



सत्यमेव जयते

①

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12639/1021/2021 | R28250

Complainant: Shri Shiv Prakash Dubey
E-mail: <spdubey2633@irctc.com>

Respondent: The General Manager (HR)
Indian Railway Catering & Tourism Corporation Ltd
11th Floor, B – 148, Statesman House
Barakhamba Road, New Delhi – 110001
E-mail: <info@irctc.com>

R28250

Complainant: 45% locomotor

GIST of the Complaint:

शिकायतकर्ता श्री शिव प्रकार, सहायक प्रबंधक का अपनी शिकायत दिनांक 01.03.2021 में कहना है कि वह आई.आर.सी.टी.सी. में वर्ष 2006 में दिव्यांग कोटे के तहत भर्ती हुए थे तथा मैनेजमेंट द्वारा उनको अवगत करवाया गया कि पदोन्नति में दिव्यांग कोटा केवल समूह 'सी' और 'डी' में ही लागू है जबकि डी.ओ.पी.टी., ओ.एम. दिनांक 03.12.2013 में स्पष्ट से निर्देशित किया गया है कि दिव्यांग व्यक्ति के पदोन्नति में आरक्षण की गणना समूह 'ए', 'बी', 'सी' एवं 'डी' के सभी पदों में एक समान तरीके से की जानी है ।

2. The matter was taken up with the Respondent vide letter dated 03.03.2021 under Section 75 of the RPwD Act, 2016.

3. Addl. General Manager (HRD), IRCTC vide letter dated 30.03.2021 inter-alia submitted that PwD quota in promotion is applicable only in Group 'C' & 'D' posts and DOP&T OM dated 03.12.2013 does not provide reservation in promotion for PwDs.

4. Complainant vide rejoinder dated 08.04.2021 inter-alia submitted that para 03 and 08 of DOP&T OM dated 03.12.2013 have neither mentioned nor implemented, even though said guidelines were issued in accordance with Judgement of Hon'ble Supreme Court, arising out of SLP (Civil) No. 7541 of 2009 & Civil Appeal No. 1567 of 2017.

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5. After considering the respondent's reply dated **30.03.2021** and the complainant's rejoinder dated **08.04.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **05.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.07.2021**. The following were present:

- Adv. Anurag Tripathi on behalf of complainant
- Sidhartha Singh, ADM (HR) on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. He was appointed in 2006 on the post of Chief Supervisor, S-4 grade, under PwD quota and since his appointment he has not been given benefits of reservation in promotion.

8. Respondent submits that as per promotion policy there is minimum residency period for promotion to higher grade. In year 2009 the Complainant was given opportunity to appear in promotion exam after he completed residency period on 3 years, he failed to clear the exam. Thereafter, in 2010 he again appeared in promotion exam which he qualified and was promoted. Reservation in promotion for PwBD is not applicable to group A and B posts. In 2010 when complainant cleared written examination he was promoted to E-0 Grade. E-0 Grade is Group B post and therefore, reservation in promotion is not given in Group B post. Similarly in year 2016 and 2020 he was given promotion on completing residency period and qualifying promotion exam. However, both in 2016 and 2020 he was not given reservation in promotion because as per the respondent reservation for PwBDs is not available in Group B posts.

9. Plethora of Complaints are filed before this court whereby denial of reservation in promotion is alleged. After perusal of various such Complaints this court has identified following two issues which need to be addressed in such matter:



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10. Whether reservation in promotion to Group A and B is applicable for Persons with Benchmark disabilities (hereinafter mentioned as 'PwBD') and can be implemented being a horizontal reservation as against vertical reservation for other categories;

11. Whether Government instructions are mandatory to be issued before implementation of reservation for PwBD in promotion to Group A and B.

Issue No. 1

12. The Hon'ble Supreme Court settled this issue in the judgment of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153, whereby hon'ble court laid down that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment, further Government was directed to extend reservation under The Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act 1995 (hereinafter mentioned as 'PwD Act of 1995') to PwD in all identified posts in Group A and Group B irrespective of mode of filling up of such vacancies. Relevant paras of the judgment are reproduced below –

"24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

13. The hon'ble court's reasoning behind the directions was based upon the objective and purpose sought to be achieved by the legislature. Court in the same judgment noted that the objective behind PwD Act of 1995 is to integrate PwD into society and to ensure their economic progress. The intent is to turn PwD into agents of their own destiny.



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14. Court also addressed the anomaly which arises when reservation in promotion is not extended to identified posts in Group A and Group B. Para 13 of the judgment is reproduced below –

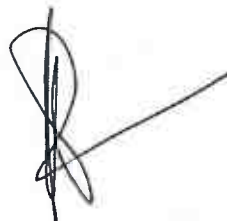
"13. For some of these identified posts in Group A and Group B, the mode of recruitment is only through promotions. The purpose underlying the statutory exercise of identification under Section 32 of the 1995 Act would be negated if reservation is denied to those identified posts by stipulating that either all or some of such posts are to be filled up only through the mode of promotion. It is demonstrated before us that PWD as a class are disentitled to some of the identified posts in Group A and Group B because of the impugned memoranda and the relevant regulations, under which the only mode of appointment to those identified posts is through promotion. Once posts are identified under Section 32, the purpose behind such identification cannot be frustrated by prescribing a mode of recruitment which results in denial of statutory reservation. It would be a device to defraud PWD of the statutory benefit granted under Section 33 of the 1995 Act."

15. Hon'ble Court in the same judgment has further held that the basis for providing reservation for PwD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in INDRA SAWHNEY v. UNION OF INDIA; AIR 1993 SC 477 is clearly and normatively not applicable to the PwD.

16. Recently in judgment dated 14.01.2020, in the matter of SIDDARAJU v. STATE OF KARNATAKA [Civil Appeal No. 1567 of 2017] the Hon'ble Supreme Court of India has upheld the judgement passed in the matter of Rajeev Kumar Gupta (Supra). The Supreme Court has held that –

"10) After hearing learned counsel appearing on behalf of all the parties including the learned Additional Solicitor General, we are of the view that the judgment of this Court cannot be faulted when it stated that IndraSawhney dealt with a different problem and, therefore, cannot be followed.

We may also note that review petitions were filed and have since been dismissed against both the 2013 and 2016 judgments. Consequently, the reference stands answered by stating that the 2013 judgment as clarified in National Federation of the Blind vs. Sanjay Kothari, Secy. Deptt. Of Personnel and Training, 2015 (9) Scale 611 and the judgment in Rajeev Kumar Gupta & Others v. Union of India & Others – (2016) 13 SCC 153 case will bind the Union and the State Governments and must be strictly followed notwithstanding the Office Memorandum dated 29.12.2005, in particular. Since the reference has been disposed of by us today, contempt petitions be listed for hearing."



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17. At this point it is pertinent to mention that the above judgments were delivered while interpreting Sections 32 and 33 of PwD Act of 1995. Therefore, issue arises whether the law laid down in these judgments shall be applicable for implementation and execution of rights under The Rights of Persons with Disabilities Act, 2016 (hereinafter mentioned as 'RPwD Act of 2016') as well.

18. This court observes that the aforementioned rulings of hon'ble Supreme Court are in the context of the PwD Act of 1995 which has now been replaced by The Rights of Persons with Disabilities Act, 2016. This court concludes that the mandate, objectives and targeted beneficiaries of both the PwD Act of 1995 and RPwD Act of 2016 are identical. Hence, replacement of the Act of 1995 does not in any way change the interpretation of the Supreme Court's directions in this matter.

19. Further the hon'ble Supreme Court held in JUSTICE SUNANDA BHANDARE FOUNDATION v. UNION OF INDIA (2017) 14 SCC 1 that RPwD Act of 2016 confers more rights on PwDs and is a sea change and requires a march forward. Relevant Para of the judgment is reproduced below -:

"24. We have referred to certain provisions only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation."

20. Therefore, this court concludes that despite of similar objectives of the two acts, if effect of judgments of hon'ble Supreme Court in Rajeev Kumar Gupta (Supra) and Siddaraju (Supra) is not extended to RPwD Act of 2016 Act, it shall be a step backwards rather than march forward.



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21. At this juncture it is vital to mention the judgment of Hon'ble High Court of Uttarakhand delivered in UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLineUtt 865. Hon'ble High Court held that law as laid down in Rajeev Kumar Gupta Case by the hon'ble Supreme Court does not make any distinction between Group A and B posts vis a vis Group C and D posts. Then the hon'ble High Court went on to held that judgments rendered under the light of provisions of PwD Act of 1996 still hold good under RPwD Act of 2016. Relevant Para of the judgment is reproduced below -:

"A bare perusal of Section 34 of the new Act reveals that every appropriate Government is under a duty to appoint person with benchmark disabilities to the extent of not less than 4% of the total number of vacancies in the cadre strength, in each group of posts. Thus, the judgments rendered in the light of provisions contained in Act no. 1 of 1996 still hold good under the new Act."

22. Hence, this court concludes that replacement of the PwD Act of 1995 does not in any way change the interpretation of the Supreme Court's directions in this matter

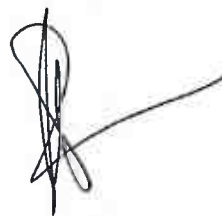
Issue No. 2

23. In the RPwD Act of 2016, the proviso to section 34(1) states that "reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time". The plea taken by the Respondent in many Complaints is that as the Government's directions are still awaited in this respect, establishments cannot implement the Supreme Court directions.

24. First proviso to sub-section (1) of section 34 of the Rights of Persons with Disabilities, 2016 reads as follows:

"Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:"

25. The question before this Court is whether reservation in promotion to PwBD in the services under the Government of India can be given at present in the circumstances when the Government of India has not issued any instructions about reservation in promotion to the PwBD after the RPwD Act of 2016 came into existence.



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26. In this regard it is imperative to mention the judgment of Hon'ble Supreme Court in matter of GOVERNMENT OF INDIA v. RAVI PRAKASH GUPTA; (2010) 7 SCC 626. One of the issues in the case was whether reservation to PwDs under s.33 of 1996 Act can be denied till executive identifies posts for reservation under Section 32 of 1996 Act. Court held that waiting for the executive to identify posts in order to extend reservation to PwDs shall be violation of the intent of the legislature. Relevant Para of the judgment is reproduced below -:

*"The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. **To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction.** Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Groups A and B posts in the IAS was undertaken after the year 2005 is not of much substance."*

27. Incidentally, Hon'ble Uttarakhand High Court in its judgment delivered in matter of UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLineUtt865 reiterated the same with respect to Section 34 of RPwD Act of 2016. Relevant Paras of the judgment are reproduced below -:

"First proviso to Section 34 of the new Act provides that reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. We have been informed that such instructions are yet to be issued by the State Government. Rights of Persons with Disabilities Act, 2016 is a beneficial legislation and Section 34 thereof confers statutory right of reservation in public employment to persons with benchmark disabilities. This valuable right cannot be denied to persons with disabilities due to inaction on the part of the State Government in issuing instructions."

28. The Government of India vide DOPT OM No. 36035/02/2017 dated 15.01.2018 issued instructions about implementation of reservation for PwBD. These instructions cover reservation in the matter of posts filled by direct recruitment. The OM appears to be silent about reservation in the matter of promotion but it is not.



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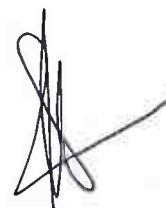
29. The OM dated 15.01.2018 refers to two OM's, one of which is OM No. 36035/03/2004 dated 29.12.2005. The OM dated 29.12.2005 contains instructions about reservation in promotion for PwBD and has not been withdrawn or superseded by OM dated 15.01.2018 or any other OM or Order or any other type of communication. The OM dated 15.01.2018 has replaced instructions about reservation for PwBD in direct recruitment but has left instructions about reservation in promotion intact. As such, instructions about reservation in promotion for PwBD issued by the Central Government already exist and reservation in promotion to PwBD should be given as per these instructions as long as any other instructions are issued by the Government.

30. A question may be raised that OM dated 29.12.2005 relates to Persons with Disabilities (PwD) while as per the RPwD Act of 2016 reservation is provided to the PwBD. Careful reading of the RPwD Act of 2016 and the OM dated 29.12.2005 makes it clear that the term PwBD used in the Act and the term PWD used in OM dated 29.12.2005 have exactly the same meaning.

31. Another issue is that the RPwD Act of 2016 says that reservation for PwBD shall not be less than 4% while the OM dated 29.12.2005 makes provision of only 3%. It needs to be noted that provision of at least 4% reservation has been made in case of direct recruitment. Regarding reservation in promotion, the Act leaves it to the discretion of the appropriate Government.

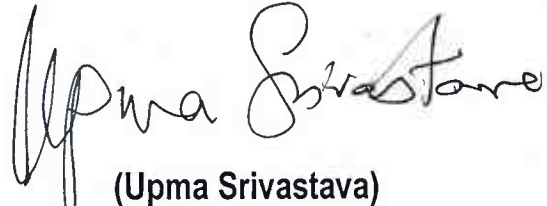
32. The OM dated 29.12.2005 provided that reservation in promotion to the PWD will be available in Group C and Group D posts only. The Supreme Court in the matter of Rajeev Kumar Gupta and others Vs Union of India and others (Supra) held that three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts shall be extended.

33. Hence, this court concludes that the Respondent establishment discriminated by not providing reservation in promotion. On the date of hearing, Complainant was posted in Group B post. This court recommends that whenever the Complainant's promotion would be



due in future, whether to Group B post or Group A post, the Respondent may give reservation in promotion to the Complainant and to other PwBD employees in all groups of posts including Group A and Group B posts in accordance with the judgment of the Supreme Court in Rajeev Kumar Gupta and others Vs Union of India and others. The matters of Complainant may be considered accordingly.

34. Case is disposed off.



(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 02.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12624/1023/2021

Complainant: Shri Mukesh Kumar Prajapati
E-mail: <nice4mukesh@gmail.com>

R28252

Respondent: The Commissioner
Navodaya Vidyalaya Samiti, B – 15
Institutional Area, Sector – 62, Noida
Uttar Pradesh – 201307

R28253

Dy. Commissioner
Navodaya Vidyalaya Samiti
Regional Office, 7/24, Gomti Nagar Extension
Near Police Head Office, Shaheed Path, Lucknow-226010

R28254

Complainant: 60% Locomotor disability

GIST of the Complaint:

प्रार्थी श्री मुकेश कुमार प्रजापति, कला शिक्षक, नवोदय विद्यालय कांसगांज, उत्तर प्रदेश का अपनी शिकायत दिनांक 23.02.2021 में कहना है कि विद्यालय के प्राचार्य एवं कार्यालय लिपिक, स्टाफ के सामने अपशब्दों का प्रयोग करते हुए उन्हें अपमानित एवं प्रताड़ित करते हैं तथा दीवारों पर पेंटिंग करने को कहते हैं। प्रार्थी का आगे कहना है कि उन्होंने दिनांक 19.02.2021 को दुगुना परिवहन भत्ता का प्रमाण पत्र चिकित्सा अधिकारी द्वारा बनवा कर प्राचार्य को प्रस्तुत किया परन्तु उन्होंने मानने से इन्कार कर दिया। प्रार्थी का आगे कहना है कि वह अपने परिवार से लगभग 1000 किलोमीटर दूर अकेले रहते हैं तथा प्राचार्य एवं कार्यालय लिपिक स्टाफ के व्यवहार के कारण उनके शारीरिक एवं मानसिक दशा पर बुरा असर पड़ रहा है।

2. The matter was taken up with the Respondent vide letter dated **01.03.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **01.04.2021**, no response has been received, therefore, the case was listed for personal hearing on **05.07.2021**.

3. Before hearing, Dy. Commissioner, Navodaya Vidyalaya Samiti vide letter dated 19.04.2021 inter-alia submitted that Shri Sukivir Singh, Principal, JNV, Agra was appointed as Inquiry Officer and he initiated an independent enquiry. The matter was sorted out amicably during the inquiry proceedings and complainant was satisfied with the enquiry dated **15.03.2021**.

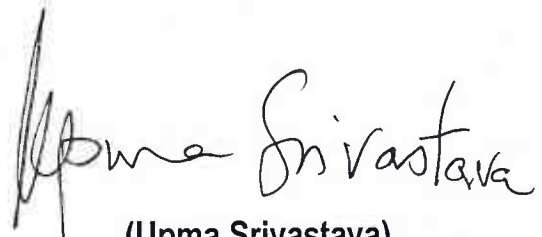
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.07.2021**. The following were present:

- Shri Mukesh Kumar Prajapati – complainant
- Shri P.R. Prasad Rao, Assistant Commissioner on behalf of respondent

Observation/Recommendations:

4. During the hearing complainant has informed that his case has been resolved by respondent followed by his email dated 16.07.2021.

5. Accordingly, the Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 02.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
 भारत सरकार/Government of India

Case No. 12627/1011/2021

Complainant:

Shri Mohak Kumar,
 173, Nehru Apartments,
 Kalkaji,
 New Delhi – 110 019

R-28227

Versus

Respondent :

The Chief Postmaster General, Delhi Circle,
 Meghdoot Bhavan,
 Dr. Bhim Rao Ambedkar Marg,
 Central Ridge Reserve Forest,
 New Delhi – 110 001.

R-28228

Disability : 50% Intellectual Disability.

Gist of Complaint:

Shri Mohak Kumar, the complainant vide his complaint dated 01.03.2021 submitted that the Chief Postmaster General, Delhi Circle vide Advt. No. III/2020-2021 has advertised for recruitment of Gramin Dak Sevaks. He submitted that Deptt. of Posts has not included Intellectual Disability in their notification to this post which is a clear violation of Notification no. 16-15/2010-DD-III dated 29.07.2013 of Ministry of Social Justice and Empowerment.

2. The Asst. Director (Legal & Inv.), Deptt. of Posts, Delhi Circle vide letter no. CC/50-14/13 dated 30.03.2021 submitted that a notification for Delhi Circle GDS Online Engagement Cycle-3 was made live on website w.e.f. 27.01.2021 for candidates to apply online. The complainant has referred to the GDS Cycle-3 notification of Delhi Circle complaining that there is no mention of Intellectual

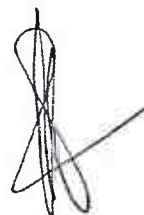
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person in the PwD category which is a clear violation of the notification dated 04.01.2021 issued by the Deptt. of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment. As regards notification dated 04.01.2021, no such notification has been received in their office. As per para 04 of the said Postal Directorate letter as per recommendations of the committee constituted for identification of posts in Gramin Dak Sevaks as suitable for persons with benchmark disabilities in pursuance of Rights of Persons with Disabilities Act, 2016 in para 4(e) of the following categories of disability are suitable for the posts in GDS:

| Name of the Posts | Categories of disability suitable for the post |
|-------------------------|---|
| BPM / ABPM / Dak Sevaks | a) Low Vision (LV) b) D (Deaf), HH (Hard of Hearing), c) One Arm (OA), One Leg (OL), Leprosy Cured, Dwarfism, Acid Attack Victim. d) Specific Learning disability e) Multiple Disabilities from amongst disabilities mentioned at (a) to (d) above except Deaf and Blindness. |

3. The complainant vide his rejoinder dated 10.04.2021 submitted that the Respondent has accepted about non receiving of Notification dated 04.01.2021 although the same is available on the public domain. The Respondent has also given reference to the Postal Directorate letter no. 17-08/2017-GDS dated 26.02.2019, which is outdated now as the present notification supersedes all the previous orders. There is also violation regarding Section 21, 23, 33 of the RPwD Act, 2016 especially Section 34 where they have extended the benefit of reservation to persons with benchmark disabilities in the new category of :-

Autism,
 Specific Learning Disability,
 Mental Illness and Intellectual Disabilities.



4. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 01.07.2021.

5. The following persons were present during the hearing ;

- 1) Complainant: Adv. Rajan Mani for Complainant.
- 2) Respondent: Shri Varun Mishra, Associate Director (Recruitment) for Respondent


Observations & Recommendations

6. Complainant submits that posts of Gramin Dak Sevak were advertised by the Respondent establishment. As per the notification issued by the Respondent establishment, Divyangjan with Intellectual Disability could not apply for the post.

7. Respondent submits that as per Postal Directorate No. 17-08/2017, dated 26.02.2019, Intellectual Disability is not recognised for the post of Gramin Dak Sevak. Further, M/o SJE Notification dated 04.01.2021 was not received by the Respondent.

8. M/o SJE notified list of posts suitable for Divyangjan vide Notification No. 38-16/2020-DD-III, dated 04.01.2021. On Sr. No. 198, post of Village Postman/Gramin Dak Sevak is identified suitable for Divyangjan with Intellectual Disabilities. Respondent is bound by this notification and hence Respondent's submission that Postal Directorate No. 17-08/2017, dated 26.02.2019 does not recognise Intellectual Disability as suitable for Gramin Dak Sevak lacks merit. By- laws of Respondent establishment cannot derogate specific guidelines issued by Government of India under Rights of Persons with Disabilities Act, 2016.

9. This court concludes that by precluding Intellectual Disabled from applying for the post of Gramin Dak Sevak, Respondent has committed violation of RPwD Act, 2016.



10. Hence, this court recommends that the Respondent shall withdraw the impugned advertisement and re-issue the same after examining it under the provisions of RPwD Act, 2016 and guidelines issued by Government of India from time to time, particularly M/o SJE Notification dated 04.01.2021.

11. Further, this court recommends the Respondent to send copy of this Order and copy of M/o SJE Notification dated 04.01.2021 to Postal Directorate for necessary amendments in by-laws of Respondent establishment.

12. The case is disposed off.

Dated: 02.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

16

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12654/1011/2021

Complainant:

Shri Anjani Lal Prajapati,
Bada Bharwara,
Viraj Khand-2,
Gomti Nagar,
Lucknow
Uttar Pradesh – 226 010.

R-28225

Versus

Respondent :

Reserve Bank of India,
(The Executive Director),
16th Floor, Central Office Building,
Shahid Bhagat Singh Marg,
Mumbai – 400001.

R-28226

Disability : 70% locomotor

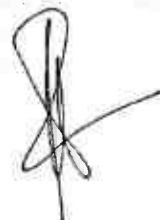
Gist of Complaint:

Shri Anjani Lal Prajapati, the complainant, a person with 70% locomotor disability vide his complaint dated 11.03.2021 submitted that Reserve Bank of India had advertised for 841 posts of Office Attendants for its various offices vide Recruitment Advertisement dated 24.02.2021. He submitted that post of Office Attendants is a Group 'D' post and such type of posts are identified for candidates with locomotor disabilities of both legs. He submitted that there is no provision in Rights of Persons with Disabilities Act, 2016 to exclude any post identified by MOSJ&E. The category of wide group of candidates with locomotor disabilities of both legs affected is deprived to get equal opportunity and participation in the Government establishments. He has requested to postpone / stop the process of recruitment and pass an order in the light of RPwD Act, 2016 so that LD/OH/Both legs affected candidates may also get

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equal opportunity and participation for the post of Office Attendant notified by RBI, Mumbai.

2. The Assistant General Manager, Reserve Bank of India vide reply dated 15.04.2021 submitted that an expert committee duly constituted by the Bank under the Rights of Persons with Disabilities Act, did not deem LD, BL as a category suitable for the post of Office Attendant (or peon) in the Bank. A perusal of the notified Group D posts reveals that the Ministry has not recognized LD, BL as a category fit for the posts such as Peon (Office Boy), Messenger Dak Peon and Office Attendant. These posts are similar to the post of 'Office Attendant' advertised by the Bank. The Respondent submitted that the benchmark disabilities highlighted as appropriate for the post of Office Attendant by the Bank are well-aligned with those identified by the Ministry. The Bank thus compliant with the Ministry's policy/notification on the subject matter. The expert committee constituted by the Bank has identified posts for persons with benchmark disabilities in accordance with the relevant provisions, such as Sections 33, 34 of the Act. The complainant's allegation that the Bank has excluded a post otherwise identified by the Ministry is thus without merit and strongly opposed. The nature of work of an Office Attendant in the Bank includes taking papers/files/letters from one table/department/office to another, distributing letters against acknowledgement preparing envelopes supplying stationery, arranging files, tying bundles, operating Zerox machine, opening cupboards/shelves etc. Further the Bank's office premises are spread across two or more buildings at some centres, thus a lot of physical movement is envisaged. Hence the said post has not been identified for LD-BL category. The Respondent further submitted that postponement of the ongoing recruitment process under the Notification at this stage would be detrimental to applicants/candidates and



against public interest. Moreover, the complainant has not been able to demonstrate a reasonable cause or premise justifying a rather extreme suggestion of deferment of the entire recruitment process. The exam for recruitment to the post of Office Attendant pre-scheduled to be held on April 09 and 10, 2021 at various centres across India has already been completed.

3. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 14.07.2021

4. The following persons were present during the hearing ;

- 1) Complainant : Shri Anjani Lal Prajapati spoke over phone.
- 2) Respondent : Shri Neeraj Sakalle, Manager for Respondent.

Observation/Recommendations:

5. The Court observed that the post of Office Attendant is not identified for Both Leg (BL) disability in the Notification dated 04.01.2021 of Ministry of Social Justice and Empowerment. The Court found no discrimination on the grounds of disability.

6. The case is disposed off.

Dated: 02.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12638/1011/2021

Complainant:

Shri Kshitij Ahuja,
C 9, Rashmi Apartments,
Harsh Vihar,
Pitampura,
Delhi – 110 034.

R-28223

Versus

Respondent :

Software Technology Parks of India,
(Through the Director General),
1st Floor, Plate 'B',
Office Block-1,
East Kidwai Nagar,
New Delhi – 110 023

R-28224

Disability : 90% Hearing Impaired

Gist of Complaint:

Shri Kshitij Ahuja, the complainant aged 36 years vide his complaint dated 03.03.2021 submitted that he had applied for the post of Member Technical Staff-E-III (Scientist 'D') against the Recruitment Advt. No.2(5)/I/STPI-HQ/2019-20 of Software Technology Parks of India in August 2020. In the advertisement it was mentioned that during selection preference will be given to candidates having hearing impairment and suitable relaxation will also be given. The complainant exceeds the experience requirement for the said post and has 58.98% marks against 60% required marks. His application has been screened without according 5% relaxation in marks which is in contravention to the respondent's own advertisement. This is a violation of RPwD Act, 2016. The complainant has requested to direct the Respondent to give 5% relaxation in marks for the said vacancy.

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2. The Respondent vide letter dated 24.03.2021 submitted that they had advertised 03 vacancies (UR-1, SC-1, OBC-1) to the post of Member Technical Staff (MTS) E-III (Scientist -'D') in Level-12 vide Employment Notice No.2(5)/I/STPI-HQ/2019-20 on 19.08.2020 inviting application from the eligible candidates meeting the advertised essential qualification and experience. The vacancies were reserved for PwD candidates. The complainant had also applied against the said employment notice. The complainant's application could not be shortlisted for further process as he was not meeting the requisite essential educational qualification criteria. He possesses 2nd Division in BE against the requirement of 1st Division. The eligibility of the candidates has been determined in terms of educational qualification, experience, age etc in accordance with the condition mentioned in the employment notice. The complainant himself has admitted that he possesses 2nd Division in BE with 58.98% marks against the requirement of 1st Division. The complainant has claimed that he did not find response to his emails inter-alia to the respondent organization. In this connection, the Respondent has stated that the complainant had filed a similar grievance online on CPGRAM on 21.02.2021 vide Registration No. MINIT/E/2021/00737. The reply against his grievance has already been sent to him by the Respondent vide email dated 01.03.2021. The Respondent further stated that they have appointed a Grievance Office vide Order dated 11.04.2011 who is looking after the complaints received from PwDs.

3. **Hearing :** An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 05.07.2021.

4. The following persons were present during the hearing ;

- 1) Complainant: Shri Kshitij Ahuja in person
- 2) Respondent: Shri Rakesh Gairola for Respondent



Observations & Recommendations

5. Complainant submits that the Respondent establishment conducted recruitment examination for the appointment of member technical staff – E-3 (Scientist D). As per the advertisement issued by the respondent, eligibility criteria for applying for the post was bachelor degree in engineering with first class marks (60%). Complainant scored 58.98% marks and in his bachelor degree course. His application was screened out and he was not given opportunity to appear in the examination. He claims that relaxation of 5% marks was not extended to him.
6. Respondent submits that total number of vacancies advertised were three. No vacancy was reserved for PwBD category. Since, the complainant did not score first class marks in his bachelor degree, therefore, his application was screened out. 5% relaxation was not given because there was no reservation for PwBD category.
7. Issue is whether relaxation can be given to the Complainant even if no vacancies were reserved for PwBD candidates.
8. Hon'ble Delhi High Court in MANEESH SHARMA v. LT. GOVERNOR & ORS.: W.P. (C) 747/2018 held that there is a clear-cut distinction between grant of reservation viz. grant of relaxation; both these aspects lie in separate domains. While reservation for physically handicapped candidates is statutorily mandated under the PWD Act, grant of any relaxation to such candidates would be for the employer to examine after taking into consideration the nature of duties required to be discharged on the post as also the number of candidates from the said category who may be found to be eligible for the said post. It may be possible that an establishment decides to reserve some vacancies for PwBD candidates in accordance with rules and guidelines even if no such vacancies are reserved in accordance with rules and guidance. Such establishments are not stopped from extending relaxation in eligibility criteria.



9. Another aspect related to relaxation is that there is no rule or guideline which lays down that relaxation in eligibility criteria shall be automatically granted to PwBD candidates. Hence, it is prerogative of the employer to decide the nature and quantum of relaxation. Such decision must be in accordance with the Recruitment Rules of the employer. If recruitment rules are silent on this aspect then such decision shall be taken after taking into consideration the nature of duties needed to be discharged on the post and number of PwBD candidates may be found eligible.

10. Respondent submitted that written examination has been conducted for the present recruitment process. Hence, this court concludes that it would not be fair to disturb the current recruitment cycle.

11. This court recommends that even though Respondent is not bound by statutory duty to provide relaxation in eligibility criteria, with objective of following the principles laid down in RPwD Act 2016 in spirit, Respondent may extend relaxation in eligibility criteria to PwBD candidates in recruitment process in future.

12. Further, this court recommends that if Recruitment Rules of the Respondent establishment provides for relaxation in eligibility criteria to PwBD candidates, Respondent shall extend such relaxation even if no vacancies are reserved for PwBD candidates.

13. The case is disposed off.

Dated: 02.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

Extra (23)

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12758/1092/2021

Complainant:

Shri Gopal Pandappa Naik,
R/o C-5-D, Government Quarters,
Near Kendriya Bhandar, Altinho-Panaji,
Goa-403001;
Email: gopalvasco@gmail.com

R-28221

Respondent:

Project Director – PIU;
NHAI Regional Office,
4th Floor, Opp: CBD Belapur Railway Station,
CBD-Belapur, Navi Mumbai-400614
Email: romumbai@nhai.org; exemptedFASTag@nhai.org

R-28222

1. Gist of Complaint:

1.1 Shri Gopal Pandappa Naik, M-38, a person with 40% Locomotor Disability (Lower Limb) filed a complaint regarding refusal to dispatch exempted FASTag to his residence or to the nearest NHAI Office at Goa.

1.2 The complainant had applied for FASTag online. NHAI Team, Regional Office, Mumbai informed him come Mumbai with the registered vehicle to collect the Tag. Being a long distance i.e. 1200 km both way, the complainant requested NHAI Team to send the Tag via Speed Post to his residence or send it to NHAI Office in Goa. But the respondent refused and said that if he wanted exempted FASTag to be fixed on his vehicle then he had to come to RO Mumbai Office and there is no other alternative.

2. Submissions made by the Respondent

2.1 Respondent filed their reply dated 08.07.2021 and submitted that Ministry of Road Transport and Highways have issued a detailed Manual for issuance of FASTags under exempted category vide SoP dated 09.12.2019. Based on the SoP, NHAI has also published an operating manual for issuance of FASTag under exempted category to be followed. As per Para 3.8 of the SoP and Para 2.3 of the Manual, the applicant has to visit Regional Office of NHAI in the

(Page 1 of 2)

State physically with the vehicle to affix the Tag and an acknowledgement is taken from the applicant.

2.2 In the instant case, the applicant's inability coming physically to Mumbai was considered. A feedback request was sent to NHAI HQ for improving the SoP/Manual and permit distribution of FASTag under exempted category from PIUs of NHAI also. The improvement of such change in SoP/Manual/Software is still awaited from HQ to limited working on account of Covid-19. However, in anticipation of formal approval from HQ, Regional Officer dispatched the FASTag of the complainant to its NHAI PIU, Goa. There is no toll plaza in Goa by MoRTH/NHAI.

2.3 The appeal of the complainant has been granted, the respondent, therefore, requested to close the case.

3. Submissions made in Rejoinder

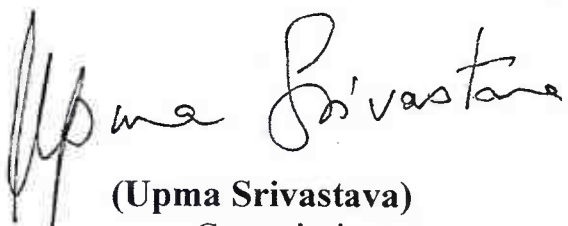
The complainant vide email dated 15.07.2021 expressed his thanks and submitted that FASTag was affixed by NHAI PIU-Goa on his Car, No.GA 07 N 0253 on 14.07.2021. He prayed that NHAI-PIU, Goa may be made a permanent venue to affix the FASTag under exempted category for Persons with Disabilities of Goa State.

4. Observations/Recommendations

4.1 Considering upon the facts of the case and similar complaints being received, it is recommended that a permanent venue suitable for affixing the FASTag under exempted category for Persons with Disabilities may be made in Goa as well as in other States/UTs.

4.2 Since the grievance of the complainant has been redressed, no further intervention is required in this matter; and the case is accordingly disposed off.

Dated: 02.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No. 12742/1011/2021

Complainant:

Shri Pritish Nandwani,
3305, Nova West,
Supernova Complex,
Sector 94,
Noida - 201301
Email<nknandwani@yahoo.co.in>

R-28229

....Complainant

Versus

Respondent :

Employees' Provident Fund Organisation,
(Through the Central Provident Fund Commissioner),
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi - 110066
Email<rpfc.exam@epfindia.gov.in>

....Respondent

R-28231

Disability : 74% Specific Learning Disability

Gist of Complaint:

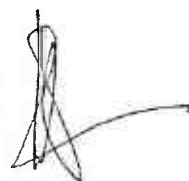
Mr. Naresh Nandwani F/o Mr. Pritish Nandwani, a person with 74% specific learning disability vide his complaint dated 09.06.2021 submitted that his son applied for the post of SSA in EPFO and appeared in required tests in 2019. The EPFO did not qualify him in phase III of tests. EPFO did not qualify any candidate from D&E category of disability despite 6 numbers of vacancies. Phase III of test is only a computer typing test, EPFO referred to clause 22 of their notification which clearly mentioned that qualifying marks will be decided as per discretion of EPFO and cut off are applied at two stages i.e. (a) on scores in individual test and (b) on total scores. The qualifying marks for PwBD candidates was kept at 5% less than that of

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General Candidates. The PwBD (D&E) category will be accounted for in the next recruitment cycle as per rules. Above criteria of cut off marks 5% less than general candidates was not specified in the notification, rather it was mentioned to shortlist candidates in 1:5 ratio for phase III. The EPFO mentioned that concession on the minimum qualifying marks has already been given for PwBD candidates and it will not be possible to consider candidates who did not get the minimum qualifying mark. Though Clause 22 of the recruitment notification did not declare qualifying marks and cut off and kept it at EPFO discretion. EPFO later on kept cut off marks so high that not even a single candidate under category D & E got shortlisted from an All India open competition test.

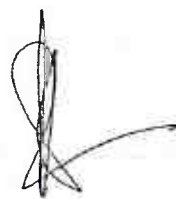
2. The matter was taken up with the Central Provident Fund Commissioner, Employees' Provident Fund Organisation vide letter dated 09.06.2021.

3. Regional P.F. Commissioner-I (Exam.) of Employees' Provident Fund Organisation vide letter no. A-12034/3/2021-EXAM/168 dated 05.07.2021 submitted that the notification for direct recruitment to the post of Social Security Assistant in EPFO was issued on 21.06.2019 in respect of 19 regions. As per the notification, the above said examination was to be conducted in three phases. The marks obtained in Phase-II will be considered for final selection. Phase -III - Computer skill test is qualifying in nature. The qualifying marks for all categories of PwBDs in both Phase-I and Phase -II of the examination were kept at a very low percentage of 35% for each test of the examination. This is 5% lower than General norm. The same was fixed uniformly for all the regions including Delhi Region. Once PwBD candidates obtain the minimum qualifying marks, the candidates are



shortlisted upto the ratio fixed for the next phase of examination or, in case of final selection, up to the number of vacancy irrespective of the total marks they obtain as compared to other category candidates. In Delhi region, a total of 05 candidates under PwBD category D&E including Shri Pritish Nandwani obtained the qualifying marks i.e. 35% in phase – I examination and declared successful for appearing in Phase-II examination. Shri Pritish appeared in the Phase – II(Mains) examination but did not obtain 35% in some of the tests of Phase – II examination, he did not qualify in Phase – III of the examination. In phase II of the examination, 02 candidates under PwBD category D&E obtained 35% or more marks in each test of the examination and were shortlisted for appearing in the Phase – III (Computer Data Entry Skill Test). Both the candidates did not appear in the Phase – III examination. Hence, no candidate in this category was selected for appointment to the post of SSA.

4. The complainant by rejoinder vide his email dated 12.07.2021 submitted that EPFO did not mention the cut off marks for SC/ST candidates and declared 5:1 selection ratio in the notification. This means they envisaged to comfortably shortlist 30 SLD candidates for 6 vacancies in the test 2. The EPFO did not mention 35% cut off in the recruitment notice. They fixed 35% cut off only after the test and shortlisted only 2 candidates against requirement of 30 candidates.



Observation/Recommendations:

5. After going through the replies of both the parties, it is observed that the Complainant could not qualify the Phase-III Examination and therefore was not selected. The reply of the Respondent is satisfactory and it is observed that there is no discrimination to the Complainant on account of disability.

6. The case is disposed off accordingly.

Dated: 04.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
 भारत सरकार/Government of India

Case No. 12644/1011/2021

Complainant:

Shri Mohak Kumar,
 173, Nehru Apartments,
 Kalkaji,
 New Delhi – 110 019.

R28336

Versus

Respondent :

University of Delhi,
 (Through the Registrar)
 Main Campus,
 Delhi – 110007.

R28337

Disability : 50% Intellectual Disability.

Gist of Complaint:

Shri Mohak Kumar, a person with 50% Intellectual Disability vide his complaint dated 04.03.2021 submitted that the National Testing Agency has advertised for recruitment of non teaching posts on behalf of University of Delhi. He submitted that 4% reservation has not been given to persons with disabilities by University of Delhi. Moreover persons with Intellectual Disability have been totally ignored. He submitted reservation was given only to one or more specific candidates with disabilities.

2. The matter has been take up with the Registrar, University of Delhi vide letter dated 11.03.2021 but no comments have been received from the University so far.

3. **Hearing :** An hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 14.07.2021.

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4. The following persons were present during the hearing ;

- 1) Complainant : Shri Mohak Kumar in person
- 2) Respondent : Prof. Anil Aneja, on behalf of Respondent.

Observations & Recommendations

5. Complainant submits that Respondent invited applications for filling various Group B and C posts on 23.02.2021. Respondent failed to reserve 4% vacancies.

6. Respondent submits that the posts advertised are those which remained unfilled in previous recruitment cycle. Further, Respondent committed that in next 6 months new as well as backlog vacancies shall be computed and fresh advertisement shall be issued whereby vacancies shall be reserved for Divyangjan.

7. This court recommends that the Respondent establishment shall advertise the vacancies arising in the establishment within 6 months after extending reservation of minimum 4% as also the backlog vacancies of Persons with Disabilities in compliance with Section 34 of Rights of Persons with Disabilities Act, 2016 and subsequent guidelines issued by the Government. Further, Respondent shall also file the compliance report in this court after taking the necessary action.

8. The case is disposed off.

Dated: 09.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12629/1011/2021

Complainant:

Shri Pawan K Mishra,
RZG 601, Gali No 1,
Raj Nagar 2 ,
Palam Colony,
Delhi – 110 077

R28340

Versus

Respondent :

Bank of Baroda,
(Through the Chief General Manager (Strategic HR & HR Integration),
Baroda Corporate Centre,
Bandra-Kurla Complex,
Mumbai - 400051

R28341

Disability : 75% Locomotor Disability

Gist of Complaint:

Mr. Pawan K Mishra, a person with 75% locomotor disability vide his complaint dated 01.03.2021 submitted that he appeared in Departmental Examination for promotion from Clerk grade to Officer on 28th December, 2019 with Roll No.2101101609 in Bank of Baroda. He has been suffering from Wilson disease which hampers his hand activity making it too slow. Therefore, he requested for extra time/scribe to the concerned authorities. His status of Pwd under OH category is also updated in Dena HRMS since 30.05.2015 which makes him eligible for all the facilities of Divyang candidate. When he reached the Exam Centre, he was shocked when the Exam Centre Superintendent refused to give him extra time/scribe by stating that they do

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not have any order from his Head Office to provide the said facility. However, he appeared in the examination without availing the said facility with his best efforts and commitment to fulfil his dreams.

2. The case was taken up with the Chief General Manager, Bank of Baroda vide letter dated 03.03.2021.

3. The Head – HR operations of Bank of Baroda vide letter dated 26.04.2021 submitted that Shri Pawan Mishra joined the Dena Bank in June 2015 in Clerical cadre and was posted at Mayapuri branch, New Delhi. Dena Bank got amalgamated with Bank of Baroda on 01.04.2019. Complainant appeared for promotion exam conducted by IBPS on 28.12.2019. Bank has always made sure the facility to be provided to employees with disability related to scribe or extra time. Complainant did not produce requisite documents required for availing Scribe facility. Also, he completed all 120 questions in stipulated time frame. The final merit list was prepared by aggregating the marks secured by the candidates in the online test, interview and annual performance appraisal. Shri Pawan could not secure a position in the final merit list. Bank further submitted that there is no reservation for PwD candidates for promotion from Clerical to Officers' cadre and therefore, bank has not violated the reservation guidelines. Concerns were raised by the complainant after 8 month of conclusion of the exercise.

4. The complainant submitted the rejoinder vide letter dated 16.06.2021 that all the points made by respondent is invalid. As the result came on 30.06.2019 and he made the representation to the Management of the Bank

of Baroda in July, 2019 itself. Bank has not informed the examination centre regarding the requirement of scribe or extra time.

5. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 07.07.2021.

6. The following persons were present during the hearing ;

1. Complainant: Shri Manoj Mishra, the complainant in person.
2. Respondent: Shri C.M. Tripathi, Head (HR) for Respondent.

Observations & Recommendations

7. Complainant submits that departmental exam for promotion from clerk grade to officer grade conducted on 28.12.2019 in which facility of Scribe and Extra time was not given to him. Complainant qualified written exam even without scribe and extra time, then appeared in interview. Final merit list was prepared on the basis of marks scored in written exam and interview. Though, Complainant scored good marks in interview, he failed to make it to merit list, because total marks scored in written exam and interview fell short of cut off marks. Complainant submits that if scribe facility has been given to him, he would have qualified the exam.

8. Respondent submits that scribe is provided for every department – promotion exam. Details of such employee who needs scribe are always given to IBPS, the agency which conducts exam. In case of communication failure, exam venue officer is empowered to allow examinee to bring his own scribe. In case of Complainant, he was not given scribe facility because he did not provide requisite documents on the venue of examination.

9. Submissions of Respondent are self-contradictory. On one hand it is submitted that details of eligible employee are given to IBPS and on the other hand it is submitted that Complainant failed to provide requisite documents on the venue.

10. Respondent's attention is invited to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. This O.M. lays down detailed guidelines for providing scribe facility. As per the OM, it is mandatory to provide scribe facility to a Divyang candidate, who has limitation in writing. Further OM directs that, the candidate may opt for his own scribe or request the examining body to provide scribe. OM also makes it mandatory for all the examining bodies to prepare panel of scribes at state, division and district levels. OM also provides for educational and other essential requisites with respect to scribe.

11. Respondent's submission that the Complainant was not provided scribe facility is violation of M/o SJE guidelines in OM dated 29.08.2018. OM provides that the examining body must adopt flexible attitude in accommodating any change in scribe in case of emergency. Examination in question is promotion exam, hence it is certain that the Respondent had knowledge about disability and inability of the Complainant to write the examination. Respondent must have adopted pro-active approach and should have arranged for scribe in advance. On the contrary, Respondent failed to adopt flexibility in accommodating scribe facility and consequently failed to provide scribe facility.

12. In the present fact, since the examination process is now complete and final merit list has been released, hence intervention of this court at this stage is not warranted.

13. This court recommends that the Respondent shall provide scribe facility in examinations conducted for promotion or for recruitment or for any other purpose in accordance with the guidelines issued vide OM dated 29.08.2018 of M/o SJE.

14. The case is disposed off.

Dated: 11.08.2021



(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India
Case No. 12677/1011/2021

Complainant:

Dr. Neha Nema,
Block E, House No.254/255,
Gandhi Vihar,
North West Delhi- 110009

R28338

Versus

Respondent :

Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya,
(Through the Registrar),
Post Hindi Vishwavidyalaya,
Gandhi Hills,
Wardha,
Maharashtra - 442001

R28339

Disability : 50% Locomotor Disability

Gist of Complaint:

Dr. Neha Nema, a person with 50% locomotor disability vide her complaint dated 26.03.2021 submitted that she did not get the benefit of reservation as per the quota for persons with disabilities while applying in Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya.

2. The matter was taken up with the Registrar, Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya vide letter dated 01.04.2021.

3. Acting Registrar of Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya vide letter no. Estt./006/PwDs/2016/11/710 dated 30.06.2021 submitted that one post of Assistant Professor was advertised vide advertisement no. MGAHV/8/2019 dated 30-07-2019, which was

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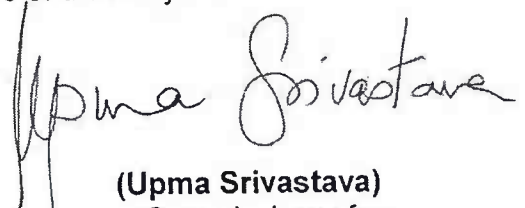
earmarked for OBC category and the Post code was 46. Dr. Neha applied for the same category. A screening committee scrutinised the applications and called 37 candidates including Dr. Neha Nema for the online interview conducted on 09.11.2020. The recommendations of the selection committee were placed before the appointing authority i.e. Executive council of the university in its 67th meeting held on 18-12-2020 which got approved too. On the basis of the recommendations, offers of Appointment were issued to candidates, selected for the post. Selected candidate has accepted the offer and joined the post on 19-12-2020. There is no such provision for counting API scores in UGC Regulation, 2018 for the selection to the post of Assistant Professor. Date, Time of interview and slot applicable was telephonically informed to the candidates.

Observation/Recommendations:

4. After going through the submissions made by both the Complainant and the Respondent, the Court observed that the reply of the Respondent is satisfactory and found no discrimination on grounds of disability.

5. The case is disposed off.

Dated: 09.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

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Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12778/1102/2021

Complainant:

Shri Rajendra Pujari,
At: New Street, Park Lane,
Po: Jeypore – 764001,
Dist – Koraput (Odisha);
Email: pineshgoudo@gmail.com

R28354

Respondent:

(1) The Branch Manager,
Utkal Gramya Bank,
Main Branch (IFSC - SBIN0RRUKGB)
Jeypore Town, District: Koraput-764001 (Odisha)

R28355

(2) The Chairman, Utkal Grameen Bank,
Head Office, Club Para, Bolangir-767001 (Odisha)
E-mail: chairman.ugb@gmail.com

R28356

1. Gist of Complaint:

1.1 Shri Rajendra Pujari, M-42, a person with 48% Locomotor Disability filed a complaint dated 22.07.2021 regarding denial of DRI Loan (Differential Rate of Interest Loan) by Utkal Grameen Bank.

1.2 The complainant runs a small Tiffin hotel near Government Bus Stand, Jeypore, District Koraput (Odisha). He has a Bank Account in Utkal Grameen Bank, Jeypore Branch. He had applied for DRI Loan, under the DRI Loan Scheme for persons with disabilities.

2. Section 19 (1) and 19(2)(d) of the Rights of Persons with Disabilities Act, 2016 provide as under:-

“19. (1) The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to

(Page 1 of 2)

facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

(2) The schemes and programmes referred to in sub-section (1) shall provide for—

(d) loans at concessional rates including that of microcredit;”

3. Submissions made by the Respondent

3.1 Chairman, Utkal Grameen Bank filed their reply dated 09.07.2021 and submitted that Utkal Grameen Bank being a Regional Rural Bank is not authorised to sanction loan to the beneficiaries under Differential Rate of Interest Scheme as spelt out in RBI Circular No.2006-2007/358.

3.2 Condoning for the difficulties, Shri Rajendra Pujari was requested to approach other Public Sector Banks to fulfil his credit requirement; and in this regard he also submitted a letter of satisfaction (in vernacular language).

4. Submissions made in Rejoinder

Complainant in his rejoinder dated 28.07.2021 submitted that he would open an account in another bank and apply for DRI loan.

5. Observations and Recommendations

5.1 No discrimination appears in this matter on the ground of disability as the rural bank is not authorised to sanction DRI loan as spelt out in RBI Circular No.2006-2007/358. The complainant may apply in another public sector bank for loan as per his own submissions.

5.2 The case is accordingly disposed off.

Dated: 09.08.2021



(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No : 12682 / 1022 / 2021
 वादी : श्री शिवलाल बाबुलाल दहीकर
 खलासी / चौकीदार
 पीएफ : 50881302232
 स्थान : इंदौर
 मोबाइल नंबर : 09834150724
 ईमेल : dahikarshivlal@gmail.com
 rajkumarverma066@gmail.com

P28370

प्रतिवादी : मंडल कार्मिक अधिकारी,
 मंडल रेल प्रबंधक कार्यालय
 रतलाम (प.रे.)
 E-mail : personneldepttrtm@gmail.com
 drm.rtl@wr.railnet.gov.in
 gm@wr.railnet.gov.in

P28371

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत में कहना है कि वह 40 प्रतिशत दृष्टिबाधित दिव्यांगजन है तथा खलासी / चौकीदार / एसएसई / एसआईजी / इंदौर रतलाम मंडल वेस्टन रेलवे के अंतर्गत कार्यरत है। शिकायतकर्ता का कहना है कि वह शारीरिक रूप से दिव्यांगजन दृष्टिबाधित (एल.वी) की श्रेणी में आता है। शिकायतकर्ता अमरावती जिला महाराष्ट्र का निवासी है। शिकायतकर्ता ने अपना स्थानांतरण नागपुर मंडल (मध्यरेल) के हेतु आवेदन दिया था जिसकी एनओसी दिनांक 26.03.2019 को रतलाम मंडल में आ चुकी है परन्तु शिकायतकर्ता को रतलाम मंडल वेस्टन रेलवे से कार्यमुक्त कर नागपुर मंडल के लिए रिलिव नहीं किया गया है, शिकायतकर्ता इसके संदर्भ में बार बार अपने सिनियर डीएसटीई और डीआरएम से मिल चुके हैं और आवेदन भी दे चुके हैं लेकिन अब तक उस पर कोई कार्यवाही नहीं हो पाई है।

अतः शिकायतकर्ता ने निवेदन किया है कि उन्हें रतलाम मंडल से नागपुर मंडल में स्थानांतरण करने की कृपा की जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.03.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. मंडल कार्मिक अधिकारी, मंडल रेल प्रबंधक कार्यालय रतलाम (प.रे.) का अपने पत्र दिनांक 27.04.2021 में कहना है कि शिवलाल बाबुलाल दहीकर इंदौर स्टेशन पर खलासी (सिग) के पद पर सिनी. से.ईजी. (सिग) इंदौर के अधीन कार्यरत है। कर्मचारी का रतलाम मंडल से नागपुर मंडल, म.रे. पर स्वयं के अनुरोध पर स्थानांतरण हेतु आवेदन किया गया था।

प्रतिवादी का आगे कहना है कि कर्मचारी को नागपुर मंडल पर कार्यमुक्त करने हेतु प्रकरण दिनांक 12.04.2021 को प्रस्तुत किया गया जिस पर सक्षम अधिकारी (वरि.मंडल संकेत एवं दूरसंचार इंजी.) ने निम्न आदेश दिए:

i) सिगनल विभाग में हेलपर/खलासी का पद सुरक्षा की दृष्टि से अत्यंत ही महत्वपूर्ण व संवेदनशील पद है मंडल पर चल रहे नियमित निरीक्षण, परीक्षण एवं अनुरक्षण कार्य तथा नवीन कार्य जैसे Electronic interlocking, IBH, Inter Locking of LC Gate, वर्क के दौरान को संपन्न करने में हेलपर/खलासी की भूमिका महत्वपूर्ण होती है इसके साथ ही मंडल पर चल रहे नवीन कार्य जैसे Electronic interlocking, IBH, Inter Locking of LC Gate, वर्क के दौरान सामान ले जाना साईट पर

इलेक्ट्रॉनिक्स इंस्ट्रूमेंटों में संरक्षा एवं सुरक्षा करने हेल्पर का महत्वपूर्ण योगदान रहता है जो कि रेल परिचालन की सुगमता, संरक्षा एवं सुरक्षा हेतु अति महत्वपूर्ण है।

ii) प्रतिवादी का आगे कहना है कि वर्तमान में सिगनल विभाग में स्वीकृत संवर्ग 347 के विरुद्ध 85 पद रिक्त हैं इस प्रकार ग्रुप डी की मुल 24 प्रतिशत रिक्ति है तथा अन्य किसी स्रोत से ग्रुप डी कर्मचारियों के मण्डल पर आने को कोई संभावना नहीं है। अतः प्रतिवादी ने वर्तमान में कर्मचारी को स्वयं की प्रार्थना पर अंतर रेलवे स्थानान्तरण पर कार्यमुक्त नहीं किया जा सकता है।

iii) शिकायतकर्ता श्री शिवलाल बाबुलाल दहीकर ने रतलाम मंडल से आये पत्र सख्यां ई/सिग/1140/5/3 vol-21 दिनांक 27.04.2021 के संदर्भ में कहा है कि सिगनल विभाग में कर्मचारियों की कमतरता के कारण और अन्य दूसरे मंडल से कोई कर्मचारियों की आने की संभावना न होने के कारण कर्मचारियों को कार्यमुक्त नहीं किया जा सकता है जो कि अन्य मंडलो से स्वयं के अनुरोध पर कर्मचारी रतलाम मंडल में आ चुके हैं। लेकिन शिकायतकर्ता की एनओसी नागपुर मध्य रेल मंडल से आने के बाद सामान्य कर्मचारियों को स्वयं के अनुरोध पर छोड़ा गया है जबकि भारत सरकार के रेल बोर्ड ने दिव्यांगजन कर्मचारियों को स्वयं के अनुरोध पर स्थानांतरण के लिए प्राधान्य दिया गया गया है, जिसका पत्र शिकायतकर्ता ने कार्यालय दिखाया था लेकिन जवाबी तौर पर शिकायतकर्ता से कहा गया कि पत्र पर कही भी लिखा नहीं है कि दिव्यांगजन कर्मचारियों को स्वयं के अनुरोध पर स्थानांतरण में छोड़ा जाए। नागपुर मध्य रेल मंडल से एनओसी आने के बाद मे कई बार रतलाम मंडल में अपने कार्यमुक्ति के संदर्भ में अपने सिनियर डीएसटीई से मिलने गया। लेकिन सारा समय उनके चेंबर के आगे बैठने के बावजूद भी शिकायतकर्ता को उनसे मिलने नहीं दिया गया। इसी संदर्भ में शिकायतकर्ता एपीओ तथा डीआरएम से भी मिल चुके हैं लेकिन शिकायतकर्ता का कहना है कि उनकी समस्या कोई सुनने को तैयार नहीं है।

अतः शिकायतकर्ता ने अनुरोध किया है कि उन्हें रतलाम मंडल से नागपुर मंडल में कार्यमुक्त करने की कृपा की जाए।

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

- i) Shri Shivilal Babulal Dahikar, (Complainant)
- ii) Shri Deepak Parmar, Divisional Personal Officer, (Respondent)

5. **Observations & Recommendations :**

i) Complainant submits that he is posted in Ratlam circle (Madhya Pradesh), whereas his native place is Amravati, Maharashtra. He applied for transfer to Nagpur circle where the native place is. NOC has also been sent to Ratlam circle office from Nagpur circle office, however, he has not been relieved by Ratlam circle hence he is not able to join services in Nagpur circle. Complainant has asked this court to Order the Respondent to issue relieving letter.

ii) Respondent in its written reply submits that the Complainant is posted on the post of helper/khalasi in signal department. Duties performed by the Complainant in Ratlam circle are important and sensitive. Crucial work like periodic inspection of railway tracks is in continuation. His duties are indispensable. Hence, it was not possible to relieve him. Further, during online hearing, Respondent submitted that by the end of this month, the Complainant shall be relieved from his services in Ratlam circle.

iii) Kind attention of the Respondent is attracted to DoPT O.M. No. A-B 14017/41/90-Estt. (RR) dated, 10.05.1990 read with another O.M. of DoPT, No AB 14017/16/2002-Estt. (RR), dated 13.03.2002. Both these O.Ms, lay down that divyang employees may be posted at their native place. Further DoPT O.M. No.36035/3/2013 – Estt. (Res) dated 31.05.2014 provides that divyang employees may be given preference in place of posting. Practice of considering choice of place of posting in case of divyang employees may be continued.

iv) Applying the principle laid down in these three guidelines issued by DoPT, this court concludes that Respondent has violated rights of divyang employees. Hence this court recommends that the Respondent shall issue relieving letter to the Complainant within 1 week of receiving copy of this Order.

6. This case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 09.08.2021



सत्यमेव जयते

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extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12650/1101/2021

Complainant:

Dr. Satendra Singh,
Professor of Physiology,
University College of Medical Sciences &
GTB Hospital, Delhi-110095
Email: dr.satendra@gmail.com

R28357

Respondents:

(1) Director,
Lady Hardinge Medical College &
Associated SSK and KSC Hospitals,
C-604, Shahid Bhagat Singh Road,
Ridge Area, Connaught Place,
New Delhi-110001
Email: directorlhmc@gmail.com

R28358

(2) Secretary,
National Medical Commission,
Pocket-14, Sector-8, Dwarka, Phase-1,
New Delhi-110077
Email: secy-mci@nic.in

R28359

(3) Dean, Faculty of Medical Sciences,
6th Floor, Vallabhai Patel Chest Institute Building,
University of Delhi, Delhi-110007;
Email: dean_medical@du.ac.in

R28360

1. Gist of Complaint:

1.1 The Complainant, Dr. Satendra Singh, M-44, a person with 70% Locomotor Disability, filed a complaint that the campus of Lady Hardinge Medical College (LHMC) and its associated hospitals are inaccessible and disabled-unfriendly. The website of LHMC is also inaccessible for persons with visual impairment.

(Page 1 of 7)

1.2 National Medical Commission (NMC) [erstwhile Medical Council of India (MCI)] had issued directions vide letters No.MCI-34(1)(UG)(Gen.)/2012-Med./67890 dated 29.03.2013 and No.MCI-34(1)(UG)(Gen.)/2012-Med./24842 dated 16.08.2016 to the Deans/Principals of all the Medical Colleges/Institutions that all medical institutions in the country to become disabled-friendly and instructed to submit compliance report.

1.3 Ministry of Health & Family Welfare on the communication, to make Delhi a model accessible city, vide F.No.A-14019/01/2018-SCT dated 6 July 2018 had issued directions to ensure compliance in all the Hospitals to make public buildings and websites accessible to all in letter and spirit. Despite all of these statutory requirements under the law and directions from the National Medical Commission (NMC), LHMC-the sole medical college for women in the Capital is still not disabled-friendly. The examination hall, academic section and the Department of Physiology on the first floor are not accessible and without the elevator. Similarly, there are lots of other areas in the LHMC & associated hospital campus which are not barrier free, yet LHMC National Institutional Ranking Framework 2021 reports 'yes' in response to whether college has access facilities.

1.4 The complainant alleged that LHMC authority violated the instructions issued by NMC and M/o H&FW. LHMC neither submitted mandatory compliance report on accessibility of its premises to MCI nor to the Court of CCPD in 2013 as the undersigned was petitioner in that case.

1.5 The website of LHMC has 349 errors as per web accessibility evaluation tool. June 15, 2019 was the deadline for both government and private websites to comply with Section 46 (Time limit for accessibility by service providers) of the RPwD Act, 2016 and Rule 15(c) (Rules for Accessibility - Information and Communication Technology) of the Rights of Persons with Disabilities Rules, 2017. Yet, as of today, LHMC webpage is inaccessible for persons with visual impairment, who are protected under Clause 1(B) of the Schedule to RPDA 2016. Section 42 of RPDA 2016 imposes a statutory obligation on the government to ensure that all information and communication technology is accessible to patients with disabilities.

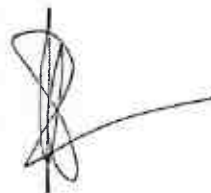
1.6 LHMC website does not have details of Equal Opportunity Cell & Grievance Redressal Officer both of which are mandated under RPwD Act, 2016 and a copy of Equal Opportunity Cell has to be submitted to CCPD too. All of these factors prevented the complainant as well as other students', faculty, non-



teaching staff, patients, NMC assessors, examiners and visitors with disabilities participation on an equal basis in LHMC activities.

1.7 The complainant prayed –

- (i) To direct the Director LHMC making the entire institution & its associated hospitals disabled-friendly (including the website) in a time-bound manner at the earliest;
- (ii) To not to hold any examinations, meetings, lectures etc at any of the inaccessible venue;
- (iii) To frame the Equal Opportunity Cell of LHMC in consultation with employees with disabilities at LHMC and upload it on the website along with details of Grievance Redressal Officer as mandated under RPDA 2016;
- (iv) To direct NMC to check the MCI/NMC inspection reports and Dean's Declaration Form submitted by LHMC to check the information submitted on accessibility and if found to be in contravention with the RPDA 2016, appropriate action be taken including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and withdrawal of recognition;
- (v) To direct the NMC to issue another reminder to all medical institutions in the Country to adhere to the accessibility standards as per RPDA 2016 else appropriate action may be taken on the Dean/Principal of the institution in addition to de-recognition of the institution;
- (vi) To direct Dean, Faculty of Medical Sciences, University of Delhi to ensure that none of the 13 medical institutions under Faculty of Medical Sciences, University of Delhi including LHMC hold/conduct any examination (UG, PG, Super Speciality etc.) at an inaccessible (disabled-unfriendly) venue; and to ensure that all of the 13 medical institutions under Faculty of Medical Sciences, University of Delhi frame and upload Equal Opportunity Policy prominently on their website; and
- (vii) CCPD may further issue a writ, order or direction or pass any other or further order or orders in the interest of justice, as it may deem fit, in the facts and circumstances of the present case. Our Hon'ble Prime Minister launched the flagship Sugamya Bharat Abhiyan but it is sad to see that medical institutions which should have been the first place to be completely accessible, flout the respect for inherent dignity of people with disabilities, put up barriers to their full and effective participation and inclusion; and perpetuates inequity.



2. Submissions made by the Respondents:

2.1 Director, LHMC [Respondent No.1] filed their reply dated 06.04.2021 annexing therewith photographs of ramps and Tactile Paths (37 Nos.) and submitted that the historical background of LHMC building may be taken as part and parcel of their comment, foundation stone of which was laid in 1914 and the college started in 1916. LHMC is undergoing with a major infrastructural change under Comprehensive Redevelopment Project and new blocks are being constructed which are nearly completion. All such accessibility as provided in the RPwD Act, 2016 have been provided in the new block. The academic Block will get new examination hall well connected with lifts with 24 x 7 power back up.

2.2 LHMC has complied with the revised Standard Assessment Form of MCI and it has always been endeavour to ensure that there is no discrimination to the persons with disabilities.

2.3 The two letters dated 29.03.2013 and 16.08.2016 of MCI had not received in LHMC, therefore, the compliance report could not be submitted. Cognizance of the aforementioned letters stated to have been taken for furnishing mandatory compliance report.

2.4 Concerns were noted for due modifications in the Webpage of LHMC with the Guidelines issued by MeitY.

2.5 Once the new buildings are operational, the Institution would be one of the disabled friendly not only in NCR but in PAN India. Recently, tactile pavings have been put in all the Hospital area, Administration Block of LHMC and Associated Hospitals. Each Department on each of the Floor in the new building is well connected with the ramps and Lift Lobby making it disabled friendly.

2.6 The complainant has just submitted the photograph of Swarn Jayanti Auditorium of the Institution. Had he been liaised with any of the Officers deputed with the functioning of the Auditorium, he would have been informed that the Auditorium had ramps on its both left and right sides providing access to Stage/Dias. Ramp has been provided to the Departments of Anatomy; SPM; Pharmacology which also provides to approach the Convocation Hall meant for the UP/PG Students and to the Office of the Director; and Office of Vice Principal of LHMC. Apart from this, the 'ONCOLOGY Building in Kalawati Sharan Children Hospital too had ramps on its both sides for disabled friendly entry. LHMC & Associated Hospitals are disabled friendly and not as portrayed by the complainant. It is also being modified towards betterment for times to



come. Tenders have been floated for installation of four lifts to be installed for the accessibility to Department of Pathology; Department of Forensic and Replacement of UG Hostel Lift.

2.7 The possibility of installation of a Lift for approaching the Department of Physiology is also being explored. Provision of a ramp with tactile paving for reaching to Medicine Ward, Skin (Dermatology) Ward, Lux Room/Swine Flu Ward, Gynae Ward, Eye & ENT Ward and ENT Operation Theatre has been made. Entry Gate of LHMC has been designed in such a way that persons with disability can comfortably enter the premises. Under Graduate Hostel for housing the MBBS students too has a ramp where three lifts are installed.

3. No reply was filed by the National Medical Commission and University of Delhi.

4. Submissions made in Rejoinder

4.1 Complainant in his rejoinder dated 26.04.2021 submitted that in response to RTI, LHMC had stated that in the last ten years they have had 18 Undergraduate and 06 Postgraduate candidates with disabilities admitted to LHMC. Currently, they have 01 Senior Resident and 13 non-teaching staff with disabilities at LHMC. How those 18 girls with disabilities completed their year-long professional-I & II respectively in the departments of physiology and pathology which are disabled-unfriendly. It is no less than physical and mental torture.

4.2 Moreover, complainant has been assigned the duty of external examiner for the MD Physiology Examination 2021 for the three medical colleges under the University of Delhi (LHMC, MAMC, UCMS) at the Department of Physiology, LHMC which is inaccessible. How will he be provided dignified reasonable accommodation to fulfil his responsibility on equal basis with others? This violates Section 20(2) and Section 3(1) of RPwD Act, 2016. The complainant has alleged to have been threatened by the Director LHMC to take him to the Court calling the complaint as malicious.

4.3 Section 21(1) of the RPwD Act, 2016 mandates every establishment to notify Equal Opportunity Policy and Section 21(2) mandates that every establishment shall register a copy of the said policy with Chief Commissioner. LHMC has not complied with the same nor has appointed a Grievance Redressal Officer as per Section 23(1) of RPwD Act, 2016.

4.4 With regard to the photographic evidence of new buildings annexed by LHMC, complainant assumed it to be the best example of accessibility but

submitted that LHMC had poor idea about accessibility. LHMC did not provide photographic evidence of accessible toilets, OPD counters and host of other public utilities in its newly constructed state of the art buildings. Access Audit Report conducted on 04.01.2020 had indicated "No toilet for PwD with grab bars" in the new building, nurses hostel, Ortho OPD, SSK hospital building, LHMC College building and Pathology Block.

4.5 LHMC never involved any doctor with disabilities or Disabled People Organisations to solve inaccessibility problems and preserve historical character of LHMC building. It is dereliction of duty to say that they do not have the most urgent letters sent by MCI. Copy of the Dean's declaration form of the inspections conducted by MCI in the last five years, was not provided.

4.6 The complainant countered photographs that Tactile Pavings have obstructions by cooler and seating block. Department of Psychiatry has Tactile Path on the ramp, the open gate obstructing the path, no signage depicting L or T shaped intersection for warning. Tactile Pavings have no Warning Blocks, ends abruptly, only Guiding Blocks. No Warning Blocks have been placed 300 mm at the beginning and end of the ramps & steps. Notice Board has been placed at the bottom making difficult to read for crutch users. Examination hall floor seems slippery. One sided railings, no continuous handrails.

5. Observations/Recommendations

5.1 The concerns raised by the complainant of accessibility, barrier free and disabled friendly premises including OPD Counters, Wards, Class Rooms and Toilets etc. in LHMC and associated hospitals as well as the Website of LHMC, have to be considered and provided with by the LHMC authority. Although, the building of LHMC is old and having historical background, yet LHMC is undergoing a major infrastructural change and new blocks are being constructed. It is appreciated that all such accessibility as envisaged in the RPwD Act, 2016 would be provided in the new block. It is pertinent to mention Section 44 of the RPwD Act, 2016 which stipulates as under:

"44. (1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government."

5.2 LHMC Authority is advised to make the LHMC and its associated hospitals' campus/premises and its Website accessible, barrier free and disabled

friendly in all respects in terms of Sections 40 to 46 of the RPwD Act, 2016 and Rule 15 of the Rights of Persons with Disabilities Rules, 2017. The Website of LHMC should be brought to the GIGW standards. LHMC should also notify and put on its website the Equal Opportunity Policy in terms of Section 21 of the RPwD Act, 2021. The Grievance Redressal Officer may also be appointed.

5.3 The case is accordingly disposed off.

Dated: 09.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities

Copy for information to –

- (1) All Hospitals in Delhi
- (2) Secretary, M/o Health & Family Welfare



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12655/1011/2021

Complainant:

Shri Manmohan Bajpai,
H. No. 2158, D-Block,
Indira Nagar,
Lucknow – 226 016

R28334

Versus

Respondent :

Indian Institute of Technology
(Through the Registrar)
Recruitment Section,
IIT Kanpur,
Uttar Pradesh – 208016.

R28335

Disability : 40% visual impairment.

Gist of Complaint:

Shri Manmohan Bajpai, the complainant, a person with 40% visual impairment vide his complaint dated 11.03.2021 submitted that IIT Kanpur had advertised for recruitment of more than 500 Group 'A' Teaching and non Teaching Staffs vide their Advt. No. 1/2019. He applied for the post of Deputy Registrar. Only one person with locomotor disability is working in Group 'A' in IIT Kanpur while no person is working in Group 'A' post under VH category. No post is seen reserved for Non-Teaching staffs in Group 'A' category in the above mentioned advertisement. As per DoP&T 4% reservation is to be made in Group 'A' cadre which has been violated by IIT Kanpur. More than one year has passed since he submitted the application, but still nothing has been processed so far. IIT Kanpur has not been maintaining reservation roster in Group 'A' for persons with disabilities. The complainant has prayed to direct IIT Kanpur to give reservation as well as relaxation in Group 'A' non

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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)

teaching category for persons with disabilities as per Govt. of India guidelines and to direct the Respondent to fill all the vacant posts in Group 'A' which can be filled by PwDs as per Reservation Roster etc. and also to give relaxation in standards to persons with disabilities.

2. The Registrar, IIT Kanpur vide letter dated 03.06.2021 submitted that the statement made in Para-1 of the complaint regarding number of Group-A staff of the Institute is correct. However, the Recruitment Section is dealing with only the non-teaching staff of the Institute and the number of Group-A non-teaching staff is 45, as on the date. All recruitments pertaining to academic staff is carried out by the office of the Dean of Faculty Affairs (DOFA). It is a fact that at present unfortunately only one Group-A non-teaching staff is on the roll of the Institute and he belongs to OH category of disability. The Institute is following the guidelines on reservations issued by the Govt. of India and adopted by the Board of Governors of the Institute. As on the date, the Institute has full number of staff members under PwD category in the Group -B and Group-C category as per the PwD Roster. In Group-A, non-teaching staff, out of the three PwD posts, one staff member had resigned and one has not accepted the offer of appointment. Presently only one Group-A staff is in PwD category in Group-A and this is because of the said reasons. The complainant is a candidate for the post of Deputy Registrar against Advt. No. 1/2019. The age relaxation for PwD category candidate will be extended to the complainant if he is meeting the other eligibility criteria. No other relaxation can be extended to him other than age relaxation. The Respondent submitted that they could not process the applications form due to pandemic conditions and lockdowns. However, during the current unlock period, the scrutiny of the application forms has been resumed by them and



further processes would be followed in a couple of months. The institute is maintaining a PwD reservation roster and is ensuring the appointment of PwD candidates if they are eligible and have met with other essential requisites of reservation. The Respondent submitted that in order to reach out specifically to the candidates belonging to PwD category, it is mentioned in the advertisement itself that preference would be given to persons with disabilities, even where reservation is not marked for them in the advertised posts.

3. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 07.07.2021.

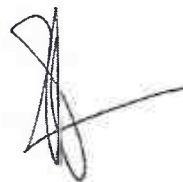
4. The following persons were present during the hearing ;

- 1) Complainant: Shri Manmohan Bajpai in person
- 2) Respondent: Shri K.K. Tiwari, Registrar, on behalf of Respondent.

Observations & Recommendations

5. Complainant submits that total number of Group A posts in Respondent establishment, inclusive of teaching and non teaching staff is 500, out of which, only one Divyangjan is employed, who is Orthopedically Handicapped. Complainant applied for the vacancy of Deputy Registrar and requested the Respondent for providing reservation according to provisions of RPwD Act, 2016.

6. Respondent submits that total number of non-teaching Group A posts in the establishment is 45 only. Out of 45, 3 are earmarked for Divyangjan. Out of these 3, one post is held by Divyangjan. One person resigned and the other post could not be filled because the person recruited refused to join. Further respondent informed that total Group A teaching posts in the establishment



are 437. This number keeps on fluctuating as per the strength of students studying in the establishment.

7. Issue of contention in the present Complaint is reservation of vacancies which are filled by 'direct recruitment'. Legal position on this issue is settled. Section 34 of Rights of Persons with Disabilities Act, 2016 makes it compulsory for every government establishment to appoint not less than 4 percent of vacancies in cadre strength in each group of posts. This provision lays down guiding principle on this issue.

8. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

9. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

10. During online hearing, Respondent informed this court that it is bound by guidelines issued by 'IIT Council', which is controlling authority of all the IITs. Further, Respondent informed that vacancies are reserved in accordance with guidelines issued by 'IIT Council'.



11. Reservation for Divyangjan is mandated by the statute passed by legislature. In case the guidelines issued by the council are in contradiction with the provisions of RPwD Act, 2016, mandate of the legislature supersedes guidelines issued by 'IIT Council'. Hence, Respondent cannot overlook the mandate of the legislature. Provision of statute passed by the legislature cannot be curtailed by the guidelines passed by the council. Hence, it is duty of the Respondent to reserve minimum 4% of vacancies for Divyangjan.

12. Further, since the nature of PwD reservation is vacancy based hence Respondent is bound to reserve minimum 4% vacancies in each recruitment cycle.

13. Hence, this court recommends that the Respondent shall reserve not less than 4 percent of vacancies in the cadre strength in each group, irrespective of the fact that vacancies are arising in teaching or non-teaching posts.

14. The case is disposed off.

Dated: 11.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12687/1023/2021

Complainant: Shri Vikas Chaudhari
E-mail: <cvikas4@gmail.com>

R28343

Respondent: The Divisional Railway Manager
North Central Railway, Agra – 282001

R28342

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 05.04.2021 में कहना है कि वह उत्तर मध्य रेलवे के आगरा मंडल के ईदगाह रेलवे अस्पताल में Hospital Attendant के पद पर कार्यरत है तथा उनके सहकर्मी श्रीमती मंजु रानी और श्री राहुल कुमार आज़ाद ने प्रार्थी पर जानलेवा हमला करवाया जिसकी शिकायत उन्होंने रेलवे के उच्च अधिकारियों को एवं स्थानीय थाने में भी दर्ज करवाई लेकिन अधिकारियों द्वारा कोई उचित कार्यवाही नहीं हुई।

2. The matter was taken up with the Respondent vide letter dated 09.04.2021 under Section 75 of the RPwD Act, 2016.

3. वरि. मण्डल कार्मिक अधिकारी, उत्तर मध्य रेलवे, आगरा का अपने पत्र दिनांक 22.04.2021 में कहना है कि रेलवे हॉस्पिटल में एक डॉक्टर, एक फार्मासिस्ट श्री राहुल कुमार आज़ाद, श्रीमति मंजुरानी चपरासी व श्री विकास चौधरी कार्यरत है तथा दिनांक 18.03.2021 को श्री विकास चौधरी हॉस्पिटल में अकेले थे तभी किसी अनजान व्यक्ति ने उनके साथ मारपीट की व मोबाइल छीन लिया जिसकी शिकायत उन्होंने नज़दीकी थाने में दर्ज करवाई। विपक्षी का आगे कहना है कि पुलिस सिविल, पुलिस रेलवे विभाग द्वारा दो उच्च अधिकारियों ने मामले की जाँच की तथा जाँच रिपोर्ट में सारांश बताया गया है कि कर्मचारी झाँसी मण्डल जाना चाहता है इसलिए कर्मचारी के स्थानांतरण की कार्यवाही पूर्ण की जा चुकी है झाँसी मण्डल में जुलाई 2021 में हॉस्पिटल अटेंडेन्ट का एक पद रिक्त होने पर श्री विकास चौधरी को आगरा मण्डल से झाँसी मण्डल हेतु उनके अनुरोध पर स्थानान्तरण कर दिया जायेगा।

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4. प्रार्थी का अपने पत्र दिनांक **05.05.2021** में कहना है कि उन्होंने स्थानांतरण की मांग ग्वालियर के लिए की थी ताकि वह अपने माँ की देखभाल कर पाए। प्रार्थी ने अनुरोध किया है कि उन्हें ग्वालियर रेलवे स्टेशन पर स्थानांतरण दिलवाया जाये तथा उत्तर मध्य रेलवे को निष्पक्ष एवं गहन विभागीय जाँच के आदेश दें।

5. After considering the respondent's reply dated **22.04.2021** and the complainant's rejoinder dated **05.05.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **14.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.07.2021**. The following were present:

- Shri Vikas Chaudhari – complainant
- Shri G.P. Mishra, DPO & Shri Yagyesh Kaushal on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that on 18.03.2021 two people came and assaulted him physically, also snatched his mobile phone. Complaint of this incident has been made to senior officials, however no strong action was taken. The incident has also been reported to the regional Police Station.

8. Respondent submits that at the time when the incident happened, Complainant was alone in the hospital. It was lunch break between two shifts. Further, no camera was placed at the location where the incident took place, hence no video recording of the incident is in record.

9. Section 3 of Rights of Persons with Disabilities Act, 2016 lays down that the appropriate government shall ensure that Divyangjan enjoy right to life with dignity and respect equally with others.

10. Facts stated by the Complainant points towards gross violation of Section 3 of the Act. Respondent clearly failed to protect the 'right to life with dignity' of the Complainant. It was the duty of the Respondent to provide adequate security to its own employee, particularly who is 100% Visually Impaired.

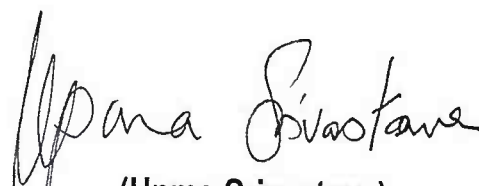


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11. This court recommends that the Respondent shall take adequate steps to protect the life and limbs of divyang employees employed in the establishment. The hospital may be equipped with CCTV and security guard. Under no circumstances should a 100% visually impaired person should be left alone in office premises.

12. Case is disposed off.

Dated: 11.08.2021


(Upma Srivastava)
Commissioner for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12751/1023/2021

Complainant: Shri Pitambar Gana
E-mail: <pitambargana79900@gmail.com>

R28344

Respondent: The Wing Commander
06 Wing Air Force Station
Barrackpore, 24, Parganas (N), West Bengal

R28345

Complainant: 51% person with visual impairment

GIST of the Complaint:

Complainant vide complaint dated **14.06.2021** submitted that he had not attended office from 06.05.2021 due COVID -19 pandemic situation but before leaving the station, he had informed to Office. He alleged that Department has stopped his salary.

2. The matter was taken up with the Respondent vide letter dated **23.06.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **09.07.2021**, no response has been received from the respondent.

Observation/Recommendations:

3. After perusal of the documents available on record, it is recommended to the respondent to follow necessary government instructions timely and implement the same for all employees who are persons with disabilities as per following DOP&T's OM :

DOP&T O.M. No.11013/9/2014-Estt.A.III dated 19th May, 2020 – entitled "Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19) Attendance regarding", states..... "In continuation of this Ministry's O.M. of even number dated the 18th May, 2020, it has been decided that the Government servants who have underlying conditions (co-morbidities) and were



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undergoing treatment for these ailments before lockdown, may, as far as possible, be exempted from roster duty upon production of medical prescription from treating physician under CGHS/CS(MA) Rules, as applicable. **Similarly, Persons with Disabilities and Pregnant Women may also not be included in the roster to be prepared."**

DOP&T O.M. No.11013/9/2014-Estt.A.III dated 7th October, 2020 – entitled "Preventive measures to contain the spread of Novel Coronavirus (COVID-19) – Attendance of Central Government officials regarding", Para 1(f) states..... "Persons with Disabilities and Pregnant women employees shall continue to work from home till further orders."

4. In view of the aforesaid orders, the respondent shall re-examine the entire matter of withholding salary etc and ensure that no injustice is carried out.
5. Accordingly respondent is recommended to adhere with the DoP&T OM in letter & spirit. The case is disposed of.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 11.08.2021





सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12667/1023/2021

Complainant: Shri Vikas Kumar
E-mail: <vikasdtu1618@gmail.com>

R 28350

Respondent: The Chairman & Managing Director
M/s Oil & Natural Gas Corporation Ltd
Pandit Deen Dayal Upadhaya Urja Bhawan
5, Nelson Mandela Marg, Vasant Kunj, New Delhi - 110070

R 28351

Complainant: 71-99% Mental illness

GIST of the Complaint:

Complainant vide complaint dated **20.03.2021** submitted that he was appointed as a Assistant Executive Engineer (Drilling) in Oil & Natural Gas Corporation Ltd on **27.08.2018** and posted at Office of Head Drilling Services, Karaikal. He further submitted that during the service, he was suffering from mental illness and continuously undergoing medical treatment from Institute of Human Behaviour & Allied Science, New Delhi and hospital certified that the complainant is a person of disability with severe disabilities of Mental illness-Brain-Schizophrenia. Thereafter, he has requested to respondent transfer from Karaikal to ONGC, Delhi but did not receive any response.

2. He has requested that: (i) the unauthorized absence being marked by the respondents since 05.12.2020 be treated by the respondent as void and the absence of the complainant be treated by the respondent as paid medical leave till the period he is provided with suitable alternative job at Delhi. (ii) the salary be released for the month of January 2021, February 2021 and March 2021 and his salary be continued to be paid as per Section 20 of RPwD Act, 2016

3. The matter was taken up with the Respondent vide letter dated **23.03.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **28.04.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **12.07.2021**.

(Signature)

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)

...2...

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.07.2021**. The following were present:

- Kanwal Nain, Adv along with Bhavya Nain, Adv – complainant
- Gaurav Aggarwal, Adv. Along with Shri A.P. Singh, Director (Cord) on behalf of respondent


Observation/Recommendations:

4. Both the parties were heard.

5. Complainant submits that he joined Respondent establishment on 27.08.2018. He was posted on Oil rig near Karaikal, Puducherry. In year 2019, he completed job training and probation period. PAR Assessment for 2018 and 2019 are A+ and A respectively. Later during service, he acquired disability. Due to disability, he became dependant on his parents and went to live with them in Delhi. Because of his stay in Delhi, he was not able to join the duties in Karaikal, due to which he was marked 'absent without authorisation' since 05.12.2020. Respondent constituted medical board to examine disability of the Complainant, which was convened on 05.01.2021 and examined the Complainant. Reliefs sought by the Complainant are his transfer to Delhi and his unauthorised leaves be treated as 'paid medical leave'.

6. During online hearing Respondent submitted that the case of the Complainant has been examined and process of the Complainant's transfer to Delhi is under process and assured the the same shall be done in near future. Further, Respondent submitted that with intention of giving Complainant a better chance, delay in transfer was caused.

7. It is settled principle of law that any employee who acquires disability during service, cannot be discriminated against. In the present facts, Complainant acquired schizophrenia during his service. Schizophrenia is a chronic brain disorder which causes delusions, hallucinations, disorganized speech, trouble with thinking and lack of motivation. It is certain that any person with this medical condition need rehabilitation and support. Hence, this



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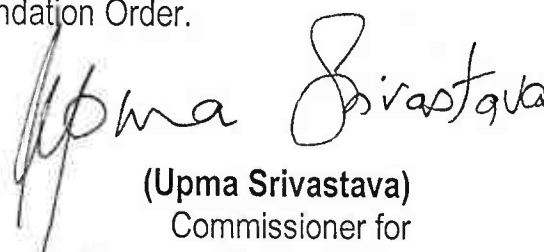
court expresses its satisfaction with the assurance forwarded by the Respondent to transfer the Complainant to Delhi. Further, on the issue of regularisation of leave, kind attention of the Respondent is attracted towards judgment of Hon'ble Bombay High Court in **Edward Swalin D'Cunha v. Commissioner for Persons with Disabilities and Shipping Corporation of India; decided on 18.03.2010 – MANU/MH/0230/2010.** In this case hon'ble Bombay HC quoted another judgment in which the issue was same, i.e. salary of the employee was withheld, who acquired disability during service. Relevant paras of the judgment are quoted below –

"37. The unreported judgment delivered by the Division Bench of this Court in Ashwini Ashok Desai v/s Chattrapati Shivaji Maharaj General Hospital (supra) cited by the learned Counsel for the petitioner, deals with a case where also the petitioner had developed mental illness Schizophrenia and the petitioner was made to retire from the service on the ground of mental illness. This Court, relying on the judgment in the (supra) held in para 12 as under:

*"12. In the result, the order of the Commissioner as well as the order terminating the service of the petitioner are quashed and set aside. The respondents are directed to identify a suitable post for the petitioner and in case no suitable post is available create a supernumerary post for the petitioner in accordance with section". **The respondents are also directed to forthwith release the salary of the Petitioner for the period from 4th January, 2003 and continue to pay her salary as per section 47 of the Act."***

8. Judgment of the Hon'ble High Court enforces the provisions of Disability laws in spirit. This court is inclined to tread on the same lines. Hence this court recommends that leave taken by the Complainant which are marked as 'unauthorised absent leave' shall be treated as 'paid medical leave'. Further, this court recommends that assurance forwarded by the Respondent to transfer the Complainant to Delhi shall be honoured by the Respondent within 1 week of receiving copy of this Recommendation Order.

9. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 11.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12666/1023/2021

Complainant: Smt. Sumangala J
#327/A, Anugraha, 4th Block, Sir M Vishveshwariah Layout
Near Federal Bank, Bangalore – 560110
E-mail: <sumaashok7@gmail.com>

P28361

Respondent: The Director
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road, Bengaluru – 560091
e-mail: <niumhospital2004@gmail.com>

P28362

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **18.03.2021** submitted that she has been working as a staff Nurse in National Institute of Unani Medicine and doing shift duties since 2008. She further submitted that now she is unable to do shift duties in various wards due to disability and in this regard, she has given several representations but her request was not considered by competent authorities. Therefore, she has requested to consider and allot her General shift duties.

2. The matter was taken up with the Respondent vide letter dated **23.03.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **28.04.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **12.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.07.2021**. The following were present:

- Smt. Sumangala J – complainant
- Shri Nadeem Ahmad Sidiqqi, Administrative Officer on behalf of respondent

...2....

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant submits that she is compelled to attend office during evening and night shifts. She raised the complaint in year 2019, however her Complaints were not redressed.
5. Respondent submits that she raised certain aspects in her Complaint filed in 2019. Thereafter, she was assigned duties on ground floor wards. Problem related to evening and night shift duties could not be redressed because all the employees are assigned shift duties on rotational basis. Since 6 out of 10 sanctioned posts are vacant hence, to uphold the employment rights of all the staff members, it is not possible for the Respondent to assign morning shift duties to the Complainant.
7. This court is satisfied with the Reply filed by the Respondent. This court expresses satisfaction with the fact that the Complainant has been assigned duties on ground floor.
8. Section 20(2) of Rights of Persons with Disabilities Act, 2016 provides that every government establishment is duty bound to provide conducive environment to employees with disability. In the present facts, if the Respondent will assign only morning shift to the Complainant, it may lead to violation of employment rights of other employees of the establishment. Intent of RPwD Act, 2016 is not to violate the rights conferred by other statutes.
9. Hence, this court recommends that the Respondent shall continue to assign duties to the Complainant on the ground floor only. Further intervention of this court is not warranted.
10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 11.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12652/1023/2021

Complainant: Shri Om Prakash Dhakar
E-mail: <opdhakargaroth09@gmail.com>

128363

Respondent: The Director
Postgraduate Institute of Medical Education & Research
Chandigarh – 160012

128364

Complainant: 45% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 08.02.2021 submitted he is working as Nursing Officer in PGIMER, Chandigarh and Smt. Veenus Pardeep (Ward Incharge AEC 5th – ANS) is continuously harassing and humiliating him. Because of this, he has been transferred from AEC to Heart Command which is busy and highly COVID-19 prone area, therefore, he has requested to quash transfer order.

2. The matter was taken up with the Respondent vide letter dated **15.03.2021** under Section 75 of the RPwD Act, 2016.

3. Sr. Admn. Officer (H), PGIMER, Chandigarh vide letter dated **04.05.2021** inter-alia submitted that grievance of Shri Om Prakash Dhakar has been listened personally by the Sr. Officers of the establishment and no evidence of any kind of discrimination emerged. They further submitted that there is an issue of interpersonal conflict and both the Nursing Officers and the ANS have submitted the complaint against one another.

4. Complainant vide rejoinder dated **18.06.2021** inter-alia submitted that there is not interpersonal conflict between them, while ANS knowingly harass and humiliate him and another divyangjan.

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5. After considering the respondent's reply dated **04.05.2021** and the complainant's rejoinder dated **18.06.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **14.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.07.2021**. The following were present:

- Shri OM Prakash Dhakar – complainant
- Shri Viajay Kumar Tadia on behalf of respondent

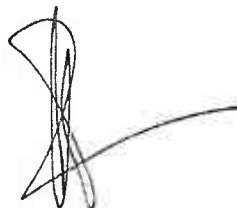
Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that two people namely, Mrs. Veenus Pradeep, Assistant Nursing Staff and Sunita T, DNS. use abusive language and hurl insensitive remarks referring to disability of the Complainant. The two people behave similarly with other divyang employees of the establishment.

8. During online hearing, Respondent submitted that the Complaint was filed before the appropriate authorities within the organisation. The Complaint was forwarded to Liaison Officer. Thereafter to resolve the issue a committee was also formed under the chairmanship of a divyang employee. The committee met association of divyang employees of the Respondent establishment.

9. Section 7 of Rights of Persons with Disabilities Act, 2016 mandates that the appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents.



...3....

...3....

10. Respondent's initiative to constitute a committee to resolve the whole issue are in consonance with Section 7 of RPwD Act, 2016 and are worthy of appreciation.

11. Further Clause (b), (c) and (d) of Section 7(1) of RPwD Act, 2016 makes it mandatory for appropriate government to take steps for avoiding such incidents and prescribe the procedure for its reporting; take steps to rescue, protect and rehabilitate victims of such incidents; and create awareness and make available information among the public this court recommends that the committee constituted by the Respondent shall make active intervention in the whole issue and will try to resolve the same within short span of time.

12. Hence, this court recommends that the Respondent shall conduct sensitization programmes and counselling of all the staff of the establishment and particularly of the employees named by the Complainant. Further, if counselling fails to sensitize the employees, the Complainant shall be posted away from the employees named by the Complainant. Further, this court recommends that the Committee shall actively intervene in the issue to resolve it within short span of time.

13. Case is disposed off.



(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 11.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12690/1022/2021

Complainant : Shri Piramanayagam
H/o Sorna Krishnammal
M-21 Thirunagar
Tirunelveli, Tamilnadu
Mob : 08220609699/09592083505
E-mail : piramanayagam.tvl@gmail.com

P228352

Respondent : The Chairman & Managing Director,
State Bank of India (SBI)
Central Office, State Bank Bhawan,
Madam Cama Marg, Mumbai-400021
Phone No : 022-26445211, 26445208, 26445212
E-mail : aseem.bhushan@sbi.co.in
agmhr.lhomah@sbi.co.in

P228353

GIST OF COMPLAINT

The complainant Piramanayagam (age 66) on behalf of his 40% Mentally & Physically disabled wife Smt. Sorna Krishnammal, (age 64) who is suffering from chronic neurological problem due to cancer (since 2014) and brain secondary (since 2019). She is having problems like memory problem, language and speech problem, intellectual problem (unable to express what is going in and around her and unable to perform her day to day activity on her own), involuntary urination and defection, locomotive problem and frequent felldown. The complainant being old and with conditions like diabetes and breathing problem and recovered from 70% lung infection due to covid 19, he is not in a condition to lift her and do the necessary activity like bathing her cleaning her defection to take care of her.

The complainant further submitted that both of them depending on his son who is care giver for both of us who working in State Bank of India Mumbai now. Earlier, both were travelling back and forth to Mumbai till September 2019. After September 2019, due to severity of the disease and for further treatment they permeated moved back to Tamil Nadu as they are state govt pensioners.

The complainant submitted that after March 2020, his wife is completely physically and mentally unstable with above said conditions (nearly bed ridden) and they are in extreme stress. His son (Gomathi Sankar) is working in State Bank of India Maharashtra circle has applied transfer several times since 2017 and latest on September 2020 but State Bank of India (SBI) management has not responded for the transfer application since last seven months and his son has taken 3 months leave to take care as a temporary measure and joined duty.

Therefore, the complainant has requested to consider his son transfer which is a basic right of the disabled person to have care giver to provide support for day to day activity.

2. The matter was taken up with the Respondent vide letter dated 12.04.2021 under Section 75 of the RPwD Act, 2016.

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. In response, Shri Alok Kumar Chaturvedi, Dy. General Manager & Circle Development Officer vide letter no: HR/IR/0091 dated 12th May 2021 inter-alia submitted that based on the extant instructions of the bank and the office memorandum issued by the Govt. of India in respect of the transfer/posting of employees, who are care giver of disabled dependents, the transfer of the official cannot be considered as these instructions state about exemption of the care giver from routine transfer.

However, they have noted his request for transfer, and they may consider the same subject to bank's requirements and vacancies available.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

- i) Shri Piramanayagam along with Mr. Raja, (Complainant)
- ii) Circle Dev. Officer & DGM (HR), (State Bank of India)

5. **Observations & Recommendations:**

i) Complaint is filed by the husband of effected person, their son is employee. Wife of the Complainant (mother of the employee) is intellectually disabled. Complainant and his wife, who are in their declining years, live in Tirunelveli, Tamil Nadu. Son is sole care taker, he is working in Mumbai. Complainant seeks transfer of his son/employee to Tamil Nadu as he and his wife can't move to Mumbai because both of them are Tamil Nadu state pensioners.

ii) Respondent submits that guidelines and circulars issued by the Government of India provide for exemption of routine transfer of employee who is care taker of divyang child or parents; there is no guideline or circular which provides for transfer of such employee.

iii) Reply of the Respondent is in consonance with DoPT O.M. No. 42011/3/2014-Estt. (Res) dated 08.10.2018, which provides for exemption from routine transfer of employees who serve as main caregiver of divyang parents.

iv) In the absence of clear guideline on this point, this court refrains from forming any new guideline which has not been formed by the policy maker. However, this court is inclined to note that at number of times, a guideline or statute is upheld by following it in spirit rather than in letter. Considering the age and nature of disability of the effected person, i.e. mother of the employee concerned, the Respondent may consider to transfer the employee to the State of Tamil Nadu, nearby Tirunelveli.

6. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12704/1022/2021

Complainant : Shri Virendra Kumar Tripathi
No. 971299874 HC (GD)
SHQ BSF SGNR (Rajasthan)
Mob: 07888944066/09530778105
E-mail : virendrakumartripathi6@gmail.com

R28365

Respondent : The Directorate General
Border Security Force (BSF)
Force Headquarters, Block 10,
CGO Complex, Lodhi Road, New Delhi
E-mail : dqbsf@bsf.nic.in

R28366

GIST OF COMPLAINT

The complainant Virendra Kumar Tripathi of SHQ BSF Sriganganagar (Rajasthan), his daughter Ms. Seema Tripathi, who is suffering from Mental Retardation and she is 90% disabled person. The complainant submitted that his daughter has been issued disability certificate from the Government Medical College Jammu and he also a registered person under Persons with Disabilities Act and has been issued Unique Disability Certificate by Government. of India.

The complainant submitted that his daughter is fully dependent on him for day to day chores and he is the caregiver for his daughter. His wife is also there in his family but since her childhood her daughter is attached with him for day to day needs and the children with special disability develop an attachment with one person/parent who takes care of them on daily basis and become comfortable and dependent on them for everything and in his case her daughter is solely dependent on him for everything. She does not eat without him presence, does not sleep, go to the school or hospital without him.

The complainant further submitted that he was posted in Frontier Headquarter, Jalandhar, Punjab since 02.04.2016 and his daughter was enrolled in special in Jalandhar namely St. Josesh Convent School, Cantonment Road, Jalandhar, Punjab. His daughter was undergoing her medical treatment at hospitals in Jalandhar, Punjab and he was the one who was taking her to school and hospital and she does not go to school or the hospital without him company. The children with disability like mental retardation as in case of his daughter goes to special schools and the special schools try to develop them or teach them day to day chores like waking, eating etc... The Special schools are very necessary and play vital role in development/rehabilitation of a specially abled child.

Further, the complainant submitted that a Signal No. R/1131 dated 27.03.2020 was issued for ATO 2020 and he was posted to Rajasthan Frontier for further disposal of FTR HQ BSF Rajasthan, Thereafter, vide Signal No. A/4416 dated 29.05.2020 posted to 125 Bn BSF Sriganganagar (Rajasthan). Accordingly, he joined 125 Bn BSF on 3rd January 2021. Further, the complainant stated that 125 Bn BSF asked application for posting/transfer to SHQ BSF

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Sriganganagar as per direction of FHQ (Pers Dte), New Delhi Signal No. R/3414 dated 09.01.2021. The complainant submitted the application regarding posting/transfer to SHQ BSF SGNR from 125 Bn BSF and He posted to SHQ BSF SGNR from 125 Bn BSF via FTR HQ BSF Rajasthan order No. 10630-35 dated 29.12.2020.

As per FHQ (Pers Dte), New Delhi further his posting order has been issued from SHQ BSF SGNR to 125 Bn BSF via FHQ Signal No. A/4404 dated 13.03.2021.

The complainant further submitted that he had given a representation on 07.04.2020 to IG BSF Punjab, requesting that he should be posted out to a location where his daughter can undergo treatment and attend special school. Thereafter, he gave another representation on 28.09.2020 addressed to the Director General, FHQ BSF, New Delhi for posting him to a location where his daughter can undergo medical treatment in his presence and she can attend special school but no action was taken on the same.

The complainant submitted that since then he was on leave from 29.10.2020 to 14.12.2020, he was not able to attend the proceedings of departmental committee for redressal of grievance of force personnel with disabled children and thereafter, he was again asked to appear before the committee on 17.12.2020. No committee proceedings took place on 17.12.2020 and it was only IG who took his interview and forwarded his request only for allotment of quarter to Rajasthan Frontier without request for posting him at a location where his daughter can attend special school and undergo medical treatment.

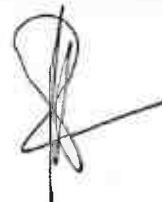
Therefore, the complainant humbly requested that the recently posted order issued via FHQ(Pers Dte) Sig No. A/4404 dated 13/03/2021 may please be cancelled and posted at same place i.e. SHQ BSF Sriganganagar (Raj) or FTR HQ BSF Jodhpur 95 Bn BSF and 126 BN BSF.

2. The matter was taken up with the Respondent via letter dated 28.01.2021 under Section 75 of the RPwD Act, 2016.

3. The respondent filed their reply dated 21st May 2021 and submitted the following fact-

In response, Shri Indraj Singh, S/o Shri Badan Singh, Deputy Inspector General (Estt). on behalf of respondent submitted reply and stated that the complainant Virendra Kumar Tripathi of 125 Bn BSF joined BSF on 22.08.1997. He remained posted at Ftr HQ Punjab (Jalandhar) w.e.f 05.06.2013 to 23.12.2020 (7.6 Yrs), After completion of normal tenure of 6 years in PB Ftr, Individual was granted 01 year extension by HQ SDG (WC) Chandigarh via their O/o No. 9256-58 dated 06.05.2019 during ATO-2019. After completion of 7 years 6 months in Punjab FTR, services of indvl was placed at the disposal of Rajasthan Ftr by HQ SDG (WC) for further adjustment in under command HQs/Unit. Accordingly the complainant via Ftr HQ Rajasthan signal dated 29.05.2020 indvl was adjusted in 125 Bn BSF at Sriganganagar which is nearby Unit of SSHQ BSF Sriganganagar (Rajasthan).

The case was received from SDG HQ Western Command and FHQ Adm Dte (r R Cell) for posting to Ftr HQ BSF NB/SB/FHQ New Delhi/SHQ Kolkata/SHQ Sriganganagar on medical ground of his daughter who is having 90% disability being a case of mental retardation. The case was examined and complainant was given opportunity for posting to field unit under Ftr HQ



BSF NB/SB/SGQ Kolkata including unit under SHQ BSF Sriganganagar, but the complainant again submitted his choice for static location i.e. 95/25//STC BSF Tekanpur. As per choice given by the complainant his case was examined, but could not be acceded for posting at requested places being ineligible due to less cooling off period, non-completion of Mandatory Field Service (MFS) between posting to static to static HQ in present rank and non availability of vacancy at respective location/HQs. The decision was conveyed to Ftr HQ PB/Raj/125 Bn for further information to the complainant vide FHQ Pers Dte (Estt Section) Signal No. R/3411 dated 18.01.2021 and R/3412 dated 11.02.2021.

The respondent further submitted that beside completion of normal tenure (6+1 Years) about 7 years 6 months in Ftr HQ PB, individual remained posted /attached with static location i.e. STC BSF Tekanpur from 26.08.2008 to 04.06.2013 and Ftr HQ PB (Jalandhar) from 05.06.2013 to 23.12.2020 thus, has been posted for 12.4 Yrs in static location continuously. As per request of complainant, he has been posted to 126 Bn BSF locations at Chop, Jaipur (Rajasthan) vide Ftr HQ Rajasthan BSF Order No. Estt-II/Ftr/PB&T-NGO's/Raj/2021/4383-88 dated 03.05.2021.

The respondent further stated that the complainant that his disabled daughter is fully dependent on him for her day to day chores and he caregiver for his daughter, they submitted that disabled daughter of the complainant is now of more than 20 years of age and in family there is her mother, who is best suited to help her in day to day chores and other help. Moreover, there are two young sons of the complainant, who are more than 18 years of age they can also be helpful to their sister. Moreover, the complainant has now been posted to Jaipur, where number of Special School are available and also Specialist Hospitals available for treatment of his daughter Moreover, while in service, he has to attend his normal duties and can't be left free all the time to attend her daughter. Considering the grievances of the complainant, the administrative constraints of the Department, the Respondents have already posted the petitioner at Jaipur where both the Specialist Hospital and Special School for the need of the complainant's daughter are available.

4. The complainant filed his rejoinder by email dated 14.06.2021 in r/o of comments submitted by the respondent and he is not agreed with his comments.

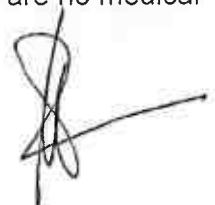
5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

- i) Shri Virendra Kumar Tripathi - Complainant
- ii) Shri Shailesh Kumar, 2nd in Command – Respondent

6. **Observation / Recommendations:**

- i) Complainant joined BSF on 22.08.1997. Remained posted in Jalandhar from 05 June 2013 to 22 August 2020 for 7.6 years approximately. Complainant submits that he was posted in frontier HQ Jalandhar Punjab since 02.04.2016. Daughter was enrolled in Jalandhar, Punjab school where she was undergoing her medical treatment. Complainant was posted to Sriganganagar, Rajasthan w.e.f. 29.05.2020. Further he submits that since there are no medical

...3...



facilities available in Sriganganagar to cater the special needs of the Complainant's divyang daughter, hence he must be given posting to some place where such medical facilities are available.

ii) Respondent submits that before filing Complaint in this court, he filed an application before Respondent establishment for retention in Jalandhar, since it was not possible hence, he was given choice for posting to Field unit in Kolkata. Instead, he chose Tekanpur. He could not be posted in Tekanpur because it is static location. No employee of similar rank cannot be posted in static location before completion of minimum cooling period and non-completion of mandatory field services. He was posted in Tekanpur from 2008 to 2013. Hence, he was on static location for 12 years, first in Tekanpur then in Jalandhar.

iii) During online hearing it was informed that the Complainant has been posted in 95th Unit situated in Jaipur, as per his own choice. However, Complainant submitted that in future, this unit may be shifted out of Jaipur and in such case, he shall also be shifted out of Jaipur which will again cause set back to systematic rehabilitation of his divyang child.

iv) These submissions made by the Complainant do not give rise to any cause to file the Complaint in present time. These are mere apprehensions and conjectures. Hence, intervention of this court is not warranted.

7. This case is disposed off


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.08.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No: 12696/1022/2021

Complainant : Shri Jatinder Arora
S/o Shri Heera Pal
Flat No. 406, GHS, 6, Sector-20
Panchkula, Haryana-134116
E-mail : chdjatinderarora@gmail.com

R28367

Respondent : The Chief Executive Officer,
Employee Provident Fund Organisation (EPFO),
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
NewDelhi-110066
Contact No : 011-26172671
E-mail : cpfc@epfindia.gov.in

R28368

The Regional Commissioner
Employee Provident Fund Organisation
Ministry of Labour and Employment
Govt. of India
Regional Office, sCO-4-7, sector-17-D
Chandigarh-160017
Contact No : 2701190, 2701158, 2701135
E-mail : ro.chandigarh@epfindia.gov.in

R28369

GIST OF COMPLAINT:

The complainant Shri Jatinder Arora, person with 100% Visual impairment, recently he has got selected as SSA in EPFO and now for posting allotted in the Regional office Amritsar to join by 12th April 2021. The complainant made his representation to the EPFO office dated 26th March 2021 wherein he requested before the competent authority to change his regional office from Amritsar to Chandigarh on the ground that it would be very challenging and difficult to live along in a totally new city as no family member can go along with him. The complainant further stated that due to the blindness it is very difficult for him to manage daily household work for fulfilling his basic necessities such as food cloth etc...

The complainant further stated that he has permanently residing at Panchkula for the last many years with his family and Chandigarh regional office is nearest to his residence. Hence he is familiar with this city and also he will have support of his family members. So the complainant requested to EPFO to give joining in Chandigarh regional office.

The complainant further submitted that he got reply from the EPFO on dated 7th April 2021 in which competent officers has refused to consider his request and asked him to join the Amritsar regional office by 12th April 2021. Thereafter, he met the officer personally and he was forced to join the Amritsar office. EPFO officer asked him to first join the regional office Amritsar then they will get him transfer herein Chandigarh office but he don't understand why EPFO wants to cause him unnecessary hardship.

Therefore, the complainant has requested to consider his request and transfer him to regional office Chandigarh which is a basic right of the disabled person to posting near their native place.

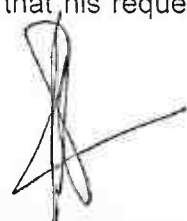
2. The matter was taken up with the Respondent vide letter dated 13.04.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent Sh. Shashank Kumar Pandey, Regional P.F. Commissioner-II (Legal), Regional Office, Chandigarh, vide letter no: PB/CHD/Legal/Notices/183 dated 20.05.2021 inter-alia submitted that Employees Provident Fund Organisation is an Autonomous/Statutory Organisation under the Ministry of Labour, Govt. of India and that it follows rules and provisions of the Govt. of India issued on the subject matter from time to time and adopted as such by the Central Board of Trustees (CBT) of EPFO. The respondent stated that no discrimination has been made against the complainant either in the course of his recruitment and subsequent appointment, or at the time his initial posting. None of the newly recruited Social Security Assistants (SSAs) have been posted to any office of EPFO other than Regional Office, Amritsar, and this decision to post all the newly recruited SSAs including one appointed on Compassionate Grounds to Regional Office Amritsar has been taken under the compelling circumstances of acute shortage of staff to the extent of 65% and expected vacancy due to retirement of 15 officials by December, 2021/within the year 2021-2022, further exacerbating the staff posting in that office.

The respondent further submitted that posting of complainant has been considered by Addl Central PF Commissioner (Zone) being the Cadre Controlling Authority purely on the administrative exigencies due to acute shortage of staff (65% shortage) at present and expected shortage due to retirements in Regional Office, Amritsar. Hence the Cadre Controlling Authority has not violated the provisions of the Circular dated 31.03.2014 which clearly specifies that the transfer of person with disabilities may be considered subject to administrative constraints.

The respondent further submitted that 06 candidates selected to the post of Social Security Assistant (SSA) in the Punjab region, out of which 03 candidates have joined till date. Since, in Regional Office, Amritsar, there are only 22 SSA/SSSAs in-position against 63 Sanctioned posts leading to shortage of 65.01% in clerical staff, Addl Central PF Commissioner (Zone), being the Cadre Controlling Authority had decided to post all newly recruited SSAs of Punjab region to Regional Office, Amritsar. The provisional order of appointment of the complainant was issued by Regional office, Chandigarh (the erstwhile region) as there is no Regional PF Commissioner-I in Regional office Amritsar, asking to complainant to join on duty at Regional office, Amritsar, by 12.04.2021.

The respondent submitted that the complainant was called for a meeting with Addl. Central PF Commissioner (Zone) and that he has apprised of the shortage of staff position at Regional Office, Amritsar, and the administrative exigencies arising due to the same. He has also been informed by office email dated 07.04.2021 that his request has been carefully considered, but could not be accepted at this stage due to acute shortage of staff at Regional Office, Amritsar, with a request to him join at Regional Office, Amritsar by the due date. He has also been intimated through email dated 07.04.2021 that his request may be considered at an appropriate time.



The respondent stated that as in the case of other newly recruited SSAs, the posting to Regional Office, Amritsar is the initial posting of Shri Jatinder Arora and not his transfer as averred by the complainant. The complainant is a newly recruited SSA who has not yet reported for initial duty as the SSA and, therefore, the question of his transfer at this stage does not arise. As it has been submitted, the initial posting of the complainant to Regional office, Amritsar, as in the case of other newly-recruited SSAs, was driven by administrative exigencies of acute shortage of staff (65% shortage) at present and additional shortage by December, 2021/ within the year 2021-22 due to expected retirement of another 15 officials in Regional Office, Amritsar.

The respondent further submitted that the initial positing of the complainant at Regional office Amritsar, consequent upon his appointment in Employees Provident Fund Organisation Punjab Region, is a purely administrative decision without any bias, mala-fide or arbitrariness and even the Hon'ble Supreme Court of India has held that when the transfer of any employee is not tainted by arbitrariness, illegality or bias, the Courts should not interfere.

The respondent further stated that the complainant is not entitled to any relief and that the present complainant is liable to be dismissed as such.

4. The complainant in their rejoinder dated 03.06.2021 submitted the following facts:-

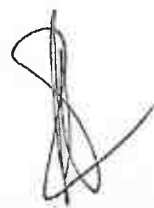
i) Respondent in his reply has totally ignored the challenges and difficulties suffered by a person with visual impaired in his day to day life. It seems that responded has not even idea of the life of an employee with visual impairment, further it shows insensitivity of respondent towards his employees with visual impairments. Respondent should have not put together his normal employees and employee with visual impairment.

ii) Cadre controlling authority is underestimating day to day dependency and challenges of visually impaired person. The authority has relied on outer appearances while making the decision but in reality my outer appearance does not depict the severity of visual impairment because Petitioner is patient of retinitis pigmentosa in which patient looks absolutely fine by his appearance. Right now he is 100% blind at night and just have light reflection in morning and also he do not have side vision hence he has always need some caretaker or one of his family member along with him to fulfilment of his daily basic needs such as food etc. further to proof above sited facts he is ready to go under medical examination by eye specialist if required by respondent.

iii) The complainant is living alone in EPFO Accommodation in Amritsar, where he is facing huge hardship and challenges when it comes to fulfilment of basic needs such as food etc, which are necessary for every citizen to live life with dignity, also recognised as fundamental right under article 21 of constitution of India. In this Covid-19 pandemic it is also not safe to have some made to cook food for him due to permanent engagement of family in Panchkula this if not possible for his any family member to come in Amritsar to live along with petitioner.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

- i) Shri Jatinder Arora - Complainant
- ii) Shri Gaurav, Advocate – Respondent



6. Observation / Recommendations:

- i) Complainant submits that he was selected on the post of Social Security Assistant. He was asked to report in Amritsar on or before 12 April 2021. Complainant requested to change the posting from Amritsar to Chandigarh. His native place is Panchkula, near Chandigarh.
- ii) Respondent submits that there is acute shortage of staff in Amritsar. Further, all 6 persons who were recruited along with the Complainant are posted in Amritsar office, none has been posted in any other office than Amritsar.
- iii) Complainant is Blind. Nature of disability of the Complainant compels him to be assisted in successful performance of basic functions of day-to-day life. Posting the Complainant away from his native place shall augment the difficulties and challenges faced by the Complainant.
- iv) Disability does not mean inability. A divyang person can perform an assigned task efficiently if conducive environment is provided to him to overcome natural barriers which hurdles her/his daily life. With same objective, Section 20(2) of Rights of Persons with Disabilities Act, 2016 assigns government establishments with duty to provide barrier free and conducive environment to divyang employees. Similarly, DoPT OM No. 36035/3/2013, dated 31.03.2014, provides in Para H that divyang employee must be given place of posting of choice. Guidelines and statute contain provisions for providing conducive environment to divyang employee. Objective behind these provisions is that services of divyang employees may be optimally utilised by enabling them to overcome natural barriers.
- v) Section 20(2) of RPwD Act, 2016 and Para H of DoPT OM are hereinafter produced -:

"Section 20(2) - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability."

DoPT OM – "Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints. The practice of considering choice of place of posting in case of persons with disabilities may be continued."
- vi) Therefore, this court recommends that the Respondent shall transfer the Complainant to Chandigarh, his native place. Further if there is no vacancy in Chandigarh office, Respondent shall explore the possibility of mutual transfer.

7. This case is disposed off


 (Upma Srivastava)
 Commissioner for
 Persons with Disabilities

Dated: 12.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12753/1024/2021

Complainant: Smt. Vishakha Malviya
E-mail: <vishakhamalviya@yahoo.co.in>

R28333

Respondent: The Chief Engineer, HQ Chief Engineer (N) Mumbai
26, Assaye Building, Colaba, Mumbai – 05
E-mail: <Ceznm2-Mes@nic.in>

R28332

Complainant: Master Shashwat Nath – a Child having multiple disability

GIST of the Complaint:

Complainant vide complaint dated **18.06.2021** submitted that her husband Shri Swapnil Nath is working as Joint Director (Architect) in HQ Chief Engineer (N), Mumbai and their one child has a multiple disability and presently they are residing in Govt. Accn. **Chitralekha Bldg** (Type V without Servant Qtr), Nofra, Colaba, Mumbai. She further submitted that there are two buildings for MES Civilian Officers namely **Chitralekha Bldg** (11 Nos Type V Qtrs without servant Qtr) and **Vishwakarma Bldg** (07 Nos Type V Qtrs with servant Qtr) and they had repeatedly applied for change of Accommodation i.e. from Chitralekha Bldg to Vishwakarma Bldg for proper care of her disabled child but neither intimated since last 05 years nor allotted Type V Accn. She alleged that Type V Accn at Vishwakarma Bldg being allotted to other officer's in-spite of being on priority on medical grounds of my son.

2. The matter was taken up with the Respondent vide letter dated **18.06.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **15.07.2021** inter-alia submitted that this case shall be considered only from next month in terms of Rule 12 (2) of SRO - 308.

4. Complainant vide e-mail dated **02.07.2021** reiterated her grievance.
5. After considering the respondent's reply dated **15.07.2021** and the complainant's rejoinder dated **02.07.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **04.08.2021**.

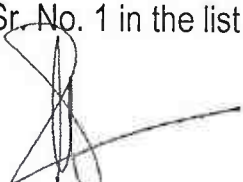
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.08.2021**. The following were present:

- Shri Sita Ram Meena – complainant
- Col. R.K. Singh on behalf of respondent

Observation/Recommendations:

6. The Complaint is related to accommodation. Main cause of the Complaint lies in two buildings, one is called Chitrlekha Building and another one is called Vishwakarma Building. Both buildings have Type – V residential apartments with only one difference, i.e. in Vishwakarma Building, servant quarter is attached with the residential unit, whereas in Chitrlekha building, servant quarter is not attached with the residential unit. Complainant's husband who is employed in Respondent establishment is allotted a residential unit in Chitrlekha Building. Complainant submits that her son is has Multiple Disabilities including intellectual disability up to 90% and needs rehabilitation. Her grievance is that attached servant quarter will help in availing better rehabilitation facilities for her child, however the Respondent has failed to consider her husband's demand for allotment of accommodation in Vishwakarma Building. Time and again application for the same has been rejected by the Respondent. Moreover, due to ongoing special repair work there is frequent movement of workers in the apartment she is residing in along with her husband and the child, which causes hinderance in rehabilitation of her child.

7. Respondent submits that it has been very kind and has taken care of the interests of the Complaint in the past. Out of turn allotment has been done thrice in the past. In seniority list another employee is on the top and husband of the Complainant is on Sr. No. 2. Out of turn allotment to the husband of the Complainant shall result into violation of rights of the employee who is at Sr. No. 1 in the list.



8. Rehabilitation process of the child with intellectual disabilities is sine qua non for development of divyang child. Comfortable living accommodation is the most basic necessity for successful rehabilitation of the Person with Intellectual Disability. Section 5 of Right of Persons with Disabilities Act also focuses on the same. As per the provision, it is positive obligation of the appropriate government to endeavour to provide access to range of residential facilities to Persons with Disabilities. Provision is reproduced below -:

"Section 5 - Community life—(1) The persons with disabilities shall have the right to live in the community.

(2) The appropriate Government shall endeavour that the persons with disabilities are,—

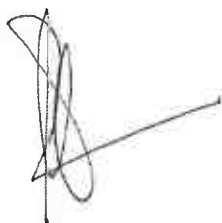
(a) not obliged to live in any particular living arrangement; and

(b) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender"

9. Relief sought by the Complainant is of simple nature. Her husband is employee of Respondent establishment. Their child is in need of rehabilitation process by virtue of his disability. Residential accommodation of same type with extra servant room may help in better rehabilitation process of the child. If allotted, Respondent will not incur unbearable financial implications.

10. Moreover, Respondent also failed to prove that the employee who is at Sr. No. 1 in the list has applied for the accommodation in Vishwakarma building or if so then earlier than the complainant. Hence, the Respondent's argument that out of turn allotment to the Complainant's husband shall lead to violation of rights of other employees bereft merits.

11. Respondent's attention is also invited to principles of Reasonable Accommodation imbibed in RPwD Act, 2016. RPwD Act, 2016 which incorporates principle of 'Reasonable Accommodation' for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures



must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Ac 2016."

12. Hence, this court concludes that combined reading of Section 5 of RPwD Act, 2016 with principles of Reasonable Accommodation is imperative in the present case. This court recommends that Respondent shall allot residential unit in Vishwakarma Building Type V Qtrs with servant quarter to the Complainant irrespective of her position in seniority list as first priority. The compliance report to be submitted to this Court within 90 days of the receipt of this recommendation.

13. Accordingly the case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Dt: 17.08.2021

Case No: 12753/1024/2021

Complainant: Smt. Vishakha Malviya
E-mail:<vishakhamalviya@yahoo.co.in>

Respondent: The Chief Engineer, HQ Chief Engineer (N) Mumbai
26, Assaye Building, Colaba, Mumbai – 05
E-mail:<ceznm2-mes@nic.in>

CORRIGENDUM

Kind attention is invited to the Order in the aforementioned case dated 17.08.2021.

2. Basic facts mentioned in Para 05 of the Order shall be read as under:

"5. After considering the respondent's reply dated **15.07.2021** and the complainant's rejoinder dated **02.07.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **04.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.08.2021**. The following were present:

- Smt. Vishakha Malviya – complainant
- Col. Rohan Lewis, Additional Chief Engineer and Col. Bhaskar Paranjpe on behalf of respondent"


(Sudhir Goel)
Desk Officer



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12679/1011/2021/P22838

Complainant:

Shri Maulik Rajendrakumar Pandit,
Kalarvado,
Salvivado,
Dist. : Patan (N.G.),
Gujarat – 384 265

Versus

Respondent :

Oil and Natural Gas Corporation Limited,
(Through the Chairman & Managing Director)
Plot No.5A-5B,
Nelson Mandela Road,
Vasant Kunj,
New Delhi – 110 070

P228384

Disability : 40% Dwarfism

Gist of Complaint:

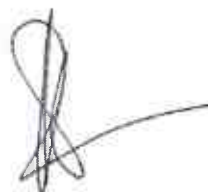
Shri Maulik Rajendrakumar Pandit, a person with 40% locomotor disability vide his complaint dated 26.03.2021 submitted that he applied for the post of Junior Accountant and Junior Assistant (P&A) in ONGC Recruitment for non Executives on regular basis in Gujarat against the Advertisement No. 01/2019(R&P). He secured good marks in the examination. He was called for document verification. OH(BL) was mentioned in his disability certificate when he applied for the post in January, 2019. In March 2019, a call came from a government Hospital to renew the certificate and he renewed the same. As per the new guidelines, hospitals took his original certificate and provided the renewed one by changing category from OH (BL) to locomotor disability (Dwarfism) but percentage was

1 | Page

still the same. After checking his documents, he was not allowed to appear in computer typing exam as no guidelines were mentioned in the advertisement.

2. The matter was taken up with the Chairman & Managing Director, Oil and Natural Gas Corporation Limited vide letter dated 06.04.2021.

3. The DGM (HR) I/C R&P, Oil and Natural Gas Corporation Limited vide letter no. ONGC/BDA/R&P/Jr. Asst (P&A)2021 dated 31.05.2021 submitted that Shri Maulik Rajendrakumar Pandit had appeared in the Computer Based Test (CBT) and has qualified in the CBT meant for the post of Junior Assistant (P&A). He was called to submit relevant documents after being shortlisted. On 22.02.2021, Shri Maulik vide his application dated 22.01.2021 has submitted relevant documents including "Disability Certificate" dated 19.06.2019. The last date for submission of online application for the advertisement was 20.02.2019. The Respondent submitted that the 'validity of the PwD Certificate shall be tested with respect to the last date of the online application (20.02.2019), i.e. the disability should have been acquired before 20.02.2019. He submitted that further the Disability Certificate should have been issued by the Competent Medical Board duly constituted by the Central / State Government. Shri Maulik Rajendrakumar Pandit had furnished a Disability Certificate dated 19.06.2019, i.e. which was after the cutoff date and hence his candidature was not considered for Skill Test (Typing Test).



4. The complainant vide his rejoinder dated 05.06.2021 submitted that he has the Disability Certificate in Gujarati language obtained from the State Government which clearly mentions that he has Orthopaedic disability and is valid till 19.02.2019. Section 34 of the Rights of Persons with Disabilities Act, 2016 provides for 4% reservation for persons with disabilities in recruitment. He renewed his certificate as per the government guidelines. He has requested that if he is not eligible under the disabled category, if he can be included in general category.

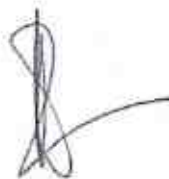
5. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 19.07.2021.

6. The following persons were present during the hearing ;

- 1) Complainant: Shri Maulik Rajendrakumar Pandit,
- 2) Respondent: Shiv Kumar and Rajesh Kumar, on behalf of Respondent

Observations & Recommendations

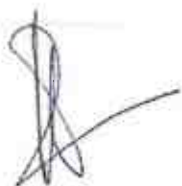
7. Respondent conducted recruitment examination for the post of Junior Account & Junior Assistant (P&A). He successfully qualified the exam and was subsequently called for documents verification. He submitted disability certificate dated 19.06.2019. However, his candidature was rejected at this stage itself. He was not called for skill test, which was to be conducted after document verification. Complainant claims that in March 2019, he received call from government hospital to renew his certificate. Thereafter, he submitted his Disability Certificate with the hospital. New certificate dated 19.06.2019 was issued to him in accordance with 2016 guidelines.



8. Respondent submits that it was mentioned in the advertisement that successful candidate has to produce Disability certificate issued on or before 20.02.2019. Whereas, disability certificate produced by the Complainant was issued on 19.06.2019. Hence, his candidature was rejected and he was not called for next round, i.e. skill test. Further, old certificate issued before 20.02.2019 was rejected because disability mentioned therein was 'locomotor disability'.

9. Error was committed by both the parties in the case. Complainant committed error by not updating his Disability Certificate on time. Respondent committed error by not accepting the certificate issued before 20.02.2019 (hereinafter mentioned as 'old certificate'). Respondent's reason that the old certificate was rejected because it certified Complainant's disability as 'Locomotor Disability' and not 'Dwarfism' is incorrect in law. Prior to 2017, Persons with Disabilities Act, 1995 was under force. Under the 1995 Act, Dwarfism was not recognized as separate disability. It was assumed under wide umbrella of locomotor disability. Dwarfism was recognized as separate disability for the first time under Rights of Persons with Disabilities Act, 2016. Certificate dated 19.06.2019 was made in accordance with rules under Persons with Disability Act, 1995. Hence, Respondent committed error in rejecting the certificate dated 19.06.2019.

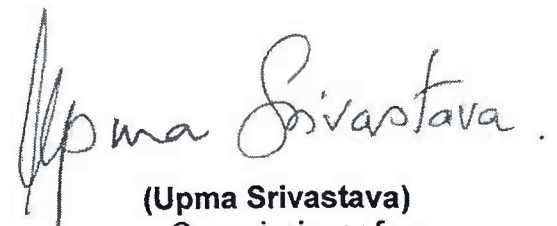
10. During online hearing Respondent informed the court that total number of 21 vacancies were reserved for Divyangjan. Out of which 12 have been filled, only 9 are remaining vacant which are reserved for 'Visually Impaired' category.



11. It would be injustice with Visually Impaired candidates to convert the vacancy reserved for them. Hence, this court recommends that the Respondent shall refrain from committing similar error in future and Respondent shall consider the candidature of the Complainant in next recruitment cycle.

12. The case is disposed off.

Dated: 18.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12702/1092/2021 | 1228381

Complainant:

Shri Manoj Kumar Anand,
R/o C-67/68-A, Rama Park, Dwarka Mod,
Uttam Nagar, New Delhi-110059
Email: anand.manoj.kumar@gmail.com
Mobile: 98100936816

Respondent:

Department of Heavy Industry (AEI Section)
[Through: Secretary]
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhawan, New Delhi-110011
Email: shioff@nic.in; simmi.narnaulia@nic.in

1228382

1. Gist of Complaint:

1.1 The complainant, Shri Manoj Kumar Anand, M-52, a person with 60% Locomotor Disability, filed a complaint regarding not issuing GST Concession Certificate by the respondent, Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprises, for purchase of car.

1.2 The complainant has mentioned his ordeal and submitted that while filling up online application for obtaining GST Concession Certificate, the following two options were required to be filled up –

- (i) Name of doctor signing & Registration number of the Doctor signing; and
- (ii) Name of the counter signing doctor (civil surgeon/chairman of medical board) and Registration Number of the counter signing doctor (civil surgeon / Chairman of Medical Board).

(Page 1 of 4)

1.3 His Disability Certificate (DC) has been issued by All India Institute of Medical Sciences, Delhi (AIIMS Delhi) but it does not have the Registration Number of "Doctor Signing" and "Counter Signing Doctor". Since his submission for online application could have been possible only after filling the Registration Numbers of the 'Doctor Signing' and 'Counter Signing Doctor', he could not submit it online. His son Shri Tushar Anand met the concerned authorities at AIIMS Delhi and requested to provide the aforesaid Registration Numbers. He was told that the registration numbers could not be provided in any case because the certificate had been issued by AIIMS Delhi as per the format stipulated by the Central Government; all the information needed has already been provided in the DC.

1.4 The complainant further submitted that as per the guideline, the registration numbers are not required if one has UDID /Card issued by the Department of Social Welfare. He has no UDID Card but he has the Disability Card issued by the Dy. Commissioner, Patel Nagar, New Delhi.

1.5 The complainant has also submitted that earlier he had received the Excise Exemption Certificate No.12(41)/2007-AEI dated 21.11.2008 from DHI at the time of buying his first car under PwD category on the basis of the same documents.

2. Submissions made by the Respondent

2.1 The respondent filed their reply dated 13.05.2021 and submitted that as per the ordeal described by the complainant, due to poor response of authorities of AIIMS Delhi registration numbers of the doctors were refused to be provided.

2.2 The registration number/MCI number of doctors is required to safeguard the Department from issuing GST Concession certificate on the basis of forged disability certificates. A few examples are available regarding rackets issuing forged disability certificates.

2.3 Complainant's request for issue GST Concession Certificate was examined and it was found that he had been issued Excise Duty Concession Certificate in 2008, as per then guidelines (at present, GST is applicable replacing Excise Duty). Considering this as a special case, the complainant was advised vide email dated 03.05.2021 to submit application through '**dhigecs portal**' (portal made operational w.e.f. 15th



Nov. 2020 for online issue on GST Concession Certificate) and to mention "file number of Excise Duty concession certificate" issued to him in 2008 in the mandatory field asking for "registration number of the doctor". On receipt of the applicant's online application through designated portal, it would be examined and processed further as per the extant guidelines.

3. Submission made in Rejoinder

3.1 In the rejoinder dated 25.05.2021, the complainant submitted that he has experienced that AIIMS Delhi is most sensitive institute towards people with disabilities and he has no complaint from AIIMS.

3.2 As regards safeguarding the Department from forged disability certificates, the respondent has misled the Court by providing half-baked information and manipulating the overall case.

3.3 The complainant wished to have a copy of notification issued by Government making aware of people with disabilities to arrange for registration number of doctors and counter signing doctors; and making changes in the disability certificates so that he could take it to the AIIMS and get his DC updated.

3.4 The complainant alleged to have harassed him by the respondent, as the respondent put his 2008 Excise Duty Concession Certificate number in place of doctors' and counter signing doctor's registration numbers. He was asked by the respondent to sent two updates to upload the photo identification documents. The first time he was asked to upload Aadhar, PAN and Signature; second time, he was asked for the signature, which clearly shows the efficacy of the respondent taking information in piecemeal. Deliberately harassing people in all possible manner and not support them seems to be their intent.

3.5 It has been stated by the respondent that as a special case of him the certificate is being issued, which is of course with the wrong detail deliberately to harass him which is still going on.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.07.2021**. The following were present:

- (1) Complainant in person
- (2) Smt. Simmi Narnauliya, Under Secretary for the Respondent



5. Observation/Recommendations:

5.1 Both the parties were heard.

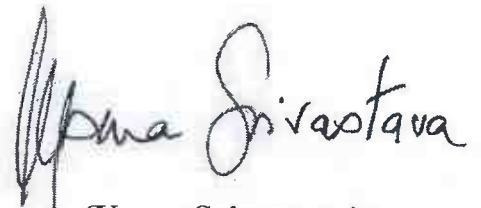
5.2 Complainant filed an application to obtain GST concession certificate for buying a car. After series of communications with the Respondent, on 18.05.2021, GST concession certificate in favour of the complainant was issued by the Respondent. Complainant submits that this is flawed certificate because name of the car dealer mentioned is incorrect.

5.3 On this point Ministry submits that name of car dealer was mentioned by the Complainant himself. Hence, if the name is incorrect it is because Complainant himself mentioned incorrect name of the car dealer at the time of applying for the certificate.

5.4 During online hearing Respondent assured that grievance of the Complainant would be redressed on the basis of an application by the Complainant to the Respondent. There would be no further harassment. Since the Complaint has been resolved amicably, intervention of this court is not warranted.

5.5 The case is accordingly disposed off.

Dated: 17.08.2021



**(Upma Srivastava)
Commissioner
for Persons with Disabilities**



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12688/1023/2021

R28394

Complainant: Shri Anand Pratap Singh
E-mail: <Anand.Singh5@sbi.co.in>

Respondent: The Chief General Manager (HR)
State Bank of India, Corporate Centre
State Bank Bhawan, 16th Floor, Madam Cama Road
Mumbai – 400021
E-mail: <agmphr.lhoban@sbi.co.in> <dgm.pm@sbi.co.in>

R28395

Complainant: 40% Hearing impairment

GIST of the Complaint:

Complainant vide complaint dated **04.04.2021** submitted he has been working as Assistant in State Bank of India, Gonda Region of Lucknow Circle since 03.12.2012 and submitted the following grievances:

- Gonda Region of Lucknow Circle is approximately 150 km away from his home place of Lucknow, therefore, he had applied for transfer but no action has been taken.
- During demonetization period, he was not paid for overtime announced by Bank, despite claiming the same several times.
- Conveyance allowance for PwD Staff @ Rs. 400/ per month not paid.
- During Covid-19 period, special casual leave for disabled employees was rejected by Branch Manager.

2. The matter was taken up with the Respondent vide letter dated **09.04.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **06.06.2021** submitted that (i) transfer order has been issued on 25.05.2021 (ii) he was not eligible for overtime during the demonetization period because he did not work beyond normal working hours. (iii) Controller of complainant has been advised to pay conveyance allowance for PwD employees from the date it is payable.
4. Complainant vide e-mail dated **07.07.2021** inter-alia submitted that during the demonetization period, he was posted in Sadullah Nagar Branch which is single man Branch i.e. run by single Manager and single Assistant and Branch ran beyond working hours. He further submitted that Bank is silent on the last point.
5. After considering the respondent's reply dated **06.06.2021** and the complainant's rejoinder dated **07.07.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.07.2021** but due to administrative exigencies hearing rescheduled on **02.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

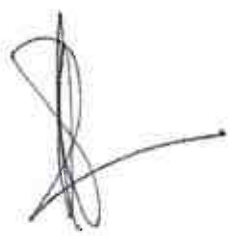
- Shri Anand Pratap Singh – complainant
- Shri Ajaya Singh, DGM & Shri Pushkal Pandey, Law Officer on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.
7. Complainant submits the complaint chalking out 4 points of grievances. First pertains to transfer of the Complainant. He submits that he was posted in Gonda whereas his native place is Lucknow. Distance between Gonda and Lucknow is 150 K.Ms. Secondly, during demonetization period 'Overtime allowance was announced, but the same was not paid to him. Thirdly, Conveyance Allowance of Rs. 400/- per month was also not paid. Fourthly, during Covid-19 exemption period, he applied for CoVid-19 leave which was also not granted. He also applied for Special casual leave for divyang in February 2021, which was also not granted.



8. Four main issues at the centre of the Complaint are 'Transfer Issues', 'Overtime Allowance', 'Conveyance Allowance' and non-granting of leave. With respect to issue of transfer and overtime allowance, Reply filed by the Respondent is satisfactory. Since, the transfer order has already been issued and since the Complainant failed to prove that he worked for extra hours, hence intervention of this court on these two issues is unwarranted.
9. Issue of 'Conveyance Allowance' – Respondent submits that the note has been approved and Conveyance Allowance shall be released soon. This court is inclined to attract the kind attention of the Respondent to Section 20(2) of Rights of Persons with Disabilities Act, 2016. As per the provision, it is obligation of the Respondent establishment to provide conducive environment to Persons with Disabilities. Delay in releasing Conveyance Allowance is contrary to mandate of Section 20(2). Hence this court concludes that Respondent shall release Conveyance Allowance with immediate effect.
10. Non sanctioning of leave – DoPT OM No. 36035/3/2013-Estt.(Res) dated 31.03.2014 lays down certain guidelines for providing certain benefits in respect of Persons with Disabilities employed in Government for efficient performance of their duties. In Para – G of the O.M. another DoPT O.M. dated 19.11.2008 is mentioned, in which provision for 4 days of 'Special Casual Leave' in a calendar year for Persons with Disabilities is provided.
11. Moreover, RPwD Act, 2016 incorporates principle of 'Reasonable Accommodation' for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable

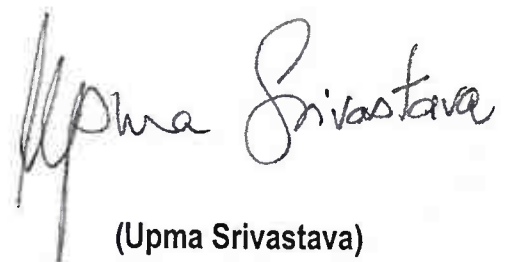


Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016."

12. Hence, this court recommends that the issue of sanctioning of leave shall be settled according to the principles of Section 20 of RPwD Act, 2016 and of Reasonable Accommodation delineated above.

13. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12626/1024/2021 / 128396

Complainant: Shri BV Ravi Kumar
E-mail: <bvravikumar40@gmail.com>

Respondent: The Divisional Railway Manager
East Coast Railway, Waltair Division
Visakhapatnam
E-mail: <watsrdpo@gmail.com> <adrm@wat.railnet.gov.in>

Complainant: 100% Hearing impairment

GIST of the Complaint:

Complainant vide complaint dated nil inter-alia submitted that he joined as 'Safaiwala' in January 2001 and later, his cadre was changed as 'Dispensary Cleaner'. He further submitted that in 2016, he had applied for the post of 'Hospital Attendant' which is equivalent cadre to Dispensary Cleaner but till date, no response has been received.

2. The matter was taken up with the Respondent vide letter dated 01.03.2021 under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated 19.04.2021 inter-alia submitted that his request for change of category from Dispensary Cleaner to Hospital Attendant/Hospital Assistant can't be considered as the same is not in conformity with guidelines for filling up of Hospital Attendant/Hospital Assistant vacancies as provided by PCPO/BBS.

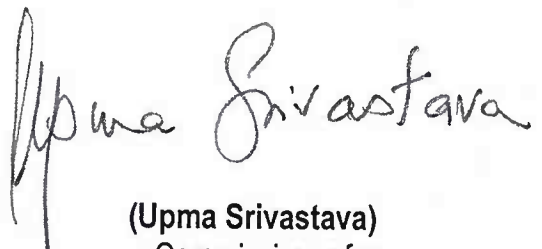
4. After considering the respondent's reply dated 19.04.2021 and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 29.07.2021 but due to administrative exigencies hearing rescheduled on 02.08.2021.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Shri BV Ravi Kumar – complainant
- Shri Abanikant Parida, Sr. DPO on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.
6. Complainant submits that he joined as 'Safaiwala' in January 2001. In 2006, on his own request, his cadre was changed to 'Dispensary Cleaner'. Further, he submits that he applied for the post of 'Hospital Attendant' which is going to be vacant.
7. Respondent submits that Promotion to the post of 'Hospital Attendant' is done from the post of 'Safaiwala'. Since he himself requested for change in category, hence, cannot change the category to 'Safaiwala'.
8. During online hearing Respondent submitted that post of Dispensary Cleaner is not stand-alone post. There are promotion avenues in this post as well. Dispensary Cleaner is promoted to the post of 'Dresser-III'. Further, Respondent affirmed that whenever vacancies for the post of 'Dresser-III' Complainant's candidature shall be considered as per the rules.
9. This court concludes that since the change in category from 'Safaiwala' to 'Dispensary Cleaner' was made in accordance with the choice of the Complainant himself hence, by denying to rechange the category back to 'Safaiwala' is not a violation of rights of the Complainant.
10. This court is satisfied with the Reply of the Respondent and intervention of this court is not warranted.
11. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

99

Case No: 12669/1021/2021

Complainant: Shri Mukesh Kumar
E-mail: <mksnt9313@gmail.com>

128398

Respondent: The Divisional Railway Manager
Northern Railway, Moradabad
Uttar Pradesh – 244001

128399

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह उत्तर रेलवे, मुरादाबाद मंडल में खलासी के पद पर कार्यरत है तथा विभाग द्वारा दिनांक 18.12.2019 को समूह 'घ' से 'ग' की पदोन्नति के लिए लिस्ट जारी की गई जिसमें उनका नाम 15वें स्थान पर दर्शाया गया। परन्तु ट्रेड टेस्ट दिनांक 07.03.2020 के दिन, टेस्ट से 30 मिनट पहले विभाग द्वारा उनकी दिव्यांगता के कारण उनको ट्रेड टेस्ट देने से वंचित कर दिया गया।

2. The matter was taken up with the Respondent vide letter dated **23.03.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Divl Rly Manager (P), Moradabad vide letter dated **15.04.2021** submitted that Shri Mukesh Kumar had been appointed as a Khalasi under PwD quota in 2013 and notification was issued for filling up the vacancy of TCM III against 50% promottee quota vide letter dated 18.12.2019. Shri Mukesh Kumar had also applied but he is not permit to attend trade test as per instruction contained in Railway PS No. 13436/08 in S&T Deptt as the post of Telecom Technical Assistant is not Earmarked/suitable for visually handicapped.

....2....

4. After considering the respondent's reply dated **15.4.2021** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **14.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.07.2021**. The following were present:

- Shri Mukesh Kumar – complainant
- Sandeep Saxena, Assistant Personnel Officer on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complainant submits that he joined respondent establishment on 25.05.2013 and wants promotion on the post of Technical Assistant. Promotion exam was conducted again for the post on 07.03.2020. Just 30 minutes before the exam he was precluded from appearing because post of Telecom Technical Assistant is not identified suitable for Visually Impaired Divyangjan.

7. Respondent submits that the post of Technical Assistant - I is identified suitable for Orthopedically Handicapped and not for Visually Impaired. Khalasi is not the feeder post for Technical Assistant post. Moreover, duties of Khalasi and Technical Assistant are different. Duties assigned to Khalasi are of general nature, whereas, duties assigned to Technical Assistant are of technical nature. This post is not identified suitable for Visually Impaired employee.

8. This court finds reply of the Respondent satisfactory. Court's intervention in the present complaint is not warranted.

9. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12738/1023/2021 *128408*

Complainant: Shri Uppalapati Harikrishna
e-mail: <harikrishnauppalapati0@gmail.com>

Respondent: The Director
All India Institute of Medical Sciences
Basni Industrial Area, Phase – 02, Jodhpur
Pin – 342005, Rajasthan *128409*

Complainant 45% hearing impairment

GIST of the Complaint:

Complainant vide e-mail dated **17.05.2021** inter-alia submitted that AIIMS, Jodhpur neither implementing DoP&T's order nor exempting PwDs employees from roster duty during COVID – 19 period.

2. The matter was taken up with the Respondent vide letter dated **11.06.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Sr. Administrative Officer, AIIMS, Jodhpur vide letter dated **03.07.2021** inter-alia submitted that as per available record Shri Uppalapati is not a regular employee and he has not submitted any complaint in this regard. They further submitted the services of all employees are required during pandemic time, however, Institute follows all Guidelines issued from DoP&T time to time.

4. The above reply was sent to the complainant through e-mail on 06.07.2021 with the direction to submit comments/rejoinder within 15 days but no response has been received from the complainant.

Observation/Recommendations:

5. In light of the reply of the respondent and facts and material available on record, no further intervention of this Court is required.

6. The case is accordingly disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12686/1024/2021 & 12818/1024/2021 1228410

Complainant: Shri Mukesh Gupta
C-5/81, Ground Floor, Sector – 11
Rohini, Delhi – 110085
E-mail: <mukeshgupta6.mg@gmail.com>

Respondent: The Principal Chief Personnel Officer
Northern Railway, Baroda House, New Delhi
e-mail: <cpo@nr.railnet.gov.in>

1228411

Complainant: 60% Locomotor disability

GIST of the Complaint:

Complainant vide complaints dated **26.03.2021** submitted that Northern Railway is neither implementing the Section 21 & 22 of the Rights of Persons with Disabilities (RPwD) Act, 2016 & Rule – 08 & -09 of the RPwD Rule – 2017 nor considering suggestions of PwD employees & Association of PwDs.

2. The matter was taken up with the Respondent vide letter dated **07.04.2021** under Section 75 of the RPwD Act, 2016. But despite Reminder dated 31.05.2021, no response has been received from the respondent. Accordingly, a hearing scheduled on **20.07.2021** which was further re-scheduled to **22.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.07.2021**. The following were present:

- Shri Mukesh Gupta – complainant
- Shri Anand Madhukar CPO (IR) on behalf of respondent

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Observation/Recommendations:

3. After perusal of the complaint and arguments submitted by both the parties, it is recommended that Section 21 (1) & 22 (1) of the RPwD Act, 2016 and Rules 08 & 09 of RPwD Rules, 2017 should be implemented by the respondent which stipulates that

Section 21 (1) - "Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Govt."

4. **Section 22 (1) – "Every establishment shall maintain records of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information in compliance with the provisions of this Chapter in such form and manner as may be prescribed by the Central Government."**

5. Further, **Rule 8 of the RPwD Rules, 2017 – Manner of publication of equal opportunity policy** – (1) Every establishment shall publish equal opportunity policy per PwDs. (2) The establishment shall display the equal opportunity policy preferably on their website, failing which, at conspicuous places in their premises. (3) The equal opportunity policy of a private establishment having twenty or more employees and the Government establishments shall inter alia, contain the following, namely: -

(a) facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment;

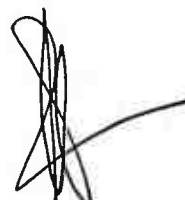
(b) list of posts identified suitable for PwDs in the establishment;

(c) the manner of selection of PwDs for various posts, post – recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation if any, and other facilities;

(d) provisions of assistive devices, barrier-free accessibility and other provisions for PwDs;

(e) appointment of liaison officer by the establishment to look after the recruitment of PwDs and provisions of facilities and amenities for such employees.

....3....



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6. **Rule 9 of the RPwD Rules, 2017 – Form and manner of maintaining records by the establishments** – (1) Every establishment covered under sub-rule (3) of the rule 08 shall maintain records containing the following particulars, namely:-

- (a) The number of PwDs who are employed and the date from when they are employed;
- (b) The name, gender and address of PwDs;
- (c) The nature of disability of such persons;
- (d) The nature of work being rendered by such employed PwD; and
- (e) The kind of facilities being provided to such PwDs.

(2) Every establishment shall produce for inspection on demand, records maintained under these rules, to the authorities under this Act and shall supply such information which may be required for the purpose of ascertaining whether the provisions have been complied with.

7. Reading of provisions delineated above suggests that it is mandatory for establishments to draft and notify 'Equal Opportunity Policy'. Hence, this Court recommends that the Respondent shall discharge its duty in accordance with Section 21 (1) and Section 22 (1) of Rights of Persons with Disabilities Act, 2016 and rules and guidelines issued by the Government.

8. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12712/1024/2021 R28414

Complainant: Shri Asokan, C/o Ponnamma
Mangalayam, Govindamutton – PO
Kayam Kulam, Distt. Alleppey, Kerala – 690527

Respondent: The Asstt. PF Commissioner
Employees Provident Fund Organization
Bhavishya Nidhi Bhawan No. 34763
Karkatpura, Chaman, Hyderabad, Telengana – 500027 R28415

Complainant: 50% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 19.04.2021 submitted that he had worked in Sri Venkateshwara Par Boiled Modern Rice Mill, Hyderabad from 1994 to 2000 and he has requested to forward his PF form to the concerned authority to clear the PF amount.

2. The matter was taken up with the Respondent vide letter dated 24.05.2021 under Section 75 of the RPwD Act, 2016. But despite Reminder dated 06.07.2021, no response has been received from the respondent.

Observation/Recommendations:

3. In the light of the documents available on record, this Court recommends, the respondent to resolve the above issue within 15 days and remit the PF amount to his bankers viz Federal Bank, Devikulam Branch A/c No. 13190100153331 (IFSC FDRL 0001319) as per his request.

4. The case is disposed off.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12714/1022/2021 / P28425

Complainant : Shri Prashant Shamrao Karade
PF No. 4162536
C/o Madan Bhivgade
Plot No. 14, Vishwas Nagar,
Near Jaripatika Police Station,
Behind Buddha Vihar, Nagpur-440014
Mobile No: 08888269953

Email Id : prashant.karade.1@gmail.com

Respondent : The Chairman
State Bank of India
Corporate Centre, State Bank Bhavan,
Madam Cama Road, Mumbai-400032

E-mail ID : chairman@sbi.co.in ; agmhr.lhomah@sbi.co.in

P28426

GIST OF COMPLAINT

The complainant Shri Prashant Shamrao Karade, vides complaint by email, dated 22nd April 2021, submitted that he is belonging to "Mahar" community which is socially Backward Community i.e. (Scheduled Caste) with "benchmark disability" and is governed by the provisions of the Rights of Persons with Disability Act, 2016 and entitled for the protection from any kind of exploitation, cruelty, abuse and discriminatory treatment in the matter of employment and otherwise, the disable persons need for such entitlement of protection from abuse and exploitation is much more acute, prominent and has been specifically provided under the section 6 & 7 of the Act, by giving statutory protection the required Medical Certificate dated 07.10.2020, certifying the physical disability was issued by the Govt. Medical Hospital, Nagpur, Maharashtra, certifying 60% temporary locomotor disability. This is as per the guidelines for the purpose of assessing the extent of specified disability in a person included under RPWD act 2016 notified by Government of India vide S.O.76 (E) dated 04.01.2018 and this certificate is recommended for 02 Years and therefore this certificate is valid till 07.10.2022.

The complainant further submitted that he was performing his duties at SBI Nagpur Branch as Senior Associate, and was initially asked to report to SBI RBO, Chandrapur vide Award Staff Redeployment Transfer order no. AGM/AS/TRF/16 dated 27.08.2020 issued by Asstt. General Manager, Nagpur Branch instructing him to report to RBO-IV, Chandrapur without availing of any leave or usual joining time.

The complainant stated that after receipt of illegal transfer order he immediately submitted his humble request representation for cancellation of his above said transfer orders on extreme medical grounds by enclosing all his relevant medical documents and certificates. He personally met with Chief Manager (HR) and Dy. General Manager (B&O) and requested them to consider his representation on extreme medical grounds and as per the provision and guidelines issued under Disabilities Act, 2016 where employees with physical disabilities are exempted from routine exercise of transfers. But to utter dismay all his request were turned down without even his Physical examination or verification by the Bank's Senior Medical officer.

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)

He was not only harassed but was treated very badly and was humiliated and was forced to join at RBO-IV, Chandrapur.

The complainant submitted that his services were transferred to RBO-IV, Chandrapur under the pretext of Award Staff Redeployment Transfer Policy violating Bank's own circular provisions and guidelines and also violating section 33 of the industrial disputes Act, 1947 as the matter was subjudiced before the Asstt. Labour commissioner (Central), Nagpur as State Bank of India, Staff Union, (MC) Nagpur Module has raised the industrial dispute along with Strike Notice for the wanton violation and breach of all India Settlements agreed and signed by the All India Staff Federation and Bank Management on Award Staff Transfer Policies.

The complainant further submitted that he was transferred illegally from Nagpur Branch, without even having formal intimation, would amount to serious degrading and cruel behaviour and a sheer case of discrimination as many employees who are not even having any serious diseases or any disability are given exemption while myself who is suffering from benchmark disability of nearly 60% is harassed in one way or the other.

The complainant is humbly requested as under:

i) The management of the State Bank of India, DGM (B&O) and CM (HR) State Bank of India Zonal Office is called upon to desist from any further violation of section 6 and 7 of the Act, and also initiate suitable action against all concern.

ii) Declare that his transfer is illegal and contrary to the law as well as Bank's and Governments own circulars;

iii) Issue the direction to the Bank to immediately restore the position and posting at the same branch i.e. SBI Nagpur Main Branch (0432).

2. The matter was taken up with the Respondent vide letter dated 31.05.2021 under section 75 of the RPwD Act 2016.

3 In response, the respondent Dy. General Manager, Circle Development Officer, Human Resource Department, Bandra Kurla Complex, Bandra (E), Mumbai vide letter no: dated 05.07.2021, submitted the following facts:

i) Shri Prashant Karade (Complainant) was posted in State Bank of India (SBI), Nagpur Branch and transfer order was issued on 25.08.2020 under redeployment to Regional Office, Chandrapur.

ii) The employee submitted a representation for cancellation of transfer order with a request to retain at Nagpur Centre under medical grounds for which he submitted medical related documents for consideration.

iii) The medical papers of the complainant were referred to the Senior Medical Officer at Administrative office, Nagpur who opined as under:

"The ailment of the employee is maintaining the status quo does not require any active line of treatment at present. In view of the above, it cannot be considered under exemption/relaxation from transfer as per extant bank's norms."

...2...

4 In response, the complainant has not submitted any comments against the rejoinder letter issued by CCPD Office on 08.07.2021.

Observation/Suggestion:

5. This Court observed that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the complainant may be exempted from routine transfer.

6. Relevant para of DOPT OM dated 31.03.2014 is reproduced as under:-


"As per DOPT OM Para (h) dated 31st March 2014 is that the divyang employee may be exempted rotational transfer and may be allowed to continue same job where he would achieve the desire^d performance".

7. Section 20(5) of RPwD Act, 2016 is as under:-

"Section 20.(5) 'Non-discrimination in Employment' of the Rights of Persons with Disabilities Act, 2016 provides that the appropriate Government may frame policies for posting and transfer of employees with disabilities."

8 The respondent is recommended to retain the complainant in Nagpur Branch preferably so as to enable him to live with his family.

9. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12697/1022/2021 **128427**

Complainant : Shri Praveen Kumar Bendi
Tradesman Mate (Industrial)
P.No. 3740411-Y
Indian Navy
INS Hansa, Dabolim
South Goa-403801
Mobile No : 07989704109
E-mail: Praveen.bendi@gmail.com

Respondent : The Flag Officer Commanding
Headquarters
Goa Naval Area, Vasco da Gama
Goa

128428

Contact No : 0832-2582555 Extn. 2400
Fax No : 0832-2510760
E-mail : ---

GIST OF COMPLAINT

The complainant Shri Praveen Kumar Bendi, vide his complaint by email, dated 11th April 2021, submitted that he is working as a Tradesman Mate (Industrial) at INS Hansa, Goa since September, 2017. The complainant further stated that he joined this post under Persons with Disabilities (PwDs) category (Low vision with 40%) against the advertisement no: davp 10702/11/0282/1617.

The complainant further submitted that his parents (senior citizens) staying alone at his home town i.e. Srikakulam, Andhra Pradesh, needs to be taken to doctor for regular checkups and medical assistance for which his presence much required at this stage of their ailment. The complainant stated that he has to travel to his home town at least once in a month which is very difficult due to his disability, both personally and professionally.

The complainant has requested to CCPD transfer him from Goa to Visakhapatnam which is nearest place of his home town so that he can focus on his work and also be there for his parents as and when needed. This will save his time, energy and efforts to travel all the way to his hometown every month and he will be able to give complete time to his professional life and also his personal life.

2. The matter was taken up with the Respondent vide letter no: dated 13.04.2021 under section 75 of the RPwD Act 2016.

3. In response, Shri Prateek Ghosh, Captain, Chief Staff Officer (LA&P), Flag Officer Commanding, vides their letter no: 39/269/1/83 dated 16th June 2021, Inter-alia submitted the following points:-

- i) The respondent clarified that Shri Praveen Kumar Bendi, Tradesman Mate has been appointed at INS Hansa in VH category vide this Headquarters Appointment Order No.39/266/66/C dated 21 August 2017 against a vacancy reserved for Persons with Disabilities at Goa Naval Area.
- ii) This Headquarters is cadre controller for the industrial cadres at Goa Naval Area and the feasibility of routine transfer of Shri Praveen Kumar Bendi, Tradesman Mate to Visakhapatnam is ruled out as there is no unit/branch/office in Andhra Pradesh under the jurisdiction of this Headquarters as Cadre Controller.
- iii) The respondent further clarified that had Shri Praveen Kumar Bendi, Tradesman Mate belonged to any of the centrally controlled cadres viz. Scientific Staff, Drawing Staff and Store House Staff of Indian Navy, his request for transfer to Visakhapatnam could have been considered as per DoP&T instructions. It is also clarified that reservation rosters for the aforesaid 03 in nos. centrally controlled cadres are maintained by the respective directorates at IHQ MoD (N). Therefore, there is no liability to maintain any station specific reservation quota in respect of these Civilian cadres. However, the individual is part of locally controlled cadre and it is mandatory to maintain the quota of reservation in each category/group/block at Goa Naval Area as per extant provisions.
- iv) Policy guidelines on various grounds of transfer of Civilian personnel have been promulgated in Indian Navy vide IHQ MoD(N)/PDCP letter CP(G)/2601/Transfer Policy dated 11 August 2015.
- v) Therefore, the complainant's request for transfer to nearest workplace to home town in accordance with the provisions contained in DoP&T OM No. AB 14017/16/2002-Estt (RR) dated 13th March 2002 and the extant policy thereof is not justified.
- vi) In view of the aforesaid, the individual has been advised to apply for transfer on compassionate grounds under the provision of Army Order 12/2020.
- vii) The inter-cadre transfer orders on compassionate grounds are issued as per the aforesaid Army Order {Sub-Para (f)}. Based on genuineness of the case reported by OC unit and willingness of the applicant to join post at new station in zero seniority, the transfer/posting orders are issued by IHQ MoD (Army)/AG's Branch. However, in the instant case pertaining to application dated 15 July 2019 of Shri Praveen Kumar Bendi, Tradesman Mate, it is evident that the individual has not applied under the provisions of Army Order in force at that point of time i.e. Army Order 22/2001.
- viii) On account of rule position clarified at Sub-Para (f) & (g) above, it is evident that the application dated 15 July 2019 quoted ibid is devoid of merit. Therefore, even though the department/office where Shri Praveen Kumar Bendi, Tradesman Mate has been working, had forwarded the case file to Administrative/Civilian Section vide Staff Minute Sheet 420/36/SMS dated 16 Jul 19, the same has been returned to the department unactioned view aforesaid reasons.
- ix) The respondent further submitted that the Shri Praveen Kumar Bendi, Tradesman Mate has not been subjected to any rotational transfers within the Goa Naval Area and therefore directives contained in DoP&T OM AB 14017/16/2002-Estt.(RR) dated 31 March 2014 with respect to intra-cadre posting of government servant in Goa Naval Area have been complied with. The individual has not been transferred from INS Hansa to any local unit since his initial appointment.



x) Subsequent request of Shri Praveen Kumar Bendi, Tradesman Mate for transfer to Visakhapatnam as a case of inter-cadre posting with zero seniority received vide INS Hansa letter 270/55/3-A dated 18th May 2021, has also been examined in this Headquarters. The Head of Office/OC unit of Shri Praveen Kumar Bendi, Tradesman Mate is not satisfied of the genuineness of the grounds on which the individual has applied for transfer to Visakhapatnam. The said matter has been forwarded to the higher authorities as 'not recommended case' as per extant policy. In this regard, this Headquarters letter 39/270/11 (CT) dated 14 June 2021 containing applications and unit's recommendations (all not recommended view reasons recorded in writing therein) in respect of 07 in nos. Persons with Disabilities who applied for transfer on similar compassionate grounds including the applicant, is relevant

xi) It is pertinent to mention that all policy directives pertaining to welfare of Persons with Disabilities (Divyangjan) received from the higher formations have been implemented in letter and spirit in this Headquarters. Nomination of Liaison Officer Order CS/1/3313 dated 12 December 2019. The liaison officer is Grievance Redressal Officer for all Persons with Disabilities (Divyangjan) employed under the jurisdiction of Command Headquarters i.e. Western Naval Command, Mumbai. In view of the above, respondent requested that:-

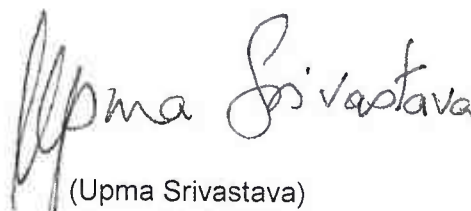
4. **Observation / Recommendations:**

This Court observed that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the provisions under RPwD Act, 2016 for transfer of persons with disabilities is as under:

"Section 20(5) 'Non-discrimination in Employment' of the Rights of Persons with Disabilities Act, 2016 provides that the appropriate Government may frame policies for posting and transfer of employees with disabilities".

5. In light of the reply of the respondent, facts and material available on record, the respondent are advised to reconsider the matter of inter-cadre posting afresh so as not to infringe the rights of PwDs, under their Army order 12/2020.

6. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12728/1011/2021 **1228385**

Complainant:

Dr. Rajiv Kumar Chechi,
A-102, Sukhville Apartment,
Vidya Knowledge Park,
Baghpat Road,
Meerut,
Uttar Pradesh - 252002

Versus

Respondent :

Khadi and Village Industries Commission,
(Through the Chairman),
Ministry of Micro, Small and Medium Scale Enterprises,
"Gramodaya",
3 Irla Road,
Vile Parle (West),
Mumbai - 400056

1228386

Disability : 44% Locomotor Disability

Gist of Complaint:

Dr. Rajiv Kumar, a person with 44% locomotor disability vide his complaint dated 31.05.2021 submitted that the KVIC declared the final result of the post of Director through Direct Recruitment on 15.04.2021 whereby a total 17 selections were made in addition to 09 waiting list selections for the total 18 posts as there was no candidate found to be eligible for EWS category against 01 EWS category post. He attended the interview on 15.03.2021. He submitted that KVIC has violated the Rights of Persons with Disabilities Act, 2016. He has requested for the immediate joining and

1 | Page

issuance of appointment letter for the post of Director from KVIC against the allocated PwD category.

2. The matter was taken up with the Chairman, Khadi and Village Industries Commission vide letter dated 04.06.2021.

3. The Director (Adm. & HR) of Khadi and Village Industries Commission vide letter dated 25.06.2021 submitted that Khadi and Village Industries Commission (KVIC) follows Employees Recruitment Rules, 2016 notified by the Govt. Of India and also the guidelines issued by the DoPT, Govt. Of India from time to time. Further they mentioned that Dr. Rajiv Kumar had clearly mentioned in his application form that he is a general category candidate and also not a person with disability. He has not declared that he is a PwD candidate and also not uploaded any certificate of his disability in his online application. He had neither made any complaint in this regard nor challenged the selection process at any stage till the final result was declared. The Respondent referred to a similar case filed earlier by Shri Manmohan Bajpai and as recommended by this Court they have reserved 1 post of Dy. Director for PwD candidates which shall be filled up by a separate recruitment process. They have not issued any notification for Equal Opportunity Policy but following all the rules and reservations and relaxations policies for Persons with Disabilities. The Grievance Redressal officer has been appointed vide circular dated 09.10.2012. All candidates were shortlisted for interview on the basis of criteria based on educational qualification and experience acquired. The complainant himself was shortlisted for the same. Final selection was done on the basis of total marks obtained in initial scrutiny and performance of the candidates in the interview.



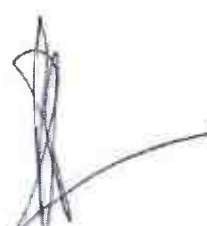
4. The complainant vide his rejoinder dated 22.07.2021 has expressed his dissatisfaction over the reply of KVIC dated 25.06.2021. He requested for a copy of Roster maintained for persons with disabilities by Respondent since last 5 years and also want to know from the Respondent the total number of Special Recruitment Drive conducted for filling the post of Director and Deputy Director during the last five years along with a copy of Advertisement.

OBSERVATIONS & RECOMMENDATIONS

5. Plethora of Complaints is filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.

6. Whole recruitment cycle can be divided into following parts –

- a) Identification of Posts suitable for PwD candidates.
- b) Reservation given to Persons with Disabilities
- c) Issuance of Notification
- d) Examination Fees
- e) Examination Process – Facilities provided during examination and Examination Centres
- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection



7. Before proceeding further, it is important to elicit objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination and are given equal opportunity.

8. For the present complaint whole summary of the statute is unwarranted, hence, concerned provisions for relevant portions are hereafter identified and mentioned.

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

9. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in



accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 38.16./2020-DD.III dated 04.01.2021 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

10. Addition of any post from this list –

a) (a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that this list is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements. The same is mentioned in Note 2 of Notification dated 04.01.2021 Issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

(b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 04.01.2021, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.

(c) Point 4 of the notification dated 04.01.2021 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.



RESERVATION FOR PERSONS WITH DISABILITIES

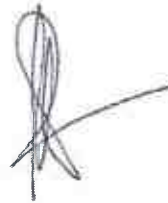
11. This category can be divided into following 6 sub categories –

- a) Quantum of reservation
- b) Exemption
- c) How vacancies shall be computed
- d) Maintenance of Roster
- e) When not filled – Inter se exchange and carry forward
- f) Nature – horizontal

12. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

13. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

14. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an



establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPWD' in short). DEPWD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

15. How Vacancies can be Computed – The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts are taken into consideration. Method is same for recruitment to group A, B and C posts. (DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018)

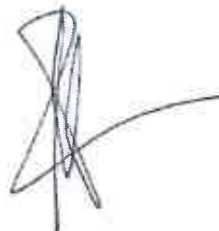
16. Maintenance of roster – Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain



group wise vacancy based Reservation Roster Register. Detailed method of maintaining and ear marking vacancies is laid down in Para 7.1 to 7.8 of the OM.

17. When vacancies cannot be filled - It may happen that in recruitment year some or all vacancies may not be filled up due to non-availability of suitable person with disability or for any sufficient reason. Under such circumstances, government establishment cannot convert such vacancies to unreserved category. Detailed procedure for conversion of such unfilled vacancies is laid down in Para 8 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. As per the instructions mentioned in the OM, following steps have to be followed by government establishment

- a) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.
- b) Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, It may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and mental illness; multiple disability from amongst persons above mentioned for disabilities.
- c) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.




18. It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.

19. Nature of reservation - It is settled position of law that reservation for PwBD is horizontal and vacancy based, unlike reservation for SC/ST and OBC which is post based and vertical in nature. Therefore, specific method for earmarking selected PwBD candidates has to be adopted. Reference can be made to Para 9 to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 and DoPT OM No. 36035/2/2017-Estt.(Res) dated 25.03.2019.

ISSUING OF NOTIFICATION

20. DoPT OM No 36035/2/2012-Estt.(Res) dated 26.11.2012 lays down certain points which are to be kept in mind while advertising the vacancies. Summary of the point is as follows.

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is Identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.
- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.



EXAMINATION FEES

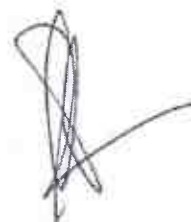
21. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.

EXAMINATION PROCESS

22. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured. Hence, while conducting examination government establishment has to ensure that test centers as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.

23. Reference can also be made to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. Para I to XVII of the OM lays down detailed provisions related to facilities which shall be provided to PwBDs during examination.

24. Scribe – Para IV, V and VI of the OM lays down detailed guidelines related to Scribe/Reader/Lab Assistant. In these paragraphs exhaustive guidelines are provided as to when it is mandatory and when discretionary to provide for Scribe/Reader/Lab Assistant. Similarly, Para VIII contains guidelines with respect to mode of answering the questions asked.



25. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.

26. At this point relevant provisions related to 'Reasonable Accommodation' need to be mentioned. Section 3 of RPwD Act, 2016 lays down that appropriate government shall ensure reasonable accommodation for persons with disabilities. Reasonable Accommodation is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

27. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

RELAXED MINIMUM CRITERIA

28. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of suitability. As per the OM if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.



SELECTION ON MERITS

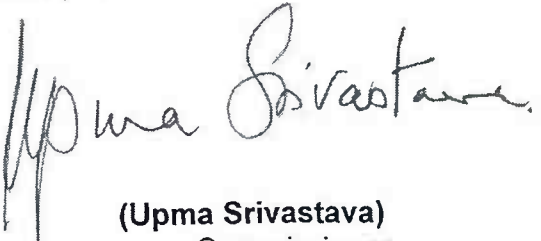
29. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with benchmark disability is selected on merits without relaxed standards along with other candidates. He will not be entitled for the reserved vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability

30. In accordance with guidelines issued on the point of reservation as delineated above, the Respondent is recommended to reserve 4% to persons with disabilities to person with disabilities. The Respondent is further advised to ensure that the rights of persons with disabilities are not infringed.

31. The Respondent vide their submission submitted that the complainant had mentioned in his application form that he is a candidate under general category and not a person with disability. The complainant cannot demand reservation as he has not declared his disability while applying to the post.

32. The case is disposed off.

Dated: 18.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12730/1011/2021 | R28387

Complainant:

Dr. Raj Kumar Das,
Research Scholar,
A.K. Golder Laboratory (AR6B),
Chemical Engineering Department
IIT Guwahati,
Assam – 781039

....Complainant

Versus

Respondent :

R28388

CSIR-Institute of Minerals & Materials Technology,
(Through the Director)
Sachivalaya Marg,
RRL Campus,
Acharya Vihar,
Bhubaneswar,
Odisha – 751013

....Respondent

Disability : 70% Hearing Impairment

Gist of Complaint:

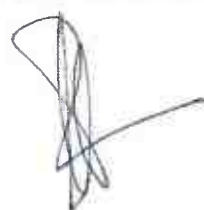
Dr. Raj Kumar Das, the complainant, a person with 70% hearing impairment submitted that he had applied to the post of Scientist (Post Code:S03) in CSIR-IMMR Bhubaneswar which is reserved for HH category against their Advt. No.01/2019 dated 16.09.2019. He has been selected for the interview. He was the only candidate with hearing impairment for the said post. He attended the interview on 22.09.2020 at CSIR-IMMT Bhubaneswar. As the panel members were in virtual mode and as the Director was about 15 feet away from him with protective mask due to Covid-19, he could not do any lip reading on account of these constraints and this affected his answers as well as selection to the post. During his 9 months of teaching as Guest

1 | Page

Faculty at NIT, Arunachal Pradesh, he had successfully conversed with students by aiding verbal sounds with lip reading.

2. The matter was taken with the Director, CSIR-Institute of Minerals and Materials Technology, Odisha vide letter dated 03.06.2021.

3. The Controller of Administration, CSIR-Institute of Minerals & Materials Technology, Bhubaneswar vide letter dated 29.06.2021 submitted that the Complainant had applied for the post of Scientist (Post Code S03) against Advt. No. 01/2019 vide Application No. 2485. Under the said Post Code 02 posts were reserved for SC category. 11 posts of Scientists were notified, out of which one post was reserved horizontally for HH category. Dr. Raj Kumar Das was shortlisted by the Screening Committee with relaxed standards to be called for interview. Accordingly, call letter was issued to Dr. Raj Kumar Das for appearing for interview for the post of Scientist scheduled on 22.09.2020. Keeping in view the risk of infection in the event of travel by the candidates and in order to avoid exposure during Covid pandemic situation, both the option for appearing in interview, i.e. virtual mode as well as physical appearance mode as was kept open for the candidates and accordingly the applicant preferred to appear in physical presence mode and he appeared in person before the Selection Committee for the interview at CSIR-IMMT, Bhubaneswar. The interview was held as per procedure. Before the commencement of interview, the audio and video quality for the interview was thoroughly checked by expert IT professionals for all the candidates including Dr. Das so as to ensure that the candidates do not face any problem in the interview and was suitably adjusted to their requirements. The same procedure was also scrupulously followed for Dr. Das before commencement of his interview. As was given to understand by Dr. Das, he was very much



comfortable with the Selection Committee. The interview commenced and completed in a friendly and cordial manner. During the course of interview, the complainant did not raise any issue of problem of difficulty in hearing or difficulty in lip reading due to protective mask etc. Had he raised any such issue during the course of interview, the selection committee would have taken proper care and would have definitely solved the issue. As regards the statement that one of the members of the Selection Committee was sitting at a distance of 15 feet, the Respondent submitted that one of the members of the Selection Committee was present physically inside the Interview Room wearing mask within the audible limit the complainant during the course of interview and the distance between the complainant and the member was maintained at around 6 to 7 feet in order to comply with the norm for social distancing. The audio quality and video quality was thoroughly checked by the expert I.T. professional before the commencement of the interview of Dr. Das and it was suitably adjusted as per his requirements and satisfaction. Had he raised the issue of difficulty in hearing or lip reading, then and there the member would have solved the issue in consultation with the whole Selection Committee, but he did not do so. The Selection Committee gave due care and weightage to the performance of the complainant in the interview with relaxed standards as per provisions of law but unfortunately, he could not secure the threshold mark for selection.

4. The complainant vide his rejoinder dated 18.07.2021 submitted that he had exercised his choice of appearing in the interview physically with the hope that he would have been able to face the interview board more comfortably. He requested the IMMT Recruitment Cell by email on 08.09.2020 for a possible guest house accommodation. Unfortunately, he did not get any Guest House accommodation. On the day of interview he contacted the



officials at the interview front desk and intimated and alerted them of his physical limitation. Their response was quite apathetic and they even told him rudely to come back at 10:30 a.m. for document verification. On that day, there were only two candidates (including him) for the physical interview. The interviewer was around 15 feet away and the monitor was around 4 feet away. He was asked questions by four interviewers. One was sitting in the room. The second interviewer was online in video mode and the other two were online in audio mode. The interviewer, who was in the room, was sitting with face mask on. He submitted that he was struggling to get the questions asked by the interviewer as he was not able to lip read because of the mask he was wearing. He was quite satisfied with his performance and felt his presentation was well appreciated but he was deeply disheartened and demoralised to see the final result.

Observation/Recommendations:

5. The reply of the Respondent is satisfactory. It is observed that the complainant did not raise the issue of difficulty in hearing or lip reading anytime during the interview. However, Respondent is advised to ensure that candidates with disabilities are provided with facilities required depending on their disability during the interview so that they are comfortable during their interview and also to ensure that there is no discrimination to the persons with disabilities on account of his/her disability.

6. The case is disposed off accordingly.

Dated: 18.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12739/1023/2021 **1228400**

Complainant: Smt. Uma Mahesh Panchal
e-mail: <piyagaikwad021@gmail.com>

Respondent: The Commandant
Military Hospital Kirkee
Range Hills, Khadki, Pune – 411020
E-mail: <dglpmhke@gmail.com>

1228401

Complainant: 100% Hearing impairment

GIST of the Complaint:

Complainant vide complaint dated **11.05.2021** submitted that she is working in Military Hospital Kirkee Ranghills Khadki Pune as a Ward Sahayika and due to the Covid-19 pandemic, she is not getting any transport facility to reach the hospital and don't have own vehicle also. She further submitted that she cannot work from home as she is unable to communicate on telephone and electronic means on phone call, therefore, she has requested to sanction the special casual leave in the Lockdown period from 12th May 2021 till the Lockdown ends.

2. The matter was taken up with the Respondent vide letter dated **11.06.2021** under Section 75 of the RPwD Act, 2016.

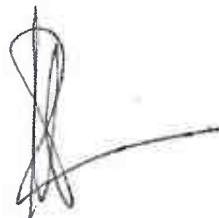
3. In response, Col Sr. Registrar, Military Hospital, Kirkee vide letter dated **05.07.2021** inter-alia submitted that her request for exemption from attending the office during lockdown cannot be acceded to and in case Smt. Uma Panchal is having difficulties in performing her duties in a hospital, she may be advised to apply seeking employment in a non-hospital set up. They further submitted that the unlock down process has already been started by the Govt. of Maharashtra, hence there is no substance in the complaint.

Observation/Recommendations:

4. Non sanctioning of leave – DoPT OM No. 36035/3/2013-Estt.(Res) dated 31.03.2014 lays down certain guidelines for providing certain benefits in respect of Persons with Disabilities employed in Government for efficient performance of their duties. In Para – G of the O.M. another DoPT O.M. dated 19.11.2008 is mentioned, in which provision for 4 days of 'Special Casual Leave' in a calendar year for Persons with Disabilities is provided.

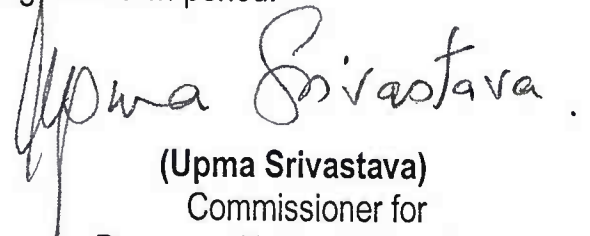
5. Moreover, RPwD Act, 2016 incorporates principle of 'Reasonable Accommodation' for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016."



6. Hence, this court recommends that the issue of sanctioning of leave shall be settled in accordance with DoP&T's OM and of Reasonable Accommodation delineated above as the complainant is entitled for leave/exemption from duty during lockdown period.

7. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12731/1021/2021 / R28402

Complainant: Shri Rajendra Kumar Kushwaha
E-mail: <rjkk12@gmail.com>

Respondent: The General Manager (Personnel)
Coal India Ltd, "Coal Bhawan"
Personnel/EE, Div. 2nd Floor, Premises No. 04
Mar, Plot No. AF – III, Action Area – 1A, New Town
Rajarhat, Kolkata – 700156, West Bengal
E-mail: <cmd.ncl.cil@coalindia.in>

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 02.06.2021 में कहना है कि वह कोल इंडिया लिमिटेड में सहायक प्रबंधक (सचिव/राजभाषा) ग्रेड ई-3 के पद पर कार्यरत है तथा वरीयता-सूची के अनुसार 04 अधिकारियों के नाम में से उनका नाम सबसे ऊपर था प्रार्थी का आगे कहना है कि नियमानुसार प्रार्थी की पदोन्नति उप प्रबंधक, ग्रेड ई-4 पर सबसे पहले होनी चाहिए थी परन्तु जूनियर अधिकारी को पदोन्नति कर दिया गया।

2. The matter was taken up with the Respondent vide letter dated 07.06.2021 under Section 75 of the RPwD Act, 2016.

3. In response, General Manager (Personnel), Coal India Ltd vide letter dated 01.07.2021 inter-alia submitted that in the DPC, the Performance appraisal ratings (PRIDE) of last 03 years corresponding to cut off dates i.e. 2018 – 19, 2017 – 18 & 2016 – 17 of eligible candidates were considered and the PRIDE ratings in respect of Sri Kushwaha for the year 2018-19, 2017 – 18 & 2016 – 17 were 'very good', 'very good' and 'zero' respectively, therefore, Sri Kushwaha was considered by DPC in the meeting held on 10.04.2021, but Committee did not recommend him for promotion to E4 grade due to zero rating for the year 2016-17.

....2.....

4. प्रार्थी का अपने प्रति उत्तर दिनांक **02.07.2021** में कहना है कि वह अपना PRIDE किसी दृष्टिवान की सहायता से कार्यालय में भरवाते हैं जिसमें कभी-कभी त्रुटियां भी होने की संभावना बनी रहती है तथा इसी वजह से वर्ष 2016-2017 के दौरान वह Online PRIDE भरने में असमर्थ रहे। प्रार्थी का आगे कहना है कि इस बारे में उन्होंने उच्च अधिकारियों को भी लिखा था परन्तु कोई जवाब नहीं आया।

5. After considering the respondent's reply dated **01.07.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.07.2021** but due to administrative exigencies, hearing rescheduled on **02.08.2021**.


Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Adv. Rajendra Kumar on behalf of complainant
- Suarapureddi Ravindranathan on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that his name was on Sr. No.1 in seniority list, however he was denied promotion from Assistant Manager Post (E-3 grade) to Dy. Manager post (E-4 grade). Further he submits that DPC while considering his promotion considered ratings of 2016-17 as 'Zero'. This act of DPC is act of discrimination because ratings are given on the basis of 'PRIDE' form, which is filled by the employee himself on the online portal. Complainant has to take help of the other employee to fill the form. Because of his nature and severity of disability he failed to fill the form on time. He applied for filling the form on later date, however, Respondent did not permit him to do the same.



....3....

8. Divyang employees have special needs. Respondent is duty bound to take care of special needs of the divyang employees. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it positive obligation of the Respondent to provide barrier free and conducive environment to divyang employees. For interpretation of term 'barrier free and conducive environment' DoPT O.M. dated 31.03.2014 must be referred to. Para C of the O.M. lays down that special furniture, wheel chairs (motorised if required by the employee), software scanners, computer and other hardware, etc. must be provided to divyang employees in accordance with their requirement, which would improve their efficiency.

9. Respondent's act of not promoting the Complainant is perfect example of discrimination with divyang employees. It is admitted fact that because of nature and severity of the disability, Complainant could not fill online PRIDE form. He informed the Respondent about his inability to fill the form and requested the Respondent to permit him to fill the form on later date. On receiving the application from the Complainant, Respondent should act according to Section 20(2) of RPwD Act and DoPT OM dated 31.02.2014. However, respondent not only failed to act accordingly, also failed to promote the divyang employee by considering his rating for 2016-17 as 'Zero'. This is grave injustice with divyang employee. All help should be extended to ensure that APAR is submitted by the PwD by cross checking with the person.

10. Hence, this court recommends that Respondent shall again constitute DPC, since the Complainant could not fill the online PRIDE form with no mistake on his part. Reconstituted DPC shall consider ratings of 2019-20 for considering the promotion of the Complainant.

11. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021



सत्यमेव जयते

BS

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12689/1023/2021 / R28404

Complainant: Shri Pawan Kumar G Patil
e-mail: <pawankumar_patil@yahoo.com>

Respondent: The Zonal Manager
LIC of India, Western Zonal Office, Yogakshema
Mumbai – 400021
E-mail: <wz_pirdesk2@licindia.com>

R28405

Complainant: 100% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **06.04.2021** submitted that he had appointed as a Assistant in LIC of India on 07.02.2020 and as per rule, his probation period was 06 months from date of joining i.e. on August 2020 but till date he has not received confirmation letter.

2. The matter was taken up with the Respondent vide letter dated **09.04.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Regional Manager (P&IR), LIC of India vide letter dated **10.05.2021** inter-alia submitted that Shri Pawan Kumar G Patil has been confirmed in the services of the Corporation w.e.f. **04.12.2020**.

4. Complainant vide rejoinder dated **07.06.2021** alleged that his confirmation date was intentionally extended for approximately 04 months without any reason.

5. After considering the respondent's reply dated **10.05.2021** and the complainant's rejoinder dated **07.06.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.07.2021** but due to administrative exigencies, hearing rescheduled on **02.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Shri Pawan Kumar G Patil – complainant
- Shri R.Y. Mohite on behalf of respondent

Observation/Recommendations:

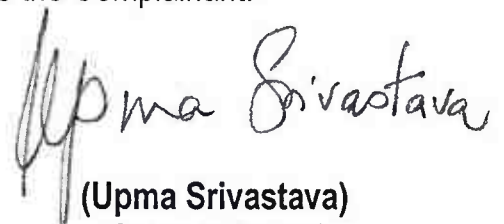
6. Both the parties were heard.
7. Complainant submits that he joined Respondent establishment in February 2020. As per the Appointment Letter, duration of Probation Period was 6 months. Hence Respondent was bound to confirm him in August, 2020, after completion of 6 months of probation period. He alleges that despite of completing probation period, he has not been given confirmation letter. Hence, the Complainant is not able to avail benefits like medical leave etc.
8. Respondent replied that the Complainant has been confirmed with effect from 04.12.2020. The same has been conveyed to the Complainant vide letter dated 19.04.2021.
9. Further issue was raised by the Complainant in his Rejoinder that he was confirmed after 4 months of the due date. Respondent during online hearing informed the court that Probation Period of the Complainant was extended because performance of the Complainant was not satisfactory.
10. Complainant informed the court that basic infrastructure like desk and computer were not disabled friendly. No special arrangements were there in the office to take care of the needs of divyang employees.
11. This court finds merit in the argument of the Complainant. There is direct correlation between conducive environment provided to the divyang employees and their performance. It is unjust to expect world class performance from divyang employee when even basic infrastructure facilities are not provided to him.

12. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it positive obligation of the Respondent to provide barrier free and conducive environment to divyang employees. For interpretation of term 'barrier free and conducive environment' DoPT O.M. dated 31.03.2014 must be referred to. Para C of the O.M. lays down that special furniture, wheel chairs (motorised if required by the employee), software scanners, computer and other hardware, etc. must be provided to divyang employees in accordance with their requirement, which would improve their efficiency.

13. Respondent failed to act accordingly. Respondent did not approach this court with clean hands. Respondent's act of extending probation period because of unsatisfactory performance is violative of RPwD Act, 2016. Unsatisfactory performance of the Complainant, if any, is result of the lack of infrastructure facilities extended to the employee. Moreover, no notice was issued to the complainant as to why his probation may not be extended. He was not given an opportunity to defend himself. Hence, this court concludes that decision of extending probation period of the Complainant is violative of Principles of Natural Justice as well.

14. This court recommends that Respondent shall review the decision of extending the probation period of the Complainant and shall confirm him from the same date on which his confirmation was due according to the Appointment Letter issued to the Complainant.

15. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12707/1023/2021 **128406**

Complainant: Shri Surendra Prasad
E-mail: <sprasad12@rediffmail.com>

Respondent: The Director, Bhabha Atomic Research Centre, Trombay, Mumbai – 400085
E-mail: <caoa@barc.gov.in>

128407

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **15.04.2021** inter-alia submitted that his all APAR from period 2014 – 2015, 2015 – 2016, 2016 – 2017 is showing good grading but after some differences with Head, the officers marked low grades in APAR i.e. 'B'. He further submitted that there is complete denial/delay in promotion by providing low grade again and again.

2. The matter was taken up with the Respondent vide letter dated **17.05.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **16.06.2021** inter-alia submitted that BARC implements 'Merit based promotion', and NOT time-based promotion, in which an employee is promoted to the next grade only if he/she completes minimum years in the present grade and is also found eligible for the promotion based on his/her performance in the preceding years. They further submitted that there is no complete denial/delay of promotions as he has been promoted to higher grades from time to time based on his performances and APAR grading.

4. Complainant vide e-mail dated **02.07.2021** reiterated that there has been delay in promotion by marking low grade 'B' or "B" in APAR due to his disability

5. After considering the respondent's reply dated **16.06.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **26.07.2021** but due to administrative exigencies case rescheduled on **02.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Shri Surendra Prasad– complainant
- Shri D. Srinivas Rao and Ms. Laxmi Devi on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Two issues are raised by the Complainant in his Complaint. One is related to his transfer to the office situated nearby to his place of accommodation. Second one is related to his APAR Grading.

8. On the issue of transfer, Respondent submitted that the Complainant was posted in the office situated nearby to his place of accommodation. However, after various Complainants filed by the female employees against the Complainant in the present case, he was transferred to the present office. Reply on the point of transfer is accepted and court is not inclined to intervene on this issue.

9. On the issue of APAR gradings, reference is made to APARs dated 14.09.2020 and 06.08.2019. In both report dated 14.09.2020 and 06.08.2019, he has been given 'B+, Good' grading, along with a remark by Head of Section that 'due to health reasons, he is unable to provide dedication to plant/lab work assigned to him'.

10. Respondent has failed to fulfil the duties assigned to him by virtue of Section 20(2) of Rights of Persons with Disabilities Act, 2016 and subsequent guidelines. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it positive obligation of the Respondent to provide barrier free and conducive environment to divyang employees. Work which can be handled well by the complainant should be allotted to him.



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11. In the present case, instead of providing barrier free environment, Respondent took into consideration the challenges faced by the Complainant because of his disability while assigning grades in the APAR.

12. Hence, this court recommends that the Respondent shall review the entire matter of APAR gradings and his performance through a Committee which is independent of his immediate superiors. Further, respondent shall not downgrade APAR because of complainant's inability to perform work due to his disability.

13. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12703/1023/2021 **1228412**

Complainant: Shri Devendra Meena
L – 1542, Gali No. 09, Church Colony
Sangam Vihar, New Delhi
E-mail: <devondrakatrawat1999@gmail.com>

Respondent: The Executive Director
Nehru Yuva Kendra Sangathan
M/o Youth Kendra Sangathan
4, Jeevan Deep Building, Ground Floor
Parliament Street, New Delhi
e-mail: <ddpersonnel@gmail.com>

1228413

Complainant: 40% visual impairment

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक 15.04.2021 में कहना है कि वह नेहरू युवा केन्द्र, यमुना विहार में मल्टी टास्किंग स्टाफ (MTS) के पद पर कार्यरत है तथा वहाँ के जिला युवा समन्वक (District Youth Coordinator) प्रार्थी को अन्धा कहा कर बात करते एवं परेशान करते हैं जैसे जानबूझ कर फिल्ड का कार्य देना और फिर ऑटो का किराया भी न देना। प्रार्थी ने आरोप लगाया है कि दिनांक 17.03.2021 को उन्हें धक्का मारकर ऑफिस से निकाल दिया गया और अब ऑफिस में नहीं बैठने दे रहे हैं। जिसकी रिपोर्ट प्रार्थी ने प्रधान कार्यालय में की परन्तु कोई कार्रवाई नहीं हुई।

2. The matter was taken up with the Respondent vide letter dated 15.04.2021 under Section 75 of the RPwD Act, 2016. But despite Reminder dated 31.05.2021, no response has been received from the respondent. Therefore, hearing scheduled on 20.07.2021 but due to administrative exigencies, hearing rescheduled on 22.07.2021.

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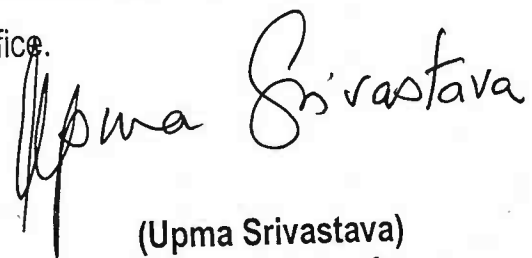
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.07.2021**. The following were present:

- Adv. Raja Panda on behalf of complainant
- Sudhir Pandey, Asst. Director (Legal) on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant submits that despite of his disability he is assigned field work. Travelling expenses incurred by him for performing field work are also not reimbursed. Further Complainant submits that abusive terms are hurled at him by some of the officers of the establishment and on 17.03.2021 he was refrained from attending office.
5. Respondent submits that 1 member Committee has been constituted to investigate the issue of assigning field work and use of abusive terms. Further, respondent submits that the Complainant is not attending office since last one year approximately and his salary is continued to be paid. Respondent also assured that the Complainant will not be refrained from attending office if he will join the office.
6. Reply filed by the Respondent is satisfactory. This court recommends that the committee shall investigate and resolve the issue as soon as possible. Further, Complainant shall join office and shall not be refrained from attending the office.

7. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12641/1021/2021 / P28416

Complainant: Shri Albert C J
E-mail: <albertmattom@gmail.com>

Respondent: The Chief Postmaster General
O/o the Chief Postmaster General
Kerala Circle, Thiruvananthapuram – 695033
E-mail: <apmgstaff.keralapost@gmail.com>

P28417

Complainant: 45% locomotor disability

GIST of the Complaint:

He is working as Postal Assistant (Savings Bank Control Organization) in Irinjalakuda Head post office, Kerala circle and recently, Hon'ble Supreme Court of India ordered that differently abled persons are eligible for reservation in government jobs irrespective of the mode of recruitment whether it is direct recruitment or promotion in the year 2016 and reaffirmed that verdict recently by a three member bench but respondent vide letter dated 28.05.2020 informed that reservation under PwD category is not applicable in case of promotion by seniority/selection.

2. The matter was taken up with the Respondent vide letter dated 03.03.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Postmaster General (staff), O/o the Chief Postmaster General, Kerala vide letter dated 30.03.2021 inter-alia submitted that reservation for PwD category in promotion is a sub judice matter before the Hon'ble Supreme Court of India and reservation for PwD category in promotion will be considered based on the outcome of the case and consequent orders issued by the DoP&T.

4. After considering the respondent's reply dated **30.03.2021** and the complainant's rejoinder **08.04.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **05.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.07.2021**. The following were present:

- Shri Albert CJ – complainant
- Shri G. Gopa Kumar, ASP (Staff) on behalf of respondent

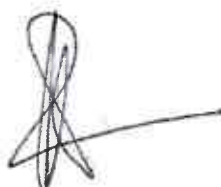
Observation/Recommendations:

5. Both the parties were heard.

6. Complainant submits that he joined Respondent establishment in year 2013. It is alleged by the Complainant that the Respondent establishment has denied to extend reservation in promotion for Persons with Disabilities.

7. Respondent submits that reservation in promotion is not extended for Persons with Disabilities because as per Section 34 Proviso of Rights of Persons with Disabilities Act, 2016, reservation in promotion shall be in accordance with such instructions as issued by appropriate government from time to time. Respondent submits that the 'appropriate government' in the present case is Department of Personnel & Training ('DoPT'). Since DoPT has not issued any instructions on this point hence, Respondent cannot extend reservation in promotion to Persons with Disabilities.

8. RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that ones the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision.



9. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way reflects that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).

10. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of hon'ble Supreme Court and High Court.

11. This court has received similar complaints regularly. Order have been passed by this court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. Copy of the Orders are attached herewith.

12. In view of the clear directions of the Supreme Court and as fully detailed in the enclosed Orders, this court recommends that the Respondent shall pursue the Order attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the judgment of the Hon'ble Supreme Court in Rajeev Kumar Gupta and others Vs Union of India and others.



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13. Respondent is also recommended to forward the copy of this Order along with the attachments to Postal Directorate for effective implementation of this Order.

14. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12592/1021/2021

Complainant: Shri Rajesh, R/o I – 429, Ansari Nagar East

AIIMS Campus, New Delhi – 110029

Respondent: The Director, All India Medical Sciences

Ansari Nagar, New Delhi – 110029

e-mail: <director.aiims@gmail.com> <director@aiims.edu>

Complainant: 45% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **29.01.2021** inter-alia submitted that he has been working as a Operation Theatre Assistant in AIIMS since 25.03.2012. He alleged that as per existing rule of the AIIMS, he was eligible for next promotion after completing of 05 years regular service but the Institute had given next promotion as a Technician (Operation Theatre). He has requested to direct the respondent to identify promotional post for Group 'B' & Group 'A' under the PwD category in AIIMS, New Delhi in respect of Operation Theater Cadre and promote him under the PwD category.

2. The matter was taken up with the Respondent vide letter dated **04.02.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **05.03.2021**, respondent did not submit any reply.

3. Similar matter was heard on **08.01.2021** in the matter of Shri C.G.Sathyan, Jr. Admn. Officer versus AIIMS, New Delhi and during the hearing Respondent expressed his inability to grant promotion to the Complainant and Respondent denied promotion to the Complainants because of its own fault. Policy of reservation for PwDs exists since year 1989 and became statutory duty by effect of Persons with Disabilities Act, 1995. It is settled principle of law that in adjudication of a case no party is allowed to take benefit of his own wrong (*Commodum ex injuria sua nemo habere debet*) Hence, non-preparation of Reservation Roster is fault of the Respondent and the Complainant cannot be made to pay the cost for it.

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)

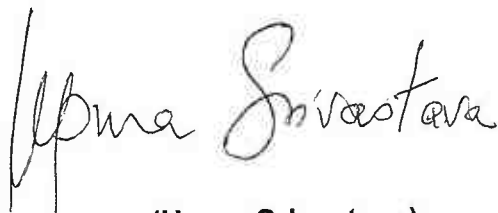
(Please quote the above file/case number in future correspondence)

4. Hence on this issue this court concludes that Employment rights of the Complainants are being infringed by the Respondent.

5. Hon'ble Supreme Court in the matter of RAJEEV KUMAR GUPTA AND OTHERS VS UNION OF INDIA AND OTHERS [(2016) 13 SCC 153] held that three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts shall be extended. Recently hon'ble Supreme Court upheld the decision of Rajeev Kumar Gupta in SIDDARAJU v. STATE OF KARNATAKA [Civil Appeal No. 1567 of 2017]. This court also passed a detailed reasoned Order settling this issue on similar lines in B. UMA PRASAD Vs. EPFO Case No.11183/1021/2019.

6. Therefore this court recommends that the Respondent shall promote the Complainants to the post of O.T. (Technician).

7. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 31.03.2021

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12485/1011/2020

Complainant :

Shri Manmohan Bajpai,
D-2158, Indira Nagar,
Lucknow - 226016

R-26974

Versus

Respondent :

Khadi & Village Industries Commission,
(Through the Chairman),
Ministry of MSME,
3, Gramodaya,
Irla Road, Vile Parle (West),
Mumbai - 400 056

R-26975

Disability : 40% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 30.11.2020 submitted that he wanted to apply for the post of Director and Deputy Director against an Advertisement No.KVIC/Adm./Recruitment/Dir-Dy.Dir(DR)/2(30)/2020-21 of Khadi and Village Industries Commission but KVIC has not provided any reservation to persons with disabilities. The sanctioned strength for the post of Director is 44 and for the post of Deputy Director is 43 and there are many other posts in Group A cadre. The Complainant submitted that in a written reply to the RTI, KVIC has replied that at present no officials of PH category are working in the post of Director and Deputy Director in KVIC. This means that KVIC is not interested to fill up 4% quota reserved for persons with disabilities. He submitted that KVIC is not providing any fee relaxation to PH persons. The complainant has requested to give direction to KVIC to provide proper reservation and relaxed standards to visually and physically challenged to the post of Director and Deputy Director.

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2. The Director (Adm. & HR), KVIC vide letter dated 07.01.2021 submitted that Shri Manmohan Bajpai submitted that the complainant is 40% visually impaired candidate and has applied for the post of Director in KVIC vide Applicant ID No.107484 and also paid an amount of Rs.1500/- towards the application fee. Due to less number of vacancies, i.e. 18 posts of Director and 16 posts of Deputy Director, the 4% reservation (which comes to less than 1) could not be provided to a PwD candidate. The sanctioned strength of Director is 44 and Deputy Director is 43. Apart from the above Group-A posts, there are only two posts which are above, i.e. Deputy Chief Executive Office (Sanctioned strength is 08) and Joint Chief Executive Officer (Sanctioned Strength is 01). Due to non-availability of suitable candidates in the feeder cadre & after exhausting of all channels of recruitment, i.e. deputation including short-term contract (even after 5 attempts), the Ministry of MSME accorded approval to fill up 18 posts of Director and 16 posts of Dy. Director through Direct Recruitment (DR) as a onetime measure. The post of Directors and Deputy Directors are 100% promotional post and at present no PH person is available/working in the post of Director and Deputy Director in the feeder cadres, The allegation made by the complainant is not correct. The post of Directors and Deputy Directors are 100% promotional post and at present due to non-availability of suitable candidates in the feeder cadre & after exhausting of all channels of recruitment, i.e. deputation including Short Term Contract (even after 5 attempts), the Ministry of MSME accorded approval to fill up 18 posts of Director and 16 posts of Dy. Director through Direct Recruitment as a onetime measure. Since the post has not been reserved for PwDs due to less number of vacancies, i.e. less than 1 number, therefore, no relaxation in fee has been provided.

3. The complainant vide his rejoinder dated 15.01.2021 reiterated that KVIC has not given any reservation in the post of Director and Deputy Director in their advertisement. The Respondent has submitted in their reply that the sanctioned strength of Director is 44, Deputy Director is 43, Deputy Chief Executive Officer is 08 and Joint Chief Executive Officer is 01 which means inspite of the total sanctioned cadre strength is 96, KVIC did not give any reservation for PwD candidates in its advertisement.

4. **Hearing :** The case was fixed for video conferencing by the Commissioner for Persons with Disabilities on 16.02.2021. The said hearing has been postponed to 12.03.2021 due to administrative exigencies.

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5. The following persons were present during the hearing on 12.03.2021 ;
- 1) Shri Manmohan Bajpai, the complainant in person.
 - 2) Shri G. Guru Prasanna, Deputy CEO (Admin) and Shri Sandeep Kotey for Respondent.

OBSERVATIONS & RECOMMENDATIONS

6. Respondent issued notification for filling 18 vacancies in the post of Director and 16 vacancies in the post of Deputy Director, both Group A posts. Respondent admitted that no seat was reserved for Persons with Benchmark Disabilities. Respondent submits that reason for not providing reservation was that 4% of 18 and 16 is less than 1 and hence it was not possible to reserve any seat for PwBD candidates.

7. Further, it is also alleged that the Respondent charged examination fees from the PwBD candidates. Respondent submits that since no seat was reserved for PwBD candidates hence, no exemption from payment of examination fees was given to PwBD candidates.

8. Both acts of the Respondent, i.e. non reservation of seats for PwBD candidates and charging of fees from PwBD candidates is violative of settled legal position.

NO RESERVATION FOR PwBDs

9. Clause 2.2 of DoPT O.M. No. 36035/02/2017-Estt (Res), dated 15.01.2018 lays down the formula of calculating total number of vacancies mandated to be kept reserved for PwBD candidates. As per the Clause, 4 percent of total number of vacancies arising in each group of post, i.e. Groups A, B, C and D shall be reserved for PwBD candidates. Respondent committed error in calculating 4% of 18 (vacancies for the post of Director) and 16 (vacancies for the post of Deputy Director) separately. Since both the posts of Director and Deputy Director are Group A posts hence as per Clause 2.2 of the O.M., the Respondent was supposed to calculate 4% of 34 vacancies (18 and 16 vacancies combined). 4% of 34 results in 1.36, hence, as per the formula of calculation laid down in DoPT O.M., Respondent was under obligation to reserve at least 1 vacancy for PwBD candidates.

10. During online hearing it was informed by the Respondent that the impugned recruitment process is not complete yet and assured that the Respondent shall keep 1 seat vacant and will later conduct recruitment process to fill such vacant seat with Persons with Benchmark Disabilities.

CHARGING OF EXAMINATION FEES

11. Respondent admitted that examination fees was charged from all the candidates who applied against the impugned advertisement/notification, irrespective of her/his PwBD category. Respondent reasoned that since no vacancies for PwBD candidates was reserved hence exemption from payment of examination fees was not given.


12. DoPT issued O.M. No. 36035/2/2017-Estt.(Res), dated 23.08.2019. As per Clause 3 of the O.M., PwBD candidates are exempted from payment of application fees and examination fees prescribed in respect of various examinations. Exemption given under the O.M. is not based upon the reservation for PwBD candidates, such exemption is based upon the PwBD status of the applicant, irrespective of number of vacancies reserved for PwBD candidates.

13. Therefore, this court recommends that the Respondent shall revisit the Roster and earmark 1 post of either Director or Deputy Director reserved for PwBDs in accordance with the Roster. Such reserved post shall be filled by the PwBD candidate by separate recruitment process. Further, this court recommends that the Respondent shall refund the amount charged from PwBD applicants.

14. During online hearing Respondent submitted that other vacancies will be filled in near future by mode of promotion. Various Complaints are filed before this court whereby grievances related to reservation for PwBD in promotion and recruitment process are raised before this court and this court has passed Orders delineating various judgments of the Hon'ble Supreme Court and various High Courts and various guidelines issued by DoPT and MoSJ&E, U.O.I. Two such Orders passed by this court namely, **SRI UMA PRASAD v. CEO EMPLOYEES PROVIDENT FUND ORGANISATION; 11183/1021/2019** and **SRI RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EXAMINATION; CASE NO. 12349/1011/2020** are attached herewith. This court recommends that the Respondent shall follow these guidelines before conducting fresh recruitment for PwBD candidates against 1 vacancy left vacant and also follow these guidelines before conducting recruitment process to fill the vacant posts by way of promotion.

15. The case is disposed off.

Dated :01.04.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12349/1011/2020

Complainant: Shri Rahul Kumar Upadhyay, R/o Village Asna Ajeetpur, Mathura Road, Aligarh, Uttar Pradesh – 202 001.

Respondent : National Board of Examinations (Through the Executive Director), Medical Enclave, Ansari Nagar, Mahatma Gandhi Marg, Ring Road, New Delhi – 110 029

Disability : 50% hearing impaired

Gist of Complaint:

The complainant submitted that he has applied for the post of Senior Assistant against the Advt no. 21005/RECT/2020 in National Board of Examination. He appeared in the preliminary examination held on 31.08.2020. The National Board of Examinations shortlisted candidates from general category, OBC, SC and ST category. He submitted that there were number of vacancies in the post of Sr. Assistant, Junior Assistant, Junior Accountant and Stenograph etc., but not a single seat was reserved for persons with disabilities.

2. The Executive Director, National Board of Examinations (NBE) vide letter No.21005/RECT/2020/2940 dated 09.11.2020 submitted that National Board of Examinations issued a Public Notice through their website on 11.07.2020 for filling up of a number of posts in the grade of Senior Assistant, Junior Assistant, Junior Accountant & Stenographer. The selection was to be made through a two stage exercise (i) a Computer based test for short listing of candidates (ii) short listed candidates to be subjected to a skill test, before preparing the final merit list for appointment of candidate. In the advertisement it was also indicated reservations for vacancies of SC/ST/OBC/EWS & PwDs. In the instant case the complainant had applied for the post of Senior Assistant with reference to the above advertisement and appeared in the preliminary Computer Based Test (CBT) held on 31.08.2020. The complainant's contention is that not a single seat was reserved for persons with disabilities and that NBE shortlisted equal to 5 times the number of vacancies from each category in which he was not shortlisted. The PwD candidates were given age relaxation of 10 years for appearing in the Computer Based Test (CBT) as per the instructions issued by the Govt. of India. Based on the results of the Computer Based Test (CBT), a short list of candidates equal to not less than five times the number of vacancies were prepared

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which included PwD candidates also subject to their clearing the CBT. The shortlisted candidates were subjected to a Skill Test held on 18.10.2020 comprising of Type Writing Test, Grammar Correction Test, Drafting Multiple Letters in MS Word, spread sheet package for Senior Assistant/Junior Assistant and Type Writing Test, Accounting, Basic Accounting Technique for Junior Accountant as indicated in the original advertisement. The question of application of reservation of posts for persons with disabilities will come into play only when the final merit list is prepared based on the marks obtained in Computer Based Test (CBT) and the marks obtained in Skill Test conducted on 18.10.2020. The Respondent submitted that Shri Rahul Kumar Upadhyay having Application No. 1001289 and belonging to UR category appeared in the CBT but could not be included in the list of shortlisted candidates based on the marks obtained by him where were far lower than even the marks obtained by the last person from SC/ST/OBC category who were included in the shortlist. In the circumstances, the complainant could not be included in the shortlisted list of candidates even by relaxed standards. The Respondent further submitted that two persons with disability candidates have qualified the Computer Based Test and have appeared in the Skill Test also and will be considered for appointment as per the appropriate reservation for PwD which will be applied in their cases.

3. **Hearings** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 11.12.2020.

4. The following persons were present during the hearing ;

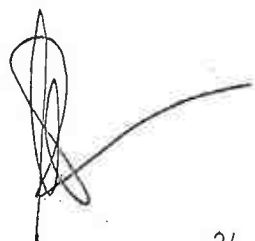
- 1) Shri Rahul Kumar Upadhyay, the Complainant.
- 2) Ms. Ruchira Gupta, Advocate for Respondent.

OBSERVATIONS & RECOMMENDATION

5. Plethora of Complaints are filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.

6. Whole recruitment cycle can be divided into following parts –

- a) Identification of Posts suitable for PwD candidates.
- b) Reservation given to Persons with Disabilities
- c) Issuance of Notification
- d) Examination Fees
- e) Examination Process – Facilities provided during examination and Examination Centres.



- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection

7. Before proceeding further, it is important to elicit objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination and are given equal opportunity.

8. For the present complaint whole summary of the statute is unwarranted, hence, concerned provisions for relevant portions are hereafter identified and mentioned.

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

9. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 16-15/2010-DD.III dated 29.07.2013 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

<http://disabilityaffairs.gov.in/content/page/notifications.php>

10. Addition of any post from this list –

(a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that this list is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements. The same is mentioned in Note 2 of Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

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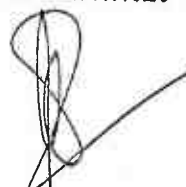
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(b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 29.07.2013, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.

(c) Point 4 of the notification dated 29.07.2013 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.

RESERVATION FOR PERSONS WITH DISABILITIES

11. This category can be divided into following 6 sub categories --

- a) Quantum of reservation
- b) Exemption
- c) How vacancies shall be computed
- d) Maintenance of Roster
- e) When not filled – Inter se exchange and carry forward
- f) Nature – horizontal

12. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

13. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

14. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full



justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

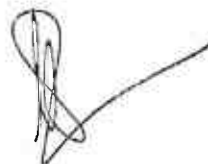
15. How Vacancies can be Computed – The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts are taken into consideration. Method is same for recruitment to group A, B and C posts. (DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018)

16. Maintenance of roster – Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain group wise vacancy based Reservation Roster Register. Detailed method of maintaining and earmarking vacancies is laid down in Para 7.1 to 7.8 of the OM.

17. When vacancies cannot be filled - It may happen that in recruitment year some or all vacancies may not be filled up due to non-availability of suitable person with disability or for any sufficient reason. Under such circumstances, government establishment cannot convert such vacancies to unreserved category. Detailed procedure for conversion of such unfilled vacancies is laid down in Para 8 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. As per the instructions mentioned in the OM, following steps have to be followed by government establishment

- a) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.
- b) Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, It may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and mental illness; multiple disability from amongst persons above mentioned for disabilities.
- c) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.

18. It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.



19. Nature of reservation - It is settled position of law that reservation for PwBD is horizontal and vacancy based, unlike reservation for SC/ST and OBC which is post based and vertical in nature. Therefore, specific method for earmarking selected PwBD candidates has to be adopted. Reference can be made to Para 9 to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 and DoPT OM No. 36035/2/2017-Estt.(Res) dated 25.03.2019.

ISSUING OF NOTIFICATION

20. DoPT OM No 36035/2/2012-Estt.(Res) dated 26.11.2012 lays down certain points which are to be kept in mind while advertising the vacancies. Summary of the point is as follows.

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.
- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.

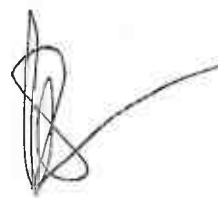
EXAMINATION FEES

21. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.

EXAMINATION PROCESS

22. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured. Hence, while conducting examination government establishment has to ensure that test centers as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.

23. Reference can also be made to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. Para I to XVII of the OM lays down detailed provisions related to facilities which shall be provided to PwBDs during examination.



24. Scribe – Para IV, V and VI of the OM lays down detailed guidelines related to Scribe/Reader/Lab Assistant. In these paragraphs exhaustive guidelines are provided as to when it is mandatory and when discretionary to provide for Scribe/Reader/Lab Assistant. Similarly, Para VIII contains guidelines with respect to mode of answering the questions asked.

25. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.

26. At this point relevant provisions related to 'Reasonable Accommodation' need to be mentioned. Section 3 of RPwD Act, 2016 lays down that appropriate government shall ensure reasonable accommodation for persons with disabilities. Reasonable Accommodation is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

27. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

RELAXED MINIMUM CRITERIA

28. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.

SELECTION ON MERITS

29. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with bench mark disability is selected on merits without relaxed standards along with other candidates. He will not be interested against the reserved shared the vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability



30. Respondent establishment issued Advertisement No. 21005/RECT/2020, whereby vacancies for various posts were advertised. Complainant has alleged that reservation for PwBD was not provided. Respondent submitted that in Point (c) of Para 1.1 of the Advertisement in question clearly mentions that Reservation for PwD shall be granted. Point (c) is hereafter quoted –

"Reservation for vacancy of SC/ST/OBC-NCL/EWS as per Govt. of India instructions/rules.

Total number of vacancies are inclusive of number of vacancies for PwD."

31. From the perusal of the advertisement, it is prima facie evident that Respondent has mentioned about reservation for PwBD in casual manner. Language and mode of mentioning reservation for PwBDs is in complete violation of DoPT OM dated 26.11.2012, detailed summary of which is mentioned above in Para 16 of this Order.

32. Therefore, this court recommends that Respondent shall compute the total number of vacancies and shall renotify the advertisement clearly indicating numbers of such vacancies. Respondent is also recommended to indicate clearly whether the posts advertised are suitable for PwBD and also the sub category for which the post is identified suitable. Further Respondent is recommended that while issuing notification again, OMs and relevant provisions of RPwD Act 2016 shall be taken into consideration. Comprehensive summary of the provisions is mentioned hereinabove.

33. The case is disposed off.

Dated: 07.01.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 11183/1021/2019

Complainant : Shri Shri B. Uma Prasad, Sr. Social Security Assistant, Employees' Provident Fund Organisation, Office of Regional Provident Fund Commissioner-I, Bhavishya Nidhi Bhawan, Door No.: 58-14-86, Marripalem VUDA Layout, NAD Post, Visakhapatnam, Andhra Pradesh - 530 009.

Respondent: Chief Executive Officer Employees Provident Fund Organisation, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-110 066.

Date of Complaint : 24.05.2019

Gist of Complaint:

Shri B. Uma Prasad, a person with 48% locomotor disability vide his complaint dated 24.05.2019 submitted that he is working as Sr. Social Security Assistant in the Office of the Regional Provident Fund Commissioner-I, Visakhapatnam. He was selected under PH quota. He submitted that EPFO is not implementing the provisions of the Rights of Persons with Disabilities Act, 2016 and thus he is being deprived of the legal right as a person with disability. He is being deprived of his promotion by his establishment. His next promotion is to the post of Section Supervisor. He has made many representations to his establishment, but did not receive any response.

2. The Addl. Central P.F. Commissioner, EPFO, Vijayawada vide letter no. ACC(AP)/ZO(VJA)/SS/Disability/Court/2019/498 dated 18.09.2019 submitted that Shri B. Uma Prasad is working in Group 'C' post seeking promotional reservation to the post of Section Supervisor which is Group 'B' post carrying Grade pay of Rs.4200/-. He submitted that their establishment is maintaining Reservation Rosters for persons with disabilities w.e.f. 01.10.2015. He submitted that as regards the reliance upon the judgement of the Hon'ble Supreme Court in W.P. (Civil) No.521 of 2008 between Rajeev Kumar Gupta & ORs vs Union of India & Ors, by the applicant, the Respondent submitted that it is an individual specific case and the nodal department of the Government of India, i.e. DoP&T has not issued any direction regarding universal implementation of the said Judgement of the Hon'ble Supreme Court by all the Departments of the Government of India. The applicant also had not brought to the notice to the effect of issue of any such direction by the Government of India.

...2/-

3. The complainant vide his rejoinder dated 14.10.2019 submitted that for the post of Section officer in Group-B post, the mode recruitment is only through promotion and hence he is not eligible for the reservation under persons with disabilities quota. He submitted that EPFO is not maintaining the reservation roster for persons with disabilities. It shows that the reservation roster is maintained by his establishment from 01.10.2015 for Telangana State only and the status of reservation roster for the period from 01.01.1996 TO 30.09.2015 is not known. He has requested this Court to order EPFO to strictly follow the PwD Act, 1995 and RPwD Act, 2016, for reservation in Group-B post and extend the benefit to him by way of promotion to the post of Section Supervisor with all other benefits deemed fit in the interest of justice.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 28.07.2020.

4. The following persons were present during the hearing ;

1. Shri Uma Prasad, Complainant.
2. Shri Krishna Choudhary, Addl. Central Provident Fund Commissioner, Andhra Pradesh.

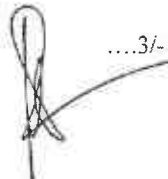
Both the parties were heard.

5. The complainant reiterated his grievance of not being granted promotion to the post of Section Supervisor by duly implementing 3% reservation in promotion . The complainant further stated that the Hon'ble Supreme Court has already given directions but the DoP&T has not issued any administrative instruction for implementation in this regard.

6. The respondent referred to DoP&T O.M. No. 36035/02/2017-Estt (Res). dated 20.06.2017 (copy enclosed) which is about reservation for persons with Benchmark Disabilities. In that OM. in para (2) it states ' the issue of reservation in promotion to persons with disabilities is sub-judice in various cases in the Hon'ble Supreme Court including Civil Appeal No. 1567/2017 titled Siddaraju vs State of Karnataka & Ors and Review Petition (C) No.36/2017.

Observation/Recommendations:

7. There are two issues to be addressed in this matter:

....3/-


1. whether reservation in promotion to Group A and B is applicable for Persons with disabilities (hereinafter mentioned as 'PwD') and can be implemented being a horizontal reservation as against vertical reservation for other categories,
2. whether Government instructions are mandatory to be issued before implementation of reservation for PwD in promotion to Group A and B.

Issue No. 1

8. The Hon'ble Supreme Court settled this issue in the judgment of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153, whereby hon'ble court laid down that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment, further Government was directed to extend reservation under The Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act 1995 (hereinafter mentioned as 'PwD Act of 1995') to PwD in all identified posts in Group A and Group B irrespective of the mode of filling up of such vacancies. Relevant paras of the judgment are reproduced below –

"24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

25. In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

9. The Hon'ble court's reasoning behind the directions was based upon the objective and purpose sought to be achieved by the legislature. Court in the same judgment noted that the objective behind PwD Act of 1995 is to integrate PwD into society and to ensure their economic progress. The intent is to turn PwD into agents of their own destiny.

10. Court also addressed the anomaly which arises when reservation in promotion is not extended to identified posts in Group A and Group B. Para 13 of the judgment is reproduced below –

"13. For some of these identified posts in Group A and Group B, the mode of recruitment is only through promotions. The purpose underlying the statutory exercise of identification under Section 32 of the 1995 Act would be negated if reservation is denied to those identified posts by stipulating that either all or some of such posts are to be filled up only through the mode of promotion. It is demonstrated before us that PWD as a class are disentitled to some of the identified posts in Group A and Group B because of the impugned memoranda and the relevant regulations, under which the only mode of appointment to those identified posts is through promotion. Once posts are identified under Section 32, the purpose behind such identification cannot be frustrated by prescribing a mode of recruitment which results in denial of statutory reservation. It would be a device to defraud PWD of the statutory benefit granted under Section 33 of the 1995 Act."



11. Hon'ble Court in the same judgment has further held that the basis for providing reservation for PwD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in INDRA SAWHNEY v. UNION OF INDIA; AIR 1993 SC 477 is clearly and normatively not applicable to the PwD.

12. Recently in judgment dated 14.01.2020, in the matter of SIDDARAJU v. STATE OF KARNATAKA [Civil Appeal No. 1567 of 2017] the Hon'ble Supreme Court of India has upheld the judgement passed in the matter of Rajeev Kumar Gupta (Supra). The Supreme Court has held that-

"10) After hearing learned counsel appearing on behalf of all the parties including the learned Additional Solicitor General, we are of the view that the judgment of this Court cannot be faulted when it stated that Indra Sawhney dealt with a different problem and, therefore, cannot be followed.

11) We may also note that review petitions were filed and have since been dismissed against both the 2013 and 2016 judgments. Consequently, the reference stands answered by stating that the 2013 judgment as clarified in National Federation of the Blind vs. Sanjay Kothari, Secy. Deptt. Of Personnel and Training, 2015 (9) Scale 611 and the judgment in Rajeev Kumar Gupta & Others v. Union of India & Others - (2016) 13 SCC 153 case will bind the Union and the State Governments and must be strictly followed notwithstanding the Office Memorandum dated 29.12.2005, in particular. Since the reference has been disposed of by us today, contempt petitions be listed for hearing."

13. At this point it is pertinent to mention that the above judgments were delivered while interpreting Sections 32 and 33 of PwD Act of 1995. Therefore, issue arises whether the law laid down in these judgments shall be applicable for implementation and execution of rights under The Rights of Persons with Disabilities Act, 2016 (hereinafter mentioned as 'RPwD Act of 2016') as well.

14. This court observes that the aforementioned rulings of hon'ble Supreme Court are in the context of the PwD Act of 1995 which has now been replaced by The Rights of Persons with Disabilities Act, 2016. This court concludes that the mandate, objectives and targeted beneficiaries of both the PwD Act of 1995 and RPwD Act of 2016 are identical. Hence, replacement of the Act of 1995 does not in any way change the interpretation of the Supreme Court's directions in this matter.

15. Further the hon'ble Supreme Court held in JUSTICE SUNANDA BHANDARE FOUNDATION v. UNION OF INDIA (2017) 14 SCC 1 that RPwD Act of 2016 confers more rights on PwDs and is a sea change and requires a march forward. Relevant Para of the judgment is reproduced below -:

"24. We have referred to certain provisions only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation."



16. Therefore, this court concludes that despite similar objectives of the two acts, if effect of judgments of hon'ble Supreme Court in Rajeev Kumar Gupta (Supra) and Siddharaju (Supra) is not extended to RPwD Act of 2016 Act, it shall be a step backwards rather than march forward.

17. At this juncture it is vital to mention the judgment of Hon'ble High Court of Uttarakhand delivered in UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND: 2018 SCC OnLineUtt 865. Hon'ble High Court held that law as laid down in Rajeev Kumar Gupta Case by the hon'ble Supreme Court does not make any distinction between Group A and B posts vis a vis Group C and D posts. Then the hon'ble High Court went on to hold that judgments rendered in the light of provisions of PwD Act of 1996 still hold good under RPwD Act of 2016. Relevant Para of the judgment is reproduced below :-

"14. A bare perusal of Section 34 of the new Act reveals that every appropriate Government is under a duty to appoint person with benchmark disabilities to the extent of not less than 4% of the total number of vacancies in the cadre strength, in each group of posts. Thus, the judgments rendered in the light of provisions contained in Act no. 1 of 1996 still hold good under the new Act."

18. Hence, this court concludes that replacement of the PwD Act of 1995 does not in any way change the interpretation of the Supreme Court's directions in this matter.

Issue No. 2

19. In the RPwD Act of 2016, the proviso to section 34(1) states that "reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time". The plea taken by the Respondent in this matter as well as in many others is that as the Government's directions are still awaited in this respect, establishments cannot implement the Supreme Court directions.

20. First proviso to sub-section (1) of section 34 of the Rights of Persons with Disabilities, 2016 reads as follows:

"Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:"

21. The question before this Court is whether reservation in promotion to PwBD in the services under the Government of India can be given at present in the circumstances when the Government of India has not issued any instructions about reservation in promotion to the PwBD after the RPwD Act of 2016 came into existence.

22. In this regard it is imperative to mention the judgment of Hon'ble Supreme Court in matter of GOVERNMENT OF INDIA v. RAVI PRAKASH GUPTA: (2010) 7 SCC 626. One of the issues in the case was whether reservation to PwDs under s.33 of 1995 Act can be denied till executive identifies posts for reservation under Section 32 of 1995 Act. Court held that waiting for the executive to identify posts in order to extend reservation to PwDs shall be violation of the intent of the legislature. Relevant Para of the judgment is reproduced below:-

...6/-

"25. ... The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. **To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction.** Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Groups A and B posts in the IAS was undertaken after the year 2005 is not of much substance."

23. Incidentally, Hon'ble Uttarakhand High Court in its judgment delivered in matter of UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND: 2018 SCC OnLineUtt 865 reiterated the same with respect to Section 34 of RPwD Act of 2016. Relevant Paras of the judgment are reproduced below :-

"17. First proviso to Section 34 of the new Act provides that reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. We have been informed that such instructions are yet to be issued by the State Government.

18. Rights of Persons with Disabilities Act, 2016 is a beneficial legislation and Section 34 thereof confers statutory right of reservation in public employment to persons with benchmark disabilities. This valuable right cannot be denied to persons with disabilities due to inaction on the part of the State Government in issuing instructions."

24. The Government of India vide DOPT OM No. 36035/02/2017 dated 15.01.2018 issued instructions about implementation of reservation for PwBD. These instructions cover reservation in the matter of posts filled by direct recruitment. The OM appears to be silent about reservation in the matter of promotion but it is not.

25. The OM dated 15.01.2018 refers to two OM's, one of which is OM No.36035/03/2004 dated 29.12.2005. The OM dated 29.12.2005 contains instructions about reservation in promotion for PwBD and has not been withdrawn or superseded by OM dated 15.01.2018 or any other OM or Order or any other type of communication. The OM dated 15.01.2018 has replaced instructions about reservation for PwBD in direct recruitment but has left instructions about reservation in promotion intact. As such, instructions about reservation in promotion for PwBD issued by the Central Government already exist and reservation in promotion to PwBD should be given as per these instructions as long as any other instructions are issued by the Government.

26. A question may be raised that OM dated 29.12.2005 relates to Persons with Disabilities (PwD) while as per the RPwD Act of 2016 reservation is provided to the PwBD. Careful reading of the RPwD Act of 2016 and the OM dated 29.12.2005 makes it clear that the term PwBD used in the Act and the term PWD used in OM dated 29.12.2005 have exactly the same meaning.

27. Another issue is that the RPwD Act of 2016 says that reservation for PwBD shall not be less than 4% while the OM dated 29.12.2005 makes provision of only 3%. It needs to be noted that provision of at least 4% reservation has been made in case of direct recruitment. Regarding reservation in promotion, the Act leaves it to the discretion of the appropriate Government.

....7/-

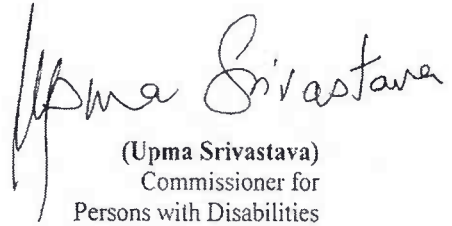


28. The OM dated 29.12.2005 provided that reservation in promotion to the PWD will be available in Group C and Group D posts only. The Supreme Court in the matter of Rajeev Kumar Gupta and others Vs Union of India and others (Supra) held that three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts shall be extended.

29. It is recommended that the respondents may give reservation to persons with benchmark disabilities in promotion in all Groups of posts including Group A and Group B posts in accordance with the order of Hon'ble Supreme Court in the matter of Shri Rajeev Kumar Gupta and others vs Union of India and others. The matter of complainant may be considered by the respondent accordingly.

30. The case is disposed off.

Dated: 30.09.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No.12691/1032/2021 | R28445

Complainant:

Shri Jahid Ali,
S/o Shri Ishak Khan,
R/o Village – Muhammedi Nagla Tyor Bujurg Mazra,
Post- Chhatari, District- Bulandshahr, UP – 202397
Email: zahid3amu@gmail.com; Mobile: 9058888253

Respondent:

Registrar,
Aligarh Muslim University, Aligarh-202002
Email: registrar.amu@amu.ac.in

R28446

1. Gist of Complaint:

1.1 Shri Jahid Ali, M-30, a person with 75% Locomotor Disability (both lower limbs) has alleged that the respondent Aligarh Muslim University, Aligarh (AMU) did not launch Special Admission Drive for admission to Ph.D courses for the Session 2019-20 to fill up 02 seats of Ph.D (Hindi) reserved for Persons with Disabilities. These 02 seats of Ph.D (Hindi) were not filled up as the candidates with disabilities including the complainant could only obtain 33 marks and could not obtain the cut off marks (35). The complainant has further alleged that AMU converted these 02 reserved seats into General Category.

1.2 As per the Regulations issued by the University Grants Commission vide Notification dated 27.08.2018 the Special Admission Drive should have been launched by AMU within a month to fill up the remaining unfilled reserved seats for persons with disabilities.

1.3 Para 2 of the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil/Ph.D Degrees) (1st amendment) Regulations, 2018 provides as under:

(Page 1 of 4)

“2. The following proviso shall be added to the clause 5.4.1 of the University Grants Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D Degrees) Regulations, 2016 –

“Provided that a relaxation of 5% of marks (from 50% to 45%) shall be allowed for the candidates belonging to SC/ST/OBC (Non-Creamy layers)/Differently-Abled category in the entrance examination conducted by the Universities.

Provided further that, in spite of the above relaxation, the seats allotted for SC/ST/OBC(Non-Creamy layer)/Differently-Abled categories remain unfilled, the concerned Universities shall launch a Special Admission Drive, for that particular category within one month from the date of closure of admissions of General Category. The concerned University will devise its own admission procedure, along with eligibility conditions to ensure that most of the seats under these categories are filled.”

1.4 The Court of CCPD in Case No.11469/1141/2019 [Shri Safdar Khan Vs Aligarh Muslim University] has already observed and recommended to AMU as under:

“4. This Court observe that the respondent appears to violate Clause 5.4.1 of the University Grants Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D Degrees) (1st Amendment) Regulations, 2018 which provides to launch a Special Admission Drive to fill up the unfilled seats reserved for PwDs in spite of the relaxation of 5% of marks (from 50% to 45%).

5. In view of the facts mentioned above, the respondent is recommended to consider the request of the complainant for admission to Ph.D. (Commerce). The respondent is also advised to follow the guidelines of UGC and fill up the seats reserved for persons with benchmark disabilities in all streams.

6. The case is disposed of.”

2. Submissions made by the Respondent

The respondent AMU in their reply dated 20.05.2021 inter-alia submitted that no special admission drive is being run by the University

with regard to unfilled seats. PwD candidates are being provided a relaxation of 5% in terms of marks in qualifying examination as well as in Entrance Test and 5% reservation in seats.

3. Submissions made in Rejoinder

The complainant in rejoinder dated 22.06.2021 reiterated his complaint.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **06.08.2021**. The following were present:

- (1) The complainant in person
- (2) Prof. Faisal, Assistant Controller

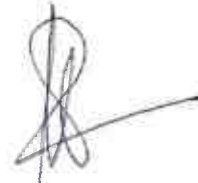
5. Observation/Recommendations:

5.1 Both the parties were heard.

5.2 The present Complaint relates to repeated violation of UGC guidelines by the Respondent. Respondent establishment offers Ph.D. courses in various disciplines. In academic year 2018-19, Respondent conducted admission in Ph.D. (Commerce), along with other disciplines. Some seats which were reserved for PwBD candidates remained unfilled. Respondent did not take any initiative to fill up the seats which remained unfilled despite of clear guidelines issued by UGC with respect on this issue. This court also issued Order dated 16.07.2020 recommending the Respondent to follow UGC guidelines and fill up the seats which remained vacant.

5.3 In the present complaint, issue is same except the fact that present Complaint is related to unfilled seats in Ph.D. (Hindi) in academic year 2020-21. Respondent again failed to conduct any special drive to fill the seats which remained unfilled.

5.4 As per Clause 5.4.1 of University Grant Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D. Degrees), Regulations, as it stands after Ist Amendment dated 27.08.2018, every university has to provide relaxation of 5% marks for divyang candidates in entrance examinations. Further it is provided that if in spite of providing relaxation of 5% marks, any seat allotted to Divyang candidate remains unfilled,



university shall launch 'Special Admission Drive' within 1 month of closure of admissions for General Category.

5.5 In the present facts, seats of Ph.D. (Hindi) remained unfilled, in spite of university providing 5% relaxation in marks. However, Respondent admitted that no special drive was conducted to fill up the seats which remained vacant.

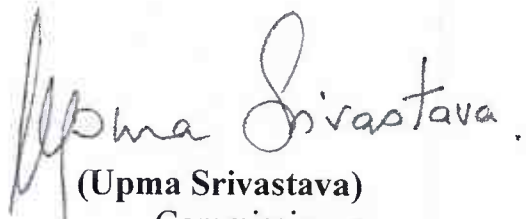
5.6 Respondent has committed act of discrimination with PwBD candidates by not launching 'Special Drive' to fill the seats which remained unfilled. Moreover, callous approach of the Respondent is also evident from the fact that it failed to adhere to the recommendations passed by this court dated 16.07.2020 and also failed to provide reasons for not adhering to the Orders of this Court.

5.7 This is repeated violation of the Respondent establishment. This court is compelled to attract the kind attention of the Respondent to penal provisions of Rights of Persons with Disabilities Act, 2016. Section 89 of the Act provides for punishment upto Rs. 5,00,000 (Rupees Five Lakhs) for contravention of provisions of Rights of Persons with Disabilities Act, 2016. Hence, any person responsible for violation of the provisions of this Act can be tried and punished by special Court of Sessions specified by the State Government under Section 84 of Rights of Persons with Disabilities Act, 2016.

5.8 This court recommends that the Respondent shall launch 'Special Drive' for filling up the seats which were reserved for divyang candidates, which remained unfilled in the course of Ph.D. (Hindi) in academic year 2020-21.

5.9 Accordingly the case is disposed off.

Dated: 23.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12675/1011/2021 /1228451

Complainant:

Dr. Neha Nema,
H. No. E-254/255, 4th Floor,
Gandhi Vihar,
New Delhi - 110009
Email<neha645835@gmail.com>

Versus

Respondent :

Indira Gandhi National Tribal University,
(Through the Registrar),
Amarkantak,
Village – Lalpur,
Dist. – Anuppur,
Madhya Pradesh - 484887
Email<registrar@igntu.ac.in>

1228452

Disability : 50% Locomotor Disability

Gist of Complaint:

Dr. Neha Nema, a person with 50% locomotor disability vide her complaint dated 26.03.2021 submitted that she did not get the benefit of reservation as per the quota for persons with disabilities while applying in Indira Gandhi National Tribal University.

2 The matter was taken up with the Registrar, Indira Gandhi National Tribal University vide letter dated 06.04.2021.

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3. The Registrar, Indira Gandhi National Tribal University vide his rejoinder letter dated 05.08.2021 submitted that 40 posts of Assistant Professors have been advertised through Advt. No.IGNTU/T-01/2020 dated 07.09.2020. Appropriate reservation was given for SC, ST, OBC, EWS and PwD category in the advertisement. Horizontal reservation for PwD category has been given to specified posts. The post advertised in the Deptt. of Journalism and Mass Communication was reserved for OBC category. The said post was not reserved for PwD category. Dr. Neha Nema has applied vide Application Form No.2020105732 for the post of Assistant Professor which was reserved for OBC category only. She has been considered eligible for the post under OBC category and given opportunity to appear in the interview on 12.03.2021 and she has attended the interview online. Based on the recommendations of duly constituted Selection Committee she has not been selected. The respondent in order to implement the government's policy relating to the reservation of jobs for PwD, has followed a detailed procedure in effecting reservation in terms of the provisions of PwD Act, 1995 and its subsequent amendments and maintained the roster for the purpose. As per Rights of Persons with Disabilities Act, 2016, an expert committee with representation of persons with bench mark disabilities has been duly constituted for preparing the Reservation Roster for identification of posts under reserved category. Reservation Roster for persons with benchmark disabilities has been prepared by the expert committee to earmark reservation for teaching positions keeping in view the instruction issued by the MHRD and University Grants Commission. Grievance Redressal Officer has already been appointed in the University considering the mandate of Section 23 of Rights of Persons with Disabilities Act, 2016. Allegations made against the answering respondent are specifically denied. Dr. Neha Nema is misleading



the Hon'ble Court with false information and therefore the present complaint does not contain any merit and substance and is liable to be dismissed in the interest of justice.

4. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 06.08.2021.

5. The following persons were present during the hearing ;

- 1) Dr. Neha Nema, the Complainant in person
- 2) Dr. Samson R Victor for Respondent.

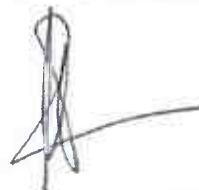
Observations & Recommendations

6. Complainant alleged that Respondent is not extending reservation for PwBDs in direct recruitment for the post of Assistant Professor.

7. Respondent submits that the instant/impugned post was not kept reserved for Persons with Benchmark Disability. The post was kept reserved for 'Other Backward Class' category.

8. Since the post is reserved for Other Backward Class and not for Persons with Benchmark Disability, hence the issue is not in purview of this Court and intervention of this Court is not warranted

9. However, plethora of Complaints are filed before this court relating to the issue of recruitment. This court had an opportunity to delineate laws and guidelines related to various aspects of recruitment process in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021, titled as NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH (Copy enclosed).



10. Hence this Court recommends that Respondent shall pursue the Copy of the Order attached along with and shall follow all the guidelines delineated while conducting recruitment in future.

11. The case is disposed off.

Dated: 23.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities

Encl : As above



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12678/1011/2021

Complainant:

Dr. Neha Nema,
H. No.254/255, Gandhi Vihar,
Near Mukherjee Nagar,
New Delhi – 110 009.

Versus

Respondent :

Central University of Himachal Pradesh
(Through the Registrar)
Camp Office, Near HPCA Cricket Stadium,
Dharamshala,
Dist. Kangra,
Himachal Pradesh – 176 215.

Disability : 50% locomotor

Gist of Complaint:

Dr. Neha Nema, the complainant, a person with 50% locomotor disability vide her complaint dated 26.03.2021 submitted that the Central University of Himachal Pradesh had advertised for recruitment to the post of Assistant Professors in their University. The complainant submitted that she also applied to the post of Assistant Professor but she has not being selected under PwD quota. She also belongs to backward community.

2. The Registrar, Central University of Himachal Pradesh vide letter dated 20.04.2021 submitted that their University had started direct recruitment of Assistant Professors during the year 2011-12. Initially 80 Professors were recruited. The 3% reservation were given at that time to candidates with disabilities and the following candidates were appointed under PH quota.

[Signature]
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- 1) Dr. Muhammad Atif, Assistant Professor – VH
- 2) Dr. Saima Banu, Assistant Professor – VH
- 3) Dr. Prakrati Bhargav, Assistant Professor - VH

In the year 2019, the University had advertised for filling up of 128 teaching posts under direct recruitment. Out of the total of 128 posts five posts were reserved for persons with disabilities as per 4% reservation quota. Out of 5 posts, 02 posts were reserved for persons with visual impairment and the remaining 03 posts were reserved for persons with locomotor disabilities because in the earlier recruitment the University had utilized the two posts of OH category along with posts of VH category. Hence, the advertisement was given showing reservation of 05 posts of OH category. In the meantime, a case was filed with the Commissioner for Persons with Disabilities, Govt. of Himachal Pradesh by the National Platform for Disabilities Rights and Duties, Chandigarh against the reservation of persons with disabilities in the employment advertisement issued by the Central University of Himachal Pradesh. The Commissioner for Persons with Disabilities, Govt. of Himachal Pradesh vide an order dated 03.06.2019 recommended Central University of Himachal Pradesh to reserve one post for VH candidate out of 05 posts reserved for locomotor disabilities. Thereafter, their University accordingly revised the reservation in posts in the employment advertisement.

OBSERVATIONS & RECOMMENDATIONS

3. Plethora of Complaints are filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.



4. Whole recruitment cycle can be divided into following parts –
- a) Identification of Posts suitable for PwD candidates.
 - b) Reservation given to Persons with Disabilities
 - c) Issuance of Notification
 - d) Examination Fees
 - e) Examination Process – Facilities provided during examination and Examination Centres.
 - f) Relaxed minimum criterion for PwD candidates
 - g) Selection and Non selection
5. Before proceeding further, it is important to elicit objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination.
6. For the present complaint whole summary of the statute is unwarranted, hence, relevant provisions for relevant portions are hereafter identified and mentioned.


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IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

7. In an organisation there may be number of posts which can not be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 38-16/2020-DD-III dated 04.01.2021 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

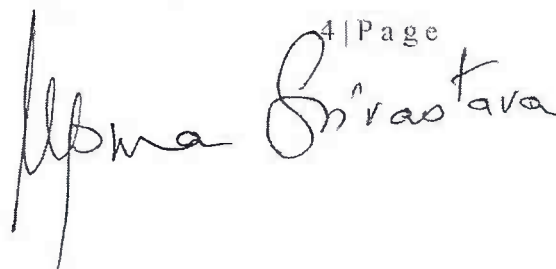
<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

8. Addition of any post from this list –

a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that this list is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements. The same is mentioned in Note 2 of Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>

b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 29.07.2013, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such

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Anurag Srivastava

post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.

- c) Point 4 of the notification dated 29.07.2013 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.

RESERVATION FOR PERSONS WITH DISABILITIES

9. This category can be divided into following 6 sub categories –

- a) Quantum of reservation
- b) Exemption
- c) How vacancies shall be computed
- d) Maintenance of Roster
- e) When not filled – Inter se exchange and carry forward
- f) Nature – horizontal

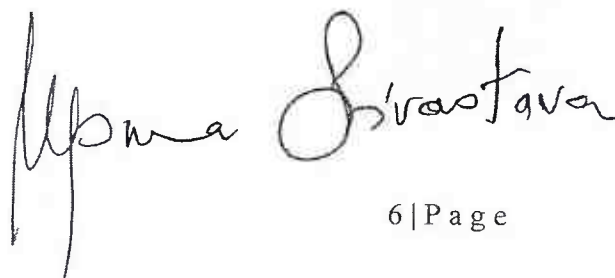
10. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.


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11. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

12. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

13. How Vacancies can be Computed – The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts are taken into consideration. Method is same for recruitment to group A, B and C posts. (DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018)

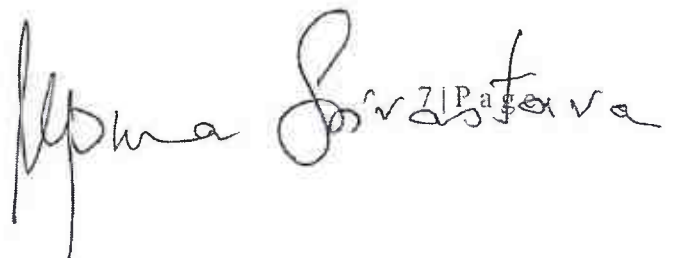
 M. S. Srivastava

14. Maintenance of roster – Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain group wise vacancy based Reservation Roster Register. Detailed method of maintaining and earmarking vacancies is laid down in Para 7.1 to 7.8 of the OM.

15. When vacancies cannot be filled - It may happen that in recruitment year some or all vacancies may not be filled up due to non-availability of suitable person with disability or for any sufficient reason. Under such circumstances, government establishment cannot convert such vacancies to unreserved category. Detailed procedure for conversion of such unfilled vacancies is laid down in

Para 8 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. As per the instructions mentioned in the OM, following steps have to be followed by government establishment –

- a) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.
- b) Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, It may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and mental illness; multiple disability from amongst persons above mentioned for disabilities.
- c) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.


Anurag Srivastava

It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.

16. Nature of reservation - It is settled position of law that reservation for PwBD is horizontal and vacancy based, unlike reservation for SC/ST and OBC which is post based and vertical in nature. Therefore, specific method for earmarking selected PwBD candidates has to be adopted. Reference can be made to Para 9 to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 and DoPT OM No. 36035/2/2017-Estt.(Res) dated 25.03.2019.

ISSUING OF NOTIFICATION

17. DoPT OM No 36035/2/2012-Estt.(Res) dated 26.11.2012 lays down certain points which are to be kept in mind while advertising the vacancies. Summary of the point is as follows.

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is Identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.
- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.


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EXAMINATION FEES

18. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.

EXAMINATION PROCESS

19. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured.

Hence, while conducting examination government establishment has to ensure that test centers as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.

20. Reference can also be made to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. Para I to XVII of the OM lays down detailed provisions related to facilities which shall be provided to PwBDs during examination.

21. Scribe – Para IV, V and VI of the OM lays down detailed guidelines related to Scribe/Reader/Lab Assistant. In these paragraphs exhaustive guidelines are provided as to when it is mandatory and when discretionary to provide for Scribe/Reader/Lab Assistant. Similarly, Para VIII contains guidelines with respect to mode of answering the questions asked.

22. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.

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Hema Srivastava

23. At this point relevant provisions related to 'Reasonable Accommodation' need to be mentioned. Section 3 of RPwD Act, 2016 lays down that appropriate government shall ensure reasonable accommodation for persons with disabilities. Reasonable Accommodation is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

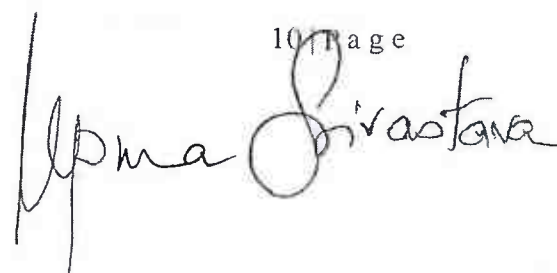
24. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

RELAXED MINIMUM CRITERIA

25. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.

SELECTION ON MERITS

26. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with bench mark disability is selected on merits without relaxed standards along with

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other candidates. He will not be adjusted against the reserved shared the vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability

IRREGULARITIES IN THIS MATTER :

27. In the present complaint it is stated that the Respondent Establishment issued advertisement for recruiting various teaching positions in their University. However, the Respondent University did not give reservation for visually impaired persons for the post of Professors and Associate Professors.

28. As stated above, as per DoPT OM dated 15.01.2018, it is positive obligation of government establishments to make 100 points reservation roster. Further, as per Section 34 of RPwD Act, 2016, it is mandatory for government establishment to reserve minimum 4 percent of total number of vacancies for PwBDs.

29. This court concludes that Respondent has failed to fulfill the statutory duties and follow DoPT guidelines with respect to maintenance of reservation roster and reserving vacancies for PwBDs. Therefore, the Court reiterate its earlier recommendation issued in the Case No.11877/1011/2020 dated 18.01.2021 in the matter of Ms. Geetayani Mishra and Central University of Himachal Pradesh. Respondent establishment is recommended to re notify the whole advertisement after calculation of reservation in accordance with Section 34 of RPwD Act 2016 and concerned OM's issued by DoPT.

30. Accordingly the case is disposed off.

Dated: 15.06.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12718/1022/2021 / 228466

Complainant : Pramod Kumar
Khalsi
Station Javadroad, Mandal: Ratlam,
Western Railway
Mobile No : 08757961834
E-mail: sharmagraphicsnyg@gmail.com

Respondent : The General Manager
Western Railway,
1st Floor, GLO Building
HQ Office, Churchgate
Mumbai-400020, Maharashtra
E-mail : gm@wr.railnet.gov.in

वरि. मण्डल कार्मिक अधिकारी
कृते मण्डल रेल प्रबंधक (स्था). रतलाम
मंडल रेल प्रबंधक कार्यालय, रतलाम

GIST OF COMPLAINT

शिकायतकर्ता श्री प्रमोद कुमार का अपनी शिकायत में कहना है कि वह 40 प्रतिशत दृष्टिबाधित दिव्यांगजन है तथा पूर्व में दिनांक 03.07.2020 को अंतर रेलवे स्थानान्तरण हेतु आवेदन किया था जिस पर पद रिक्त नहीं होने की वजह से कार्यवाही नहीं हुई। शिकायतकर्ता ने आगे कहा कि सिनियर डीपीओ दानापुर में ईसीआर से बात होने के बाद उन्होंने कहा कि आप दिव्यांगजन कोटे में आवेदन लिखकर भेजे।

शिकायतकर्ता का अपनी शिकायत में कहना है कि दिव्यांगजन होने के कारण उन्हें कम दिखाई देता है तथा गाँव आने जाने में बहुत असुविधा होती है धर में बड़ा होने के कारण परिवार का पुर्व रूप से ध्यान नहीं रख पाता हूँ।

अतः शिकायतकर्ता ने निवेदन किया है कि उन्हें रतलाम मंडल से आरा स्टेशन डिविजन दानापुर ईसीआर में करवाने की कृपा की जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 31.05.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. वरि. मण्डल कार्मिक अधिकारी, मंडल रेल प्रबंधक कार्यालय, रतलाम (प.रे.) का अपने पत्र दिनांक 05.07.2021 में कहना है कि श्री प्रमोद कुमार पुत्र श्री अयोध्या सिंह : खलासी (वाणिज्य), जावदरोड रतलाम मण्डल द्वारा पूर्व में स्वयं के अनुरोध पर स्थानांतरण (दिव्यांगजन के आधार पर) रतलाम मण्डल से प. दीनदयाल उपाध्याय नगर (मुगलसराय) मण्डल हेतु आवेदन दिया था, जिसे 21.11.2018 को उचित कार्यवाही करते हुए मुगलसराय मण्डल को अग्रणी कर दिया गया था। परंतु आज दिनांक तक संबंधित मण्डल से उनके द्वारा सहमति या असहमति से संबंधित कोई पत्र प्राप्त नहीं हुआ है।

प्रतिवादी का आगे कहना है कि श्री प्रमोद कुमार द्वारा रतलाम मण्डल से दानापुर मण्डल (पूर्व मध्य रेलवे) स्वयं के अनुरोध पर स्थानांतरण (दिव्यांगजन के आधार पर) हेतु आवेदन भेजा गया था, जो इस कार्यालय को प्राप्त नहीं हुआ था। स्टेशन अधीक्षक जावद रोड के द्वारा 20.06.2021 को कर्मचारी से आवेदन प्राप्त कर इस कार्यालय को भेजा गया है, जिसे सक्षम अधिकारी के अनुमोदन से दिनांक 28.06.2021 का रतलाम मण्डल से दानापुर मण्डल (पूर्व मध्य रेलवे) हेतु अग्रणी किया है। दानामुर मण्डल से सहमति प्राप्त होने के बाद कर्मचारी को कार्यमुक्त करने हेतु आवश्यक कार्यवाही की जा सकेगी।

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)

4. The complainant has not submitted any comments against the rejoinder.

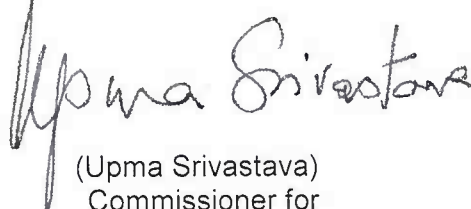
5. **Observation /Recommendations:**

i) Main issue concerns transfer of the Complainant to Danapur division of the Respondent establishment. Respondent submits that Complainant's application for transfer from Ratlam division to Danapur division was received on 20.06.2021. Respondent forwarded the application along with requisite documents to Danapur division by letter dated 25.06.2021 for receiving approval from Danapur division.

ii) DoPT OM dated 31.03.2014 in Para H lays down that practice of considering choice of place of posting in case of Persons with Disabilities may be continued.

iii) Respondent is recommended to consider Complainant's transfer considering the guidelines laid down in DoPT O.M. dated 31.03.2014. Copy of this Order may be forwarded to Danapur division for expediting approval and implementation of transfer orders.

6. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



सत्यमेव जयते

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Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12604/1141/2021

128476

Complainant:

Shri Sanjib Kumbhar
S/o Shri Durjyodhan Kumbhar
At/PO: Salepali, Via: Jarasingha,
Dist: Balangir – 767067 (Odisha)
Email: sanjibkumbhar1986@gmail.com

Respondent:

Member Secretary,
Rehabilitation Council of India (RCI)
B-22, Qutab Institutional Area, New Delhi – 110018
Email: rehabstd@del3.vsnl.net.in

128477

1. Gist of Complaint

1.1 Shri Sanjib Kumbhar, M-35, a person with 50% Speech & Hearing Impairment filed a complaint regarding not issuing Registration Certificate as Special Educator by RCI.

1.2 The complainant submitted that he completed B.Ed in Special Education (Distance) from Karnataka State Open University in 2014. He had applied for RCI Registration more than 07 times but RCI rejected his application every time. He is currently working as a Special Educator in a Special School and feels that if he does not get registration from RCI his 06 years would be wasted and his future would be in darkness.

2. Submission made by Respondent (RCI)

On taking up the matter RCI filed their reply, dated 11.03.2021 and submitted that in the absence of non-receipt of approved Study Centre and list of pass out students from Karnataka State Open University (KSOU), it is difficult to register the students. Further, it has no relevance with the disabled candidate.

(Page 1 of 4)

3. Submission made in Rejoinder

3.1 The complainant in his rejoinder dated 19.03.2021 furnished a copy of the letter No.5-172/RCI/RTI-3430 dated 16.09.2020 issued by RCI in reply to query under RTI; and submitted that RCI had registered 25 number of candidates from KSOU of the same batch. Further, if it was so, RCI should have given notice to the students not to take admission in KSOU. This is the matter between KSOU and the RCI what is the fault of the students; they are playing with the future of the students.

4. Reply sought from both RCI and KSOU

Considering upon the Reply filed by RCI and the Rejoinder filed by the Complainant, both RCI and KSOU were advised to by this Court to submit their comments specifically clarifying that if the 25 number of candidates from KSOU of the same batch could be issued registration certificates why not to the complainant/student.

5. Reply submitted by KSOU

5.1 KSOU filed their reply/comments vide letter dated 03.05.2021 and submitted that B.Ed Special Education in four disability disciplines were offered by KSOU from 2007-2012 in collaboration with RCI as per MoUs dated 16.03.2007 and 23.07.2012. As per MoU, each year Apex Advisory Committee Meetings were held in which two senior representatives of RCI (Chairperson and Member Secretary) were part of the committee. RCI had agreed, as per MoU, to give registration under CRR for students who complete B.Ed Special Education from KSOU.

5.2 KSOU established Study Centres as per KSOU norms in consultation with RCI (as most of study centres suggested by RCI were offering Diploma level programmes in Special Education in Karnataka) and RCI never raised any objections concerning Study Centres from 2007-2012; and has given registration to all students who had completed B.Ed Special Education. It is in 2013, RCI started raising objection about Study Centres but the students had already completed the courses and final examination. Therefore, it was not possible to change the study centre or choose new Study Centre as KSOU did not offer any courses after 2015 due to non-cooperation of RCI. KSOU had published the list of approved study centres in the prospectus and a copy of the same was sent to RCI. RCI had never asked KSOU to change its study centres from 2007-2012, received 10% fees from KSOU for its support which included registration of

students under CRR as per MoU. RCI raised study centre issue only after completion of MoU period.

5.3 It is not possible to follow newly formed norms of RCI applying to the previous batches of students (2007-12) as the students had already completed B.Ed Special Education and most of them are teachers already working in Special/Inclusive Schools.

6. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.07.2021**. The following were present:

- (1) Shri Sanjib Kumbhar, the complainant and his representative Shri Prakash Samal
- (2) Shri Subodh Kumar, Member Secretary, RCI for Respondent No.1
- (3) Dr. Indumati Rao; for KSOU

7. Observation/Recommendations:

7.1 All the parties were heard.

7.2 Crux of the Complaint lies in the conflict of two establishments, Karnataka State Open University ('KSOU' in short) and Rehabilitation Council of India ('RCI'). Complainant alleged that he pursued his B.Ed. in year 2014 from Karnataka State Open University. Thereafter, he applied for registration in RCI. His registration was rejected.

7.3 RCI has submitted that Registration of Divyangjan is in suspension because such registration can only be done by RCI when KSOU shall make available list of students who pursued their degree/diploma from colleges recognized by KSOU. Further, RCI submits that list of colleges/institutions/study centres recognized by RCI is also not made available by the KSOU.

7.4 KSOU by its letter, dated 03.05.2021 submitted the list of all the pass out candidates. Further, KSOU submitted that till year 2012 RCI never raised the issue with respect to recognized colleges/institutions/study centres. Only in 2013, such issues were raised. During online hearing KSOU also ensured that it shall make available all the necessary documents to RCI.

7.5 The issue is not directly related to disability; however, this court cannot turn blind eye on the sufferings of Divyangjan for no fault on their part. Inactions being of RCI and KSOU over so many years have resulted into a



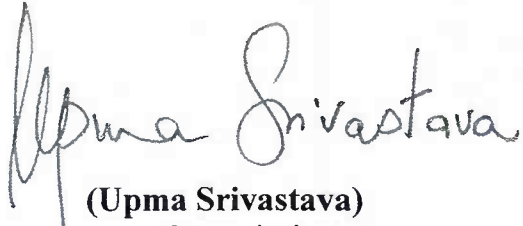
situation in which price of inaction is paid by Divyangjan who pursued B.Ed. from KSOU.

7.6 Section 20 of Rights of Persons with Disabilities Rights, 2016 lays down that government establishments shall not discriminate with divyang employees in matter of employment. Employment of Divyangjan is sine qua non in achieving aims and objectives as laid down in Preamble of Constitution and RPwD Act, 2016. Employment empowers Divyangjan to make their own choices, to gain respect and individual autonomy in society. Hence, inaction caused by any government establishment because of procedural irregularities and their inability to sort out their conflict/problem is a serious issue and hinders in effective recognition and enforcement of rights of Divyangjan.

7.7 Hence, this court recommends that RCI and KSOU shall resolve the dispute amicably. On the assurance provided by KSOU, this court further recommends that KSOU shall provide RCI, list of all the necessary documents which are required by RCI to provide registration to divyang students. Further, both the establishments shall explore more avenues to resolve the dispute as soon as possible. Further, this court recommends that if options to resolve the issue fail within a period of three months, then RCI shall grant registration to divyang candidates as per records available with them only and no longer wait for any certification from KSOU. This is the only way out to help the PwDs get their certificate & then get a job for which they are waiting since years without any fault on their part.

7.8 Accordingly the case is disposed off.

Dated: 24.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

Extra

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12741/1102/2021 | R28478

Complainant:

Shri Ved Prakash Singhania,
National Federation of the Blind,
Lucknow, R/o D-51, Sector-9, Vijay Nagar,
Ghaziabad-201301 (UP);
Email: singhaniavedp@gmail.com;
Mobile: 9873344098

Beneficiary/Affected Person:

Shri Ayaz Husain & Smt. Sajda Begam,
Vill + Post: Sarawa,
Tehsil: Shikarpur, District-Bulandshahar-203395 (UP)
Mobile No.8006837540

Respondent:

- (1) Branch Manager,
UCO Bank, Shikarpur Branch,
Vill. + Post: Shikarpur,
District – Bulandshahar-203395 (UP)
Email: shikar@ucobank.co.in
- (2) General Manager, UCO Bank,
Head Office: 6th Floor, 10, B.T.M Sarani,
Kolkata-700001
Email: hocompliance.calcutta@ucobank.co.in

1. Gist of Complaint:

The complainant filed a complaint on 13.04.2021 that Shri Ayaz Husain, a completely blind teacher had opened a joint bank account with his wife Smt. Sajda Begam on 'Either/Survivor' basis with UCO Bank Shikarpur Branch, District Bulandshahar (UP) around 6 months ago. The complainant alleged that the Branch Manager destroyed his entire chequebook in his presence with the reason that the bank account should be opened as 'Former/Survivor' basis, as per their Head Office circular. On the other hand no such instructions were

(Page 1 of 4)

circulated by Indian Bank Association in this regard, as other banks are opening joint account of blind customers with his/her spouse on 'Either/Survivor' basis. Further, the complainant was verbally advised to visit branch personally for each transaction whereas the complainant has to remain in school till 1600 Hrs and he is unable to approach Bank in business hours.

2. The matter was taken up with the Branch Manager, UCO Bank, Shikarpur Branch, District Bulandshahar UP) [Respondent No.1]; and with the General Manager, UCO Bank, Kolkata [Respondent No.2].

3. Submissions made by the Respondents

3.1 Respondent No.1 filed their reply dated 07.07.2021 and submitted that as per their internal circular dated 10.09.2008 issued by their HO, a visually impaired person can open account either singly/jointly with any person of his/her choice (whom he/she considers reliable and who may be competent to contract and should not be visually impaired person). However, the mode of operation in such accounts will be 'Former or Survivor' and the visually impaired person shall be the 1st name account holder. Due to an inadvertent error the operation in the joint SB account of Shri Ayaz Hussain was allowed by the Bank on 'Either or Survivor' basis. As soon as the bank realised the error/mistake, the mode of operation in the joint SB account of Shri Ayaz Hussain was changed to 'Former or Survivor' basis.

3.2 Regarding destroying of entire cheque book, the respondent No.1 denied and refuted and submitted that since the conversion of the Single SB Account to Joint SB Account of Shri Ayaz Hussain and Smt. Sajda Begum, the Branch had issued only one cheque book which is still in existence though Smt. Sajda Begum had made use of certain cheques out of the cheque book, but the remaining cheque leaves are in operation.

3.3 In the month of March, 2021, Smt. Sajda Begum had visited the Branch and made requisition for issuance of a multicurrency cheque book with her signature only. She was advised by the Branch to come along with her husband Shri Ayaz Hussain as he is the 1st name account holder the said joint SB account. Smt. Sajda Begum and Shri Ayaz Hussain instead of approaching the Branch making a requisition for issuance of the cheque book, lodged this complaint, hence the Branch was unable to process any request.

3.4 The Bank has issued its circular with mode of operation in visually impaired person account as 'Former or Survivor' to protect customer from any loss in future as well as to mitigate its operational loss.



4. No reply was filed by the Respondent No.2 despite reminders and lapse of statutory period of notice.

5. Submissions made in Rejoinder

The complainant in rejoinder dated 14.07.2021 added that the said Joint SB Account was smoothly operational with clause 'Either or Survivor' and the customer had no complaint. The said account was categorized as 'Former or Survivor', violating relevant guidelines of IBA and RBI as well. The customers are still of their opinion that their joint account must be kept operational with clause 'Either or Survivor' basis in terms of IBA and RBI guidelines. The 2nd account holder, i.e. Smt. Sajda Begum was denied for banking service by the Bank.

6. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **06.08.2021**. The following were present:

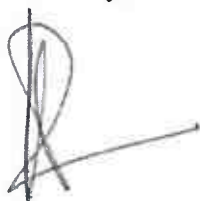
- (1) None for the complainant
- (2) Adv. D.K. Sharma for the Respondents

7. Observations & Recommendations:

7.1 Complaint is filed on behalf of Sri Ayaz Hussain, hereinafter called as 'beneficiary'. Complainant submits that the beneficiary and his wife maintain joint bank account in branch of Respondent establishment. Grievance of the Complainant is that earlier mode of operation of the account was 'Either or Survivor' which was later changed to 'Former or Survivor'. Prayer of the Complainant is to change the mode of operation to 'either or survivor'. Complainant also submits that to issue new cheque book, Respondent is insisting on physical presence of the divyang beneficiary in the bank.

7.2 During online hearing, Respondent explained meaning of both the modes of operation. As per the Respondent, 'Either or Survivor' means any one of the two persons who are holding joint account can perform transactions, whereas, 'Former or Survivor' means only that person can perform transactions who is named first and only after his/her death second one can perform the transaction.

7.3 Respondent further submitted that as per guidelines issued by Indian Banking Association, in case of joint bank account of Visually Handicapped no particular mode of operation was prescribed. To protect the interest of divyang bank holders, UCO bank issued guidelines whereby, mode of operation was prescribed as 'Former or Survivor'.



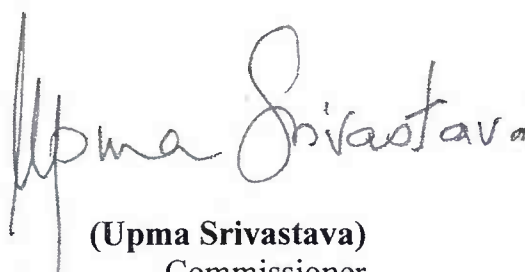
7.4 This court is satisfied with the reply of the Respondent. Financial interest of the divyang beneficiary can be best protected if mode of operation will be 'former or survivor'. When the mode of operation would be 'former or survivor', divyang beneficiary would be able to monitor his account. Such monitoring will not be possible if mode of operation would be 'either or survivor'.

7.5 With respect to issue of cheque book, Respondent submits that divyang beneficiary comes to the bank regularly. New cheque book can be issued only when some formalities will be completed by the divyang beneficiary. This court is satisfied with the Reply of the Respondent. It is utmost duty of the Respondent to protect financial interests of the divyang beneficiary. In order to abide by this duty, and to protect the divyang beneficiary from financial fraud and cheating, Respondent cannot allow any other party to operate divyang beneficiary's bank account.

7.6 Hence this court concludes that Complainant has not made out any case of discrimination with divyang person. This court recommends that to carry out functions for which presence of divyang beneficiary is indispensable, Respondent may explore the option of sending bank employee to residential accommodation or to the work place of divyang beneficiary. Further, this court recommends that the Respondent shall also abide by the Rules and Directives for customers with special needs and Persons with Disabilities, issued by Indian Banking Association and RBI.

7.7 Accordingly the case is disposed off.

Dated: 24.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12746/1011/2021 | 128482

Complainant:

Dr. Anil Sahebrao Kuwar,
Plot No.41, Nagai Colony,
Sakri Tal Sakri,
Dist. : Dhule,
Maharashtra – 424 204

Versus

Respondent :

Indian Institute of Technology
(Through the Registrar)
Gandhinagar,
Palaj,
Gujarat – 382355.

128483

Disability : 50% locomotor disability

Gist of Complaint:

Dr. Anil Sabebrao Kuwar submitted that he had applied for the post of Assistant Professor in Chemistry with level 12 as per the Rolling Recruitment advertisement dated 18.01.2021 of IIT-Gandhinagar. He attended the formal interaction on 25.05.2021 via online mode. He received an email from IIT Gandhinagar on 04.09.2021 informing him of no further processing of the post of Assistant Professor. His academic and research presentation and final interview still remain. Till date the Institute has not filled up any post of Assistant Professor under PwD category in their Institute.

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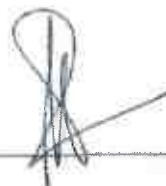
2. The matter was taken up with the Registrar, IIT-Gandhinagar vide letter dated 15.06.2021.

3. The Registrar, IIT-Gandhinagar vide letter dated 13.07.2021 submitted that Dr. Kuwar applied for the position of Assistant Professor in the discipline of Chemistry of IIT-Gandhinagar on 18.01.2021 in PwD category vide application no. CH21-8. In an earlier instance, Dr. Kuwar was found not suitable by the Institute for the same position in January 2020. Dr. Kuwar had then made an appeal in CCPD against his non selection but CCPD vide Judgement in Case No. 12350/1011/2020 disposed off the case on 24.12.2020. A preliminary interaction (through Video Conference) was done with Dr. Kuwar on 25.05.2021 by the Faculty Search Committee of the Institute. But, even before his candidature was assessed by the Selection Committee, Dr. Kuwar filed an appeal to the Director/Registrar of the Institute vide email dated 04.06.2021 and also to CCPD as well as to the Chairman, National Commission for Backward Classes. In response to their reply, Dr. Kuwar had informed them vide his email dated 24.06.2021 that he has accepted the response of the Institute.

4. A copy of Respondent reply dated 13.07.2021 was sent to the complainant vide letter dated 23.07.2021 for submission of his comments. However, no comments have been received from the complainant so far.

Observation/Recommendations:

5. In terms of **Section 34 of the Rights of Persons with Disabilities Act, 2016:**

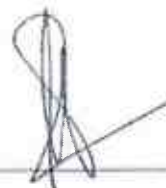


"Section 34.(1) Every appropriate Government shall appoint in every Government establishment, not less than four percent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one percent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one percent for persons with benchmark disabilities under clauses (d) and (e), namely:-

- (a) blindness and low vision;*
- (b) deaf and hard of hearing;*
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;*
- (d) autism, intellectual disability, specific learning disability and mental illness;*
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness by the appropriate Government from time to time;*

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.



(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability;


Provided that if the nature of vacancies in an establishment is such that a given category of persons cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit."

6. As per instructions issued by **Department of Personnel & Training**, Govt. of India vide **O.M. No.36035/02/2017-Estt(Res)** dated **15th January, 2018**:

"2. QUANTUM OF RESERVATION

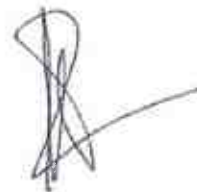
2.1 In case of direct recruitment, four per cent of the total number of vacancies to be filled up by direct recruitment, in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.



2.2 Against the posts identified for each disabilities, of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent, under clauses (d) and (e), unless otherwise excluded under the provisions of Para 3 hereunder:- (a) blindness and low vision; (b) deaf and hard of hearing; (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy; (d) autism, intellectual disability, specific learning disability and mental illness; (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness.

3. EXEMPTION FROM RESERVATION

If any Ministry/Department in the Central Government considers it necessary to exempt any establishment or any cadre or cadres fully or partly from the provisions of reservation for persons with benchmark disabilities, it shall make a reference to the Department of Empowerment of Persons with Disabilities giving full justification for the proposal, who having regard to the type of work carried out in any Government establishment by notification and subject to such condition, if any, as may be specified in the notification, in consultation with the Chief Commissioner for Persons with Disabilities (CCPD) may exempt any Establishment or any cadre(s) fully or partly from the provisions of reservation for persons with benchmark disabilities."



7. As per **Section 2(y)** of the **Rights of the Persons with Disabilities Act, 2016** reasonable accommodation has to be provided to persons with disabilities as quoted under:

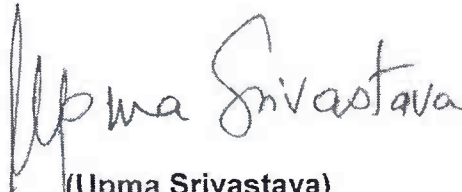
"Section 2.(y) – "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others."

8. Though it is understood that the decision of the Scrutiny-cum-Selection Committee is final so far as selection and appointment of faculty is concerned yet by providing reasonable accommodation (as per above provision) to persons with disabilities in terms of slightly relaxed standards at the time of interview when all other eligibility requirements are being met would be in the fitness of things. This would ensure that a person with disability gets employment as well as the vacancy does not remain unfilled.

9. The respondent are recommended to adhere to the provisions of the Rights of Persons with Disabilities Act, 2016 and Government instructions as quoted above without fail.

10. The case is disposed off.

Dated : 24.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12663/1011/2021 | R28484

Complainant:

Ms. Meera V.U.,
T.C. 15/1927, Near Ganapathy Temple,
Vazhuthacaud,
Thiruvananthapuram – 695014

Versus

Respondent 1:

University Grants Commission,
(Through the Chairman)
Bahadur Shah Zafar Marg,
New Delhi – 110 002

R28485

Respondent 2:

National Testing Agency,
(Through The Chairperson),
C-20, 1A/8, Sector-62,
IITK Outreach Centre,
Noida – 201 309.

R28486

Disability : 75% Visual Impairment

Gist of Complaint:

Ms.Meera V.U submitted that National Testing Agency has discriminated candidates with disabilities in UGC-NET Exam on the ground of caste. The results published by NTA for May 2020 UGC-NET Examination is against the provisions of the RPwD Act, 2016. In their notification they claim that they are giving reservation / relation in marks to PwD category on the

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basis of RPwD Act whereas they have not given 5% reservation in higher education to PwD category as per Section 32 of the RPwD Act, 2016. She has sent e-mails to NTA, UGC and registered her grievance on Public Grievances Portal but received no reply or action on it. The complainant has requested this Court to take urgent steps to protect the rights of persons with disabilities as per RPwD Act, 2016 and give 5% reservation on higher education to PwDs irrespective of caste based reservation.

2. No comments have been received from Respondent No. 1, i.e. UGC.

3. The Joint Director, National Testing Agency vide letter no. NTA/Exams/UGC-NET/PwD/2021 dated 28.05.2021 submitted that NTA has been entrusted by the University Grants Commission (UGC) with the task of conducting UGC-NET which is a test to determine the eligibility of Indian nationals for 'Assistant Professor' and 'Junior Research Fellowship and Assistant Professor' in Indian universities and colleges. The methodology for allocating slots through horizontal reservation to the 'persons with disability' has been adopted in preparing the result of June 2020 UGC-NET as per Paragraph 3 of Memorandum No.36035116191-Estt.(SCT) issued by Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Govt. of India dated 18th February 1997 regarding 'Reservation for the physically handicapped persons in Group A and B posts/services under the Central Government'. It is clearly spelt out in the Order issued by DoP&T that the horizontal reservation for PwD category cuts across vertical reservation for categories like General, SC, ST etc. The Judgement of the Supreme Court of India in the Indira Sawhney case has also been taken into cognizance in the DoP&T order. The aggrieved has misquoted the said Judgement of the Supreme Court of India. It is thus established that the National Testing Agency (NTA) has followed the norms of the Government of India while applying horizontal reservation for 'Persons with Disability' among categories like General, SC, ST, OBC (Non Creamy Layer) & EWS for which vertical reservation has been applied in preparing the result of June 2020



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UGC-NET. The Respondent submitted that Ms. Meera V U had although been a candidate of UGC NET June 2020 with Application No. 200510319438, Roll No. KL1750900357, she has been absent from this exam, as evident from the Score Card. She has applied again for UGC NET December 2020 Cycle.

Observation/Recommendations:

4. Plethora of Complaints are filed before this court relating to the issue of recruitment including reservation in recruitment process. This court had an opportunity to delineate laws and guidelines related to various aspects of recruitment process in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021, titled NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH.
5. This Court is satisfied with the reply of the Respondent. Interference of the Court in the present complaint is not warranted. However, Respondent may pursue the Order of this Court dated 15.06.2021 in case no. 12678/1011/2021 delivered in the matter of Ms Neha Nema vs Central University of Himachal Pradesh attached herewith for future reference in all reservation matters for persons with disabilities.
6. The case is disposed off accordingly.

Dated: 24.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12716/1011/2021 | 1228487

Complainant:

Shri Vasu Dev Sharma ,
H. No.1(A), Roura Sector-3,
Distt. Bilaspur,
Himachal Pradesh-174001.

Versus

Respondent

Department of Personnel & Training,
(Through the Secretary)
Ministry of Personnel, P G and Pensions
Government of India, North Block,
New Delhi - 110 001

1228488

Disability : 60% visually impaired

Gist of Complaint:

The complainant vide his complaint, dated 20.05.2021 submitted that his son Dr. Vishv Mohan, a person with 60% visual impairment came out successful in CSE-2014 examination and was recommended by UPSC for appointment in IAS in the year 2015. He submitted that it gave him a major blow when they faced biases in the disguise of unfit medical status due to negligent/arrogant doctors having nexus. They challenged the same before the Central Administrative Tribunal and thereafter approached the Hon'ble High Court of Delhi. In pursuant to WPC No.:12481/2018 titled "Vishv Mohan vs DoP&T & Others' Hon'ble Delhi High Court directed for re-examination of his son's disability at AIIMS-Delhi. After the medical re-examination at AIIMS, it was observed this Dr. Vishv Mohan possesses poor vision of 6/60 in

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both his eyes which is legal blindness under RPwD Act. The detailed medical report which contained the extent of visual disability was sent by AIIMS to DoP&T with reference to Diary No. 1363073/19/CR. The complainant submitted that DoP&T had suppressed/hide the detailed medical report which clearly certified that his son is sixty percent (60%) visually impaired with reference to DoP&T Diary no. 1363073/19/CR making his son entitled for appointment in IAS. Only after the intervention of Hon'ble CIC on 09.03.2021 in response to his RTI application, they received its copy after three years. The complainant has prayed to pass an order holding and declaring that the petitioner is a person with visual disability having visual acuity of 6/60 and therefore 'legally blind' as per Section 2(b)(ii) of PwD Act, 1995 and entitled to be appointed in IAS 2015 batch against the disabled quota as 'Special Case' forthwith.

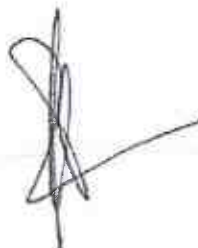
2. The matter was taken up with the Secretary, DoP&T vide letter dated 25.05.2021 but no communication has been received from the Respondent.

Hearing : A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 04.08.2021.

3. The following persons were present during the hearing ;

1. Complainant in person.

2. Respondent: Shri Anshuman, Under Secretary on behalf of Respondent.



Observation/Recommendations:

4. During online hearing Respondent submitted that Complainant's son, who is beneficiary in the present complaint has filed the same case before Hon'ble Delhi High Court vide Writ Application No 574/2020, which is pending before the Hon'ble Court.
5. Since the matter is sub judice, hence, interference of this court is not warranted.
6. The case is disposed off.

Dated: 24.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12618/1011/2021 1228489

Complainant:

Shri Prashant Pandey,
B-1/204, Cheryl Apartment,
Downtown,
Kharadi,
Pune – 411014

Versus

Respondent :

State Bank of India,
(Through the Deputy General Manager)
Central Recruitment & Promotion Dept.,
Corporate Centre,
Atlanta Building, 3rd Floor,
Nariman Point,
Mumbai – 400021

1228490

Disability : 50% Autism Spectrum Disorder

Gist of Complaint:

Shri Prashant Pandey, a person with 50% Autism Spectrum Disorder submitted that IBPS in its advertisement no. CRPD/PO/2020-21/12 for the post of Probationary Officer has not included the category Autism Spectrum Disorder (ASD) under Specific Learning Disability. When enquired IBPS about the reasons for not including this disability in their advertisement, they replied that they have identified only three categories, i.e. Specific Learning Disability, Mental Illness and Multiple Disabilities suitable for the post of Probationary Officer. He submitted that IBPS conducts examinations for the same posts for other banks and they have clearly mentioned and included Autism Spectrum Disorder (ASD) for the same post. The complainant has

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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)

requested for adding Autism Spectrum Disorder (ASD) in their future advertisements.

2. The matter was taken up with the Deputy General Manager, State Bank of India vide letter dated 01.03.2021.

3. The General Manager, State Bank of India, Corporate Centre, Mumbai vide letter no. CRPD/AK/PO/2020-21/799 dated 19.03.2021 submitted that reservations for persons with disabilities in the vacancies for the recruitment of Probationary Officers is provided by the Bank in terms of the provisions of Rights of Persons with Disabilities Act, 2016 and the relevant Government Guidelines. The Office Memorandum F. No.34-24/2016-DD-III dated 15.05.2018 issued by the Ministry of Social Justice and Empowerment also empowers individual organizations to identify posts suitable for various categories of persons with disabilities pending notification of any centralized list. Incompliance of these above guidelines and pending issuance of a centralized list by the Government of India, an internal Committee was constituted by the Bank for categorization of posts in the Bank for persons with disabilities mentioned in clause (d) and (e) u/s 3491) of the RPwD Act, 2016. The Respondent submitted that banks are custodians of public money and it is essential that the candidates recruited by the Bank possess the basic abilities to perform the job in the bank including that of the officers/clerk. The internal committee constituted by the Bank carried out thorough deliberations on the matter and held detailed discussions with renowned experts in the field including top Medical Practitioners, NGOs and with the National Institute of Mental Health & Neurosciences (NIMHANS), Bengaluru. On the basis of the report submitted by the Internal Committee, it was found that persons with the following categories of disabilities, as defined under clause (d) and (e) u/s



34(1) of RPwD Act, may carry out the job requirement of general officers including that of a Probationary Officer;

- a) Specific Learning Disability (SLD)
- b) Mental Illness (MI)
- c) Multiple Disabilities amongst above details LD, VI, HI, SLD & MI

The Respondent submitted that they initiate periodic review of the identified posts at an interval not exceeding three years. The State Bank of India is sensitive and committed to the welfare of persons with disabilities. Appropriate number of vacancies are kept reserved by the Bank for different categories of PwD candidates with benchmark disabilities. Additionally he submitted that the bank extends relaxations / facilities to persons with disabilities in the PO recruitment.

- a) Relaxation of 10 years in maximum eligible age.
- b) Relaxation of 5% in minimum qualifying marks in Main Examination and Group Exercise & Interview.
- c) Relaxation in maximum permissible number of attempts.
- d) Waiver of application fee.
- e) PwD candidates having limitations in writing including that of speed is allowed to avail the undernoted facility during examinations for recruitment of Probationary Officers subject to production of medical certificate:

- i) Extra time of 20 minutes for every 1.00 hour of test and
- ii) Facility of Scribe.

4. The complainant vide his rejoinder dated 01.04.2021 submitted that as per his knowledge no separate PwD certificate is issued as a mental illness under (d) and (e) category and Autism comes under that category only. He requested for a rectification in the next recruitment advertisements of SBI.



OBSERVATIONS & RECOMMENDATION

5. Plethora of Complaints are filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.

6. Whole recruitment cycle can be divided into following parts –

- a) Identification of Posts suitable for PwD candidates.
- b) Reservation given to Persons with Disabilities
- c) Issuance of Notification
- d) Examination Fees
- e) Examination Process – Facilities provided during examination and Examination Centres
- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection

7. Before proceeding further, it is important to elicit objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that



Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination and are given equal opportunity.

8. For the present complaint whole summary of the statute is unwarranted, hence, concerned provisions for relevant portions are hereafter identified and mentioned.

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

9. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 38.16./2020-DD.III dated 04.01.2021 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

10. **Addition of any post from this list –**

a) (a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that this list is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements. The same is mentioned in Note 2 of Notification dated



04.01.2021 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

(b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 04.01.2021, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.

(c) Point 4 of the notification dated 04.01.2021 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.

RESERVATION FOR PERSONS WITH DISABILITIES

11. This category can be divided into following 6 sub categories –

- a) Quantum of reservation
- b) Exemption
- c) How vacancies shall be computed
- d) Maintenance of Roster
- e) When not filled – Inter se exchange and carry forward
- f) Nature – horizontal

12. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the



cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

13. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

14. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

15. How Vacancies can be Computed – The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that



the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts are taken into consideration. Method is same for recruitment to group A, B and C posts. (DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018)

16. Maintenance of roster – Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain group wise vacancy based Reservation Roster Register. Detailed method of maintaining and ear marking vacancies is laid down in Para 7.1 to 7.8 of the OM.

17. When vacancies cannot be filled - It may happen that in recruitment year some or all vacancies may not be filled up due to non-availability of suitable person with disability or for any sufficient reason. Under such circumstances, government establishment cannot convert such vacancies to unreserved category. Detailed procedure for conversion of such unfilled vacancies is laid down in Para 8 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. As per the instructions mentioned in the OM, following steps have to be followed by government establishment

- a) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.
- b) Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, It may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and

mental illness; multiple disability from amongst persons above mentioned for disabilities.

- c) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.

18. It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.

19. Nature of reservation - It is settled position of law that reservation for PwBD is horizontal and vacancy based, unlike reservation for SC/ST and OBC which is post based and vertical in nature. Therefore, specific method for earmarking selected PwBD candidates has to be adopted. Reference can be made to Para 9 to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 and DoPT OM No. 36035/2/2017-Estt.(Res) dated 25.03.2019.

ISSUING OF NOTIFICATION

20. DoPT OM No 36035/2/2012-Estt.(Res) dated 26.11.2012 lays down certain points which are to be kept in mind while advertising the vacancies. Summary of the point is as follows.

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is

Identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.

- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.

EXAMINATION FEES

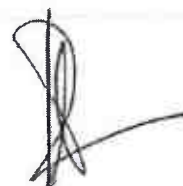
21. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.

EXAMINATION PROCESS

22. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured. Hence, while conducting examination government establishment has to ensure that test centers as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.

23. Reference can also be made to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. Para I to XVII of the OM lays down detailed provisions related to facilities which shall be provided to PwBDs during examination.

24. Scribe – Para IV, V and VI of the OM lays down detailed guidelines related to Scribe/Reader/Lab Assistant. In these paragraphs exhaustive



guidelines are provided as to when it is mandatory and when discretionary to provide for Scribe/Reader/Lab Assistant. Similarly, Para VIII contains guidelines with respect to mode of answering the questions asked.

25. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.

26. At this point relevant provisions related to 'Reasonable Accommodation' need to be mentioned. Section 3 of RPwD Act, 2016 lays down that appropriate government shall ensure reasonable accommodation for persons with disabilities. Reasonable Accommodation is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

27. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

RELAXED MINIMUM CRITERIA

28. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.



SELECTION ON MERITS

29. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with benchmark disability is selected on merits without relaxed standards along with other candidates. He will not be adjusted against the reserved the vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability.

30. Respondent's contention that disability of 'ASD' was not identified suitable for post of Probationary Officer is violative of Notification No. 38-16/2020-DD-III dated 14.01.2021 issued by M/o SJ&E. Note No. 6 of the notification lays down that if government establishment has a separate list of identified post, then the one having wider range of identified categories would prevail.

NOTE 6 : *This list will be the principal list in respect of the posts identified suitable for persons with benchmark disabilities. However, in case a list of post is separately identified by any Central Government establishment, the list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail.*

31. After going through the documents submitted by both the parties, it is observed that the Respondent Bank has not included the Autism Spectrum Disorder (ASD) as disability for the post of Probationary Officer. Autism Spectrum Disorder (ASD) is a disability identified for the post of Probationary Officer at Sr. No.270 of Group 'A' of Notification No. 38-16/2020-DD-III dated



04.01.2021 of Ministry of Social Justice and Empowerment. Hence, the contention of the complainant is correct.

32. Therefore, this court recommends the Respondent to issue corrigendum or to re-issue the advertisement after reserving vacancies for Divyang candidates with Autism Spectrum Disorder (ASD) for the post of Probationary Officer.

33. The case is disposed off accordingly.

Dated : 24.08.2021.


(Upma Srivastava)
Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12647/1011/2021 | 1228491

Complainant:

Ms. Payal Masihi,
House No.6, PG Path,
Via Ashok Path,
Bhatia Bastee,
Kadma,
Jamshedpur,
Jharkhand – 831005.

Versus

Respondent :

Staff Selection Commission,
(Through the Chairman),
Block No.12,
CGO Complex,
Lodhi Road,
New Delhi – 110 003

1228492

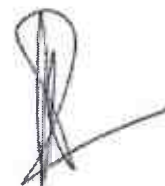
Disability : 45% Thalassemia

Gist of Complaint:

Ms. Payal Masihi, a person with 45% Thalassemia vide her complaint dated 04.03.2021 submitted that she has been suffering from Thalassemia by birth and going through the blood transfusion every month. She submitted that she had cleared all the Tiers (i.e. 1,2,3, CPT/DEST) of the CGL-2018 Examination conducted by the Staff Selection Commission and was called for Document Verification, but her candidature was rejected on the basis of her disability. She was also told that Thalassemia is not covered for the post applied by her. The complainant's contention is that when she was issued

the certificate for Thalassemia then why her disability has not been identified for certain posts.

2. The Director, Staff Selection Commission vide letter no. 3-1/2018-P&P-I(Vol.III) dated 01.04.2021 submitted that the Commission conducts the Combined Graduate Level Examination for filling up of various Group 'B' and Group 'C' posts in different Ministries / Departments / Organisations, i.e. User Department. The role of the Commission is to collect category-wise vacancies along with details of suitability of posts for disabilities as reported by the user department. Number of vacancies, quantum of reservation and suitability of posts for disabilities are decided by the User Department. The complainant is suffering from 'Thalassemia' disability which is a Specified Disability mentioned at Sr. no. 4(b)(ii) (i.e. Disability caused due to Blood disorder) in the schedule of the Act. However, the same is not covered under Section 34(1) of the Act. Therefore, no post has been identified as suitable for "Thalassemia" disability by the Indenting Departments included in the Notice of CGLE 2018. Hence, the decision of the Commission regarding eligibility of the candidate is in order. Whereas the implementation of 'Equal Opportunity Policy' under Section 21 of RPwD Act, 2016 as well as Grievance Redressal Officer under Section 23 of RPwD Act, 2016 is concerned, Staff Selection Commission has appointed a Nodal Officer for redressal of grievances related to the persons with disabilities.



Observation/Recommendations:

3. Section 34 of Rights of Persons with Disabilities Act, 2016 provides for reservation of vacancies for different categories of Divyangjan;-

Section 34 of RPwD Act, 2016 is reproduced below :-

Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;*
- (b) deaf and hard of hearing;*
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;*
- (d) autism, intellectual disability, specific learning disability and mental illness;*
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:*

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with

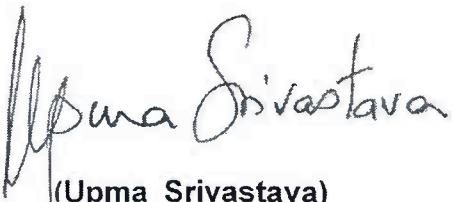
disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability

4. From the reading of the provision it is certain that although Thalassemia is recognized as specific disability but reservation under Section 34 is not extended to this category of disability as per Rights of Persons with Disabilities Act, 2016. It is also emphasized that a writ petition was also filed in the Hon'ble Supreme Court to extend benefits of reservation to Divyangjan of Thalassemia category. In an unreported Order dated 14.01.2019 bench headed by the then Chief Justice dismissed the petition.

5. Hence this Court concludes that there is no case of discrimination on the ground of disability and violation of Government of India instructions in this regard.

6. The case is disposed off accordingly.

Dated: 24.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12668/1023/2021 **128493**

Complainant: Shri Vishal Kumar Gupta
e-mail: <Vishal.Kumar11@sbi.co.in>

Respondent: The Chairman
State Bank of India, State Bank Bhawan
Madame Cama Road, Nariman Point, Mumbai – 400021
E-mail: <agmphr.lhokol@sbi.co.in>

128494

Complainant: 50% locomotor disabilities

GIST of the Complaint:

Complainant vide complaint dated **22.03.2021** submitted that he is working as a Deputy Manager in State Bank of India, Darjeeling Branch and he has been discriminated in Work Place by Sr. Officers. Even he has written a complaint to Complaint redressal cell in their Organisation but he was not given justice. He has submitted the following points:

- (i) On 12.02.2020, the words used by Shri Amrendra Kumar Singh then Regional Manager RBO-III, Siliguri who has now been elevated as Deputy General Manager and posted at Corporate Office Mumbai, on asking for Bereavement Leave in SBI Darjeeling Branch was very insulting and has deeply pained him. This incident has not been addressed by State Bank of India, Grievance Redressal Cell even after 3 complaints on 23.03.2020, 13.07.2020 and 16.11.2020.
- (ii) When Investigation started on the Complaint filed by him on 23.03.2020 to Sanjeevani HR, Corporate Centre, Mumbai the first thing done by Controller was that he called all staff of his SPS Jalapahar Branch personally and provoked them to file a Complaint Against him. Therefore three staff of his Branch filed the Complaint on the same day on request of Regional Manager RBO-III, Siliguri.

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- (iii) He had applied for Disability Allowance on 02.07.2019 but after many requests it has not been approved. On 20.05.2020, Bank had sent a letter to Safdarjung Hospital for Verification of his Certificate.
- (iv) Now his PH Conveyance Allowance has been stopped because of old disability certificate. Therefore during COVID time, he was forced by officers to make the new Disability Certificate and after One Month of waiting, he was handed over a Disability Certificate which had no difference in degree of Disability with old disability certificate.
- (v) After Completing necessary formalities of the Disability Certificate he joined the Branch from 16.10.2020 during the COVID-19 period and submitted the new Disability Certificate but till date my PH-Conveyance has not been started.
- (vi) He has requested that his PH Allowance should be started from the date of joining i.e. 01.03.2011 as Left Hemipareses is a case related to Weakness in Muscles and belong to OH Category as soon as possible with all interest. I
- (vii) Punishment should be awarded to all those who have humiliated him and hurt his dignity and himself respect:
- (viii) written apology from Mr. Amrendra Kumar Singh, (Deputy General Manager), SBI that he will not speak in such tone and language with anyone etc.

2. The matter was taken up with the Respondent vide letter dated **23.03.2021** under Section 75 of the RPwD Act, 2016.

3. In response, General Manager (North Bengal & Sikkim), State Bank of India vide letter dated **20.04.2021** inter-alia submitted that the after investigation, it was found that allegations made by the complainant were not substantiated and found not correct. They further submitted that the matter of PH allowance/conveyance allowance was examined, it was observed that his disability certificate at the time of his appointment does not reflect



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that he is orthopedically handicapped, therefore, the Bank decided to refer the matter to medical authority to obtain their recommendation and after receiving the recommendation from the medical authority vide certificate dated 24.09.2020 has released the entire PH allowance w.e.f. the date of issuance of the disability certificate i.e. 24.09.2020 as per the Govt. Guidelines.

4. Complainant vide rejoinder dated 04.06.2021 inter-alia submitted that if the Bank said that he did not belong to the OH category then his whole appointment in SBI would be null and void. It seems that he is not satisfied with the reply.

5. After considering the respondent's reply dated **20.04.2021** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **20.07.2021** but due to administrative exigencies hearing rescheduled on **22.07.2021**.

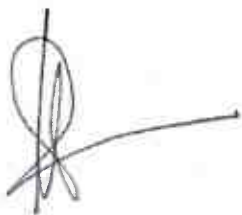
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.07.2021**. The following were present:

- Shri Vishal Kumar Gupta – complainant
- Shri Niraj Prasad on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Grievances raised by the Complainant can be divided into four major heads – disability allowance, forced to attend office during lockdown, time taken to dispose off his complaints and ill treatment of the Complainant. Complainant submits that he applied for disability allowance on 2 July 2019. By letter dated 20 May 2020, respondent establishment asked the Complainant to get renewed disability certificate, meanwhile his allowance was suspended. Afterwards, when the complainant submitted renewed disability certificate dated 24.09.2020, his Disability Allowance was granted to him from the date of issuance of renewed disability certificate, i.e. 24.09.2020.



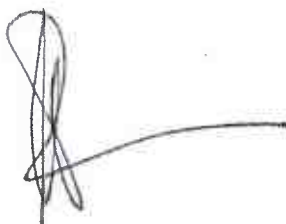
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8. Complainant also submits that he was forced to attend office during lockdown period. His wife was threatened that the complainant would be posted away from his native place if he will not attend office. Complainant filed complaints with the appropriate authorities of the respondent establishment. However, inordinate delay was caused to dispose of his applications.

9. Respondent countered the allegations and submitted that the bank was willing to grant disability allowance to the Complainant since the date on which application was filed. Complainant was asked to submit fresh disability certificate because it was no-where mentioned in the certificate that he was orthopedically handicapped. Disability mentioned in this certificate was physical disability. Thereafter, physical disability allowance was granted in his favour from the date of issuance of renewed disability certificate, i.e. 24.09.2020. Delay in redressing his complaint was caused because of covid-19 lockdown and merger of some branches of the bank. No officer of the bank asked other employees of the bank to file counter complain against the complainant.

10. Two issues on which this court is inclined to interfere are issue of attendance during Covid 19 and disability allowance. Divyang employees of government establishments were exempted from attending office during Covid – 10 period. DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by O.M. dated 14.06.2021 and is still in force. Respondent is bound by the guidelines of DoPT and hence, cannot compel the Complainant for attending office.



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11. Another issue is that of disability allowance. Respondent granted disability allowance from the date of submission of renewed disability certificate, rather from the date of application. Complainant's cause arose on the date on which he applied for the disability allowance.

12. This court recommends that the Respondent shall form an inquiry committee to look into allegations relating to compelling the Complainant to attend office inspite of the DoP&T instructions quoted above. Further, disability allowance shall be issued in favour of the Complainant from the date on which he applied for the same in the instant case i.e. w.e.f. 02.07.2019 in view of correct submission made by the complainant.

13. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12709/1021/2021

1228495

Complainant: Shri Hemant Jayantilal Shah
E-mail: <hemantshah@recl.in>

Respondent: The Chairman & Managing Director
Rural Electrification Corporation Ltd
Core – 4, Scope, Complex, 7, Lodhi Road, New Delhi
E-mail: <reccorp@recl.nic.in>

R 28496

Complainant: 90% locomotor disability

GIST of the Complaint:

Complainant Shri Hemant Jayantilal Shah, Dy. General Manager vide complaint, dated **20.04.2021** submitted that his junior has judged his Annual Performance Reports (APRs) for FY2016-17 with untenable bad comments therefore, he has requested to the respondent vide letter dated 22nd October 2019 that APR rating for FY206-17 should be revised upward and be granted promotion with effect from 01st July 2017 but no action has been taken. He has requested that (a) All the Annual Performance Reports (APRs) of Complainant's written with malice intention may please be scrapped (b) Complainant may be granted promotion with effect from 01st July 2017 to next higher grade with all financial benefits.

2. The matter was taken up with the Respondent vide letter dated **24.05.2021** under Section 75 of the RPwD Act, 2016. But despite Reminder dated **02.07.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **04.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.08.2021**. The following were present:

- Shri Hemant Jayantilal Shah – complainant
- Shri Rajesh Raj, G.M. (HR) on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant has raised three issues related to transfer, reservation in promotion and APR he submits that employee who was junior to the Complainant judged the annual performance of the Complainant, he spoiled the APR for year 2016-17 because he intended to get promotion before the Complainant. Further, Complainant submits that he was transferred from Mumbai to Vadodara.
5. Respondent submits that he has been reinstated to Mumbai. Hence, issue of transfer has been settled amicably and needs no interference of this court.
6. On the issue of APR Respondent submits that in Regional Offices of the Respondent establishment, Chief Programme Manager of the establishment becomes head of office. All the employees report to him even if this employee is of equal rank. In the case of Complainant, same procedure was in place. Further, Respondent submits that the Complainant was not treated unfairly because even in case of enabled employees of Respondent establishment, annual performance is judged by the head of office even if he is of equal rank. Complainant's annual performance was also judged by the head of office who is of rank equal to that of the Complainant. Further, Respondent submits that APRs of the Complainant and other employees were further reviewed by 'Executive Authority' and 'Reviewing Authority' as per the established procedure, hence there was no discriminatory treatment with the Complainant.
7. This court is satisfied with the Reply of the Respondent. Interference on the issue of APR is not warranted.
8. On the issue of reservation in promotion, it is indispensable to note that RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with



Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision. Judgement delivered in RAJEEV KUMAR GUPTA case was upheld by Hon'ble Supreme Court recently in STATE OF KERELA VS LEESAMMA JOSEPH, decided on 28.06.2021.

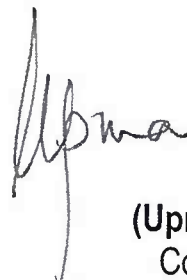
9. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way reflect that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).

10. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of Hon'ble Supreme Court and High Court.

11. This court has received similar complaints regularly. Order have been passed by this court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. Copy of the Orders are attached herewith.

12. In view of the clear directions of the Hon'ble Supreme Court and as in the enclosed Orders, this court recommends that the Respondent shall pursue the Orders attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 and judgments of Hon'ble Supreme Court of India delineated in the Orders attached.

13. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12723/1023/2021 | 128499

Complainant: Shri D.B. Lohakare
741, TPT Coy ASC (CIVGT)
C/o 99 APO, Bangdubi, West Bengal

Respondent: The Director
Director General Personnel & Services
Integrated HQ of MOD (Army), DHQ PO
Sena Bhawan, New Delhi – 110011
E-mail: <webmaster.indianarmy@nic.in>

128500

Complainant: 54% locomotor disability

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत में कहना है कि वह यूनिट 741 टी.पी.टी., बेंगलूरु वेस्ट बंगाल में सफाईकर्मी के पद पर कार्यरत है जहाँ श्री एन.के. गुप्ता, ओ.सी. अधिकारी अवकाश के दिन प्रार्थी से युनिट या अपने घर पर काम करवाते हैं प्रार्थी का आगे कहना है कि इन्कार करने पर उच्च अधिकारी उन्हें प्रताड़ित करते हैं।

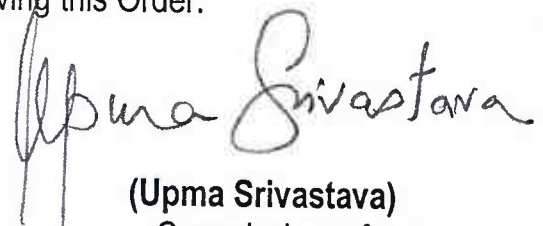
2. The matter was taken up with the Respondent vide letter dated **24.05.2021** under Section 75 of the RPwD Act, 2016. But despite Reminder dated **02.07.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **04.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.08.2021**. The following were present:

- Shri D.B. Lohakare – complainant
- Respondent – absent

Observation/Recommendations:

3. Complainant has filed grievance related to harassment. Complainant submits that he is assigned work which are inhumane and of degrading nature. Complainant further submits that the Respondent has denied to grant him leave.
4. Respondent neither submitted its reply despite of repeated reminders, nor appeared before the court during online hearing. Respondent's act of not filing Reply is evident of its tepid attitude.
5. Section 6 of Rights of Persons with Disabilities Act, 2016 mandates that appropriate government shall take measures to protect Divyangjan from inhumane and derogatory treatment. Further, Section 20(2) of the Act, mandates that government establishments are duty bound to provide barrier free and conducive environment to divyang employees.
6. Hence, this court recommends that Respondent shall conduct counselling of the reporting officers of the Complainant. Further, Respondent shall conduct enquiry into the issue of assignment of demeaning work and work other than assigned to the complainant and shall submit its report to this court within 3 months of receiving this Order.
7. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12699/1023/2021

1228492

Complainant: Shri Vijay Kumar Rajak, UDC
Dr. Hari Singh Gour Vishwavidyalaya
Sagar, Madhya Pradesh
E-mail: <vijayrajakutd@gmail.com>

Respondent: The Registrar
Dr. Hari Singh Gour Vishwavidyalaya
Sagar, Madhya Pradesh
E-mail: <registrar@dhsgsu.edu.in>

1228498

Complainant: 45% Locomotor disability

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 31.03.2021 में कहना है कि वह डॉ. हरीसिंह गौर केन्द्रीय विश्व विद्यालय, मध्य प्रदेश में अपर श्रेणी लिपिक के रूप में कार्यरत है तथा उनकी पुत्री को विश्वविद्यालय द्वारा प्रचलित विश्वविद्यालय कर्मचारी कोटे एवं स्पोर्ट्स कोटे के अधीन बी.ए. एवं एल.एल.बी. आनर्स प्रथम वर्ष सत्र 2020-21 में प्रवेश से वंचित किया गया। प्रार्थी का आगे कहना है कि उन्होंने उक्त विषय पर माननीय उच्च न्यायालय, मध्य प्रदेश में याचिका दायर की जो कि उच्च न्यायालय द्वारा निर्णय हेतु सुरक्षित रखी गई है। प्रार्थी का आगे कहना है कि कोविड-19 अवधि के दौरान उन्हें प्रतिदिन कार्यालय में उपस्थित होने के लिखित आदेश दिये गये। प्रार्थी का आगे कहना है कि विश्वविद्यालय द्वारा उन्हें दिनांक 22.03.2021 को कारण बताओ नोटिस जारी किया गया, जबकि प्रार्थी ने किसी भी प्रकार से विश्वविद्यालय के आदेश की उल्लंघन नहीं की।

2. The matter was taken up with the Respondent vide letter dated 13.04.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Registrar, Dr. Harisingh Gour Vishwavidyalaya vide e-mail dated 16.06.2021 submitted that complainant's daughter had applied for admission in B.A. L.L.B

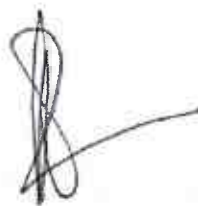
(Hons) under OBC (NCL) category and also claimed under Sports Quota and Employees wards Quota but her sports achievement did not fall under the category prescribed in the Admission Brochure 2020-21 and there was no Employees Quota prescribed either in the University Ordinance or in the Admission Brochure 2020-21. The Complainant's daughter by scoring 120 marks could not find place in the merit list either under UR category or under OBC (NCL) category and could not get admission in the aforesaid course. In this regard, she also approached Hon'ble High Court of MP at Jabalpur vide Writ Petition No. 3479/2021 but said Writ Petition was dismissed by the Hon'ble Court. They further submitted that the complainant is the Senior Ministerial Cadre Employee (UDC Cadre) posted in the Department of Law of the Vishwavidyalaya and as such the Head of the Department did not allow him to work from home during the Unlock Phase-I so that the work of the Department might not be affected. This was done in good faith keeping in view the interest of students and not to harass the Complainant. The Complainant is an employee of the University and being the employee he is bound to follow the Central Civil Services (Conduct) Rules, 1964. But the Complainant in utter violation of the said rules attempted to exert undue pressure on the University Administrative for admission of her daughter in B.A. LL.B Course by directly communicating with media and getting published misleading information regarding prevalence of admission under employees' quota for last 5 years in the Vishwavidyalaya.

4. प्रार्थी ने अपने प्रति उत्तर दिनांक **01.07.2021** में निवेदन किया है कि विश्वविद्यालय द्वारा जारी कारण बताओ नोटिस को निरस्त करवाया जाए।

5. After considering the respondent's reply dated **16.06.2021** and the complainant's rejoinder dated **01.07.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **20.07.2021** but due to administrative exigencies, hearing rescheduled on **22.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.07.2021**. The following were present:

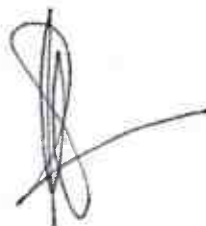
- Shri Vijay Kumar Rajak, UDC
- Brij Bhushan Sharma, Deputy Registrar



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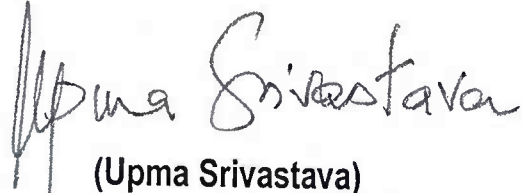
Observation/Recommendations:

6. Both the parties were heard.
7. Complainant submits that he was compelled to attend office during Covid lockdown. In its reply, Respondent countered the submission by stating that the Complainant was asked to attend office not during Covid lockdown but during Unlock-1, starting from 03 June 2020. Further, Respondent submitted that the Complainant belonged to senior management cadre, i.e. Upper Division Clerk. Hence, he was not allowed to perform 'work from home' during unlock phase – 1.
8. Submissions of the Complainant are contrary to guidelines issued by DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by O.M. dated 14.06.2021 and is still in force.
9. Hence, this court concludes that Respondent's act of compelling the Complainant is violative of DoPT guidelines.
10. Complainant also raised issue related to allocation of work. Complainant alleges that the nature of work allocated to him is detriment for his health, considering the nature of his disability.
11. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it mandatory for the government establishments to provide conducive environment to divyang employees.



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12. Hence, this court recommends that the Respondent shall not compel the Complainant to attend office during Covid as per various OMs issued by DoP&T and shall allocate work which is suitable for him considering his disability.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12591/1023/2021

R28501

Complainant: Shri Sandeep Sharma
House No. 56, 3rd Floor Right Side
Tyagi Mohalla Chattarpur, Near Axis Bank ATM
New Delhi - 110074
E-mail: <sandeepsharma@ircon.org>

Respondent: The General Manager (HRM)
Ircon International Ltd, Corporate Office
C - 4, District Centre, Saket, New Delhi - 110017
e-mail: <cmdsectt@ircon.org>

R28502

Complainant: 50% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **01.02.2021** has requested on following points: (i) due to bias/irrelevant transfer order issued against him he has faced financial loss in order to shift family from Bilaspur to Siliguri and coming from Siliguri to New Delhi for joining Corporate Office. The entitled financial support as per the company's rule should be provided. (ii) APARs intentionally downgraded should be reviewed and revised (iii) promotion decisions from AM/HRM to DM/HRM to be reviewed (iv) transfer to nearby native place i.e. Sivok Rangpoo Project, Siliguri.

2. The matter was taken up with the Respondent vide letter dated **03.02.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **05.03.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **09.04.2021**. During the hearing, representative of the respondent had sought extra time and case adjourned to **20.04.2021, 01.07.2021 & 04.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.082021**. The following were present:

- Shri Sandeep Sharma – complainant
- Adv. Debarshi Bhadra and Shri Kabir Hussain, Legal Officer on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant submits that he joined Respondent establishment in March 2017. In 2019 he was transferred to Bilaspur, Chattisgarh. In Bilaspur, work was not assigned and he was declared 'surplus staff'. Complainant submits that Respondent did not even provide desk and computer. Thereafter, he requested for transfer to native place, i.e. Siliguri, however, by order dated 29.05.2019, he was transferred to Corporate Office, New Delhi. Complainant's grievance is that at the time of transfer to Delhi, a post was vacant in Siliguri and some other employee was transferred there APAR downgraded twice with objective of denying promotion. Complainant further submits that in 2021, promotion from the post of Assistant Manager to Dy. Manager also denied.
5. Two major points of grievance raised by the Complainant are related to his transfer to New Delhi, rather than Siliguri, which is his hometown and second issue is related to denial of promotion.
6. On the issue of transfer, Respondent submits that Complainant himself, vide email dated 11.03.2019, requested to transfer him to either Siliguri (hometown) or Corporate Office, New Delhi. His demand was acceded to and he was transferred to New Delhi. He also filed complaint in CCPD, vide Complaint No. 11147/1022/2019, whereby he sought relief from CCPD to transfer to either Siliguri or New Delhi. Since his demand to transfer him to New Delhi was acceded to hence fresh demand to transfer him to Siliguri has been denied. Since the transfer was done on demand hence transfer benefits were not given. On the issue of promotion, Respondent submitted that reason for downgrading APAR was bad



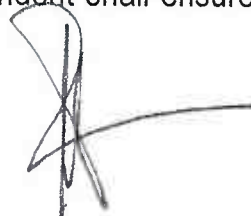
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performance and quarrelsome attitude. Further, because of Complainant's quarrelsome attitude, a lady officer also filed a complaint against him. Moreover, APR is given 15% weightage only while considering promotion. Other relevant factors are seniority (20%), service record (55%) and educational qualification (10%). DPC took all these factors into consideration and on the basis of all these factors he was denied promotion.

7. Right to practice any profession is a fundamental right, guaranteed under Part III of Indian Constitution. This right is guaranteed to Divyang citizens of this country, along with others. In context of special needs of divyang employees, this right is further strengthened by Right of Persons with Disabilities Act, 2016 and various other guidelines issued by Government of India from time to time. Section 20 of the Act, lays down that Government establishments are duty bound not to discriminate with divyang employees and also duty bound to provide conducive environment, barrier free environment and reasonable accommodation to divyang employees of the establishment. Before RPwD, Act 2016, DoPT issued O.M. dated 31.03.2014 whereby guidelines for providing certain facilities to divyang employees were prescribed. Objective of the statute and guidelines is to provide an environment to divyang employees in which they can utilise their capacity to optimum level and can perform as desired by them.

8. Similarly, DoPT O.M. dated 10.05.1990, read with another O.M. of DoPT dated 13.03.2002, lays down that divyang employees shall be posted at or near their native place. Respondent submits that the Complainant was posted in New Delhi on his choice, however, during online hearing Complainant submitted that New Delhi was his second choice. First choice of the Complainant was Siliguri.

9. This court concludes that for effective implementation of employment rights of the Complainant, detailed enquiry in the issues raised by the Complainant is indispensable. Hence, this court recommends that the Respondent shall constitute a 3 members Review Committee. The Committee shall review both the issues of promotion and transfer, raised by the Complainant. Further, it is recommended that the Respondent shall ensure that the

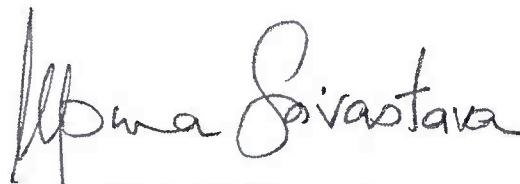


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members of the Committee shall not comprise any person who was involved in the decision on the issue of promotion or transfer, related to which the grievance has been filed. Moreover, with objective of saving time and resources, this court further recommends that the present Complaint of the Complainant be considered as Complaint filed before the 'Review Committee' of the respondent. Complainant shall not be compelled to file fresh Complaint before the Review Committee. A compliance report alongwith the report of the Committee with action taken may be submitted to this Court within three months of issue of this order.

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12616/1021/2021 | R2853

Complainant: Shri Satish Damodar Bagwe
E-mail: <satish.bagwe1103@gmail.com>

Respondent: The Managing Director
State Bank of India
Madam Cama Road, Nariman Point, Mumbai – 400021
E-mail: <dmd.cdo@sbi.co.in>

R28504

Complainant: 53% locomotor disability

GIST of the Complaint:

Complainant vide complaint, dated 19.02.2021 inter-alia submitted that Shri Satish Damodar Bagwe at present working as Asstt. General Manager, Vigilance Department, State Bank of India, Local Head Office, 3rd Floor, C – 5 Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051. He met with major Road Accident on 12/09/2001 while on official duty. The accident caused injuries all over body from head to leg. Consequent upon accident, he was under medical treatment for major period from 12/09/2001 to 01/09/2002 at Ruby Hall Clinic, Pune, Maharashtra and PD Hinduja Hospital, Mahim, Mumbai and was under physiotherapy treatment at residence for major period from 02.09.2002 to 23.12.2003. During this period and thereafter Bank has neglected the fact that he met with major accident whilst on official duty and could not attend examination/interviews conducted. Even bank has not given any letter for examination/interviews for the period even though he was eligible for promotion. Bank is merely saying that he was given opportunities which is not supported with documentary evidences. Thus bank is not justified in refusing promotions for which he is eligible as he has performed well and satisfy all criteria. But bank has advised him that as per promotion policy of SBI, there is not reservation for Physically Handicapped person in promotions which is contradictory to Government guidelines for reservation for promotion to Physically Handicapped person in Public Sector Bank. He has performed exceedingly well even after accident whilst on official duty. He also attended office without break even home during entire period from March 2020 to January 2021.

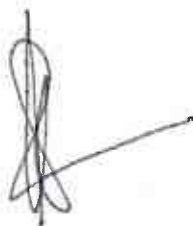
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2. The matter was taken up with the Respondent vide letter, dated **23.02.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Chief General Manager, State Bank of India vide letter, dated **03.04.2021** inter-alia submitted that neither the provisions of said Act nor any office memorandum issued by the Government of India or promotion policy of the Bank, stipulate any reservation for the persons with disability. The complainant is claiming back date effect of promotion to SMGS-IV for year 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09 as against his promotion, which he received on 17.07.2009 and for promotion to SMGS-V with back date effect of 30.03.2017. Complainant made a presentation in the year 2018, which was duly replied by the Bank vide letter dated 03.03.2018. Shri Satish Bagwe is eligible for promotion to TEGS-VI in the current promotion year i.e. 2021-22 and his name is included in the Zone of consideration list published by Cadre Management Department, Corporate Centre on 15.03.2021. The Bank humbly submits that the complainant can not raise the dispute of his promotion with back date effect once the complainant has accepted his promotion to SMGS-IV & SMGS-V without any protest and Doctrine of Promissory Estoppel would set in and he can not raise any dispute with regard to promotion to SMGS-IV, which he accepted in the year 2009. Respondent reiterated that since there is no reservation policy in promotion either under the Act or under any of the Government of India guidelines or promotion policy of the Bank, the complaint of complainant deserves to be dismissed as lacking any merit and substance. The Bank reserves its right to give additional submission on production of fresh documents by the complainant.

4. The complainant in his rejoinder dated **20.04.2021** showed his dissatisfaction towards the respondent's reply.

5. After considering the respondent's reply dated **03.04.2021** and the complainant's rejoinder **20.04.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **07.07.2021**.



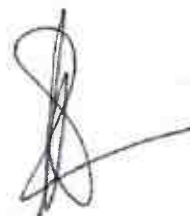
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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.07.2021**. The following were present:

- Shri Satish Damodar Bagwe – complainant
- Annapurni Venkatesh, AGM Law and GM Goel, G.M. on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.
7. Complainant submits that the Respondent establishment has denied to extend reservation in promotion for Persons with Disabilities.
8. Respondent submits that the Complainant was promoted even without extending reservation in promotion.
9. Further, Respondent submits that reservation in promotion is not extended for Persons with Disabilities because as per Section 34 Proviso of Rights of Persons with Disabilities Act, 2016, reservation in promotion shall be in accordance with such instructions as issued by appropriate government from time to time. Respondent submits that the 'appropriate government' in the present case is Department of Personnel & Training ('DoPT'). Since DoPT has not issued any instructions on this point hence, Respondent cannot extend reservation in promotion to Persons with Disabilities.
10. RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision. Judgement delivered in RAJEEV KUMAR GUPTA case was upheld by Hon'ble Supreme Court recently in STATE OF KERALA VS LEESAMMA JOSEPH, decided on 28.06.2021.



11. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way reflects that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).

12. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of hon'ble Supreme Court and High Court.

13. This court has received similar complaints regularly. Order have been passed by this court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. Copy of the Orders are attached herewith.

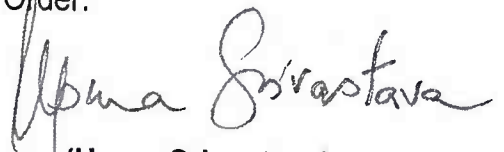
14. In view of the clear directions of the Hon'ble Supreme Court and as fully detailed in the enclosed Orders, this court recommends that the Respondent shall puruse the Orders attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the provisions of Rights of Persons with Disabilities Act, 2016 and judgments of the Supreme Court of India, deliniated in the Orders attached.



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15. Respondent is also recommended to forward the copy of this Order along with the attachment to Postal Directorate for effective implementation of this Order.

16. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021

End: As above



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 11958/1011/2020 **R28568**

Complainant :

Shri Akash C.V.,
Room No.106,
DQA(WP) DGQA,
H-Block, DHQ,
Nirman Bhawan,
New Delhi – 110 011

Versus

Respondent 01:

Director General of Personnel,
Engineer-in-Chief's Branch,
Integrated HQ of MoD (Army),
Kashmir House, Rajaji Marg,
New Delhi – 110 011.

R28569

Respondent 02:

Union Public Service Commission,
(Through the Secretary)
Dholpur House,
Shahjahan Road,
New Delhi - 110069

R28570

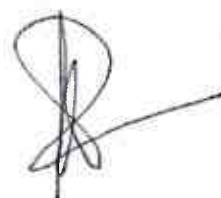
Disability : 45% Hearing Impairment

Gist of Complaint:

Shri Akash C.V, the complainant vide his complaints dated 05.03.2020 and 11.12.2020 submitted that IDSE cadre is an organized Group 'A' cadre under Military Engineering Service, Ministry of Defence and total sanctioned cadre strength is 1038 as per S.R.O.9 dated 16.03.2016. As per Engineering Service Examination Rules 2020, IDSE cadre posts are identified suitable for OA and HH category under PwD reservation. However, as on date MES has not reserved any vacancy for HH person and exclusively granted the provision of reservation for OA person under PwD reservation. It is also learned that there is no HH person available in Group A post in MES. The matter has been highlighted before MES through CPGRAMS portal vide his grievance application No.MODEF/E/2020/00692 dated 05.03.2020 reminder dated 05.08.2020 and requested them to amend the recruitment requisition for ESE 2020 as per the reservation roster. The complainant has prayed for the following;

2/-

- i) To direct UPSC to recruit HH person against the vacancy for OA person under PwD reservation in ESE 2020.
 - ii) To insist MES to calculate 1% backlog vacancies in Group 'A' posts from 01.01.1996 against total reported vacancies from 01.01.1996. and report the backlog vacancies for HH persons in next recruitment.
2. No reply from the Respondent received.
3. The Respondent No.2 vide its reply dated 20.01.2021 submitted that the Commission conducts Engineering Services Examination as per the Rules of the Examination which inter-alia contain the list of Services/Posts identified suitable for persons with Benchmark Disability category along with the physical requirements and functional classifications. The vacancies along with category-wise composition (SC/ST/OBC/EWS/PwBD) to be filled up on the basis of the Examination are furnished by the Cadre Controlling Authorities (CCAs) of the participating Services of the Examination. The Commission finalizes the result and recommends candidates after consolidating the vacancies (stream-wise :- Civil Engineering, Mechanical Engineering, Electrical Engineering and Electronics & Telecommunication Engineering) furnished by the CCAs concerned. Vacancies in respect of the Indian Defence Service of Engineering is reported by Ministry of Defence. The Commission has no role in calculation of vacancies, earmarking of such vacancies amongst different categories of candidates including PwD category or for that matter distribution of PwD vacancies amongst sub-categories. This strictly falls within the ambit of the CCA concerned. Thus the complaint as well as the relief sought therein falls in specific domain of the Ministry of Defence (IDSE) and the Commission has no role in the matter.
4. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 19.02.2021.
5. The following persons were present during the hearing ;
1. Shri Akash C.V., the complainant in person.
 2. None represented Respondent No.1,
 3. None represented Respondent No. 2.
6. The complainant was heard during the hearing.



7. The Court directed Respondent No. 1 to file a written reply to the Court within 15 days of issuance of the Record of Proceedings.

8. As no reply has been received from Respondent No.1, an online hearing has been scheduled on 20.04.2021 at 3:00 p.m and the said hearing was postponed in view of lockdown due to COVID-19 pandemic. Finally the parties were heard through online hearing on 01.07.2021.

9. The following persons were present during the hearing on 01.07.2021;

- 1) Shri Akash C.V., complainant in person.
- 2) Shri Ravinder Agar, Advocate for Respondent No. 1
- 3) Shri Ajay Kumar Jain, Director (Cadre & Management) and Shri Nitin Bhardwaj, Nodal Officer, Ministry of Defence (Respondent No.2)

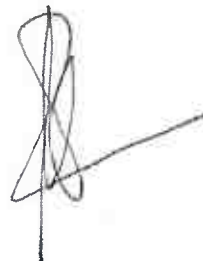
OBSERVATIONS & RECOMMENDATIONS

10. Complainant has submitted that since 2011 till 2020, vacancies in various branches of Engineering have been advertised. Respondent reserved seats for Divyangjan, however, each time reservation was given to Locomotor Disability Divyangjan and no vacancy was ever reserved for subcategory of Hearing Impaired.

11. Respondent No. 1 submits that the irregularity was identified and requisition sent to UPSC in year 2020 was amended in year 2021.

12. This court receives number of complaints whereby irregularities in recruitment examination process are pointed out. This court takes this opportunity to delineate various guidelines issued by Government of India on following issues related to recruitment examination –

- a) Identification of Posts suitable for PwD candidates.
- b) Reservation given to Persons with Disabilities
- c) Issuance of Notification
- d) Examination Fees
- e) Examination Process – Facilities provided during examination and Examination Centres
- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection



13. Before proceeding further, it is important to list the objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination.

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

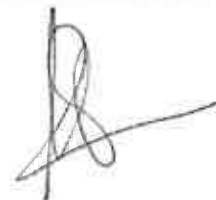
14. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 38.16./2020-DD.III dated 04.01.2021 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

15. Addition of any post from this list –

- a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that the list in which jobs suitable for Divyangjan are identified, is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements. The same is mentioned in Note 2 of Notification dated 04.01.2021 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>



- b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 04.01.2021, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.
- c) Point 4 of the notification dated 04.01.2021 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.

RESERVATION FOR PERSONS WITH DISABILITIES

16. This category can be divided into following 6 sub categories –

- a) Quantum of reservation
- b) Exemption
- c) How vacancies shall be computed
- d) Maintenance of Roster
- e) When not filled – Inter se exchange and carry forward
- f) Nature – horizontal

17. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

18. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

19. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry



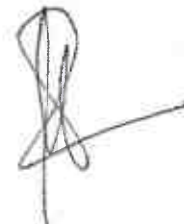
or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

20. How Vacancies can be Computed – The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts are taken into consideration. Method is same for recruitment to group A, B and C posts. (DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018)

21. Maintenance of roster – Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain group wise 100 points vacancy based Reservation Roster Register. Detailed method of maintaining and earmarking vacancies is laid down in Para 7.1 to 7.8 of the OM. Detailed methodology of maintaining the Roster is discussed.

22. When vacancies cannot be filled - It may happen that in recruitment year some or all vacancies may not be filled up due to non-availability of suitable person with disability or for any sufficient reason. Under such circumstances, government establishment cannot convert such vacancies to unreserved category. Detailed procedure for conversion of such unfilled vacancies is laid down in Para 8 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. As per the instructions mentioned in the OM, following steps have to be followed by government establishment –

- a) Such unfilled vacancy shall be carried forward in the subsequent recruitment year.



- b) Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, It may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and mental illness; multiple disability from amongst persons above mentioned for disabilities.
- c) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment of a person other than from the persons with disabilities.

23. It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.

24. Nature of reservation - It is settled position of law that reservation for PwBD is horizontal and vacancy based, unlike reservation for SC/ST and OBC which is post based and vertical in nature. Therefore, specific method for earmarking selected PwBD candidates has to be adopted. Reference can be made to Para 9 to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 and DoPT OM No. 36035/2/2017-Estt.(Res) dated 25.03.2019.

ISSUING OF NOTIFICATION

25. DoPT OM No 36035/2/2012-Estt.(Res) dated 26.11.2012 lays down certain points which are to be kept in mind while advertising the vacancies. Summary of the point is as follows.

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.
- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.

EXAMINATION FEES

26. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.



EXAMINATION PROCESS

27. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured. Hence, while conducting examination government establishment has to ensure that test centers as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.


28. Reference can also be made to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. Para I to XVII of the OM lays down detailed provisions related to facilities which shall be provided to PwBDs during examination.

29. Scribe – Para IV, V and VI of the OM lays down detailed guidelines related to Scribe/Reader/Lab Assistant. In these paragraphs exhaustive guidelines are provided as to when it is mandatory and when discretionary to provide for Scribe/Reader/Lab Assistant. Similarly, Para VIII contains guidelines with respect to mode of answering the questions asked.

30. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.

31. At this point relevant provisions related to 'Reasonable Accommodation' need to be mentioned. Section 3 of RPwD Act, 2016 lays down that appropriate government shall ensure reasonable accommodation for persons with disabilities. Reasonable Accommodation is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

32. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.



RELAXED MINIMUM CRITERIA

33. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.

34. AGE RELAXATION – As per DoPT OM No. 15012/1/2003-Estt.(D) dated 29.06.2015, age relaxation of minimum 10 years to PwBD-General candidates, 13 years to PwBD-OBC candidates and of 15 years to PwBD-SC/ST candidates is granted.

SELECTION ON MERITS

35. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with bench mark disability is selected on merits without relaxed standards along with other candidates. He will not be adjusted against the reserved shared the vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability.

DETAILED PROCEDURE FOR MAINTAINING ROSTER

36. Situation – 1 - As on 01.01.2018 or 15.01.2018, if a new cycle begins, the roster points for PwD shall be 1, 26, 51 and 76. The categories are (1% reservation for each)

- a) Blind and Low Vision;
- b) Deaf and hard of hearing;
- c) Locomotor disability including Cerebral Palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- d) autism, intellectual disability, specific learning disability and mental illness.
- e) multiple disabilities from amongst persons under Clauses (a) to (d) including deaf-blindness;

37. Situation 2 - As on 15.01.2018, the cycle has already started and only 1st point is filled in under 3% reservation. Then the roster may be modified for the remaining points i.e. 26, 51 and 76.



38. Situation 3 - As on 15.01.2018, the cycle has already started and two points are filled in i.e. 1 and 34 (under 3% reservation) still the roster can be modified to accommodate the another two points say 51 and 76. The Appointing authority should ensure how best the 4% reservation be implemented from 15.01.2018. The flexibility of filling the reserved points within the blocks i.e. 1-25, 26-50, 51-75 and 76-100 has been provided. The earliest vacancy in the block should be filled in by the PwD applicants, as per the prescribed reservation.

39. To understand more practically, the following examples may help:

- a) The new cycle started on 01.01.2018 and there are 27 vacancies in a group. The points reserved for PwD are 1 & 26. The first vacancy goes to Blind and Low vision i.e. (a) category. The 26th vacancy goes to Deaf and hard of hearing i.e. (b) category. As and when 51 vacancies arise it goes to (c) category and 76th vacancy goes to (d) category.
- b) If the cycle as on 15.01.2018 started already and the first vacancy is filled by (a) category, then 26th, 51st and 76th vacancies shall be filled in by the applicants belonging to (b), (c) and (d) category.
- c) If the cycle already started as on 15.01.2018 and the first vacancy was filled in by Hearing Handicapped (HH) category then the remaining vacancies i.e. 26, 51 and 76 as and when arises shall be filled in by (a), (c) and (d) category candidates. The aim of the Appointing Authority should be to fill up the vacancies by the categories for which the points are meant. For whatever reason, the points are filled in by other categories than the one for which they are meant for, by the end of the cycle, all the 4% (points 1, 26, 51 and 76) should be filled in the (a), (b), (c) and (d) categories.
- d) If there are backlog vacancies, they are to be filled in by the categories for which they have been carried forward.
- e) For inter-change of the vacancies, the procedure is laid down in the O.M. dated 15.01.2018.
- f) The 4% is to be calculated on the number of vacancies in a particular group i.e. A/B/C.
- g) The roster is to be maintained group wise i.e. A/B/C.
- h) In Group B and C, it is 4% of total vacancies (not posts). In Group A, it is 4% of vacancies in identified posts.
- i) This is a vacancy based roster and not post based roster.



- j) This is a horizontal roster i.e. the point reserved under 1/26/51/76 may also be a point reserved for SC/ST/OBC/EWS.

40. This Court perused notification dated 07.04.2021 issued by Respondent No.2. It is certain that the notification was issued on the basis of requisition sent by Respondent No. 1. In the notification, post of Indian Defence Service Engineers is identified suitable for 'PD' and 'OA' categories. In the same notification it is mentioned that abbreviations used are as per M/o SJ&E notification dated 29.07.2013. Moreover, 'PD' is indicated as 'Partially Deaf'. There is irregularity in the notification. Since notification was issued on 07.04.2021, hence Respondents should have used terms which are mentioned in M/o SJ&E Notification dated 04.01.2021 or in Rights of Persons with Disabilities Act, 2016. M/o SJ&E Notification dated 29.07.2013 has been replaced by Notification dated 04.01.2021, hence it is irregular to use terms mentioned in 2013 Notification.


41. Terms 'Partially Deaf' is neither mentioned nor defined in M/o SJ&E Notification dated 04.01.2021 or in RPwD Act, 2016. RPwD Act, 2016 in its schedule categories Hearing Impairment in two categories, i.e. 'Deaf' and 'Hard of Hearing'. Similarly, M/o SJ&E Notification dated 04.01.2021 mentions terms 'Hard of Hearing' and not 'Partially Deaf'.

42. Hence, this Court recommends that Respondent No.1 shall identify post as per M/o SJ&E Notification dated 04.01.2021. Moreover, Respondent shall use terms which find mention in RPwD Act, 2016 and M/o SJ&E Notification dated 04.01.2021. Further, this Court recommends that the Respondent No.1 shall amend the requisition sent in the year 2020 and re-send the requisition to Respondent No.2. After receiving amended requisition, Respondent No.2 shall issue necessary corrigendum amending Notification dated 07.04.2021.

43. This Court further recommends that the Respondent No.1 shall always keep in consideration the above-mentioned guidelines and rules while sending requisition to agencies responsible for conducting recruitment examinations.

44. The case is disposed off accordingly.

Dated: 26.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
 भारत सरकार/Government of India

केस संख्या : 12711/1022/2021 **R28572**

के मामले में

शिकायतकर्ता : श्रीमति धर्मवती,
 माता श्री सुमित कुमार,
 132, गांव - ताजपुर खुर्द,
 डाखना छावला, नई दिल्ली-110071

संपर्क नंबर : 08368073302

बनाम

प्रतिवादी : रेलवे बोर्ड
 (द्वारा -सचिव),
 रेल मंत्रालय, रेल भवन,
 नई दिल्ली - 110001

R28573

GIST OF COMPLAINT

शिकायतकर्ता श्रीमती धर्मवती ने अपनी शिकायत में कहना है कि उनका बेटा 53 प्रतिशत शारीरिक दिव्यांग है तथा वह सहायक कार्य प्रबंधक के पद कार्यरत है। शिकायतकर्ता ने आगे कहा है कि वह ज्यादा देर तक खड़ा होकर अपनी ड्यूटी करने में असमर्थ है एवं बैठकर कार्य करने में समर्थ है। शिकायतकर्ता का आगे कहना है कि उनके बेटे को कोर्ट के आदेश केस स. 6610/1022/2016/डी622 दिनांक 23.12.2016 के अनुसार कोफमो, तिलक मार्ग में स्थानांतरित किया गया था और वर्तमान में शिकायतकर्ता का बेटा कोफमो कार्यालय जो कि तिलक मार्ग पर स्थित है कार्यरत है। रेलवे बोर्ड स्थानांतरण आदेश द्वारा तीन ऑफिसर्स के स्थानांतरण किए गए हैं। जिसमें से शिकायतकर्ता के बेटे को जो कि शारीरिक रूप से दिव्यांगजन है का स्थानांतरण 2200 कि. मी दूर पुनः आईसीएफ (ICF), चेन्नई कर दिया है।

शिकायतकर्ता ने आगे कहा है कि उनके बेटे की धर्म पत्नी भी केंद्रीय भण्डारण निगम (भारत सरकार का उपक्रम) नई दिल्ली में कार्यरत है और उसे मानसिक (epilepsy) संबंधित बीमारी है तथा उस बीमारी का इलाज मेंदाता हॉस्पिटल, गुरुग्राम में चल रहा है, और उसको दवाई दिलवाना व उसकी निरंतर देखभाल करना बहुत जरूरी है।

शिकायतकर्ता ने आगे कहा है कि वह एक वृद्ध महिला है तथा स्पाइडन प्रॉब्लम से ग्रसित है तथा उन्हें भी बार-बार इलाज के लिए हस्पताल जाना पड़ता है।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उनके दिव्यांग बेटे के चेन्नई स्थानांतरण को दिव्यांगता और स्पाउस आधार पर नियमानुसार तुरत परभाव से रोक (स्टे) कराने का अनुरोध करती है।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.04.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. शिकायतकर्ता ने पत्र दिनांक 07.06.2021 को सुचित किया है कि उनके बेटे को रेलवे बोर्ड द्वारा चेन्नई आदेश रद्द करके उसे उत्तर रेलवे कार्यालय बड़ोदा हाउस नई दिल्ली कार्यालय में स्थानांतरण कर दिया है। अतः शिकायतकर्ता ने पुनः निवेदन किया है कि संबंधित रेलवे बोर्ड के अधिकारियों को निर्देश दे कि दिव्यांगजनों के कल्याण के लिए भारत सरकार द्वारा जो भी आदेश जारी किए जाते हैं उनके समुचित अनुपालन के लिए रेलवे बोर्ड द्वारा भविष्य के लिए योजना / पालिसी बनाई जाए ताकि सभी दिव्यांगजन कर्मचारी/अधिकारी अपने अधिकारों से वंचित न रहें।

[Signature]

4.

Observation /Recommendations:

i) Rights of Persons with Disabilities Act, 2016 in its preamble lays down the objectives which are sought to be achieved by the legislation. Some of the objectives are 'Non-discrimination', 'Equality of Opportunity' and 'Full and Effective Participation and Inclusion in Society'. To achieve these objectives certain rights are conferred and recognized by the Act and authorities are established and entailed with certain duties. One such Chapter is Chapter IV which deals with Rights and Duties with respect to Skill Development and Employment. Section 20 of the Act, which falls in Chapter IV lays down that government establishment shall not discriminate with persons with disability in any matter relating to employment. 'Discrimination' is a wide term which is defined in Section 2(h) of the Act. As per the definition, 'discrimination' means any act of restriction or exclusion which impairs or nullifies the enjoyment of all human rights and fundamental freedoms at par with other human beings who do not belong to PwD category. Definition further lays down that denial of reasonable accommodation is also discrimination. 'Reasonable Accommodation' is defined in Section 2(y) of the Act. It means necessary and appropriate modification and adjustments made to ensure that Persons with Disabilities can enjoy their human rights and fundamental rights equally at with others.

ii) Further Section 3 of the Act lays down that appropriate government shall take steps to ensure reasonable accommodation for Persons with Disabilities. Combined reading of Section 20 and Section 3 of the Act taking into consideration various definitions in Section 2, manifests the intention of the legislature. In order to make sure that Persons with Disabilities can enjoy their basic fundamental rights equally with others, appropriate government is duty bound to make necessary changes and modifications.

iii) Further, DoPT OM No. A-B 14017/41/41/90 dated 10.05.1990, lays down that employees with disabilities may be given preference in transfer to or near their native place. The objective of the OM is that employees with disabilities may be precluded from hardships which come along with inter-state transfer because of change in social and linguistic differences. Any person with Disability may find it difficult to quickly adapt to such changes because of hardships he has to face because of disability.

iv) Further DoPT OM No. 36035/3/2013-Estt.(Res), dated 31.03.2014, which provides in Para H that divyang employees may be exempted from rotation transfer policy/transfer and may be allowed to continue in the same job. Objective of the O.M. is to provide conducive environment to divyang employee where she/he can achieve desired performance.

v) This court recommends that the Respondent shall retain the Complainant at Delhi Office and shall cancel the transfer Orders in accordance with legal provisions and guidelines listed above.

5. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12710/1023/2021 **1228574**

Complainant: Shri Upesh Kumar
Attender, Canara Bank, Shahdara

Respondent: The Managing Director & Chief Executive Officer
Head Office, Canara Bank, Jeevan Prakash Building
113-I, JC Road, Bengaluru, Karnataka - 560002
E-mail: <rajakrishnan.r@canarabank.com>

1228575

Complainant: 50% Locomotor disability

GIST of the Complaint:

प्रार्थी श्री युपेश कुमार का अपनी शिकायत दिनांक 13.04.2021 में कहना है कि वह केनरा बैंक, शाहदरा में बैंक अटेंडर के पद पर कार्यरत है जहाँ उनको ब्रांच मैनेजर परेशान करते हैं स्थानांतरण की धमकी देते हैं।

2. The matter was taken up with the Respondent vide letter dated 24.05.2021 under Section 75 of the RPwD Act, 2016.

3. The General Manager, Canara Bank, Bengaluru vide letter dated 06.07.2021 inter-alia submitted that they deny all the allegations made by the complainant as there is no iota of truth in same. They further submitted that after investigation, it was observed that complainant was allotted with only light work and he himself had requested for transfer.

4. After considering the respondent's reply dated 06.07.2021 and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 11.08.2021.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.08.2021. The following were present:

- Complainant - absent
- Shri Sarvana, AGM (Legal) on behalf of respondent


Observation/Recommendations:

5. Complainant submits that Branch Manager of the Respondent establishment, Shri Ashok Verma and his attendant Shiv, tease the Complainant for not being able to perform some jobs like making of slip bundles. Due to challenges presented before the Complainant because of nature of his disability, some jobs cannot be performed by the Complainant. Further, Complainant submits that both the persons named above threaten to transfer him to branch situated in remote areas.

6. Main cause of grievance of the Complaint was the branch manager. His transfer to some other branch has eliminated the cause of Complaint. However, this Court is inclined to recommend that the Respondent shall conduct counselling to sensitize all the employees of the branch where Complainant is employed. Such sensitization drives may be conducted by the Respondent on regular basis in offices and branches of the Respondent establishments.

7. Moreover, this Court also attracts the kind attention of the Respondent to the issue of rotational transfer of divyang employees. With an objective to provide conducive environment to divyang employee where she/he can achieve desired performance, DoPT O.M. No. 36035/3/2013-Estt.(Res), dated 31.03.2014, provides in Para H that divyang employees may be exempted from rotational transfer policy/transfer and may be allowed to continue in the same job.

8. This Court recommends further that the Respondent shall take note of the O.M mentioned above for future reference and shall exempt divyang employees from rotational transfer.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2021



सत्यमेव जयते

Extra.
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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No. 12724/1011/2021

Complainant:

Shri Girithar T.A.
4-175, Jangalapuram Road,
N. Puduppatti,
Namakkal,
Tamil Nadu – 637020

....Complainant

Versus

Respondent :

Indira Gandhi Centre for Atomic Research
(Through the Director)
Department of Atomic Energy,
Kalpakkam,
Tamil Nadu – 603102.

....Respondent

Disability : 90% locomotor disability

Gist of Complaint:

Shri Girithar T.A., a person with 90% locomotor disability vide his complaint dated 20.05.2021 submitted that he is currently pursuing final year B.Tech Metallurgical and Materials Engineering in National Institute of Technology, Tiruchirappalli. He wanted to apply in the direct recruitment of Indira Gandhi Centre for Atomic Research (IGCAR) for the post of Technical Officer/C Group 'A' post against their Advt. No. IGCAR/02/2021. He submitted that there are no physical requirements /medical standards mentioned in the advertisement and no reservation allocated for PwDs with benchmark disability. In the online application it is mentioned that "PwD candidates are not eligible to apply for this post". Therefore, he could not even apply for the post online which is denial of reservation. He has requested to consider his candidature for the above mentioned post irrespective of the closure date of application, i.e. 14.05.2021.

1 | Page

2. The matter was taken with the Director, Indira Gandhi Centre for Atomic Research vide letter dated 28.05.2021.

3. The Chief Administrative Officer, IGCAR vide letter dated 28.06.2021 submitted that 03 posts in Technical Officer/C (Group 'A'), 04 posts in Work Assistant/A (Group 'C') and 04 posts in Canteen Attendant (Group 'C') has been reserved for PwDs as given below.

| Post Code | Post Name | Benchmark Disabilities Considered |
|---|----------------------|---|
| TOC-02 to TOC-08, TOC-11 and TOC-12 (Excluding TOC-01, TOC-09 & TOC-10) | Technical Officer /C | a) Hard of Hearing (HH) b) One Arm (OA), One Leg (OL) in Orthopedically Handicapped. c) Dwarfism (Dw) and d) Acid Attack Victim (AAV) |
| AUX-03 | Work Assistant/A | a) Low Vision (VH) b) Hard of Hearing (HH) |
| AUX-04 | Canteen Attendant | c) Orthopedically Handicapped (OH), Dwarfism (Dw) & Acid Attack Victim (AAV) d) Autism Specific Disability (ASD), Intellectual Disability (ID), Specific Learning Disability (SLD) & Mental Illness (MI) |

The Respondent submitted that the candidates willing to apply for any of the advertised posts should possess the required educational qualification as on the crucial date, i.e. 14/05/2021 whereas the complainant willing to apply for the post of Technical Officer/C (Metallurgy) has not yet completed his Graduation in the respective field. Hence, the complainant is not eligible to apply for the said post. Besides, Metallurgy is not identified for persons with disabilities.

4. The complainant vide his rejoinder dated 20.07.2021 submitted that the Respondent's statement that radiological nature being carried out in IGCAR, the posts TOC-1(Atmospheric Science/Meteorology), TOC-9(Mechanics) & TOC-10 (Metallurgy) are not suitable for

persons with disabilities. He submitted that it is not clear how radiation specifically affects persons with disabilities. The complainant raised his concern in making the post TOC-10 Metallurgy not eligible for PwDs by the Respondent. He further submitted that in the Advt. No.IGCAR/02/2021 on page 13 Section VIII, under General Instructions point 4 says "The eligibility criteria including the age, educational qualification and period of experience as prescribe in the advertisement will be determined with reference to the last date of receipt of applications' but in their reply dated 28.06.2021 they have mentioned that candidate should possess the required educational qualifications as on the crucial date, i.e. 14.05.2021 which seems an irrational statement to reject his candidature.

5. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 24.08.2021.

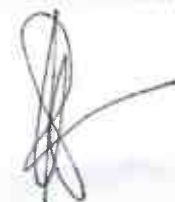
6. The following persons were present during the hearing;

- 1) Complainant: Shri Girithar T.A. in person
- 2) Respondent: Shri K.R. Seturaman, CAO on behalf of Respondent.

Observations & Recommendations

7. Complainant submits that the Respondent issued notification for various Group A post. Complainant applied for the post of Technical Officer/C – Metallurgy discipline. Total number of Group A posts advertised by the Respondent were 46 and no post was reserved for PwBD. Respondent further alleged that he was not even able to fill up examination form because, while filling up online form, message box popped up informing that PwD candidate is not eligible for applying for the post.

8. After receiving notice of this Court, Respondent reviewed the matter and reserved 03 posts for PwBDs in Group A vacancies. Regarding Complainant's submission that he was not able to fill up online form, Respondent submitted that considering the radiological nature of



activities which are carried by the Respondent, posts of Technical Officer of 3 disciplines are not identified for PwBDs. These 3 disciplines are – Meteorology, Mechatronics and Metallurgy. Complainant could not apply because Metallurgy discipline is not identified suitable for PwBD. Respondent further submitted that the Complainant did not possess minimum educational qualification of graduate degree hence he was not even eligible for applying for the post. Cut-off date for determining educational qualification was closing date of online form, i.e. 14.05.2021. Complainant did not possess graduation degree, hence was not eligible.

9. Since Respondent has reviewed the matter and has reserved more than 4% of Group A vacancies hence, this issue is settled. Issue which remains is relating to exemption of 3 disciplines which are Meteorology, Mechatronics and Metallurgy. Respondent has not submitted any document or reason to support the contention that why these 3 disciplines have been exempted.

10. During online hearing it was submitted that the Respondent referred to list of posts identified suitable for Persons with Disabilities dated 04.01.2021 issued by M/o SJ&E. Post of Technical Officer finds no mention in the list of Group A posts. Hence, Respondent exempted 3 disciplines namely, Meteorology, Mechatronics and Metallurgy. Decision to exempt these disciplines was not based upon recommendation of M/o SJ&E or of any expert committee constituted in this behalf.

11. Kind attention of the Respondent is invited to Note 6 of the M/o SJ&E which provides that the list published by M/o SJ&E is principal list and empowers Central Government establishments to publish their own list.

12. Hence, this Court concludes that exemption of 3 disciplines in the post of Technical Officer because this post does not find mention in M/o SJ&E list is bereft of any reason.

13. Plethora of Complaints are filed before this Court relating to the issue of recruitment. This Court had an opportunity to delineate laws and guidelines related to various aspects of recruitment process in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021,



titled as NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH. Copy of the Order is attached along with.

14. Since the Complainant did not possess minimum educational qualifications as on the cut-off date hence, intervention of this Court is not warranted on the issue of Complainant's eligibility for applying for the post.

15. With respect to issue of identification and exemption of Technical Officer/C, this Court recommends that the Respondent shall identify this post and other posts for different categories of disabilities only on the grounds of functional requirements for such posts. Further this court recommends that the Respondent shall pursue the Copy of the Order attached along with and shall follow all the guidelines delineated while conducting recruitment in future.

16. The case is disposed off.

27.08.2021

Encl : As above


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

Extra.

275

न्यायालय मुख्य आयुक्त दिव्यांगजन**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12614/1021/2021

Complainant: Shri Ramanuj Tiwari
116/24, Purani Basti Ram Lla School
Village – Rawatpur, Kanpur Nagar,
Kanpur Nagar, Uttar Pradesh – 208019

Respondent: The Directorate General
Ministry of Housing & Urban Affairs
Central Public Works Department
A – Wing, Room No. 101, Nirman Bhawan, New Delhi

Central Public Works Department
Through the Directorate General
A-Wing, Room No. 101, Nirman Bhawan, New Delhi
E-mail: <cpwd_dgw@nic.in>

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उनकी नियुक्ति सी.पी.डब्लू.डी., कानपुर में चतुर्थ श्रेणी के पद पर दिनांक 21.08.1996 में हुई थी तथा नियुक्ति के समय उन्होंने राष्ट्रीय दृष्टिहीन संस्थान द्वारा प्राप्त टाइपिंग टेलीफोन ऑपरेटर का प्रमाण पत्र जमा करवाया था जो कि सर्विस बुक से गायब कर दिया गया। प्रार्थी का आगे कहना है कि उनके जूनियर श्री राजेन्द्र प्रसाद को दो बार पदोन्नति मिल चुकी है परन्तु उन्हें आज तक पदोन्नति नहीं दी गई जबकि वह एम.ए. पास हैं।

2. The matter was taken up with the Respondent vide letter dated **22.02.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **19.03.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **05.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.07.2021**. The following were present:

- Shri Ramanuj Tiwari - complainant
- Shri Aman Gupta, Executive Engineer and Shri Vimal Kumar, Chief Engineer, Chandigarh Branch on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant submits that he was appointed in Respondent establishment on 21.08.1996. Since his appointment he has not been promoted even once. His junior Rajendra Prasad Kashyap, who got appointed on the same post, has been promoted twice.
5. Respondent submits that the complainant was not promoted because prior to 2012 there was no provision for promotion in recruitment rules of the respondent establishment except for promotion by departmental exam. Rajendra Prasad Kashyap qualified departmental exam and hence was promoted twice.
6. This Court concludes that non promotion of the complainant is violation of RPWD Act, 2016. It is admitted by the respondent that the promotion was denied to the complainant because of fault in recruitment rules of the respondent establishment. Promotion must be done according to seniority of the employees. It is astonishing that an employee who is part of respondent establishment since 25 years is not being promoted even once. Respondent establishment cannot hide behind faulty recruitment rules. It was the duty of the respondent establishment to amend the recruitment rules and promote the employees.
7. Hence this Court comments that the respondent shall:-
 - a) Check the records of the establishment and even if the name of the complainant appears in extended panel promote the complainant as soon as possible.



b) Give special pre promotion training to all Divyang employees, for passing departmental exams.

8. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12602/1024/2021

Complainant: Ms. Mini Goyal
D/o Late Shri Rakesh Kumar Goyal
T-14/2, DLF Phase 3, Gurugram
E-mail: <minigoyal3184@gmail.com>

Respondent: The CMD
South Eastern Coalfields Ltd
Seepat Road, Bilaspur, Chhatisgarh - 495006
E-mail: <cmd.secl.cil@coalindia.in>

Complainant: 90% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **03.02.2021** submitted that his father was retired on 31.03.2013 as a Dy. Chief Engineer (E&M) Central Stores, SECL, Chhatisgarh and he expired on 25.10.2020. Thereafter, being an only disabled child of the deceased, her name was supposed to be in PPO but it was not done by the Department/pension issuing authorities.

2. The matter was taken up with the Respondent vide letter dated **11.02.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager, South Eastern Coalfields Ltd vide letter dated **20.03.2021** submitted that matter has been taken up with concerned CMPFO Commissioner, Bilaspur and they have informed that as per the CPMS-1998 those children who attain the age of 25 years are not entitled for children pension (disabled case is silent in the scheme and her father's monthly arrear pension from Feb 2020 to his death i.e. October 2020 was calculated and settled for an amount of Rs. 2, 40, 856/- to be deposited in her given bank account.

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4. After considering the respondent's reply dated **20.03.2021** and the complainant's rejoinder **23.03.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **20.04.2021** but due to Lockdown, hearing rescheduled on **01.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **01.07.2021**. The following were present:

- Ms. Mini Goyal – complainant
- Shri A.K. Saxena, General Manager on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complaint is related to non-payment of Family Pension. Complainant's father was the employee of Respondent establishment and retired from the service in April 2013. Later on 25.10.2020 he left for his eternal adobe. Complainant applied for grant of family pension on the grounds of disability, which was rejected by the Respondent.

7. Respondent has submitted that Complainant's claim was rejected under Coal Mines Pension Scheme, 1998 ('CMPS' for short). As per the Respondent, CMPS is silent on the issue of granting family pension to disabled child of the deceased pensioner/employee. Hence, the claim of the Complainant was rejected in absence of rule in CMPS.

8. Respondent's submission cannot be accepted. Though CMPS is silent on the issue of granting family pension to disabled child, rules on this issue are well defined in CCS Pension Scheme, 1972 and OMs issued by Government thereafter. This court has received several Complaints on the issue of Family Pension and hence, this court had an opportunity to delineate rules and guidelines on the issue of granting Family Pension to disabled child.



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9. Rule 54 of CCS (Pension) Rules, 1972 lays down provisions for Family Pension. Sub Rule 6 of Rule 54 contains provision relating to time period for which Family Pension is payable. As per the provision, Family Pension is granted in favour of son of Government Servant till the age of 25 years maximum. Similarly, in case of daughter of Government Servant, maximum period for which Family Pension is granted is till marriage or re-marriage of such daughter or until she starts earning her livelihood. However, second Proviso carves out the exception to the above rule. As per the Proviso, Family Pension is granted to son or daughter of Government Servant for life if following conditions are fulfilled –

- a) Such daughter/son is suffering from physical/mental disability; and
- b) The disability is such so as to render her/him unable to earn livelihood; and
- c) Inability to earn the livelihood is evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child.

10. **ISSUE** – Whether certificate declaring the disabled daughter/son as 'unable to earn livelihood' is necessary?

11. It is pertinent to note here that, as per Rule 54, such certificate is necessary before allowing Family Pension. The same was held by CAT, Bombay Bench in matter of Sri Shamson Robinson Khandagle v. Union Of India; 2013 SCC OnLine CAT 436. Tribunal held that Disability Certificate alone is not requisite certificate to make the applicant eligible for Family Pension. Applicant in this case produced certificate of 60% disability and pleaded that certification of 60% disability alone proves his inability to earn livelihood. Tribunal rejected this contention.



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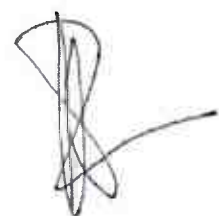
12. **ISSUE** - Who will issue the certificate declaring the person 'unable to earn livelihood' OR who will decide issue of inability to earn livelihood?

13. Two O.M.s, O.M. No. 1/18/01-P&PW(E), dated 30.09.2014 and O.M. No. 1/18/01-P&PW(E), dated 05.11.2015 sheds light on the history and clarify the issue. Prior to O.M. dated 30.09.2014, competent authority to issue disability certificate for the purpose of family pension was 'Medical Officer' not below the rank of 'Civil Surgeon'. Later the position was changed and Medical Board comprising of Medical Superintendent and two other members was made competent authority to issue disability certificate replacing 'Civil Surgeon'. Subsequently by O.M. dated 30.09.2014, it was decided that for issuing disability certificate the competent authority would be as specified in the guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010. For the purpose of issuing disability certificate for 'Multiple Disabilities', Medical Board was retained as competent authority.

14. Subsequently, by O.M. No. 1/18/01-P&PW(E), dated 05.11.2015, the rule was formed that in addition to authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010, competent authority to issue disability certificate would also be any hospital or institution specified as Medical Authority by state or central government for the purpose of Persons with Disabilities Act, 1995. Hence, as per the two notifications competent authorities to issue disability certificate are –

- a. Medical Board in case of 'Multiple Disabilities' only;
- b. Authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010;
- c. Any hospital or institution specified as Medical Authority by state or central government for purpose of issuing disability certificate.

15. **ISSUE** – Can Appointing Authority decide to grant family pension by itself, in absence of Disability Certificate?



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16. With respect to Appointing Authority, word used in the rule is SATISFY. Rule DOES NOT SAY that Appointing Authority can decide whether the applicant can earn his livelihood or not. Further, the rule says that such satisfaction has to be evidenced by the Certificate issued by the Medical Board.

17. This position was made clear by Gujrat High Court in the matter of Naresh Bansilal Soni v. Union of India; 2016 SCC OnLineGuj 654. In this case Appointing Authority stopped Family Pension on the ground that the beneficiary did not produce 'living certificate'. Later he was denied the benefit on the ground that he was present in person before the Appointing Authority and he looked physically abled to earn his livelihood. Court held that decision of Appointing Authority that beneficiary can earn his livelihood, is arbitrary. Court held that in order to preclude Appointing Authority from taking arbitrary decisions, Rule lays down that such satisfaction has to be evidenced by the Disability Certificate. Hence, subjective decision of authority is illegal and arbitrary.

18. It was held in a case reported as Narsi SambunathSuval v. G.M. Western Railways; 2015 SCC OnLine CAT 1584 by CAT, Ahmedabad that such certificate cannot be issued even by the private hospital. CAT decided that such certificate would be valid ONLY if it is issued by the prescribing authority.

19. **ISSUE** – When it can be deemed that the person is earning his livelihood?

20. O.M. No. 1/17/2019 P&P W (E), issued by Ministry of Personnel Public Grievances and Pension, dated 08.02.2021 settled the issue. As per the OM such disabled child shall be deemed to be not earning her/his livelihood if her/his overall income from sources other than family pension is less than the entitled family pension at ordinary rate and the dearness relief admissible thereon, payable on death of Government servant or pensioner concerned.

21. However, O.M. does not absolve the child from producing medical certificate declaring him 'unable to earn livelihood'. Para 4 of the O.M. lays down the same. As per the Para, it is mandatory to produce medical certificate.



22. **ISSUE** – If the employee/pensioner or her/his spouse did not furnish or intimate the details of the divyang child to Pension Sanctioning Authority during their lifetime and after the death of such employee/pensioner or her/his spouse, divyang child claims family pension, whether benefit of family pension can be extended to divyang child in such case?

23. O.M. No 1/2/09-P&PW(E), dated 30.12.2009 established the basic rule that non intimation of details of divyang child by the employee/pensioner or her/his spouse does not make such child ineligible for family pension.

24. Further O.M. No. 1/18/2001-P&PW(E) dated 25.01.2016 laid down that even if divyang child obtains disability certificate after death of employee/pensioner or her/his spouse, benefits of family pension can be extended to the child on the basis of such certificate if a) the authority is satisfied that the child is unable to earn his livelihood and b) the child was suffering from the disability on the date of death of employee/pensioner or her/his spouse. The same O.M. reiterates the rule position established in O.M. 1/18/01-P&PW(E), dated 30.09.2014 that in case the child produces disability certificate of permanent disability, issued prior to the death of employee/pensioner or her/his spouse then the child need not to obtain disability certificate afresh. Hence, litmus test in such situation is that whether or not the child was suffering from disability on the date of death of the employee/pensioner or her/his spouse.

25. **ISSUE** – Procedure if family pension is granted to guardian of divyang child because of child's minor age or intellectual disability.

26. O.M. No 1/04/06 -P&PW(E) dated 31.07.2006 clears the position that in case the pension is granted to the guardian of divyang child the guardian has to produce certificate issued under National Trust Act, 1999 for his nomination/appointment for grant of family pension.



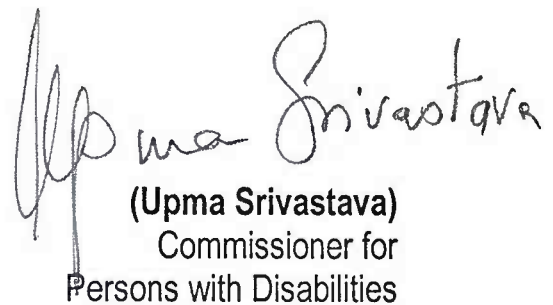
27. Further, another issue which is particular to this case is whether CCS Pension Rules, 1972 will supersede CMPS, 1998?

28. It is settled and well accepted principle of law that special law on subject always supersedes general law; *Generalibus Specialia Derogant*. CMPS, 1998 are special rules with respect to people employed in Coal Mines, these rules are not special with respect to Divyang employees. Rule 54 of CCS Pension Rules, 1972 and subsequent guidelines (delineated above) are special law laid down to protect the rights of Divyang Employees. Hence, issue of Family Pension to disabled child must be governed by CCS Pension rules, 1972.

29. Moreover, CMPS, 1998 do not contain any provisions which prohibits or denies granting family pension to divyang child of the pensioner/employee. As admitted by the Respondent, CMPS, 1998 is silent on this issue. Therefore, if an issue is not addressed by CMPS, 1998 then in order to fulfil the mandate of Rights of Persons with Disabilities Act, 2016, Respondent shall follow to CCS Pension Rules, 1972 and guidelines issued thereafter which are mentioned above in preceding paragraphs of this Order.

30. This Court recommends that the case of the Complainant shall be considered by the Respondent under CCS Pension Rules, 1972 and guidelines of the government issued thereafter.

31. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2021



सत्यमेव जयते

Extra 1
285

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12732/1023/2021

Complainant: Smt. Kakali Ganguly
W/o Tarun Kumar Ganguly
Sr. Section Engineer Office Eastern Railway
PO Durgapur, Dist. Burdwan – 713201
E-mail: <kakali.ganguly@yahoo.co.in>

Respondent: The General Manager
Eastern Railway, 17, Netaji Subhash Road
Fairlie Place, Kolkata – 700001
E-mail: <gm@er.railnet.gov.in>

Complainant: Shri Tarun Kumar a person with 40% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **01.06.2021** submitted that her husband Shri Tarun Kumar Ganguly is working in Sr. Section Engineer Office, Eastern Railway and her husband wants work from home as per circular issued by competent authority but Welfare Inspector, Sri Siddhartha Chakraborty is continuously harassing and pressurizing him to attend office.

2. The matter was taken up with the Respondent vide letter dated **07.06.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **05.07.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **11.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **11.08.2021**. The following were present:

- Smt. Kakali Ganguly – complainant
- Shri Biswanarayan Banerjee, APO on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.

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4. Complainant alleges that the Respondent compelled him to attend office during Covid – 19 exemption period. Complainant levelled these allegations against 'Welfare Inspector' and 'Permanent Welfare Inspector'. Further, Complainant further alleges that the two officers threatened him to mark him on 'Leave without Pay' if he would avail 'work from home'.

5. Respondent submitted during online hearing that the Welfare Inspector was reprimanded. Complainant was not compelled to attend office. He was allowed to do work from home. After receiving the Complaint, Respondent cross checked the records with Controlling Office and found that except for 01.06.2021, Complainant was allowed to do work from home. With respect to 01.06.2021, Respondent submits that the Complainant himself submitted in writing that he did not perform any job on that day, further he also did not apply for leave. Hence, Respondent marked him on 'Leave without Pay' for 01.06.2021.

6. Respondent made commitment during online hearing to cancel 'Leave without Pay' and regularise Complainant's leave for 01.06.2021 as this is not in line with Government rules and regulation. He should have been asked to take leave or the respondent could have adjusted on day absence against available leave in his account.

7. This Court recommends that the Respondent shall fulfil its commitment through leave or by obtaining in writing his reasons for not performing 'work from home' on 01.06.2021. Further, this Court attracts kind attention of the Respondent to O.Ms. issued by DoPT relating to exemption from attending office. DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by latest O.M. dated 14.06.2021 and is still in force.



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8. This Court recommends that the Respondent shall refer the above delineated O.Ms. in the present case and shall abide by these O.Ms. and other latest guidelines of DoPT in cases which may arise in future.

9. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

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

भारत सरकार/Government of India

Case No: 12743/1022/2021

Complainant : Shri Anil Kumar
Assistant Audit Officer
HOS No. CDCDD8013062
House No. 662, Sector 32A,
Chandigarh
Mobile No : 07680989996
E-mail: kumar.ak222@gmail.com
Respondent : Director General of Audit,
Defence Services, L-II Block, Brassey Avenue
New Delhi-110001
E-mail : dgads@cag.gov.in
Contact No : 011-23094219, 23093672, 23092583, 23094669
Fax: 011-23092301

GIST OF COMPLAINT

The complainant Shri Anil Kumar, Assistant Audit Officer (AAO), vide complaint dated 03.05.2021 submitted that he is suffering from 54% physical disability. The complainant was working in Chandigarh Office (PDA, DS). The complainant stated that he have been transferred from Chandigarh office to New Delhi Office (DGA, Navy, New Delhi) vide office order no. 071 dated 15.04.2021.

The complainant stated that he has three baby girls under the age of 03 years including twin on second time. He has also the responsibility of his aged ailing parents. His father is a diabetic patient and his mother is also suffering from gall bladder stone.

The complainant submitted that some of his colleagues of other offices have been retained on the same station where they have desired to retain but after written request he could not be retained in Chandigarh office where as Chandigarh office have deficiencies of AAOs.

The complainant humble requests to CCPD to retain his transfer/posting at Chandigarh office (Principal Director of Audit, Defence Services), Chandigarh.

2. The matter was taken up with the Respondent vide letter dated 15.06.2021 under section 75 of the RPwD Act 2016.

3. In response, Director of Audit, Shri P.C.S. Negi, Defence Services, New Delhi vide their letter no: 632/A. Admn/4722/AK dated 07.07.2021 Inter-alia submitted that as per transfer and posting policy approved by the C&AG office, the officer in ordinary circumstances, would be transferred to another station on promotion to the post of AO and AAO.

Shri Anil Kumar, AAO at the time of promotion has given following five choices of his preference through PDA Chandigarh:

i) Chandigarh ii) Delhi iii) Jammu iv) Meerut v) Dehradun

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)

Shri Anil Kumar was promoted as AAO on 15.04.2021 and posted to New Delhi which was his first choice. He was relieved from Chandigarh office 16.04.2021 vide order dated 16.04.2021 and he reported for duty in DGA (Navy), New Delhi on 19.04.2021. It is to be noted that he did not send an appeal/representation regarding his posting order, nor did he avail joining time. After joining at DGA (Navy), New Delhi he has sent a representation through mail on 08.05.2021. Representations are discussed and decided by the transfer & posting board, which generally meets once in 2-3 months. The transfer & posting board has not met since he made his representation. Those retained in present station were due to administrative and other reasons as per decision of the transfer and posting board.

4. The complainant in their rejoinder dated 27.07.2021 by email submitted the following facts:-

i) The complainant stated that inspite of deficiencies of Asstt. Audit Officers (AAO) in Chandigarh office, his letter/request could not be considered.

ii) The complainant further submitted that some candidates of same batch, have been promoted on the same station/in the same city where they were already posted. The reply submitted by DGA, DS, New Delhi dated 07.07.2021; those who were retained in present station were due to administrative and other reasons as per decision of the transfer & posting board.

iii) The complainant is facing so many difficulties in New Delhi while travelling by bus and metro train. The complainant is approaching to PA of DGA, DS New Delhi since last 3 months that he wants to meet with DGA so that he can make a verbal request regarding his transfer to Chandigarh but nobody want to meet him.

iv) The complainant most humbly requested to consider his request/grievance sympathetically and favour his transfer/posting at Chandigarh in O/o Principal Director of Audit, Defence Services, Chandigarh.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.08.2021. The following were present:

- i) Shri Anil Kumar – Complainant
- ii) D. D. Tripathi, Senior AAO – Respondent

6. **Observations & Recommendations:**

i) Complainant submits that after promotion the Complainant was transferred from Chandigarh to New Delhi while other enabled officers in the organisation are retained in same location even after promotion. Complainant further submits that because of personal problems like ailing parents and infant children, he is facing difficulty in shifting from Chandigarh to New Delhi.

ii) Respondent countered the submissions made by the Complainant and submits that as per transfer policy of the Respondent establishment officer is transferred from one location to another on promotion. Complainant was promoted and was asked to submit his choices for transfer. First choice given by him was Chandigarh, where he was posted at that time, second was New Delhi. Since he could not be posted at same location after promotion hence, he was posted to New Delhi. Further it is submitted that those officers who were retained at their present location were retained due to administrative and other reasons.

iii) During online hearing Respondent further submitted that Complainant was transferred to New Delhi by Order dated 15.04.2021. He joined in New Delhi office on 16.04.2021, i.e. on very next day of the transfer. It was further submitted that in establishment there is a procedure to challenge Transfer Orders. Any employee aggrieved with the Transfer may challenge the same before Appellate Authority. Complainant did not opt to challenge his transfer before the Appellate Authority and approached this court.

iv) Submissions of Respondent contains merit. Complainant should have opted to approach the Appellate Authority to challenge the Transfer Order. Presence of such procedure promotes efficient administration and early dispensation of justice.

v) This Court recommends that the Complainant shall present his Complaint before the Appellate Authority, which is recommended to reconsider transfer of the Complainant as per DoPT O.M. No. 36035/3/2013-Estt.(Res), dated 31.03.2014, which provides in Para H that divyang employees may be exempted from rotation transfer policy/transfer and may be allowed to continue in the same job. Objective of the O.M. is to provide conducive environment to divyang employee where she/he can achieve desired performance. Respondent is further recommended to find avenues, such as transfer by exchange etc, to retain the Complainant in Chandigarh office.

7. This case is disposed off.

(Upma Srivastava)

Upma Srivastava
Commissioner for
Persons with Disabilities

Dated: 27.08.2021