

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. 12492/1031/2020

Complainant:

K26063-Shri Rainish Sharma. Village - Bulansarai, Post-Bidupur Bazar, District – Vaishali – 844503 (Bihar) Email: rajnishs183@gmail.com

Respondent:

Registrar, Jawahar Lal Nehru University, New Mehrauli Road, Near Munirka, New Delhi - 110067 Email: registrar@mail.jnu.ac.in.

Claim made by the Complaint 1.

Shri Rajnish Sharma, M-29, a person with 100% Visual Impairment file this Complaint regarding denial of admission to Ph.D. under JRF category by the respondent Jawahar Lal Nehru University and further alleged that the respondent is not following the policy of 5% reservation in admission for the candidates with disabilities in accordance with the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016].

Submission made by the Respondent 2.

- On taking up the matter, the respondent in their reply dated 12.01.2021 2.1 submitted that the complainant Shri Rajnish Sharma had applied for Ph.D. programme in Hindi Language (NHDH) under JRF category, appeared for the Viva-Voce held on 07.11.2020 and was not selected in the said programme as he secured 45 marks.
- As per Clause 7(b) of the Admission Policy (2021-22), PwD category reservations shall be implemented/operated grouping seats wherever seats are less than 10 and keeping it floating by clubbing such seats to ensure at least 1

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



seat for PwD category, wherever qualified candidate is available within these 10 seats and adjusting his/her category against the respective category to which he/she belongs. Further, if still number of seats is less than 5%, decision to fill up these seats from among the qualified PwD category candidates, wherever available, may lie with the Vice-Chancellor to ensure filling up of maximum seats in PwD category in compliance with RPwD Act, 2016.

- 2.3 There was no Intake for PwD category candidates in HNDH as the total Intake was UR-02, OBC-01, ST-00, SC-00, PwD-00. However, to ensure 5% reservation to PwD category candidates, as per the provision of Clause 7(b) mentioned above, the University offered admission to one PwD candidate, Shri Chanchal Kumar who had secured higher marks i.e. 56 than the complainant, Shri Rajnish Sharma.
- 2.4 In view of the above facts, Shri Rajnish Sharma could not be selected as the other PwD candidate had scored more marks than him to be selected under PwD category.
- 3. The reply filed by the respondent was forwarded to the complainant for submission of his Rejoinder/Comments. However, no Rejoinder/Comment was received from the complainant despite lapse of statutory time.

4. Observation/Recommendations:

- 4.1 The reply filed by the respondent is satisfactory as it appears that the respondent University is following the 5% reservation of seats in admission for candidates with disabilities in accordance with Section 32 of the RPwD Act, 2016.
- 4.2 Accordingly the case is closed.

Dated: 02.02.2021

(Upma Srivastava) Commissioner

for Persons with Disabilities



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: 11781/1022/2020

Complainant: Shri Bijender Kumar Ray, House No. 6243 F-Block, Sanjay Colony

Sector 23, Faridabad, Haryana e-mail: <bk694710@gmail.com>

Respondent: AOC Records, Pin - 900453, C/o 56 APO

Complainant: 100% hearing impairment

GIST of the Complaint:

Complainant vide complaint dated **03.01.2020** has requested for transfer nearby home town.

- 2. The matter was taken up with the Respondent vide letter dated **12.06.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **24.11.2020**, respondent did not submit any reply, therefore hearing fixed on **08.01.2021**.
- 3. Lt Col., 3 Inf Div. Ord Unit vide letter dated **14.12.2020** inter-alia submitted that sudden request for the posting to his native place is not in the organizational interest due to the deficiency that will get created at his place and Unit is not in position to bear further deficiency of the fire staff which will endanger valuable life and property deployed in operationally important High Altitude Area. He further submitted that Shri Bijender Kumar Ray can be recommended for posting to his native place only if a suitable relief in SHAPE-1 medical category is posted to this establishment at his place.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>08.01.2021</u>. The following were present:

Complainant: absent

Shri N.P. Singh on behalf of the respondent

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Observation/Recommendations:

- 4. Complainant and his wife are 100% disabled. Complainant is resident of Faridabad, Haryana. Currently the Complainant is posted at Ladakh and seeks relief of transfer to his place of residence. Respondent has submitted that the Complainant is Group C employee and Group C employee are centrally controlled by army Ordinance Corps Records Section at Secundrabad. Further, Respondent expressed incompetence to transfer the Complainant because of deficiency of staff at the Complainant's place of posting.
- 5. It is indispensable to mention DoPT O.M. No. A-B 14017/41/90 Estt (RR), dated 10.05.1990, wherein it was directed that divyang employees may be given posting at their native place or as far as possible, near to their native place. Further, OM also directs that request by Divyangjan for transfer to their native place may be given preference.
- 6. Considering the nature and percentage of disability of the Complainant and his wife, Ordinance Corps Records Section at Secundrabad are recommended to transfer the Complainant to Faridabad, at his place of residence.

7. Case is disposed off.

Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 02.02.2021







COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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Case No: 12310/1023/2020

Complainant: Shri Shyamnandan Kumar, Inspector of Income Tax Officer

Office of the Addl. Commissioner of Income Tax, Rourkela Range,

Rourkela, Dist. – Sundergarh, Odisha – 769012

e-mail: <bk.sahu96@gmail.com> <shyamsip2017@gmail.com>

Respondent: The Assistant Account Officer, Posted – Field Pay Unit

Aaykar Bhawan, Ainthapali, Sambalpur, Dist. - Sambalpur

Odisha – 768004

e-mail: <fpusambalpur@gmail.com>

Complainant: 55% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated nil inter-alia submitted that he is working in Income Tax Department, Rourkela as a Inspector and he had applied for LTC advance of Rs. 49,000/- on 27.01.2020. He further submitted that Competent Authority had approved the bill and forwarded to the Respondent for crediting amount but bill was rejected by the respondent quoting the reason "insufficient fund" in salary head and on the same time respondent released the salary for the months of February & March and also realised LTC advance to other official in February itself. He alleged that respondent is continuously harassing him by misutilizing his authority by returning and denying LTC advance bill and further retuning LTC final claim.

- 2. The matter was taken up with the Respondent vide letter dated **12.10.2020** under Section 75 of the RPwD Act, 2016.
- 3. After considering the respondent's reply dated **25.11.2020** 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 **08.01.2021**.

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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>08.01.2021</u>. The following were present:

- Shri Shyamnandan Kumar complainant
- Shri G.R. Verma, Sr. Standing Counsel, I.T. Department on behalf of respondent

Observation/Recommendations:

- 4. Both the parties were heard.
- 5. During online hearing it was submitted by the Respondent that bills submitted by the Complainant have been paid. Further, no case of discrimination is established against the Complainant on ground of his disability. Hence, this court concludes that cause of grievance has been settled and no further intervention of this court is warranted.
- 6. Case is disposed off.

(Upma Srivastava)

Commissioner for

Persons with Disabilities

Dated: 02.02.2021







COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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Case No: 12223/1023/2020

Complainant: Shri Tarun Gupta, R/o 242, Block B1

Pashchim Vihar, New Delhi

E-mail: <aicbdelhi@yahoo.com>

Respondent:

The Managing Director, Punjab & Sind Bank

Bank House, 21, Rajendra Place, New Delhi – 110008

e-mail: <ho.hrd@psb.co.in>

Complainant: 100% visual impairment

GIST of the Complaint:

Complainant vide complaint dated 13.08.2020 submitted that he is working as Manager in Respondent Bank and he was appeared in the written examination conducted by respondent for promotion from MMG scale 2 to MMG scale 3 and scored 57 marks out of 100 and secured 21st rank in overall merit. He further submitted that as per the promotion policy, the weightage of written examination is 44 and APAR was 30 respectively and he scored 25.08 out of 44 and 23.28 out of 30 respectively. According to the complainant, his interview was very good and he gave answered all the questions up to the satisfaction of interview panel but despite this, his name was not included in the final merit list.

- The matter was taken up with the Respondent vide letter dated 05.10.2020 under 2. Section 75 of the RPwD Act, 2016.
- Dy. General Manager (HRD), Punjab & Sind Bank vide letter dated 26.10.2020 3. submitted that Shri Tarun Gupta could not secure minimum qualifying marks in interview, hence he was not able to secure a position in merit list of promoted candidates.
- After considering the respondent's reply dated 26.10.2020 and the complainant's 4. complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 12.01.2021.

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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.01.2021**. The following were present:

- Shri Tarun Gupta Complainant
- Shri Vimal Kumar Atri, AGM (HR Department) on behalf of respondent

Observation/Recommendations:

- 5. Both the parties were heard.
- 6. The complainant stated that he appeared in examination process conducted for promotion to the post of Senior Manager in year 2020-21. He submits that he secured 21st rank in the examination, however his name was not included in merit list because in interview he was given marks less than qualifying marks.
- 7. During online hearing it was submitted by the Respondent that Visually Impaired Divyangians are not provided any concession as per promotion policy.
- 8. The court observed that the complainant appeared and met all the criteria of the selection method/policy of the Bank except for interview. The complainant scored 65 marks in the examination but was not selected for the interview which was allegedly held for short duration.
- 9. From the facts observed in the matter, it needed appears that there is a bias towards a candidate with disability and that too in this case to the extent of 100% disability.
- 10. The respondent has failed to take into consideration the fact that the complainant has been meeting all the other criteria and his performance reports have been outstanding. The respondent has failed to recognize the efforts of a person with disabilities in successfully meeting these criteria.

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- 11. It is universally acknowledged that the selection method of interview is inherently subjective and no matter the efforts brought in to make it objective it is difficult to eliminate subjectively and biases on personal decisions. Hence, in the year 2020 it should not/can from the sole basis of rejection of promotion of an employee who has been working in the organisation and where he met all other criteria.
- 12. The court noted that Department of Personnel and Training instructions in O.M. No. 36035/3/2013-Estt.(Res) dated 31st march, 2014 provided that job specific post-recruitment as well as pre-promotion training programmes are required to be organized for the persons with disabilities. If an employee was not able to qualify merely the interview, the organisation should have provided some support to him in terms of pre-promotion training, so that he got equal opportunity at par with other candidates. The organisation has failed in this respect also.
- 13. The respondent has also failed to take note of Section 3(5) read with Section 2(y) of the Rights of Persons with Disabilities Act, 2016 to provide "reasonable accommodation" to the complainant.

<u>Section 3(5)</u> - The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

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

- 14. In view of the above said, this court recommends that the complainant shall be promoted to the post of Senior Manager with effect from year 2020 and necessary orders to this effect shall be issued by the Respondent.
- 15. Case is disposed off.

(Upma Srivastava)

Commissioner for

Persons with Disabilities

Dated: 02.02.2021





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Case No: 12347/1022/2020

Complainant: Shri Birendra Kumar

E-mail: <birendra84.kr@gmail.com>

Respondent: The Principal Commissioner of GST & Central Excise

Tamil Nadu & Puducherry Zone, Nungambakkam

Mahatma Gandhi Road, Chennai, Tamilnadu - 600034

GIST of the Complaint:

Complainant vide complaint dated **15.09.2020** submitted that presently he is posted at Chennai Zone as an Inspector and his home town is Bihar, therefore, he has requested for transfer on "Loan Basis" to Patna Zone to look after his parents.

- 2. The matter was taken up with the Respondent vide letter dated **08.12.2020** under Section 75 of the RPwD Act, 2016.
- 3. In response, Additional Commissioner, O/o the Principal Chief Commissioner of GST and Central Excise, Tamilnadu and Puducherry Zone vide letter dated **24.12.2020** inter-alia submitted that they are not considering any application from officers requesting for transfer on loan basis due to acute shortage of vacancies in the cadre of Inspectors in Chennai Cadre Control Zone. However, Shri Birendra Kumar has applied for Deputation to the Directorate General of Vigilance, North Zonal Unit, New Delhi and NOC has been issued on 09.06.2020. If his deputation request as mentioned above is accepted by Directorate General of Vigilance, North Zonal Unit, he can go on deputation.





Observation/Recommendations:

- 4. In light of the facts and material available on record, the reply of the respondent was found satisfactory. There appears no discrimination on account of disability being a policy issue as a whole.
- 5. The case is accordingly disposed off.

(Upma Srivastava) Commissioner for

Persons with Disabilities

Dated: 02.02.2021







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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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Case No. 12449/1014/2020

Complainant:

Ms. Subharomi Das,
Near Victoria Biscuit Factory
Malancha Road,
Kharagpur Town,
Nimpura,
West Midnapur,
West Bengal – 721 304

Versus

Respondent:

Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, No.40/C, Chittaranjan Ave., Chandni Chawk, Kolkata – 700 012.

Disability: 100% visual impairment

Gist of Complaint:

The complainant vide her complaint dated 23.11.2020 has submitted that she had applied for the post of Gramin Dak Sevak Service during 2018 under visually impaired category against an advertisement of Indian Postal Department. On 11.09.2020, she received a letter confirming her selection and she was called for document verification on 06.10.2020 at Srirampur Sub-Division Office. She made herself present for document verification as advised. On 22.10.2020 she received a letter asking her to join the training session to be held in Srirampur Sub-Division office and partly in Baruipara Branch office on 03.11.2020. She attended the training session from 03.11.2020 to 16.11.2020. On 17.11.2020 when she went to the Srirampur Sub Division Office to collect the joining letter, she was not given the letter. When she inquired about it, she was told that she cannot be issued the appointment letter as she is a person with 100% visual impairment. She is going through extreme pain and grief after this incident and she is feeling insulted especially being rejected after going through all the laid down formalities.

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2. No comments have been received from the Respondent.

OBSERVATION AND RECOMMENDATION:

- 3. The complainant suffers from 100% Visual Impairment. The grievance of the complainant is against her non appointment despite being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.
- 4. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.
- 5. The complainant is fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.
- 6. Hence, this court recommends that Respondent shall appoint the Complainant as per the test results and shall give her opportunity for at least 6 months. Further if the Complainant is able to carry out her duty efficiently then the Respondent shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.

7. The case is disposed off.

Dated: 03.02.2021

(Upma Srivastava) Commissioner for

Persons with Disabilities







COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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Case No: 12006/1023/2020

Complainant: Shri Mahipal, R/o B - 476, Bhowaput, Kausambi, Ghaziabad, Uttar

26167 Pradesh

Respondent: The Director General, Ministry of Housing & Urban Affairs, Central

Public Works Department, A – Wing, Room No. 101, Nirman

Bhawan, New Delhi

Complainant 40% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **08.01.2020** submitted that he has been working in Horticulture Division, CPWD as LDC on contract basis for last 07 years and now department is in the process of getting out to him.

- 2. The matter was taken up with the Respondent vide letter dated 13.10.2020 under Section 75 of the RPwD Act, 2016. But despite reminder dated 16.11.2020, no response has been received from the respondent. Therefore, the case was listed for personal hearing on 22.01.2021.
- 3. In response, Dy. Director (Admn. III), Directorate, CPWD vide letter dated **08.12.2020** submitted that Shri Mahipal was working as contractual worker in Horticulture Division No. 05, CPWD outsourced through a Contractor. Since the contract expired on 19.11.2019 and regular MTS were posted through SSC there was no need to extend the contract.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>22.01.2021</u>. The following were present:

• Shri Mahipal - Complainant

Respondent - absent





Observation/Recommendations:

- 4. Complainant submitted that he was working on the post of Lower Division Clerk. Later he was transferred to place away from his home and at his new place of posting he was given the job of 'Maali'. His salary was also reduced.
- 5. Respondent submitted that he was a contractual employee outsourced through a contractor. His contract expired and another person was posted as MTS through SSC.
- 6. Cause of grievance emanates from the act of the Contractor through which the Complainant was employed. It is gross injustice with a Divyangjan to reduce his salary and to post him away from his home.
- 7. Section 2(y) of Rights of Persons with Disabilities Act, 2016 defines 'Reasonable Accommodation'
 - 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. Further Section 3(5) of the Act lays down that appropriate government shall take measures to ensure reasonable accommodation for persons with disabilities.
 - Section 3(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.
- 9. Therefore, this court concludes that the Respondent establishment is duty bound to ensure that the Divyangjan who was employed in the office of the Respondent establishment shall be posted nearby to his home. Further, his salary shall not be reduced from what he was being paid when he was employed in the Respondent establishment.





- 10. Hence, this court recommends that Respondent establishment shall make efforts to employ the divyang Complainant in its establishment. Further, Respondent establishment shall take up the matter with the Contractor through which the Complainant was employed and shall ensure that new place of employment of the Complainant is not far away from his home and his salary is not reduced.
- 11. The case is disposed off.

(Upma Srivastava)

Commissioner for

Persons with Disabilities

Dated: 08.02.2021







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Case No.12345/1111/2020

Complainant:

Shri Harish Kumar Jhamb, 1/63, Govind Puri, Kalkaji, New Delhi-110019;

Email: hrj1969@yahoo.com; Mobile: 9868726161

Respondent:

The Deputy Commissioner of Police, Security, Delhi Police Security Headquarters, Vinay Marg, Chanakyapuri, New Delhi 110021 Email: dcp.secsg@delhipolice.gov.in

1. Claims made by the Complainant

- 1.1 Shri Harish Kumar Jhamb, M-55, a person with 75% Locomotor Disability (Cerebral Palsy), filed a complaint received on 08.10.2020 regarding unauthorized/illegal occupancy of his house premise by the tenant, Mrs. Manisha, a constable in Delhi Police, posted at Security Line, Vinay Marg, New Delhi.
- (Basement), Govind Puri, Kalkaji to Mrs. Manisha on 04.10.2019 on a monthly rental basis of Rs.8,500/- per month excluding electricity and water charges. He alleged that she stopped giving rent from February, 2020. The rental income was the only source of income for the livelihood of his family. He stated to have approached DCP (South East), SHO, Govind Puri, Delhi. He requested Mrs. Manisha either to pay rent or vacate the premise occupied by her. But she is using her official capacity of police personnel; she behaved rudely with him and threatened him of dire consequences if he reported this matter to any one further. He requested to safeguard the interest of a disabled person and his family.

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2. Submissions made by the Respondent:

On taking up the matter, the Deputy Commissioner of Police, Security (HQ), New Delhi filed their reply dated 22.12.2020 and submitted that the complaint/matter is related to tenancy dispute between landlord and tenant, which is civil in nature and no police action is required. However, Departmental action is being taken against W/Constable, Manisha No.3048/SE (now 3877/Sec.) who is presently posted in Security Unit.

3. Submissions made in Rejoinder:

The complainant in his rejoinder received on 18.01.2021 submitted that the reply made by the DCP, Security (HQ) is based on safeguarding the interest of its own employee without going into the depth of the case and seeing the gravity of the situation. Personnel of an organisation like Delhi Police cannot be left out by merely saying that it is the matter of dispute of tenancy. It cannot be said that without the knowledge of the organisation the lady constable, Manisha is living in the premise of Kalakaji Police Station in House No.H-20. Delhi Police is tilting the issue which is quite contrary to the situation and case. Departmental action taken report as well as the further plan of vacancy of the grabbed premise which is in locked condition without any rent may be called from the Delhi Police. The rent due be ordered to be paid from Ms. Manisha and the premise be vacated.

- 4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.02.2021.** The following were present:
 - (1) Shri Harish Kumar Jhamb, complainant
 - (2) Shri Satvir Singh, ACP/HQ/Security, for respondent

5. Observation/Recommendations:

5.1 Complainant submitted before the court that a lady Constable of Delhi Police has occupied the property of the complainant in the capacity of a tenant. After few months she stopped paying rent and warned the complainant that if he will take any legal action then she will file false complaint against the complainant. The complainant also informed the Court that apart from the rent (his source of livelihood) there are some fixed expenses related to the property which are incurred by him and the lady constable, who is an illegal occupant of the property, is not paying even a single rupee towards the rent due.



- 5.2 The complaint was taken up with Delhi Police. During the online hearing on 05/02/2021, respondent informed the Court that departmental inquiry has been initiated against the lady constable. The inquiry was initiated on 29/01/2021 and is at initial stage and appropriate action will be taken as per the evidences which will be submitted by both the parties.
- 5.3 The Court observed that in such cases where a property is occupied illegally, police is normally approached for eviction. However, contrary to this in the present complaint, a lady constable of police is herself harassing the complainant.
- 5.4 This Court further observed that miscarriage of justice is being carried out by a representative of Delhi Police which should not be taken lightly by her superiors. As evident from the hearing held, the condition of the complainant is pathetic who has been reduced to a hand to mouth existence on account of loss of the basic source of his livelihood, i.e. the rental from his flat.
- 5.5 The respondent shall note that this is not merely a matter of civil nature but a matter of abuse of a person with disability by a representative of the government and provisions of Section 7 of the Rights of Persons with Disabilities Act, 2016 are attracted in this case which are as under:
- "7. (1) 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—
 - (a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;
 - (b) take steps for avoiding such incidents and prescribe the procedure for its reporting;
 - (c) take steps to rescue, protect and rehabilitate victims of such incidents; and
 - (d) create awareness and make available information among the public.
- (2) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur.

- (3) The Executive Magistrate on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability including an order—
 - (a) to rescue the victim of such act, authorising the police or any organization working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be;
 - (b) for providing protective custody to the person with disability, if such person so desires;
 - (c) to provide maintenance to such person with disability.
- (4) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of—
 - (a) his or her right to apply for protection under sub-section (2) and the particulars of the Executive Magistrate having jurisdiction to provide assistance;
 - (b) the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities;
 - (c) the right to free legal aid; and
 - (d) the right to file a complaint under the provisions of this Act or any other law dealing with such offence:

Provided that nothing in this section shall be construed in any manner as to relieve the police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

- (5) If the Executive Magistrate finds that the alleged act or behaviour constitutes an offence under the Indian Penal Code, or under any other law for the time being in force, he may forward the complaint to that effect to the Judicial or Metropolitan Magistrate, as the case may be, having jurisdiction in the matter."
- 5.6 Given the seriousness of the situation and the assurance given by the respondent that necessary action will be taken towards redressal of the complainant's grievance, the following is recommended for immediate implementation by the respondent:
 - (a) Expeditious conclusion of the departmental inquiry and ensuring justice.
 - (b) Imposition of considerable penalty on the lady police constable including suspension from the service and recovery of the entire due amount of rent for cheating a person with disability.



- (c) Till such time the inquiry is over, the rental amount be deducted from the salary of the lady constable and deposited in the account of the complainant to ensure that he can live a dignified life.
- 5.7 Accordingly the case is disposed off.

Dated: 08.02.2021

(Upma Srivastava) Commissioner

for Persons with Disabilities







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

Case No. 12252/1011/2020भारत सरकार∕Government of India

Complainant:

Dr. Nitesh Kumar Tripathi, H.No.B-241, Gali No.11, 'B' Block, Sant Nagar, Burari,

Delhi - 110 084.

Respondent:

State Bank of India (Through the Chairman) Rourkela Steel Plant, Odisha - 769 001/

Disability

65% locomotor

Gist of Complaint:

The complainant vide his complaint dated 22.08.2020 submitted that State Bank of India, Mumbai had through an Advertisement No.CRPF/SCO/2019-20/12 had advertised for filling up some vacancies of Bank Medical Officers during the year 2019. Two PwD candidates including the complainant attended the interview at Chandigarh for the post of BMO in December 2019 but none was recruited against the three reserved vacancies for PwDs without interchanging with available suitable PwD candidates whereas the vacancies must be filled even by interchanging among the sub categories of PwD under DoP&T O.M. dated 15.01.2018. submitted that this is a matter of non implementation of Section 34(2) of Rights of Persons with Disabilities Act, 2016 which clearly mentions about filling up atleast 4% vacancies by interchanging among available vacancies. He submitted that there must not be dual standard while dealing with matter of persons with disabilities in any recruitment exercise. The complainant has requested to fill up the 3 unfilled vacancies of Bank Medical Officers in SBI by interchanging the unfilled vacancies from the available candidates of disabilities who appeared in the interview in the year 2019.

The General Manager, State Bank of India vide letter no. CRPD/P&C/SAT/2020-21/440 2. dated 27.11.2020 submitted that there were three (03) vacancies reserved for persons with disabilities out of which two (02) were for locomotor disabilities and one for other category. Against two (02) vacancies reserved for locomotor disabilities, 09 (Nine) candidates were called for The one (01) vacancy reserved for others has Two candidates were selected. interview. remained unfilled due to unavailability of candidate for selection under this category. This one (1) unfilled vacancy will be carried forward to the succeeding recruitment year and interchange, as the case may be, will be decided in the succeeding recruitment for the post.

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरमाषः 23386054, 23386154; टेलीफेंसि : 23386066 Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001; Tel.: 23386054, 23386154; Telefax : 23386006



Observation/Recommendations:

- In the light of the documents available on record, the case is disposed off with the following 3. recommendations to the Respondent:
- As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, 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 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.

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 person 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.

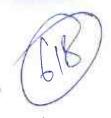


- 24)
- 5. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any person 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
- 6. 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.
- 7. Accordingly respondent is recommended to adhere with the provisions of RPwD Act, 2016 and circular issued by Govt. Of India for appointment of Persons with Disabilities. It is further recommended to ensure that the rights of persons with disabilities shall not be infringed.
- Accordingly the case is disposed off.

Dated: 08.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







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. 12288/1013/2020

Complainant:

Shri Kartik Santra, Vill: Khosha, P.O.: Tilabani, P.S.: Lalgarh, Dist.: Jhargram,

West Bengal - 721 504.

Versus

Respondent:

Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, No.40/C, Chittaranjan Ave., Chandni Chawk, Kolkata – 700 012.

Disability: 100% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 16.09.2020 submitted that he has been selected to the post of GDS Packer at Lalgarh S.O under Jhargram H.O., West Midnapore in the Cycle-1 of GDS Recruitment of West Bengal Postal Circle against their Notification No. RECTT/R-100/ONLINE/GDS/VOL-VI dated 05.04.2018. After receiving the Letter of Intimation, he went to the office of the ASP Midnapore Sub Division on 11.02.2020 for document verification. After the verification of documents, he was told that he is not suitable for the post since he is a 100% visually impaired person. Even he did not receive the Provisional Selection Letter. On 14.12.2020, he was provided with a pdf file by the West Bengal Postal Circle which contained wrong information regarding his post, i.e. GDS Packer. Instead of Packer-1, he has been provided with the information related to MC post.

2. The Assistant Director of Postal Services (Recruitment), O/o the Chief Postmaster General, West Bengal Circle vide letter no. Rectt./R-100/GDS/Cycle-1/PH/2020 dated 14.12.2020 submitted that a Notification for GDS online selection-cycle-I for filling up of 5778 posts of GDS



21.



MP, GDS MC & BPM was issued under no. Recct./R-100/Online/GDS/Vol-VI dated 05.04.2018 out of which 220 posts were reserved for PH candidates. In para-M of their Office notification dated 05.04.2018, permissible disability in respect of 'PH' candidate for GDS Mail carrier post were -OL (One leg affected), Low Vision (LV) & Hearing Impaired (HH). Inspite of declaration of eligibility criteria in respect of 'PH' candidate for the post of GDSMC in the notification dated 05.04.2018, the complainant submitted online application for the post of GDS-MC which was reserved for 'Low Vision', though he is a person with 100% blindness and not eligible for the post. foregoing facts it is clearly established that the complainant knowingly submitted online application though he was not eligible for the post of GDSMC as per the notification. The Respondent submitted that the criteria for online selection to the post of GDS was only the marks obtained in 10th Standard of approved Boards aggregated to percentage to the accuracy of 4 decimals and the selection was made as per automatic system generated merit list based on the candidate's online submitted application in accordance with the selection criteria as mentioned in para -N(1) & (2) of their office's notification dated 05.04.2018. As per online selection process the candidate who secured highest percentage of marks in 10th standard automatically received an SMS for his provisional selection on the prescribed date followed by system generated intimation letter. Shri Kartik Santra, the complainant secured highest percentage of marks in 10th standard amongst the applications applied online for the same posts and the system considered him as 'selected' for the post being more meritorious (highest% of marks) and simultaneously online 'sms' was generated to The Respondent submitted that it is pertinent to the selected candidate from the software. mention here that GDS are not Government Employees and are not getting salaries like other Government services. GDS are appointed as extra departmental agents and they get allowances for 3 hours or 5 hours of service in a day. Moreover, the duty of Mail Carrier is to carry mailbag containing registered articles, parcels, insured articles and other valuable documents and cash upto certain limit from one post office to another post office. The said work is not suitable / fit for 100% blind candidate as decided by the competent authority.

3. The complainant vide his rejoinder dated 03.01.2021 submitted that the Respondent is violating the Rights of Persons with Disabilities Act, 2016 by denying the blind candidates to apply for the post of GDS posts. He submitted that at the time of filing online application form for the post of GDS Mail Carrier, he had clearly mentioned that he is a person with blindness as there was3/-





an option for blind candidates in the application form. He did not suppress any kind of information to the Respondent. He further stated that the Respondent knowingly selected him for the post of GDS Mail Packer. He submitted that many blind candidates were selected in the Cycle-1 GDS Recruitment and some of them are even working in their Branch Post Offices without any problem whereas he is still waiting for the appointment letter. He submitted that he has been selected for the post of GDS Mail Packer on merit.

- 4. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 29.01.2021.
- 5. The following persons were present during the hearing;
 - 1) Shri Kartik Santra, the complainant.
 - 2) Ms. Preeti Rai, Assistant Director of Post, for Respondent.

OBSERVATIONS & RECOMMENDATIONS

- 6. These batch of complaints is filed by 3 Divyangjans who suffer from 100% Visual Impairment. Common grievance expressed in the complaints is non appointment of the Complainants despite of being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.
- 7. Respondent has submitted in its Reply that the whole selection process was completely automatic and was carried out using computer software without intervention of human beings. Complainants were selected on the basis of marks they secured in their Class 10th examination. No interview or written examination was conducted. The post for which the recruitment was carried could not be filled with Divyangjan suffering from 100% Visual Impairment.
- 8. The Respondent stated that as per Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities, if any post is already held by a Persons with Disabilities, it shall be automatically deemed to have been identified for Divyangjans. Moreover, Respondent informed that at the stage of filling up of Application Forms, no candidate was given opportunity to mention their disability sub category. Hence, names of Divyangjans suffering from 100% Visual Impairment could not be eliminated at the initial stage itself.
- 9. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.



- 10. Contention on the part of the Respondent that such candidates will not be able to perform the duties of a GDS is found to be presumptuous. The complainants are fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.
- 11. Hence, this court recommends that Respondent shall appoint the Complainants as per the test results and shall give them opportunity for at least 6 months. Further if the Complainants are able to carry out their duty efficiently then the Respondents shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.
- 12. The case is disposed off.

Dated: 08.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन संशक्तिकरण 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. 12033/1011/2020

Complainant:

Shri Puneet Kumar Singh, Chandmari Colliery, Near Central Workshop, Dhansar, Dist. Dhanbad, Dhanbad, Jharkhand – 828106.

Versus

Respondent:

Coal India Limited, (Through Chairman-cum-Managing Director) Coal Bhawan, No.04 MAR, Plot No.-AF-III, Action Area-1A, New Town, Rajarhat, Kolkata – 700 156.

Disability: 42% Locomotor

Gist of Complaint:

The complainant vide his complaint dated 09.06.2020 submitted that he has done Diploma in Mining from Govt. Poly Institute, Dhanbad. The subsidiaries of Coal India Limited has advertised for the post of Overman or Mining Sirdar but there was no quota reserved for PwDs. In the year 2019 he gave CSIR-CIMFR examination for the post of Technical Assistant Gr.III(i), but did not get any benefit under PwD quota. Then he gave examination for B. Tech in JCECEB, but in this case as there was no benefit of PwDs inspite of getting rank 1 in PH, he could not register his name. He feels that he has wasted his time by doing course in mining. His submitted that if there is no quota for reserved persons with disabilities in Mining then why the registration is being done for pwds.

...2/-



2. The Coal India Limited vide letter dated 15.12.2020 submitted that as per the list of identified posts, the post of Mining Sirdar is not identified for reservation for persons with disabilities. The Respondent submitted that Shri Puneet Kumar Singh appeared for the written examination for the post of mining Sirdar held on 30.12.2018, however, he didn't qualify in the said examination. Another subsidiary of CIL, i.e. WCL, has mentioned that the complainant had applied for the post of mining Sirdar against notification no. 2610 dated 05.09.2018 and had qualified in the examination, wherein his name was kept in general waiting list No.461. The recruitment process has been completed and the waiting panel is not valid at present. As per the information furnished by BCCL, no advertisement for outside recruitment had been issued in the last 3 years. As such, the question of Shri Singh applying in BCCl does not arise. NCL, a subsidiary of CIL, has stated that the complainant did not apply for the post of Mining Sirdar. The Respondent submitted that CIL and its subsidiaries are abiding the guidelines as mentioned in the RPwD Act, 2016.

The General Manager (P/IR), Western Coalfields Limited submitted that WCL had issued a Notification 2601 dated 05.09.2018 for recruitment to the post of Mining Sirdar/Shot Firer in T&S Grade C, which is a Group 'C' post. The post of Mining Sirdar / Short Firer is not a post identified for reservation for persons with disabilities in CIL. The person selected from the above notification has to perform job of Mining Sirdar / Short Firer in the Coal Mines operated by the Western Coalfields Ltd and thereore these persons are to be medically fit as per the provisions of Mines Rules, 1955. Even if Shri Puneet Kumar Singh had obtained rank at the level qualifying for selection to the post, his appointment could have been declined as he is not medically fit for the post. Howeve, he had not secured required marks in the written examination conducted to make him eligible for further process selection. The post which the applied is not reserved for persons with disability and cannot be reserved with PwD in view of standards of fitness stipulated for persons employed stipulated under Mines Rules 1955.

- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 02.02.2021.
- 4. The following persons were present during the hearing;
 - 1. Complainant -In person
 - 2. Respondent Ajay Kumar Chaudhary

OBSERVATIONS & RECOMMENDATIONS

5. Complainant applied for the post of Mining Sirdar. He submitted that he is academically qualified person having qualified Diploma in Mining from Government Polytechnique Institute, Dhanbad.

....3/-

- 3)
- 6. Respondent in its reply submitted that post of Mining Sirdar is not identified for Divyangjans, hence, vacancies for the post were not reserved for PwDs.
- 7. During online hearing Respondent assured that considering the academic qualification of the Complainant a personal meeting will be arranged with the Complainant at Dhanbad and proper guidance/information with respect to jobs and recruitments of PwDs in respondent establishment or other establishments shall supplied.
- 8. Employment is an indispensable necessity for leading a dignified life. Employment provides economic independence and liberty to take decisions. Chapter IV of Rights of Persons with Disabilities Act, 2016 provides Employment opportunities to Divyangjans. Therefore, taking into consideration the Employment Rights as guaranteed under the statue, importance of Employment for Divyangjans and Respondent's willingness to assist a Divyangjan, this court expresses its satisfaction with the assurance given by the Respondent establishment and recommends that Respondent establishment shall fulfil its promise of arranging a personal meeting with the Complainant as soon as possible and shall provide necessary guidance and assistance with respect to employment opportunities.

Dated: 08.02.2021

(Upma Srivastava)

Commissioner for Persons with Disabilities





(32)

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. 12058/1011/2020

Complainant:

Shri Rahul Sharma, B-2/5, Sector No.4, Vinay Nagar, Lashkar, Gwalior, Madhya Pradesh – 474 012

versus

Respondent:

Chief Postmaster General, M.P. Circle, Circle Dak Bhavan, Hoshangabad Road, Bhopal – 462 012.

Disability

90% Deaf and Dumb.

Gist of Complaint:

The complainant vide his complaint dated 18.06.2020 submitted that the Deptt. of Posts, M.P. Circle had advertised for the post of Gramin Dak Sevaks vide Advertisement No. CYCLE-II/2019-2020 MADHYA PRADESH CIRCLE ESTT/14-02/GDS VACANCY/2nd CYCLE/20. complainant had applied for the post of Gramin Dak Sevaks against their above advertisement. The complainant found The vacancies were advertised for hearing impaired under PH quota. difficulty in filling the online application as in the option of total marks obtained has only option of either Board of Secondary Education, M.P. Bhopal (PH-HH-VH) with Grand Total of 450 marks or Board of Secondary Education, MP.Bhopal (PH-HH-VH) with Grand Total of 600 marks. submitted that in Madhya Pradesh a deaf or blind student can pass the matriculation examination with four subject which contains a total of 400, i.e. 100 marks per subject. There was no option in the online application to mention the marks obtained out of a total 400 marks and therefore, he could not apply to the post of Gram Dak Sevaks. He has requested this Court to direct the Deptt. of Posts, West Bengal Circle to amend it online fields of the application form in consensus with the MP. Board of Secondary Education Circular by adding the option of 400 grant total marks in the online application form so that he and other persons like him can apply to the post of Gram Dak In the year 2018 too the Postal Deptt. did the same thing when it advertised for Sevaks. recruitment to the post of Gram Dak Sevaks. After the intervention of the Chief Commissioner for Persons with Disabilities the advertisement was rectified and deaf candidates were allowed to apply to these posts of GDS.

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली—110001; दूरमाष: 23386054, 23386154; हैलीफैक्स : 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 (कपया भविष्य में पत्राचार के लिए उपरोक्त फाईल / केस संख्या अवश्य लिखें)

Breye



- The Asstt. Director (Estt./Rectt), O/o the Chief Postmaster General, M.P. Circle vide letter 2. No. Estt/14-02/GDS Online/Legal Case dated 17.11.2020 submitted that a notification inviting applications online from eligible candidates for selection and engagement to the posts of Gramin Dak Sevaks was issued by M.P. Circle vide notification No. ESTT/14-02/GDS VACNCY/2nd The Secondary School Examination pass certificate of 10th CYCLE/20 dated 08.06.2020. standard with passing marks in Mathematics, local language and English (having studied as compulsory or elective subjects) conducted by any recognized Board of School Education by the Government of India / State Governments / Union Territories in India shall be a mandatory educational qualification for all approved categories of Gramin Dad Sevaks. The candidates who have passed Xth class examination in first attempt will be treated s meritorious against those passed compartmentally. As per the Mark Sheet of the complainant Shri Rahul Sharma, he has passed in the subjects, i.e. Hindi (General), Mathematics, Drawing and Social Sciences but has not studied English which is a mandatory Educational Qualification for filing form online for GDS Cycle-II. Therefore, the complainant does not fulfill the requirement for the posts of GDS. As regards the complainant's allegation that he could not apply to the post online due to some problem, it is due to fact that the complainant has not studied mandatory subject English and not due to nonavailability of option of total marks obtained, i.e. 'Board of Secondary Education, MP. Bhopal (PH-VH-HH) Grand Total-400'. The Respondent submitted that M.P. Circle Bhopal has followed the instruction of Department of Posts in true letter and spirit while issuing notification for online engagement of GDS posts.
- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 02.02.2021.
- 4. The following persons were present during the hearing;

1) Shri Gyanendra Purohit, Advocate for complainant.

2) Respondent – Rita Garg, Assistant Director (Recruitment), Office of CPMG, M.P. Circle

OBSERVATIONS & RECOMMENDATIONS

5. Respondent establishment issued advertisement inviting applications against vacancies of Gramin Dak Sevak. Complainant could not apply against the post because he did not study 'English' subject in 10th standard. Respondent submitted that one of the essential eligibility criteria for applying to the post was study of 'English' subject in 10th Standard. Since the Complainant did not study 'English' in 10th standard hence he was not eligible for the post and therefore could not apply for the post.



- 6. During online hearing Respondent was asked to explain the rationale behind making 'English' as essential for recruitment on the post of Gramin Dak Sevak. In response Respondent cited Letter No 17-02/2018-DGS, issued by Department of Post, titled as 'Revised Eligibility Criterion for GDS Posts'. As per the letter cited, study of 'English' as elective or compulsory subject in 10th Standard is necessary eligibility criterion for selection to the post of GDS.
- 7. Issue needs to be examined under the light of Section 2(y), 3(1), and 3(5) of Rights of Persons with Disabilities Act, 2016.
- 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;
- SECTION 3(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.
- SECTION 3(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.
- 8. In order to fulfil its duties under Section 3(1), appropriate government has to provide reasonable modifications and adjustments. Right to equality as guaranteed under Section 3(1) of RPwD Act, 2016 includes Right to Equity. Equality and Equity are different rights with same objective. Equality means each individual or group of people is given the same resources or opportunities. Equity recognizes that each person has different circumstances and allocates the exact resources and opportunities needed to reach an equal outcome. In our social system its critical to remember that social systems are naturally inequitable. Sometimes these are designed to reward specific group of people. Therefore, though unintentional, these systems are rooted with discriminatory practices. Therefore, statute provides concept of 'reasonable accommodation, defined in Section 2(y) and guaranteed under Section 3(5) of RPwD Act, 2016. Reasonable Accommodation is 'modification' or 'adjustment' to make resources equally accessible for Divyangjans who are naturally placed at disadvantageous position in the society.
- 9. Making study of 'English' compulsory for recruitment on the post of Gramin Dak Sevak, makes it discriminatory practice for a Divyangjan. Divyangjans are allowed to study only 4 subjects, instead of 5, in 10th standard. Hence, in order to expect a Divyangjan to necessarily study 'English' subject is discriminatory and bereft reasonability.



- 10. Moreover, a corollary can be drawn from other elite competitive examinations like Civil Services Examination, which does not require study of 'English' subject a necessity for appointment.
- 11. Therefore, this court recommends that Respondent shall make suitable modifications and adjustments and hence essential eligibility requirements shall be changed for Divyangjans. This court recommends that for Divyangjans the Respondent shall remove study of 'English' as essential requirement for appointment. If Respondent considers that English is important for optimum performance of the job of Gramin Dak Sevak then study of 'English' in 10th Standard can be made desirable or selected Divyangjans may be given post recruitment 'English' subject classes.

Dated: 08.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







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. 12244/1013/2020

Complainant:

Shri Somnath Hembram,

Vill: Nanubazar,

P.O.: Choto Sangra,

P.S.: Sainthia,

Dist. : Birbhum,

West Bengal - 731 201.

versus

Respondent:

The Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, No.40/C, Chittaranjan Ave., Chandni Chawk, Kolkata – 700 012.

Disability: 100% visual impairment

Gist of Complaint:

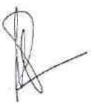
The complainant vide his complaint dated 20.08.2020 submitted that he has been selected for the post of GDS BPM at Fulur B.O. under Suri Head Post Office in Birbhum in the Cycle-1 GDS Recruitment of West Bengal Circle against Notification No. Rectt./R-100/ONLINE/GDS/VOL-VI dated 05.04.2018. After receiving the letter of intimation, he went to the office of the Superintendent of Post of Suri Sub Division on 11.02.2020 for verification and genuineness of documents/certificates. After verification, when he reached their office on 28.02.2020 along with the duly filled forms, i.e. Attestation Form, Form of Character Certificate and Form of Medical Fitness Certificate. The complainant was told that he is not suitable for the post since he is a person with 100% visual impairment. He has received provisional selection letter but he was not called for the training yet. He further submitted that he applied for the post reserved for a person with disability like him and also got selected on merit, but has not received the appointment letter so far.

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- The Assistant Director of Postal Services (Recruitment), O/o the Chief Postmaster 2. General, WB Circle vide letter ro. Rectt./R-100/GDS/Cycle-I/PH/2020 dated 14.12.2020 submitted that a notification for GDS online selection-cycle-I for filling up of 5778 posts of GDS MP, GDS MC & BPM was issued under no. Rect./R-100/Online/GDS/Vol-VI dated 05.04.2018 out of which 220 posts were reserved for PH candidates. The permissible disability in respect of 'PH' candidate for GDS Mail Carrier post were One Leg Affected (OL), Low Vision (LV) and Hearing Impaired (HH). Inspite of declaration of eligibility criteria in respect of 'PH' candidate for the post of GDSMC in the notification dated 05.04.2018, the complainant submitted online application for the post of GDS-MC which was reserved for 'Low Vision' candidates, though he is 100% blind and not eligible for The complainant has knowingly submitted online application through he was not eligible for the post of GDSMC as per notification. The Respondent submitted that the criteria for online selection to the post of GDS was only the marks obtained in 10th Standard of approved Boards aggregated to percentage to the accuracy of 4 decimals and the selection was made as per automatic system generated merit list based on the candidate's online submitted application in accordance with the selection criteria. As per online selection process the candidate who secured highest percentage of marks in 10th standard automatically received an SMS for his provisional selection on the prescribed date followed by system generated intimation letter. Shri Somnath Hembram, the complainant secured highest percentage of marks in 10th standard amongst all the candidates applied online for the post and the system considered the complainant as 'selected' for the post being more meritorious (highest %age of marks) and simultaneously online 'sms' was generated to the selected candidate from software. Mere getting sms or any other communication on selection will not entitle the candidate to claim for regular selection/appointment. The final selection is based on satisfactory completion of verification & genuineness of all required documents produced by the candidates in support of his/her eligibility for the post in accordance with notification by the Recruiting Authority. The Respondent submitted that it is pertinent to mention here that GDS are not Government Employees and are not getting salaries like other Government services. GDS are appointed as extra departmental agents and they get allowances for 3 hours or 5 hours in a day.
 - 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 29.01.2021.



- The following persons were present during the hearing;
 - 1. Shri Somnath Hembram, the complainant.
 - 2. Ms. Preeti Rai, Assistant Director of Post, for Respondent.

Both parties were heard.

OBSERVATIONS & RECOMMENDATIONS

- 5. These batch of complaints is filed by 3 Divyangjans who suffer from 100% Visual Impairment. Common grievance expressed in the complaints is non appointment of the Complainants despite of being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.
- 6. Respondent has submitted in its Reply that the whole selection process was completely automatic and was carried out using computer software without intervention of human beings. Complainants were selected on the basis of marks they secured in their Class 10th examination. No interview or written examination was conducted. The post for which the recruitment was carried could not be filled with Divyangjan suffering from 100% Visual Impairment.
- 7. The Respondent stated that as per Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities, if any post is already held by a Persons with Disabilities, it shall be automatically deemed to have been identified for Divyangjans. Moreover, Respondent informed that at the stage of filling up of Application Forms, no candidate was given opportunity to mention their disability sub category. Hence, names of Divyangjans suffering from 100% Visual Impairment could not be eliminated at the initial stage itself.
- 8. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.
- 9. Contention on the part of the Respondent that such candidates will not be able to perform the duties of a GDS is found to be presumptuous. The complainants are fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.

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- 10. Hence, this court recommends that Respondent shall appoint the Complainants as per the test results and shall give them opportunity for at least 6 months. Further if the Complainants are able to carry out their duty efficiently then the Respondents shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.
- 11. The case is disposed off.

Dated: 08.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







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. 12395/1011/2020

Complainant:

Shri Pardeep Chand,

Vill: Nadouli,

Post: Mahangupur Daher Nadouli,

Dist.: Azamgarh, Uttar Pradesh - 223223

Versus

Respondent:

Staff Selection Commission, (Through the Chairman), CGO Complex, Block No.12, Lodhi Road, New Delhi - 110 003

Disability: 40% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 05.10.2020 submitted that he had applied for the post of Stenographer Grade D Examination 2017 against an advertisement of Staff Selection Commission. He was advised to go to Lady Hardinge Medical College for joining. several visits to Delhi from Azamgarh (U.P) to Delhi to get his medical examination done. On 03.12.2019 he camped for 22 days in Delhi to get his medical examination done from AIIMS, Delhi. After number of medical examinations and mental, social and financial harassment, he was not allowed to join the said post.

The Under Secretary 9(C-1/2), Staff Selection Commission vide letter dated 07.01.2021 2. submitted that SSC had published an advertisement to the recruitment of Stenographer Grade 'C' and 'D' Examination 2017. Shri Pradeep Chand had applied for the said examination. The complainant was issued Admit Card with Roll No.3003009302 under category OBC (Code 06) and VH (Code 07) to appear for the Written Examination of Stenographer Grade 'C' and 'D' Examination 2017. The result of the Computer based examination to call candidates for skill test

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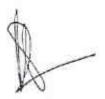


was published on 21.11.2017. Shri Pradeep Chand secured 71 marks in the said examination. The complainant's name figured in the list of qualified candidates in the Written Examination for Skill Test for the post of Stenographer Grade 'D'. Based on the performance in the written examination, Shri Pradeep Chand was called for Skill Test for the post of Stenographer Grade 'D' by the Regional Office of the Commission concerned. The complainant appeared for the Skill Test. He was issued the Admit Card for document verification. The final result of Stenographer Grade 'C' and 'D' Examination 2017 was declared on 29.03.2020. Shri Pradeep Chand was recommended for appointment as Stenographer Grade 'D' and was allocated Ministry of Health and Family Welfare. The Respondent submitted that the role of the Commission ends with the nomination of qualified candidates to the User Departments concerned and any further processes related to appointment of the candidate in the User Department concerned, viz, issuing of Appointment Letter, re-verification of Documents, conduct of Medical Examination etc. are undertaken by the User Department concerned. In the instant case, the User Department in respect of the applicant is the Directorate of General of Health Services, Govt. of India.

- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.02.2021.
- The following persons were present during the hearing;
 - 1. Shri Pardeep Chand, the Complainant.
 - 2. Ms. S. Lata, Deputy Secretary for the Respondent

OBSERVATIONS & RECOMMENDATIONS

5. The respondent informed the court that all necessary formalities for the appointment of Pradeep Chand were completed by SSC and as per the Orders of DGHS, GOI, Shri Chand had to report to Deputy Director Admin, Lady Hardinge Hospital for appointment. Complainant visited Hardinge hospital for medical examination. He was informed by one Ms. Kamla, from Admin to visit R M L Hospital for re-medical examination on 30.08.2019. Complainant visited R M L Hospital where he was subjected to medical test. Complainant informed the court that no problem was found, however, he was again asked to appear for re medical examination in AIIMS. Complainant visited AIIMS for re examination. On 03.1.2020 he was again subjected to medical re examination by one Shri G.P. Singh in room no. 134. After the medical examination he was not given medical report and was told that report will be sent to Lady Hardinge Hospital within 15 days. Complainant enquired in Lady Hardinge Hospital about his medical report, however, no information was given to



him. During online hearing respondent i.e., SSC informed this court that normally maximum time taken by the appointing authorities to appoint a candidate selected by SSC is one year. However, in this case even after expiry of 1 and half years complainant is being harassed and is not appointed even though after selection by SSC and several medical examinations.

- 6. In the present case neither DGSD MoH&FW nor Lady Hardinge hospital was made party by the complainant therefore submissions by either of the two were not given.
- 7. Respondent expressed its inability to take suitable measure because its role ended with selection and recommendation of the complainant. Further steps of the appointment can only be taken by the concerned authorities i.e., DGHS and Lady Hardinge hospital.
- 8. Therefore, this court recommends that DGHS and Lady Hardinge hospital take cognizance of this complaint and take necessary steps for the appointment of the complainant. Further, this court gives 30 days to DGHS and Lady Hardinge hospital to submit their reply on action taken by them in respect to the facts submitted by the complainant in the complaint and recommendation of this court, a copy of which is enclosed for ready reference.

Dated: 08.02.2021

(Upma Srivastava)
Commissioner for
Persons with Disabilities

The Directorate General of Health Services,
 Nirman Bhawan,
 Maulana Azad Rd,
 New Delhi, Delhi - 110011

Along with the complaint & recommendation for necessary action.

The Director,
Lady Hardinge Medical College & Smt. S.K. Hospital,Shaheed Bhagart Singh Marg,
New Delhi – 110 001.

Along with the complaint & recommendation for necessary action.

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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. 12529/1141/2021

Complainant:

Shri Chandra Shekhar Prasad Rajak, R.P.S. Mor, Beli Road, S.K. Puram Lane No.5, Danapur, Patna-801503 Email: cspdrajak@gmail.com

Respondent:

Director Housing -2
Delhi Development Authority,
DDA Awas Yojana-17, D-Block, 2nd Floor,
Vikas Sadan, INA, New Delhi-110023
Email: dirhous2@dda.org.in; agarwal.sp@nic.in

1. Gist of Complaint

- 1.1 Shri Chandra Shekhar Prasad Rajak, M-51, a person with 56.5% Locomotor Disability (both lower limbs) filed a complaint regarding refund of Registration Charges on account of filing objection against allotment of flat within the stipulated period of 90 days.
- 1.2 The complainant submitted that by the Order 17.12.2018 of this Court in complaint Case No.9018/1081/2017 filed by the complainant against DDA, he had been allotted a LIG Flat under SC+PD category under DDA Aawasiya Yojna 2017 at the ground floor bearing Flat No.143, Pocket C-1, Group-3, Siraspur by DDA vide their letter dated 23.04.2019. The complainant vide his letters dated 06.05.2019 and 15.07.2019 raised his objection against the allotment that Siraspur Location Sector is not habitable for persons with disabilities in terms of Section 40 of the Rights of Persons with Disabilities Act, 2016; and requested to change the Location Sector. He, vide letter dated 19.07.2019, further requested the respondent that in case the allotment under Siraspur Location is not changed, the allotment may be cancelled and Registration Money amounting to Rs.1.00 Lakh be refunded to him.

(Page 1 of 2)



2. Submission made by the Respondent:

2.1 The respondent filed their reply dated 08.01.2021 and inter-alia submitted that, vide their letter dated 01.07.2019, the complainant had been intimated that his request for change of location is not covered under the policy and also informed that as per Circular No.F.1((16)2015/Coordn.(H)Vol.II/890 dated 10.08.2017 and Clause 12b(i) of Aawasiya Yojna, 2017, after lapse of 90 days no refund of registration money is admissible. Since the request for cancellation of allotment was received within 90 days from the date of issue of demand-cumallotment letter, therefore, 50% registration amount is refundable as per Circular dated 10.08.2017. Vide letter dated 04.12.2019, the complainant had been informed that that Siraspur area is having all the civic amenities; and was advised to submit the documents for refund of registration amount and the same would be refunded after deduction of cancellation charges as per policy (50% of the registration money) and the required documents were also intimated to him vide letters dated 27.02.2020 and 24.07.2020. As per policy 50% of application money is refundable as per policy.

3. Submission made in Rejoinder:

3.1 The complainant filed his rejoinder dated 29.01.2021 and reiterated his claim. However, he added that had the DDA intimated him about no provision to change Location Sector during that period and/or at the time of the hearing before this Court, he would have been taken refund of the Registration Money amounting to Rs.1.00 Lakh getting the allotted flat cancelled.

4. Observation/Recommendations:

- 4.1 From the perusal of the documents, there is no discrimination on the grounds of disability, being a purely administrative issue. Complainant has to be aware of the rules/regulations himself.
- 4.2 The Court cannot intervene and the case is closed.

Dated: 09.02.2021

(Upma Srivastava)
Commissioner

for Persons with Disabilities







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. 12399/1011/2020

Complainant:

Ms. Rani Srivastav, B-Block, 189/190, Azad Nagar, Campwell Road, Balaganj, Lucknow-226003.

Versus

Respondent:

State Bank of India, (Through the Chief General Manager (HR), State Bank Bhawan, 16th Floor, Madam Cama Road, Mumbai – 400 021.

Disability: 50% Specific Learning Disability

Gist of Complaint:

The complainant vide her complaint dated 12.10.2020 submitted she applied for the post of Probationary Officer against Advt. no. CRPD/PO/2019-20/01 dated 01.04.2019 of State Bank of India. There were 20 vacancies reserved for candidates with Specific Learning Disabilities as well as other disabilities. She applied for the post of Probationary Office under Registration no. 1710602056. In the interview the complainant was given only one (01) mark in Group Exercise (GE) despite having performed well in the written test as well as in the interview. As the complainant was not selected, she made representations regarding her non selection to the post of Probationary Officer to the Chairman, SBI and various other authorities.

- 2. The General Manager, SBI vide letter dated 04.12.2020 submitted that State Bank of India has extended the following relaxations to person with disabilities in the Probationary Officer's recruitment.
- Relaxation of 10 years in maximum eligible age
- b) Relaxation of 5% in minimum qualifying marks in main examination and Group Exercise and Interview.

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- c) Relaxation in maximum permissible number of attempts
- d) Waiver of application fee.
- e) Additionally, visually impaired candidates and candidates with limitations in writing, including that of speed are also free to avail the undernoted facility for examination.
 - i) Extra time of 20 minutes of every 1:00 hours of Test and
 - ii) Facility of Scribe.

The Respondent submitted that recruitment of Probationary Officers is done through three-stage process, i.e. 1) Preliminary Examination, 2) Main Examination and 3) Group Exercise & Interview. The candidates have to qualify both the Preliminary and Main Examination separately. Ms. Rani Srivastav had appeared for Group Exercise and Interview of PO 2019 recruitment process at LHO Lucknow and secured '10' marks in Group Exercise and Interview (1 Mark in Group Exercise and 9 marks in Interview. The score of Ms. Rani Srivastav was less than the minimum qualifying score viz. 35% fixed for SC/ST/OBC/PwD (40% for Gen./EWS) and as such she did not qualify for the main examination. The same was communicated to the complainant through score sheet for Main Examination and Group Exercise and Interview.

- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.02.2021.
- The following persons were present during the hearing;
 - 1) Complainant: Shri Satyarth Sinha, Advocate
 - 2) Respondent: Shri Saurabh Srivastava, DGM

OBSERVATIONS & RECOMMENDATIONS

- 5. Complaint has alleged that she has not been selected for the post despite securing good marks in recruitment examination.
- 6. Respondent submitted that the recruitment examination consisted of three stages Preliminary Exam, Written Exam and Interview and Group Activity (last two parts of third stage). Minimum qualifying marks for each stage were prescribed and were essential to be achieved for passing the recruitment examination. Total marks of third stage, i.e. Interview and Group Activity were 50. Minimum qualifying marks prescribed for Divyang candidates were 35% as against 40% prescribed for non Divyang candidates. The Complainant scored 10 marks out of 50, which were less than minimum qualifying marks prescribed for passing the third stage.





- 7. Para 11 of DoPT OM No. 36035/02/2017 Estt (Res) dated 15.01.2018, prescribes that the Respondent shall provide relaxation in standards of suitability. This court concludes that the Respondent in the present Complaint has provided relaxed standards of suitability for Divyang candidates. Difference of 5% in minimum qualifying marks prescribed for Divyang and non-Divyang candidates is evidence of the same.
- 8. Hence, intervention of this court in the present Complaint is not warranted.

9. The case is disposed off.

(Upma Srivastava)

Persons with Disabilities

Dated: 09.02.2021







COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJÁN)

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. 12448/1014/2020

Complainant:

Shri Ravishankar Kumar, Vill: Bhavani Bigaha, Post.: Apsad,

Dist.: Navada, Bihar – 805 108.

Versus

Respondent:

Railway Recruitment Board, (Through the Secretary) Ministry of Railways, Rail Bhawan, Raisina Road New Delhi -110001

Disability: 60% Multiple Disability

Gist of Complaint:

The complainant vide his complaint dated 17.11.2020 submitted that Railway Recruitment Board had published an Advertisement No.RRC CEN 02/2018 on 10.02.2018 inviting online applications for the post of Group-D posts. He applied for one of the posts. He appeared in the CBT (Computer Based Test). He got selected in the examination. RRC Northern Railway directed him to get his Document Verification and Medical Test at DRM Office, New Delhi Railway Station. The Document Verification (DV) was cancelled a day before the test, i.e. on 16.03.2020 due to COVID-19 Pandemic. The complainant submitted that since then he has received no communication from Railways regarding the DV and Medical Test.

2. The Chairman, Railway Recruitment Cell vide letter dated 23.12.2020 submitted that Railway Recruitment Board published a notification for recruitment for the post of Group D. Shri Ravishankar Kumar appeared in the examination and was shortlisted for Document Verification and Medical Examination fixed at DRM Office, New Delhi on 17.03.2020 but these DV and Medical Examination fixed for 17.03.2020 and 18.03.2020 was postponed due to the spread of Corona Virus till further orders. As per the orders of Govt. of India, the using of Biometric Machines has been stopped till further orders. Therefore, only after removal/termination of Govt. of India orders, the competent authority will fix and re-schedule the same and it will be notified/updated to all the candidates by uploading the same at the official website of RRC.

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Observation/Recommendations:

- 3. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent :
 - a) to provide reservation to persons with disabilities strictly as per provisions under Section 34 of Rights of Persons with Disabilities Act, 2016.
 - b) to ensure disabled friendly environment to persons with disabilities especially at the time of examination and interview.
 - c) to ensure that barrier free facilities are provided in accordance with Rights of Persons with Disabilities Act, 2016.
 - d) This Court within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules, advises the respondent to be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.

4. The case is accordingly disposed off.

Date: 10.02.2021

(Upma Srivastava) Commissioner for

Persons with Disabilities







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. 11859/1011/2020

Complainant:

Q20214

Shri Kapil Khurana, G-71B, Tilak Vihar, Near B-20, Gurudwara, Tilak Nagar, Delhi – 110 018

Versus

Respondent:

North Eastern Railway, (Through the General Manager), 11,National Highway, 29, Betiahta, Gorakhpur, Uttar Pradesh – 273001.

Gist of Complaint:

Shri Kapil Khurana, Vice President, Diya (Diversified Intervention of Youth Awareness) on behalf Ms. Priyanka Chauhan and Shri Harbhajan Yadav vide his complaint dated 27.02.2020 submitted that North Eastern Railway conducted an Examination on 11.10.2018 for Group-D posts. In the examination 05 persons with visual impairment were finalised as per the final list published on 30.01.2020 but only name of three (03) candidates with persons with disabilities were mentioned,i.e. Shri Abhishek, Ms. Janealam and Shri Rahul. This is total mishandling and playing with future of 02 persons with visual disabilities.

2. The Respondent Railway vide reply dated 17.12.2020 submitted that online applications were invited from candidates for Group-D posts through an Advertisement no.CEN-02/2018 dated 10.02.2018 in Employment News. All the candidates whose application forms were found prima facie in order were issued call letters for appearing in the Written Examination (CBT). The process from advertising the recruitment till declaring the merit list of the candidates who appeared and qualified the CBT and publishing the cut off marks were conducted by the RRB. After that, the remaining recruitment process starting from Physical Efficiency Test to publishing the final



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As the applicant was a PwD provisional panel of the candidates were concluded by the RRC. After qualifying the CBT, the candidate, he was exempted from Physical Efficiency Test (PET). applicants were called for Document Verification and Medical Examinations in Gorakhpur. Due to absence of 3 candidates of second panel, three posts of visual impaired quota were vacant and the for the same three candidates Shri Abhishek Kumar Gupta, Shri Harbhajan Singh Yadav and Ms. Priyanka Chauhan were called for document verification. Only one post was vacant and wrongly assessed by the office of Respondent. This is because two candidates were absent due to pending medical. As soon as mistake was figured out only one post remained vacant and Shri Abhishek Kumar Gupta was empanelled at merit no. 153 and applicants were not considered for selection panel. The Respondent submitted that the above mentioned facts clearly demonstrates that there is no discrepancy in the formation of panel and since applicants were not in the merit list prepared against vacancy hence they could not be considered for empanelment. The Respondent submitted that many visually impaired candidates could not be considered due to want of vacancy. The Respondent further submitted that one of the candidates namely Shri Harbhajan Singh Yadav has already filed an application no. 530 of 2020 on the same issue which is still pending before the Hon'ble CAT, Allahabad.

Observation/Recommendations:

- 3. The case is sub-judice, therefore, no further intervention is required in the matter.
- 4. The case is accordingly disposed off.

Date: 10.02.2021

(Upma Srivastava)

Persons with Disabilities.







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: 12426/1022/2020

Complainant: Shri Sumit Sharma, H.No. 29, Aligani

Kotla Mubarak Pur, New Delhi – 110003 E-mail: <Sharma.sumit92@gmail.com>

Respondent:

The Director, DGRE, DRDO, Him Parisar

Plot No. 01, Sector - 37-A, Chandigarh - 1600036

e-mail: <director@dtrl.drdo.in> <mkgairola@sase.drdo.in>

Complainant More than 40% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 17.11.2020 has submitted that he was working Defence Terrain Research Laboratory (DTRL) under DRDO as Store Asstt. A. He also submitted that his recruitment was against PwD category. However, he has been transferred to Chandigarh Zone. He requested the Court that he may be transferred to Delhi region so that he could reside near his place of residence.

- The matter was taken up with the Respondent vide letter dated 19.11.2020 under 2. Section 75 of the RPwD Act, 2016.
- Addl. Director (Admin), DRDO, DGRE vide letter dated 11.12.2020 submitted that as 3. per DRDO Hqrs letter dated 22.10.2020, two Laboratories i.e. Defence Terrain Research Laboratory (DTRL), Delhi and Snow & Avalanche Study Establishment (SASE), Chandigarh have been merged with their R&D Centre and setting up of a full fledged laboratory with self accounting status named "Defence Geeinformatics Research Establishment (DGRE) at Chandigarh w.e.f 15.11.2020. Accordingly, officers and Staff of DTRL, Delhi have been transferred to DGRE, Chandigarh.
- Complainant vide rejoinder submitted that there was total 70 staffs were transferred 4. out of which 09 were retained in Delhi DRDO Office dated 30.12.2020 has requested for readjustment/placed to any other Lab/Estt./Office of Delhi.

After considering the respondent's reply dated 11.12.2020 and the complainant's 5. rejoinder dated 30.12.2020, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 02.02.2021.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>02.02.2021</u>. The following were present:

- Shri Sumit Sharma complainant.
- Shri Mukesh Kumar Gairola, Sr. Adm Officer on behalf of the respondent.

Observation/Recommendations:

- 6. Both the parties were heard.
- After hearing the respondent and documents available on record, it is observed that 7. complainant being a person with benchmark disability of 40% and having various allied health related problem, he must be given a reasonable accommodation and equal opportunity as per the following provisions of the RPwD Act, 2016:
 - Section 3(1): "the appropriate Government shall ensure that the persons with i). disabilities enjoy the right to equality, life with dignity and respect for his or her integrity, equality with others."
 - Further Section 3 (5) provides that "The appropriate Government shall take ii). necessary steps to ensure reasonable accommodation for persons with disabilities."
- 8. Considering the rule position, this court recommends, the respondent to transfer Shri Sumit Sharma expeditiously to any office/Lab. in Delhi including LASTEC Lab of DRDO.

9. The case is disposed off.

(Upma Srivastava)

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Commissioner for

Persons with Disabilities

Dated: 10.02.2021







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: 12404/1022/2020

Complainant: Shri Abhay Kumar, Sr. SSA

e-mail: <abhaykumarkhusropur@gmail.com>

Respondent: The Regional P.F. Commissioner – I (HRM-V)

Employees' Provident Fund Organization, 14

Bhikaji Cama Place, New Delhi - 110066

e-mail: <cpfc@epfindia.gov.in>

Complainant: 75% locomotor disability

GIST of the Complaint:

Complainant vide letter dated **27.10.2020** inter-alia submitted that he has been working as a Sr. SSA in EPFO, Salem (Tamilnadu) since 2008 and there is a language barrier as he don't know Tamil. He further submitted that EPFO informed that transfer request of PH official would be considered at the time of issuance of order. Whereas, Inter Regional Transfer order of 52 official was issued vide order dated 08.03.2019, wherein non of the PH candidate was considered. Therefore, he has requested transfer from Regional Office, Salem to Regional Office, Patna.

2. The matter was taken up with the Respondent vide letter dated **06.11.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **15.12.2020**, respondent did not submit any reply, therefore hearing fixed on **02.02.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.02.2021**. The following were present:

- Shri Abhay Kumar complainant
- Shri Suchindra Nath, RPFC, Chennai on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.





- 4. During the hearing, the respondent submitted that complainant had given the application in 2019 cycle, but due to his being not clear from vigilance angle, he was not considered. Now he is cleared from vigilance angle. Therefore, he may apply and will be considered for Inter Regional Transfer as per policy.
- 6. As per Rights of Persons with Disabilities Act, 2016, Rule position in respect of transfer of persons with disabilities is quoted 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."

- 7. As per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.
- 8. This Court recommends that complainant may apply for Inter Regional Transfer and the respondent shall consider the application and transfer Shri Abhay Kumar to Patna Region, and submit compliance report within 90 days from the receipt of this order.

9. The Case is disposed off.

Dated: 10.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







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. 12159/1011/2020

Complainant:

Shri Jagesh Chandra Mishra, Programmer, DCEA, National Institute of Technical Teacher's Training & Research, Shanti Marg, Shamla Hills, Bhopal - 462 002.

Versus

Respondent:

National Institute of Technical Teacher's Training & Research, (Through the Director), Shanti Marg, Shamla Hills, Bhopal - 462 002

126250

Disability: 55% locomotor

Gist of Complaint:

Prof. R.G. Chouksey, vide his complaint dated 09.07.2020 on behalf of Shri Jagesh Chandra Mishra submitted that National Institute of Technical Teacher's Training and Research, Bhopal (NITTR Bhopal) is not implementing Recruitment Reservation Roster to its employees. The employees with disabilities are being harassed and victimized. NITTTR Bhopal is not giving Reservation in Recruitment to PwDs. He submitted that a Committee to review posts to be reserved for PwDs has been constituted and the Committee gave its observations and recommendations on 23.05.2016, but NITTTR Bhopal has not implemented the Committee's Report. Shri C. Thangaraj, Director, NITTTR Bhopal has been harassing and victimizing employees with disabilities. Prof. Chouksey submitted that a complaint has been received from Shri Jagesh Chandra Mishra, Programmer, Deptt. of Computer Engineering and Application, NITTTR Bhopal regarding harassment and victimization of Shri Jagesh Chandra Mishra. During Covid-19 pandemic lockdown employees with disabilities were called for duty on regular basis including pregnant women.

2. The Director, NITTTR Bhopal vide letter No. Admn./JM/213 dated 22.12.2020 submitted that as per Institute's norms and departmental procedure necessary action has been initiated and completed regarding the committee constituted to review post to be reserved for PwDs. The Respondent submitted that during the lockdown due to COVID period, as per the directives of Govt. authorities and circulars issued from time to time by the competent authority of their institute

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all faculty Officers and staff members were directed to perform duty from home. Institute has planned for conduction of approved training programmes through online mode due to the COVID pandemic situation. Accordingly, a meeting was organized through online mode on 02.05.2020 for planning of scheduled training programmes and was communicated to concerned officers/officials including Shri Jagesh Chandra Mishra on 01.05.2020 through email and other means. Shri Mishra did not attend the meeting. A specific task of providing technical support for the online training programmes was assigned to him and communicated to him to perform his duty from home itself but Shri Mishra did not perform it. On 05.05.2020 the Director has asked all defaulters to submit an explanation for the same. Despite several reminders Shri Jagesh Chandra Mishra did not submit the reply in time which is a clear evidence of negligence. The Respondent submitted that failing to perform his duties by Shri Misha from home and as informed by Shri Jagesh Chandra Mishra that he don't have any means through which he could perform his duties from home even when he has been working as Programmer and was residing in Institute's campus, and so he was directed to attend the office after following all the instructions/precautions issued by Competent Authorities related to COVID-19 on Roster. With reference to the above complaint, comments of HOD and faculty of the parent department was called and it shows the arrogant nature and casual approach of Shri Mishra towards his duties.

The Dean Administration vide letter No. Admin/Res/PWD/959 dated 17.11.2020 has informed that Recruitment Reservation Roster for PwD's has been implemented in the Institute and number of posts have been filled as per the Roster for PwD in their Institute.

- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 02.02.2021.
- 4. The following persons were present during the hearing;
 - 1. Shri Jagesh Chandra Mishra, complainant
 - 2. Prof. Dashrath Singh Karolia, NITTTR, for Respondent.

Observations and Recommendations:

- 5. During the hearing the Respondent reiterated their submissions made by them vide letter dated 22.12.2020.
- 6. After hearing the complainant and respondent and going through the written submissions made by both the parties, the Court came to the conclusion that there is no violation on the basis of disability of the complainant or any provision of Rights of Persons with Disabilities Act, 2016 has been violated by the Respondent. The points raised by the complainant are merely conjectures and are not supported by any proof. The grievance is purely administrative in nature.
- 7. The case is accordingly disposed off.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

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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. 12402/10/1/2020

Complainant:

Dr. Nitesh Kumar Tripathi, H.No.B-241, Gali No.11, 'B' Block, Sant Nagar, Burari, Delhi – 110 084.

Respondent:

Steel Authority of India Ltd., (Through the Chairman) Rourkela Steel Plant, Odisha – 769 001

Disability: 65% locomotor

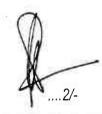
Gist of Complaint:

The complainant vide his complaint dated 23.10.2020 submitted that Steel Authority of India Ltd (SAIL) had published and Advertisement no.02/2020 on 12.10.2020 for recruitment of Medical Professional. He submitted that not a single vacancy has been reserved for persons with disabilities

2. The court noted with serious view that no comments have been received from the Respondent.

Observation/Recommendations:

- 3. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent :
- As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, 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:



59)

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 person 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.
- 5. 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 person 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
- 6. 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.
- 7. Accordingly respondent is recommended to adhere with the provisions of RPwD Act, 2016 and circular issued by Govt. Of India for appointment of Persons with Disabilities. It is further recommended to ensure that the rights of persons with disabilities shall not be infringed.
- 8. Accordingly the case is disposed off.

Dated: 10.02.2021

(Upma Srivastava)
Commissioner for
Persons with Disabilities







न्यायालय मुख्य आयुक्त विकलांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

विकलांगजन संशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment भारत सरकार / Government of India

Case No. 12482/1141/2020

Complainant:

Shri Anil Kumar, S/o Shri Bhim Singh, House No.1, ITI Staff Colony, Sonipat (Haryana) Email: rapria120@gmail.com Mobile: 9416487498

Respondent:

(1) Chief Executive Officer,
Credit Information Bureau India Limited (CIBIL),
One Indiabulls Centre Tower, 2A,
19th Floor, Senapati Bapat Marg,
Elphinstone Road, Mumbai-400013;
Email: support@cibil.com

(2) Chief Executive Officer,
Tata Motor Finance Company Limited,
2nd Floor, A-Wing, 1, Think Techno Campus,
Off: Pokhran Road No.2, Thane (West) – 400601 (MH)
Email: customercare@tmflin.com

1. Gist of Complaint

- 1.1 Shri Anil Kumar, M-53, a person with 75% Locomotor Disability filed uns complaint regarding fraud by CIBIL and M/s Tata Motors Finance Company Limited in the matter of his CIBIL Score.
- 1.2 The complainant submitted that he is an employee in Industrial Training Institute, Sonepat (Haryana). From way back 2012, he was applying for a bank loan, but no bank was giving him loan saying that his CIBIL Score is low. Being a common man he was not aware of CIBIL Score. However, in 2014, he applied for CIBIL Report. From the CIBIL Report he came to know that Tata Motor had sanctioned a Commercial Vehicle Loan of Rs.6,37,230 to

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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)



someone/company on 30.09.2011 having the Loan Account No.5000805816 and he was made a fraud guarantor in that loan from the year 2011, due to which his CIBIL Score was low.

1.3 On contacting these two companies – Tata Motors told him that this was the mistake of CIBIL; and CIBIL told him that they are not responsible for this thing. Complainant's contention is that in between these two companies only he is suffering. He has been pursuing these companies for the last five years but no action has been taken till date.

2. Submission made by the Respondent No.1:

No reply has been received from the Respondent No.1 – CIBIL despite reminders and lapse of statutory time.

3. Submission made by the Respondent No.2:

- 3.1 Respondent No.2 Tata Motors Finance Co. Ltd. filed their reply in Affidavit on 13.01.2021 and submitted that a vehicle Loan was extended to one Shri Rajiv vide Contract No.5000805816. The said loan cum hypothecated agreement was signed in capacity of guarantor by one Shri Anil Kumar, S/o Shri Raj Singh, R/o VPO Gumar, Teh. Ganaur, Sonepat-131101 having Mobile No.9728571630. At the time of filling of the application form and executing the documents, the actual guarantor Anil Kumar S/o Raj Singh provided his driving license and ration card copy as KYC documents and the same was updated in the records of the answering respondent.
- 3.2 On receipt of the complaint from the complainant, the matter was investigated internally and found out that the details provided by the complainant did not match with the details of the actual guarantor Anil Kumar S/o Raj Singh in the said loan. It is admitted fact that the complainant has never been a customer of the answering respondent and having the details of the complainant in the records of answering respondent does not arise. The name of the guarantor as Anil Kumar S/o Raj Singh had been correctly uploaded for the Loan Agreement No.5000805816. The answering respondent never had the details of complainant so as to provide the same to the Respondent No.1 CIBIL. Thus it has became clear that there has been an error on the part of Respondent No.1 in uploading of data with respect to the said vehicle loan due to which, the said loan was reflecting in the complainant's CIBIL report, even though none of the details of the complainant and the actual guarantor matching except the name.



Page 2 of 4



- 3.3 Vide email dated 11.02.2017, the fact had been brought to the notice of the Respondent No.1 requesting for rectification of records. Respondent No.1, vide its email dated 14.02.2017, duly acknowledged the same and had confirmed that the record had been rectified. Subsequently, Respondent No.2 vide email dated 14.02.2017 intimated the complainant that he is not a guarantor in the records of the Respondent No.2.; and he is malafidely pursuing the respondent No.2.
- 3.4 Respondent No.2 further submitted that the complainant had already approached Prime Minister Office, Reserve Bank of India and NBFC Ombudsman; and his grievance had already been addressed by NBFC Ombudsman in 2019 in favour of Tata Motors Finance Co. Ltd. and his complaint was dismissed being devoid of any merit.
- 3.5 The complainant with ulterior motive to extract money from the answering respondent, has started Forum Shopping right from 2017 till date and has not approached this Court after he had failed to received any monetary gains from authorities like the Hon'ble PMO or Hon'ble NBFC Ombudsman or Hon'ble RBI.

4. Submission made in Rejoinder:

The complainant filed his rejoinder dated 08.02.2021 and reiterated their complaint. However, he added that as mentioned by the Tata Motors Finance Ltd., he did not know anyone of Shri Rajiv and Shri Anil Kumar son of Raj Singh anyone of them. The complainant has admitted that PMO, RBI etc. had suggested him to approach appropriate forum for further redressal of his grievance. He has further admitted that RBI Ombudsman had disposed of the case because the error was committed on behalf of CIBIL and CIBIL does not come under the purview of RBI Ombudsmen Scheme.

5. Observation/Recommendations:

- 5.1 Respondent No.2 CIBIL, has not submitted their response despite notice and reminders of this Court, which attracts violation on their part in view of Section 93 of the Rights of Persons with Disabilities Act, 2016.
- 5.2 After examining the facts submitted by the complainant and the respondent No.2 Tata Motors Finance Ltd. In this case, this matter appears to be of criminal nature and does not come under the purview of this Court. Further, the complainant in his original complaint had not revealed this fact that





this matter had already been adjudicated by NBFC Ombudsman and he had been advised to approach appropriate forum.

- 5.3 Further, this case is not a matter of discrimination on grounds of disability which is the purview of this Court.
- 5.4 The complainant is advised to submit his complaint before the concerned Executive Magistrate having appropriate jurisdiction.
- 5.5 The case is closed.

Dated: 11.02.2021

(Upma Srivastava) Commissioner

for Persons with Disabilities







न्यायालय मुख्य आयुक्त विकलांगजन COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

विकलांगजन संशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment भारत सरकार / Government of India

Case No. 12428/1032/2020

Complainant:

Shri Markat Keshari Das,
Bimal Hota Lane, Budharaja,
Sambalpur-768004 (Odisha);
Email: anupamadas71@gmail.com

Affected Person:

Shri Dhiman Dhar Das, M-16, A person with 100% Multiple Disability (100% both Eyes and 63% both Ears)

Respondent:

National Institute for the Empowerment of Persons with Visual Disabilities (Divyangjan) [NIEPVD]

Through: Director

Through: Director,

116, Rajpur Road, Dehradun – 248001 (Uttarakhand)

Email Id: director-niepvd@nivh.gov.in; soa-niepvd@nivh.gov.in

1. Gist of Complaint

1.1 Shri Markat Keshari Das, on behalf of his son, Shri Dhiman Dhar Das, M-16, a person with 100% Multiple Disability (100% both Eyes and 63% both Ears), filed this complaint regarding proper arrangement of study of Science courses in the Model School for Visually Handicapped (MSVH), NIEPVD, Dehradun; and providing suitable writer and other facilities to his son for writing exams.

The complainant alleged that his son had completed his 10th at NIEPVD but he could not get full success in his 10th examination as the school authorities had provided an English medium student as his Writer who was very slow in Hindi writing. His son is a Hindi medium student of MSVH. At guardians' meeting, the School authorities had said that Science Courses had not started in MSVH due to shortage of students. One student is studying in a private school and staying in NIEPVD hostel. Due to Covid-19, his son was unable to go to Dehradun. As advised by the school authority, an email was sent to the Director NIEPVD but no response was received from the Director. His son has now taken admission in Sehlor's Home, Dehradun and he had been forced to pay five months school fees of Rs.33,000/-.

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



2. Submissions made by the Respondent:

2.1 The respondent submitted that at present NIEPVD does not offer Science stream for Class XI & XII, however, the respondent committed to facilitate the interested student to opt any stream/subject as per CBSE policy in upcoming academic session for admission in any other school having choice of stream (Science). Due to Covid-19 pandemic, Government of Uttarakhand had not allowed Class XI students to attend school till date. Whenever Class XI students were permitted to resume regular classes; and NIEPVD hostel services are opened, hostel admission and food facility will be provided to the students without any cost. Large print books of Science stream will also be provided free of cost to the students. There is no policy with NIEPVD to pay tuition fee for students pursuing education from different school other than NIEPVD. The candidate can apply for Post-Matric scholarship for PwDs on National Scholarship Portal to avail scholarship.

3. Submission made in Rejoinder:

The reply of the respondent had been sent to the complainant through Email as well as by Post on 23.12.2020, but no rejoinder has been found received from the complainant.

- 4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.02.2021**. The following were present:
 - (1) Ms. Anupama Das, on behalf of complainant
 - (2) Shri Kamaldeep Singh Jaggi, Principal, MSVH, NIEPVD for respondent

5. Observation/Recommendations:

- 5.1 After hearing both the parties, this Court noted that there is no policy for paying tuition fee for students pursuing education from a different school. However, it was arranged by the former Principal from an outside doner for a student. For hostel services and food facilities, NIEPVD is already committed to provide to the complainant's son.
- 5.2 Keeping in view the above, no violation of any policy and the provisions of RPwD Act, 2016 was found.
- 5.3 Accordingly the case is disposed off.

Dated: 11.02.2021

(Upma Srivastava) Commissioner

for Persons with Disabilities





न्यायालय मुख्य आयुक्त विकलांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

विकलांगजन संशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment भारत सरकार / Government of India

Case No. 12474/1101/2020

Complainants:

Shri Jayant Singh Raghav R/o 323, Chandanwari Apartment, Plot No.8, Sector 10, Dwarka, New Delhi – 110075 Email: jsraghav323@gmail.com

Shri Mohan R/o 18/19, Qutub Vihar, Near Police Check Post,

Opp: Dwarka Sec. 19B, New Delhi-110071

Email: mohanorai92@gmail.com

Respondent:

The Principal,
Shri Ram Lal Anand College,
5, Benito Juarez Road, New Delhi-110021
Email: rlac.du@gmail.com Phone: 011-24112557

1. Gist of Complaint

Shri Jayant Singh Raghav, M-22, and Shri Mohan, M-29, both persons with 100% visual impairment and the students of Shri Ram Lal Anand College filed this complaint alleging that the Website of the respondent college has not been made accessible for persons with disabilities.

2. Submission made by Respondent

The respondent filed their reply dated 29.12.2020 and submitted that Ram Lal Anand College is among few colleges of Delhi University which has not only made special efforts to admit students with disabilities but has also endeavoured to fulfil the academic and other needs of such students. All the

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



documents put on the college website are now readable by 'narrator' or 'OCR' software. Google maps are not readable due to technical limitations of the host website. The college website is accessible to all outside personages. The website is readable for visually impaired students. Certain pdf documents can be made readable through OCR software by the reader. This had been conveyed to the complainants by the EOC, Delhi University. The respondent also submitted that they would abide by the direction given to it by the Court of Chief Commissioner for Persons with Disabilities in future in this regard.

3. Submission made in Rejoinder:

The complainants filed rejoinder on 04.01.2021 and reiterated their complaint that all the documents put on the college website are still not readable by 'narrator' or 'OCR' software, as the website is still not up to the GIGW. Google Maps can be made readable after making the website complying with the "Guidelines for Indian Government Website". The college website is not accessible to all the persons with disabilities outside the college. The complainants demanded the respondent college to provide them with the subscription of the OCR's.

- 4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.02.2021.** The following were present:
- (1) Shri Jayant Singh Raghav; and Shri Mohan, complainants
- (2) Dr. Rakesh Kumar Gupta, Principal, Ram Lal Anand College, for the respondent

5. Observation/Recommendations:

Both the parties were heard.

- 5.2 Access to information and communication technology, Section 42 of the RPwD Act, provides as under:
- "42. The appropriate Government shall take measures to ensure that, -



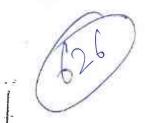


- (i) all contents available in audio, print and electronic media are in accessible format;
- (ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;
- (iii) electronic goods and equipment which are meant for every day use are available in universal design."
- 5.3 In view of the provision stipulated above, the respondent is advised to make the college website accessible and readable in all respects in the college and outside college for the persons with disabilities. It may be brought to the GIGW standards. Action taken by the respondent may be intimated to this Court in terms of Section 76 of the RPwD Act, 2016.
- 5.4 Accordingly the case is disposed off.

Dated: 11.02.2021

(Upma Srivastava) Commissioner

for Persons with Disabilities







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. 12450/1011/2020

Complainant:

Shri Pankaj Kumar Mehta,
PGT Computer Science,
D-26, Jawahar Navodaya Vidyalaya,
Fatehpur Rajputan,
P.O.: Sanour, Dist.: Patiala,
Punjab – 147 103.

Versus

Respondent:

Indian Council for Cultural Relations, (Through the Director General), Azad Bhavan, Indraprastha Estate, New Delhi – 110 002

Disability: 70% locomotor

Gist of Complaint:

The complainant vide his complaint dated 23.11.2020 submitted that Indian Council for Cultural Relations (ICCR) had advertised for the post of Program Officers. There were total of 29 posts of Programme Officers but he stated that no reservation was given to persons with disabilities. He further submitted that he had filed an RTI in this regard but did not get the required information.

- 2. The ICCR vide letter no. Admn/47/2020-21/495/20 dated 16.12.2020 submitted that in the grade of Programme Officer, there were a total of 29 posts in ICCR, out of which 08 could be filled-up by direct recruitment. Since 4% of 8 posts comes to 0.32, thus no vacancy was reserved for PwD candidates in the grade of Programme Officer in ICCR. As regards Section 21 of Rights of Persons with Disabilities Act, 2016 regarding Equal Opportunities for PwD candidates, ICCR vide letter dated 25.11.2019 conveyed to this Court that Council has kept provision for recruitment in DR posts for PwD candidates. In the grade of Assistant and Lower Division Clerk, though there are only 07 and 03 vacancies only in each grade respectively, yet ICCR with the spirit to provide equal opportunity kept a post each reserved for PwD candidates.
- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 09.02.2021

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

E-mail: ccpd@nlc.in ; Website: www.ccdisabilities.nic.in (कृपया मविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

Q 2623

Q26237



- 4. The following persons were present during the hearing;
- 1) Shri Pankaj Kumar Mehta the Complainant
- 2) Respondent Shri Rajesh Katiyar, Advocate and Shri Vinay Mor, Programme Manager, for Respondent, for Respondent

OBSERVATIONS & RECOMMENDATIONS

- 5. Four points of contentions raised in this Complaints are as follows -
- a) Accessibility Issue Examination room where the Complainant is made to sit is situated on the 3rd floor.
- b) Compensatory Time Compensatory time of 30 minutes no given during exam
- c) Minimum Qualifying Marks Respondent establishment is keeping minimum qualifying exams confidential, hence making the process of recruitment opaque and
- d) Not giving reservations to Persons with Benchmark Disabilities (PwBDs).

Accessibility Issue

- 6. A society progresses when problems associated with the society are identified and constructive solutions are provided to resolve such problems. Accessibility problem, raised in the present Complaint is so simple that even a person with average IQ levels can understand it. The problem is that the Complainant, who is divyang suffering from Locomotor disability, was assigned the examination hall which was situated on the 3rd floor.
- 7. This act of Respondent is gross violation of Rights of Persons with Disabilities Act 2016. Concept of 'Accessibility' is not defined in the Act. United Nations defines concept of 'Accessibility' in following terms –

"Accessibility is about giving equal access to everyone. Without being able to access the facilities and services found in the community, persons with disabilities will never be fully included. In most societies, however, there are innumerable obstacles and barriers that hinder persons with disabilities. ... An accessible physical environment benefits everyone, not just persons with disabilities. The Convention states that measures should be undertaken to eliminate obstacles and barriers to indoor and outdoor facilities including schools, medical facilities and workplaces.

8. Above definition of 'accessibility' explains importance of making physical infrastructure accessible for Divyangjans. If access to physical infrastructure is denied to Divyangjan, it will amount to his/her exclusion from the society, rather than inclusion. Denial of access to physical infrastructure is denial of opportunities to the Divyangjans. Though, there is no definition of 'accessibility' however, it is very much part of preamble of the statute and is mentioned as one of the aims of the statute, sought to be achieved.





Compensatory Time

9. 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. As per Para XII of the O.M. Compensatory time of 20 minutes per hour is to be given to all Divyang candidates appearing for the exam. Copy of the O.M. is enclosed herewith.

Minimum Qualifying Marks

10. It is the duty of the Respondent establishment to maintain transparency in the process of recruitment. Therefore, in case the Respondent establishment has not specifically stated minimum qualifying marks prescribed for Divyangjans and non Divyang candidates, it is injustice and violation of RPwD Act, 2016.

Reservation for PwBD Candidates

- 11. With respect to this issue, the Respondent has submitted that there are total 72 posts in Group A services in the Respondent establishment. Out of those 72, only 08 posts are to be filled by method of direct recruitment. Since, 4% of 8 is less than 1 therefore, no vacancy was reserved for PwBDs.
- 12. Respondent's method of extending reservation to PwBDs is flawed and against the Hon'ble Supreme Court's interpretation of laws related to reservation for PwBDs. 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 ones 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.
 - 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."



...5/-

- 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.
- 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. Recently in judgment dated 14.01.2020, in the matter of <u>SIDDARAJU v. STATE OF KARNATAKA [Civil Appeal No. 1567 of 2017]</u> 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."
- 16. 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.
- 17. Hon'ble Uttarakhand High Court in <u>UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND;</u>

 2018 SCC OnLine Utt 865 held that law as laid down in Rajeev Kumar Gupta Case by the hon'ble Supreme Court 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 -:

- 73
- "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, the issue has already been settled down by the Hon'ble Supreme Court. Respondent establishment is bound to reserve 4% of total number of vacancies arising, irrespective of the method of recruitment, i.e. by way of direct recruitment or by way of promotion.
- This court concludes that if argument of the Respondent is accepted, it will cause a situation where reservation will never be extended for PwBD candidates. The Respondent submits that there are total 72 posts in Group A services in the Respondent establishment. Out of those 72, only 08 posts are to be filled by method of direct recruitment. Since, mathematically 4% of 8 will never be more than 1 hence Respondent establishment shall always skip its responsibility of extending 4% reservation to PwBDs. Further, DoPT O.M. prescribes that 4% of total number of vacancies to be filled by direct recruitment shall be reserved, hence when vacancies will be filled by the Respondent establishment by way of promotion, the Respondent will skip the responsibility of extending reservation to the PwBDs by citing the O.M. and hence a situation will arise where reservation will never be extended to PwBDs.
- 20. Further, Article 141 of the Constitution of India lays down that judgments of hon'ble Supreme Court are binding upon all courts. These judgments hold good as law of land. Hence, the Respondent establishment is bound by the judgments of the Hon'ble Supreme Court.
- 21. Hence, this court recommends that –
- a) The Complainant shall not be forced to sit in examination hall on any such floor which is not accessible. Respondent shall use all its might to provide a reasonably comfortable space to the Complainant on the ground floor.
- b) The Respondent shall provide Compensatory time of 20 minutes per hour.
- c) The respondent shall clearly state minimum qualifying marks to maintain the standards of transparency.
- d) The Respondent shall reserve 4% of total number of vacancies whether to be filled by way of direct recruitment or by way of promotion.

Dated: 11.02.2021

(Upma Srivastava) Commissioner for

Persons with Disabilities







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. 12357/1011/2020

Complainant:

Ms. Urmila Karmali, House No. D-689/C Nearby Mohalla Clinic, Nathupura, Burari, Delhi - 110 084.

Versus

Respondent:

Railway Recruitment Cell, (Through the Chairman) South Eastern Railway, 11, Garden Reach Road, Kolkata. West Bengal - 700 043

Disability: 100% visual impairment

Gist of Complaint:

The complainant along with Ms. Puja Kumari, Ms. Sunita Kumari and Shri Durga Kant Tiwari submitted that during October 2018 RRC South Eastern Railway Kolkata had conducted an examination to the post of Group 'D'. The results of the examination was declared in April 2019. These four candidates were not selected for the post which is injustice done to the persons with disabilities.

The Railway Recruitment Cell, South Eastern Railway vide letter no. SER/P-2. HQ/RRC/143/CEN-02/2018 dated 13.11.2020 submitted that the Centralized Notification had vide notification no. CEN-02/2018 dated 10.02.2018 has advertised for recruitment to the post of Gr-D (Level-I). 100 posts for PwDs (25 vacancies in each PwD category) was notified following the guidelines of reservation rules for PwDs in the proportionate percentage prescribed in the Railway Board's letter/circular. The Railway Board vide Annexure-A of their letter No.E(NG)II/2017/RC-2/1/Policy dated 19.03.2019 circulated the posts which were coming under the PwD categories as per the notified vacancies by each Zonal Railway. From the notified vacancies it is seen that all the2/-

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



25 posts ofr VI category for their Railway were earmarked for VI(LV) candidate. The Railway Board further revised the Medical Classification of the posts through a letter No.E(NG)II/2017/RC-2/1 Policy dated 18.04.2019. Thus it is seen that the VI (Blind) candidates can be considered only against 7(seven) Hospital Attendant posts notified for General candidates. The Railway Board vide their letter no. E(NG)II/2017/RC-2/1 Policy dated 21.11.2019 clarified and advised to accommodate VI(Blind) candidates against the non notified posts for VI category. By the time the Railway Board's above letter was received 21 candidates already been empanelled against the notified 25 vacancies for VI(LV). As such their Railway could consider only the following 4(four) candidates case for empanelment against Hospital Attendant posts in order of merit and filled-up the 25 vacancies notified for VI category.

SI. No	Roll No	Name	Secured normalized marks	
1.	272042089920001	Poonam Toppo	71.12759	
2.	272042080430003	Ram Bhros Das	68.10273	
3.	272042080410001	Rashmi Kumari	68.10273	
4.	272042083720048	Punil Kumar Mahto	67.76663	

The 1% vacancies for VI was fulfilled after this exercise. The candidates who had represented for their empanelment were lower in the merit than the empanelled candidates of VI (Blind). The following is the merit position of the four candidates.

SI. No	Roll No	Name	Secured normalized
			marks
1.	272042083200068	Pooja Kumari	63.42858
2.	272042080410004	Urmila Karmali	63.0613
3.	272042083200025	Sunita Kumari	55.77808
4.	272042083890046	Durga Kant Tiwary	49.61748

The Respondent submitted that in view of above there is no further scope to consider their cases.

3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.02.2021.

...3/-



- The following persons were present during the hearing;
 - 1. Complainant: Shri Rajiv Katoch, Representative of the Complainant
 - 2. Respondent: Shri Kausik Bhattacharya, Chairman, RRC, South Eastern Railway.

OBSERVATIONS & RECOMMENDATIONS

- 5. Complainant alleged that Respondent establishment is discriminating against Divyangjans suffering from Blindness and further, Respondent discriminated against the Complainant by not appointing her despite of getting good marks in the qualifying examination.
- The written submissions made by the Respondent were reiterated in hearing .
- 7. This court is satisfied with the Reply of the Respondent and found no discrimination with the Complainant or with Divyangjans.
- 8. The case is disposed off.

Dated: 11.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







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. 12354/1011/2020

Complainant:

Shri Karanti Goyal, RB-133, RBI Colony, Sector 6, R.K. Puram, New Delhi-110022

Versus

Respondent:

The Planning Department, GNCT of Delhi, (Through the Principal Secretary), Level-6, B Wing, Delhi Sachivalaya, New Delhi - 110 002.

Disability: 50% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 12.09.2020 submitted that Union Public Service Commission had uploaded on its website an Advertisement No.05/2020 on 14.03.2020 for recruitment of various posts in various Ministries/Departments/Offices of Government of India. In the said advertisement vacancy no.20030513414, i.e. two Deputy Directors (Plg/stat.), Department of Planning, GNCT of Delhi (UR-02) has been advertised and for the said post, nothing has been mentioned about suitability of persons with benchmark disabilities suffering from Blindness & Low Vision and none of the advertised posts have been reserved for persons with disabilities suffering from blindness and low vision. He submitted that in the list of Group 'A' posts identified to be reserved for persons with benchmark disabilities notified in 2013 by Govt. of India, post at Serial No. 134 'Deputy Director' is identified to be reserved for both blindness and low vision with duties. This particular advertised post is identified to be reserved for persons with blindness and low vision in terms of Rights of Persons with Disabilities Act, 2016 and the extant guidelines of Government of India. The complainant submitted that there was some technical problem in the system prescribed for submission of 'Online Application Form'. It did not allow a 'person with benchmark disability with low vision' to submit Online Application Form against unreserved vacancy. The complainant has prayed for the following reliefs;

....2/-

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

- Direct the Respondents to provide him an opportunity to be considered for the advertised post considering the said post 'identified to be reserved' for 'persons with benchmark disabilities suffering from blindness and low vision'. If otherwise, Respondents may provide a true copy of exemption certificate obtained prior to advertising this particular post from competent authority as per extant guidelines of Government of India.
- Direct the Respondents to reserve one vacancy of the said post for 'Persons with Benchmark Disabilities suffering from Blindness and Low Vision' in this particular advertisement by issuing a corrigendum as 01st Roster point is to be reserved for them.
- iii) Stay the recruitment process for the said post till the pendency of his complaint/representation.
- In the 'Online Application Form', there was no provision to submit online application form against 'Unreserved Vacancies' for persons with benchmark disabilities suffering from blindness and low vision and no vacancy has been reserved for 'persons with benchmark disabilities suffering from blindness and low vision' as per the provisions of RPwD Act, 2016 and extant guidelines of GOI.
- v) General instructions may be issued to all concerned including UPSC/SSC that no requisition/recruitment proposal should be accepted for making recruitments if details about identification for all categories of persons with benchmark disabilities are not provided in it unless otherwise excluded from reservation for post/posts in question.
- vi) General instructions may please be issued to all concerned to cadre controlling authorities to provide friendly and adaptable environment to all 'persons with Benchmark Disabilities suffering from Blindness and Low Vision' whey they approach any public authority / public servant with their grievance / request / representation / suggestion.
- 2. The Deputy Secretary, UPSC vide letter no. 1/178(26)/2019-R.IV dated 01.12.2020 addressed to the Principal Secretary (Planning), Planning Department, Govt. of NCT of Delhi submitted that the issue involved in the complaint of Shri Karanti Goyal pertains to suitability and





reservation of the post of Deputy Director (Plg./Stat.) for different subcategories of PH category. UPSC only carries out recruitment as per requisition submitted and suitability or reservation of post for different subcategories is entirely a subject matter of Indenting Department, i.e. Planning Department of Govt. of NCT of Delhi in the instant matter. UPSC submitted that the issues raised in the complaint do not relate directly to them.

The Under Secretary, UPSC vide letter dated 17.12.2020 reiterated the submissions made by the Deputy Secretary, UPSC vide etter dated 01.12.2020 in the above mentioned para

3. The Joint Director (Cadre), Planning Department, Govt.of NCT of Delhi vide letter dated 22.12.2020 submitted that a proposal for filling up 2 posts of Deputy Director (Plg./Stat.) in Level-11 in GCS, Group-A Gazetted Non-Ministerial for the vacancy year 2017-2018 and 2020 under direct recruitment in Planning & Statistical Cadre, Govt. of NCT of Delhi through Union Public Service Commission. Out of the above 2 posts, one post was earmarked reserved for persons with Benchmark Disabilities, deaf and hard of hearing. The Planning Department vide letter dated 29.06.2018 and subsequent letters dated 24.08.2018, 10.09.2018, 05.10.2018 and 22.10.2019 had requested the Commissioner for Persons with Disabilities, Govt. of NCT of Delhi along with copy of Recruitment Rules, Duties of Deputy Director (Plg./Stat.) and Annexure prescribed by UPSC for seeking clarification regarding suitability/reservation for the post of Deputy Director according to the nature of work or duties performed in terms of DoP&T O.M. dated 15.01.2018 or any other revised Guidelines.

The Commissioner vide email dated 11.10.2018 and 29.10.2018 replied to them as follows;

"Whether a post in the department is identified or should be deemed to be identified needs to be decided by the user department. However, to help take a decision, the Commission checked the list of identified posts issued in 2013. At serial no.574 of Group A posts, the post of Project and Planning Officer is identified OA,OL, BL, HH. The job description of the post is to conduct analysis and compilation of projects, budget etc. It could be in a refinery or reconstruction project or any other project. The decision be accordingly taken."

The Respondent submitted that keeping in view of the reply of the Commission, the decision was taken by the Competent Authority to identify one post of Deputy Director (Plg./Stat.) under HH category as one Group 'A' Officer Assistant Director (Plg./Stat.) is already working in Planning & Statistical Cadre, GNCTD under OH category.



- 4. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.02.2021.
- 5. The following persons were present during the hearing;
 - 1. Complainant: Shri Satyarth Sinha, Advocate
 - 2. Respondent: Shri Premanand Prusthi

OBSERVATIONS & RECOMMENDATIONS

- 6. Complainant has submitted that Respondent establishment advertised vacancies against 2 posts of Deputy Director (Planning/Statistics). Out of 2 posts, 1 was reserved for Persons with Benchmark Disabilities belonging to subcategory of Deaf, HH, AAV etc. Complainant submits that the post was not reserved for PwBDs belonging to Low Vision or Blind sub category.
- 7. Complainant submits that the post was identified against 1st Roster Point, which was earmarked for PwBDs suffering from Low Vision and Blindness, hence the vacancy should have been identified and reserved for PwBDs suffering from Low Vision and Blindness.
- 8. Further, Complainant submits that as per List of Posts Identified Suitable for PwDs, issued by Ministry of Social Justice and Empowerment, post of Deputy Director is identified suitable for PwDs suffering from Low Vision and Blindness.
- 9. Respondent in its defence submitted that the proposal has already been sent to UPSC and hence the Respondent establishment cannot interfere in the recruitment procedure. Further, it is submitted that an advice was obtained from Delhi Commissioner for Persons with Disabilities, whereby it was advised that as per the List of Posts Identified Suitable for PwDs, issued by Ministry of Social Justice and Empowerment, post of Project & Planning Officer is identified suitable for OA, OL, BL and HH.
- 10. This court concludes that Serial No. 134 of List of Posts Identified Suitable for PwDs, issued by Ministry of Social Justice and Empowerment, is relevant for deciding the issue before this court. Cause of action of the present Complaint arises because of advertisement for the post of Deputy



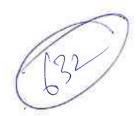
Director, and not because of advertisement for the post of 'Project & Planning Officer'. Further, as the post was identified against 1st Roster Point, which was earmarked for PwBDs suffering from Low Vision and Blindness, this court concludes that the post should have been identified and advertised for PwBDs suffering from Low Vision and Blindness. This court also concludes that Respondent establishment cannot hide its irregularity behind the veil of sending recommendation to UPSC.

11. Therefore, this court recommends that the Respondent establishment shall reserve the post of Deputy Director (Planning/Statistics) for PwBDs suffering from Low Vision and Blindness and the Respondent establishment shall withdraw the notification and review it as per rules even if the same has been sent to UPSC.

12. The case is disposed off.

Dated: 11.02.2021

(Upma Srivastava)
Commissioner for
Persons with Disabilities







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. 11796/1011/2020

Complainant:

Dr. Nitin Kalinath Gorwade, AT Post: Mamadpur (K.L),

Taluka: Chikodi,

Dist.: Belgaum, Karnataka - 591 211.

Respondent:

Postgraduate Institute of Medical Education & Research,

(Through the Director),

Sector 12,

Chandigarh - 160 012

Disability: 50% locomotor disability

Gist of Complaint:

Dr. Nitin Kalinath Gorwade vide his complaint dated 08.12.2019 submitted that he applied for the post of Assistant Professor in Dentistry under Disability quota against Advertisement No. The results of the interview were PGI/RC/2018/077/1630 dated 21.04.2018 by the Respondent. declared on 29.06.2018 but no candidate belonging to persons with disabilities was selected. He submitted that endeavour should have been made to grant the post to the person with disability under relaxed standards as compared to General Category. He was declared unsuitable. This matter is under sub judice in Chandigarh Administrative Tribunal, the case for which he filed on 02.07.2018.

The Respondent vide their reply dated 28.11.2020 has submitted that the Ministry of 2. Health and Family Welfare has declared the PGIMER Chandigarh to act as mentor Institute for operationlization of various services in the New AIIMS viz. AIIMS, Rae Bareli & AIIMS Bathinda. Accordingly, the PGIMER, Chandigarh advertised 16 posts of Assistant Professor for AIIMS, Rae Bareli vide Advertisement No.PGI/RC/2018/077/1630 dated 21.04.2018 and 156 posts for Professor, Additional Professor, Associate Professor and Assistant Professor for AIIMS, Bathinda The PGIMER, Chandigarh vide Advertisement No. PGI/RC/2019/007/2910 dated 08.07.2019. also advertised for 134 posts of Assistant Professors for PGIMER, Chandigarh vide Advertisement No.PGI/RC/2019/001/0050 dated 04.01.2019. A perusal of above said advertisements would reveal that the 14 faculty posts in the following identified departments, i.e. non-clinical departments including the department of Dentistry were reserved for persons with disabilities, the details of which are as under :-

....2/-

S.No.	Name of Institute AIIMS, Rae Bareli	Advertisement No. PGI/RC/2018/077/1630 dated 21.04.2018. Total posts	The Departments which were identified suitable for PwDs Biochemistry, ENT, Radio- diagnosis & Dentistry.	Total no. of posts advertised in the identified depts.	No. of PwD candidates appeared for interview 01 in Dentistry	No. & Name of posts for which PwD candidate, if any, got selected Nil
2.	AIIMS, Bathinda	advertised: 16 PGI/RC/2019/007/2910 dated 08.07.2019. Total posts advertised: 156	Dentistry, ENT, Microbiology, Psychiatry, Pharmacology, Radiology, Radiotherapy & Radiation Medicine, Speech Therapy, TB & Chest Diseases (Pulmonary Medicine), Urology		01 in Dentistry	Nil
3.	PGIMER, Chandigarh	PGI/RC/2019/001/0050 dated 04.01.2019 Total posts advertised : 134	Psychiatry, Radio-	y, h	03 (01 ir Radiotherapy 02 ir Dentistry)	

The Respondent further submitted that the complainant, Dr. Nitin Kalinath Gorwade applied for posts of Assistant Professor for AIIMS, Rae Bareli, AIIMS, Bathinda and PGIMER, Chandigarh appeared for interview before the Standing Selection Committee on 19.06.2018 (for Rae Bareli), 22.10.2019 & 23.10.2019 (for Bathinda) & 23.05.2019 & 24.05.2019 (for PGIMER, Chandigarh). However, he was not selected for the post of Assistant Professor due to his unsatisfactory performance in the interview before the Standing Selection Committee. In view of the unsatisfactory performance of the complainant in the interview before the Standing Selection Committee, it is wrong on the part of the complainant to claim that he has been denied the selection under PwD quota.

Hearing: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 12.01.2021.

(84)

3. The following persons were present during the hearing;

1) Complainant : Shri Nitin Kalinath Gorwade

2) Respondent: PGIMER, Chandigarh

OBSERVATIONS & RECOMMENDATIONS

- 4. Complainant believes and claims to be a suitable candidate for selection on the post of Assistant Professor, Dentistry. Based on this confidence, he applied for the post advertised for the post by AIIMS Chandigarh, which has been declared as a mentor institute for operationalisation of various services in AIIMS Rae Bareli. He alleged that Roster was not maintained and his non selection against the post advertised is in conflict of laws enacted for protection of Divyangjans.
- 5. During online hearing it was submitted by the Respondent that a case with respect to same facts and cause of action is already pending before Hon'ble Central Administrative Tribunal, Chandigarh Bench. The same was confirmed by the Complainant by email dated 12.01.2021.
- 6. Since the issue is Sub Judice before Hon'ble tribunal, hence intervention of this court is not warranted.
- 7. The case is disposed off.

Dated: 11.02.2021

(Upma Srivastava)

Commissioner for







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: 12484/1022/2020

Complainant: Shri Umesh Kumar Sharma

e-mail: <umeshbegumganj@gmail.com>

Respondent: The Commissioner, Kendriya Vidyalaya Sangathan

18. Institutional Area, Shaheed Jeet Singh Marg

New Delhi - 110016

e-mail: <kvse2section@gmail.com>

Complainant: 40% hearing impairment

GIST of the Complaint:

Complainant vide complaint dated **13.12.2020** submitted that he was working as a JSA in Kendriya Vidyalaya Sangathan, Bairagarh, Bhopal and after promotion as a SSA, he was transferred to KVS, Perambalur, Tamil Nadu on 27.08.2018 which is far away from his hometown i.e. Bhopal.

2. The matter was taken up with the Respondent vide letter dated **18.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **18.01.2021**, no response has been received from the respondent.

Observation/Recommendations:

3. The Court noted that the complainant is seeking transfer nearby his hometown. Though the respondent in another similar matter has stated that they are in the process of collecting requests for transfer in the case of persons with disabilities and spouses through their Circular dated 29/01/2020 yet they have not been able to effect any transfer till date due to the fact that the transfer guidelines are under review and pending for the approval of M/o Education, Govt. of India.



- As stated above, the Rights of Persons with Disabilities Act, 2016 provides for 4. special concession for persons with disabilities and as per Section 21 of the Act, every establishment/institution is supposed to prepare Equal Opportunity Policy shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.
- The Court is pained to note that despite several directions to KVS for preparing such 5. policy, no response has been received. This indicates that the institution takes the rights and grievances of persons with disabilities very lightly. Had such a policy been in place, request for such transfer would have been accepted and implemented long time back.
- This Court recommends that the complainant be transferred nearby his hometown. 6.

Case is disposed off. 7.







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: 12473/1024/2020

Complainant: Shri Anandhan G. , Manager (IT),

Airport Authority of India, Tiruchirappalli Airport

Respondent:

The General Manager (HR)

Airports Authority of India, Rajiv Gandhi Bhawan

Safdarjung Airport, New Delhi - 110003

Complainant

60% locomotor disability

GIST of the Complaint:

Complainant vide letter dated 10.12.2020 submitted that he is working as IT Manager in Airports Authority of India at Trichy International Airport, Tamil Nadu which is nearby his hometown. He further submitted that during Covid -19 pandemic periods, he did not attend office as the public transportation had been stopped by TN State Govt. He further submitted that he reported to duty once the public transportation resumed. He alleged that his salary has been suspended by Station HR, Trichy Airport via e-mails (i) 3% yearly increment has not been provided from April 2020 to August 2020 (ii) salary has not been provided for the months of June, July and August 2020 and (iii) 30% of his salary has been deducted from his salary of September 2020. He has requested to provide necessary guidelines to solve his salary/increment issues and to stop the unnecessary harassment by Station HR, Trichy Airport.

- 2. The matter was taken up with the Respondent vide letter dated **15.12.2020** under Section 75 of the RPwD Act, 2016.
- 3. In response, General Manager (HR), Airports Authority of India vide letter dated 19.01.2021 inter-alia submitted that Shri Anandhan G was absent from 25.03.2020 to 30.08.2020 due to lockdown during which he neither performed any work nor contacted his HOD. On 1st of June, 2020, 50% normalization in Tamil Nadu all the officials were asked to report for duty. However, he did not respond, therefore, the official was intimated on

(कृपया मविष्य में पत्राचार के लिए उपरोक्त फाईल / केस संख्या अवश्य लिखें)

16.06.2020 that his absence from 01.06.2020 will be treated as unauthorized absence and his salary was stopped. In response dated 17.06.2020, he has requested for work from home since he belongs to PwD category and commuting from home town. However, he had neither obtained station leaving permission nor handed over his duties to other officials before proceeding to his home town and hand not performed any work during lockdown or contacted his HOD, therefore, the request for work from home was not considered and also salary was stopped for June, July and August 2020. They further submitted that benefits of the 3% yearly increment was postponed to 31.08.2020, since he was on leave from 01.04.2020 to 30.08.2020 and reported only on 31.08.2020.

Observation/Recommendations:

4. 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:

"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 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."

"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."

....3....

....3....

5. In view of the aforesaid orders, the respondent shall re-examine the entire matter of withholding salary and increments etc and ensure that no injustice is carried out.

6. Accordingly respondent is recommended to adhere with the DoP&T OM in letter &

spirit. The case is disposed off.

(Upma Srivastava)
Commissioner for







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: 12464/1024/2020

Complainant:

Ms. D Padmaja Krishna, PA, MS Division

CQA (S), Secunderabad

Respondent:

Offg. Director General Quality Assurance

M/o Defence, Department of Defence Production

Govt. of India, Room No. 308, D - 1 wing, Sena Bhawan

DHQ PO, New Delhi - 110011

Complainant

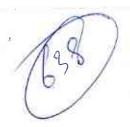
50% locomotor disability

Complainant vide letter dated 12.10.2020 submitted that she is working as Personal Assistant at CQA (S), Secunderabad and she had submitted a representation to the her Office with the request to permit Work From Home due to disability and non-availability of public transport but her representation was not considered and period starting from 10.08.2020 was treated as absent from duty. She further submitted that the Admin authorities are harassing and creating problems in grant of MACP, fixation of pay on grant of MACP, work from home etc.

- 2. The matter was taken up with the Respondent vide letter dated **11.12.2020** under Section 75 of the RPwD Act, 2016.
- 3. In response, Assistant Director/Adm-7B, DQA (R&S), Secunderabad vide letter dated **25.01.2021** submitted that in light of extant instructions related to Covid-19, her period of absence from office is deemed to be "Work From Home" and she may continue to Work From Home till further orders. Her Pay & Allowances may be admitted accordingly.
- 4. In light of the facts and material available on record, the reply of the respondent was found satisfactory and no further intervention is required
- 5. The case is disposed off.

(Upma Srivastava)

Commissioner for
Persons with Disabilities







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: 12303/1022/2020

Complainant: Shri Soumyo Ghosh, Assistant Manager

Radha Gobinddo Apartment, 95/8 Old Calcutta Road

PO+Vill-Rahara (Dangapara), PS - Khardah

Dist.-North, 24 Parganas, West Bengal - 700118

e-mail: <ghosh.soumy08@gmail.com>

Respondent: The Chairman, Indian Oil Corporation Ltd

Corporate Office, 3079/3, Sadiq Naar, J.B. tito Marg

New Delhi - 110049

e-mail: <pldivision@indianoil.in>

Complainant: 55% Hearing impairment

GIST of the Complaint:

Corporation as ST&IE at Mourigram and on 17.07.2020 he has been promoted & transferred as Assistant Manager (T&I), PHDPL Banka district of Bihar. Accordingly to him, allotted location is a very hazardous, mobile phone is strictly not allowed and walkie talkie/VHF are used for communication between control room to field location. However, he is facing difficult to hear over walkie talkie/VHF sets. He further submitted that Banka being a remote location and rail/flight connectivity is not so good, therefore, he needs family support on regular basis and accordingly posting at city location is suitable where rail/flight connectivity with his native place Kolkata is better.

- 2. The matter was taken up with the Respondent vide letter dated **12.10.2020** under Section 75 of the RPwD Act, 2016.
- 3. In response, Chief General Manager (HR and A&W), Indian Oil Corporation Ltd vide letter dated **18.11.2020** inter-alia submitted that Shri Soumyo Ghosh joined the services of the Corporation on 02.11.2015 under PwD quota as ST&IE and posted at Mourigram location. In year 2020, he was promoted as AM (T&I) and posted at PHDPL, Banka where



there is minimal sound compared to other operating location like pump stations. In order to aid the officer in discharge of his duties with ease, he has been provided with flame proof mobile phone set for communication so that his duties are unaffected on account of any difficulty faced by him to hear over Walkie Talkie/VHF set. They further submitted that Shri Soumyo Ghosh is residing at Bhagalpur which is the one of the biggest towns of Bihar and which is approx. 30 kms from the location i.e. Banka and adequate medical facilities are available. He further submitted that Shri Ghosh is a young officer who has more than 30 years of service remaining with the Corporation and it is in aid of his career progression like other officers, that he has been transferred to suitable operating location. The request of Shri Ghosh for transfer to some other administrative Offices at a city-based location cannot be considered at this stage. However, the request has been kept in record for consideration at appropriate time.

4. After considering the respondent's reply dated **18.11.2020** 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 **29.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>29.01.2021</u>. The following were present:

- Complainant In person, accompanied by Sri Taporanjan Ghosh, father of the Complainant
- S.K. Palit, CGM (HR) on behalf of respondent

Observation/Recommendations:

- 5. Both the parties were heard.
- 6. Complainant was appointed in Respondent establishment in year 2015. He was posted in Mourigram. In year 2020 he was transferred to Banka. Grievance of the Complainant is that his new place of posting is not safe for a divyang person who suffers from Hearing Impairment.
- 7. Respondent establishment refuted the submissions of the Complainant and made following submissions in their support

....3....



- a) The Respondent is currently posted at the station which is LPG delivery station and is least noisy and hence will have minimal impact on divyang suffering from Hearing Impairment
- b) The Respondent is currently residing at Bhagalpur which is located approximately 30 KMs away from the place of his residence, where other employees of the Respondent establishment reside.
- c) Since the Respondent is currently residing at Bhagalpur which is located approximately 30 KMs away from the place of his residence,he is provided with Office transportation service for travelling to and from the office.
- d) Medical facility is available in Bhagalpur.
- e) The Complainant is provided with special mobile set for purpose of communication
- It was further submitted by the Respondent that the Complainant is never left alone while he is on duty. In future, they will ensure that another non-divyang employee is always assigned duties along with the Complainant.
- Taking into consideration the facilities the Respondent establishment is providing to 9. the Complainant and the fact that the complainant lives at Bhagalpur with his spouse and that he has a very long service ahead. This court concludes that the present arrangement of posting is most suitable for the complainant. Complainant's prayer to transfer him from his present place of posting cannot be granted.

10. Case is disposed off.

Dated: 12.02.2021

(Upma Srivastava) Commissioner for

Persons with Disabilities







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: 11834/1021/2020

Complainant: Shri Manoranjan Roy, AEE (Civil), HQ 25, BRTF (GREF)

Pin – 930025 C/o 99 APO (Imphai/Manipur)

Respondent:

The Secretary (Personnel), Ministry of Personnel

P G & Pensions, Department of Personnel & Training

North Block, New Delhi - 110001 E-mail: <debabrata.d13@nic.in>

Complainant 48% visual impairment

GIST of the Complaint:

Complainant Shri Manoranjan Roy, Assistant Executive Engineer vide complaint dated 07.02.2020 has requested for reservation in promotion for persons with disabilities to the post of Executive Engineer (Civil). He further vide letter dated 19.06.2020 inter-alia submitted that if the promotion order will received after 31.10.2020 then that will be the useless and meaningless as he will retired on 31.10.2020.

- 2. The matter was taken up with the Respondent vide letter dated 06.07.2020 under Section 75 of the RPwD Act, 2016.
- In response, Under Secretary, Department of Personnel & Training vide letter dated 3. 27.10.2020 submitted that Hon'ble Supreme Court, in the matter of 'Siddaraju' (Civil Appeal No. 1567/2017) and other tagged cases, has directed on 14.01.2020 that the reservation to PwD may be extended, as per Judgements as clarified in National Federation of the Blind vs. Secy. DoP&T (2015) and Rajeev Kumar Gupta vs UOI (2016). He further submitted that their Department has filed an "application for clarification" in the Hon'ble Supreme Court on 28.09.2020 in the matter of "Siddaraju vs State of Karnataka". Regarding query as to whether reservation in promotion may be given to the PwDs, it may be sought from the Ministry of Law.

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4. After considering the respondent's reply dated **27.10.2020** 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 **22.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.01.2021**. The following were present:

• Shri Manoranjan Roy - complainant

Debabrata Das, U.S. (Reservation) DoPT on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Issue raised by the Complainant is related to denial of reservation in promotion to persons with disabilities. During online hearing it was informed that the Complainant has filed a writ petition on the same issue before Hon'ble Manipur High Court.

7. Since the issue is sub judice in the Hon'ble High Court of Manipur hence this court concludes that interference of this court is unwarranted.

8. However, for the record it is noted that the Respondent has taken up the issue with Hon'ble Supreme Court and Ministry of Law for seeking certain clarification.

9. The case is disposed off.

(Upma Srivastava)

Commissioner for

Persons with Disabilities







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: 12470/1023/2020

Complainant:

Shri V Konda Naik, Q. No. B18-4/1, DOOT No. 155

0 26298

Gowrtaminagar Colony, Aswapuram Mandal Badradri Kothagudem Dist., Telangana – 507116

e-mail:<vkondanaik1@gmail.com>

Respondent:

The General Manager, Heavy Water Plant (Manuguru)

PO Gautaminagar, Aswapuram - 5077116

Bhadradri Kothagudem Distt. Telangana

e-mail: <gm@man.hwb.gov.in>

GIST of the Complaint:

Complainant vide e-mail dated **27.11.2020** has requested to direct the respondent to appoint a Liaison Officer for PwDs at Heavy Water Plant (Manuguru) and also take action against the respondent as they are not implementing the 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."

- 2. The matter was taken up with the Respondent vide letter dated **15.12.2020** under Section 75 of the RPwD Act, 2016.
- 3. In response, Administrative Officer III, Heavy Water Plant (Manuguru), Aswapuram vide letter dated **27.01.2021** inter-alia submitted that Heavy Water Plant (Manuguru) being an Industrial Unit has been in operation even during the lock down period with the permission of Local State Government authorities for continued operation of the plant with reduced staff strength. However, after relaxation of lockdown in a phased manner by the State Government after taking into account the spread of Covid 19 and all other factors, they have started its operations in full from 09.05.2020 and all the staff members have been attending duties accordingly. They further submitted that that the Chief Administrative Officer, HWPM is the designated Grievance Redressed Officer for all service related matters. As regards with lockdown orders by the Central Government/State Government in lieu of Pandemic Covid 19, the Competent Authority made arrangements for compliance of the provisions such as work from home/roster in respect of Group 'B' & 'C' employees.

किपया मविष्य में पत्राचार के लिए उपरोक्त फार्डल / केस संख्या अवश्य लिखें)

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Observation/Recommendations:

4. After perusal of the documents available on record, it is recommended to the respondents 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:

"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 undergoing treatment for these ailments before lockdown, may, as far as possible, be exempted from roster duty u pon 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."

5. Accordingly respondent is recommended to adhere with the DoP&T OM in letter & spirit. The case is disposed off.

(Upma Srivastava)
Commissioner for
Persons with Disabilities







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: 12379/1022/2020

Complainant: Shri Radhe Singh, Fauzdar Thok, VPO Manjhi

Teh. - Nadbat, Distt. - Bharatpur - 321602 e-mail: <radhebtp306@gmail.com>

Respondent:

The Commissioner, Kendriya Vidyalaya Sangathan

18, Institutional Area, Shaheed Jeet Singh Marg

New Delhi – 110016

e-mail: <kvse2section@gmail.com>

Complainant: 50% visual impairment

GIST of the Complaint:

Complainant vide letter dated 15.10.2020 submitted that he is working in Kendriya Vidyalaya Sangathan, Kirandul, Raipur as a Primary Teacher and his hometown is 1500 km far away from School therefore, he has requested to transfer nearby his hometown.

- The matter was taken up with the Respondent vide letter dated 26.10.2020 under 2. Section 75 of the RPwD Act, 2016.
- In response, Assistant Commissioner (Estt.2&3), Kendriya Vidyalaya Sangathan vide 3. letter dated 25.11.2020 submitted that the request of Shri Radhe Singh, PRT has been considered sympathetically by the competent authority but could not be acceded to as all the activities for modification in place of posting as well as transfers are on hold because of fact that KVS transfer guidelines are under review and also due to other administrative reasons. He further submitted that his request will be given highest consideration as per KVS transfer guidelines along with all other similar cases, if and otherwise found eligible as per rules and as per their priority.
- After considering the respondent's reply dated 25.11.2020 and the complainant's 4. complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 29.01.2021.

99)

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>29.01.2021</u>. The following were present:

- Shri Radhe Singh complainant
- Shri Dharmendra Patle, Assistant Commissioner on behalf of respondent

Observation/Recommendations:

- 5. Both the parties were heard.
- 6. The Court noted that the complainant is a visually impaired seeking transfer nearby his hometown. Though the respondent has been stating in their reply that they are in the process of collecting requests for transfer in the case of persons with disabilities and spouses through their Circular dated 29/01/2020 yet they have not been able to effect any transfer till date due to the fact that the transfer guidelines are under review and pending for the approval of M/o Education, Govt. of India.
- 7. As stated above, the Rights of Persons with Disabilities Act, 2016 provides for special concession for persons with disabilities and as per Section 21 of the Act, every establishment/institution is supposed to prepare Equal Opportunity Policy shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.
- 8. The Court is pained to note that despite several directions to KVS for preparing such policy, no response has been received. This indicates that the institution takes the rights and grievances of persons with disabilities very lightly. Had such a policy been in place, request for such transfer would have been accepted and implemented long time back.

9. This Court recommends that the complainant be transferred nearby his Home Town expeditiously.

10. Case is disposed off.

Dated: 12.02.2020

(Upma Srivastava)

Commissioner for Persons with Disabilities







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: 12364/1021/2020

Complainant: Shri Jyotish Sinha, O/o DRP - 3, 28th Floor

World Trade Centre, Cuffe Parade, Mumbai – 400005

e-mail: <jotishsinha@gmail.com>

Income Tax Commissioner/Addl. Commissioner, Income tax (HQ) Respondent:

Personnel, Room No. 340, 3rd Floor, Aayakar Bhawan, M.K. Marg,

Mumbai - 400020

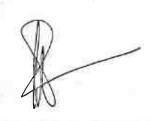
e-mail: <mumbai.dcit.hq.pers@incometax.gov.in>

Complainant: 80% locomotor disability

GIST of the Complaint:

Complainant vide letter dated 29.09.2020 inter-alia submitted that he has been working in the Income Tax Department in Mumbai as Multitasking staff, since August 2014 and he has submitted the following points:

- He had applied for short leave of 5 days and left for his native place i.e. Dhanbad, Jharkhand on 04/12/2019 along with wife as she was pregnant.
- Due to nephew accident, he extended leave for some more days and on 04/01/2020 his wife has given birth to a Son in Hospital at Raipur, Chattisgarh and he was the only person who was required to take care of both my wife and my nephew.
- Thereafter, when he was about to book ticket to return to Mumbai to join back service, he was met with a bike accident on 04/02/2020 and he got injured and hospitalized at Dhanbad, Jharkhand therefore, Doctors advised him to take bed rest for one month.
- On 17/03/2020 he had returned to Mumbai to join and resume service, however due to sudden pain and body ache he was unable to join the service at that time, thereafter due to ongoing Pandemic of COVID - 19, nationwide lockdown was announced and hence he had returned to his native place on 21/03/2020.





- When he got fit to resume duty, he returned back to Mumbai on 16/06/2020, but he
 was not allowed to resume back service, meanwhile ITO headquarter had issued a
 memo on 24/08/20 for unauthorised absent and however till today department had
 not issued salary from the month of December 2019 to till today.
- As per eligibility list issued by the concerned department on 28/01/2020, he is
 eligible for promotion from the grade of Multitask Staff to Tax Assistant and his name
 is also displayed in the said list on serial number 128 but till date he has not received
 any confirmation.
- 2. The matter was taken up with the Respondent vide letter dated **15.10.2020** under Section 75 of the RPwD Act, 2016.
- 3. In response, Dy. Commissioner of Income Tax, Mumbai vide letter dated 24.11.2020 inter-alia submitted that the applicant has narrated stories for his absence which were never informed to the office during his absence. He has cleverly concealed the facts of his involvement in the robbery and his application for anticipatory bail in High Court, Mumbai. Further, as per article published in Hindustan times on 15/06/2020, the police was looking for the applicant in the aforesaid case and applicant might have been busy in getting anticipatory bail. The applicant was not denied to join duty but he was issued a Memorandum calling for explanation of his unauthorised absence. As per CCS conduct rules, the applicant should have intimated all above events to this office instead of knowing that from newspapers. In view of the above facts and also the letter of Income Tax officer (HQ) (Personnel), Non. Gaz. Service Book Cell, Mumbai dated 01/01/2020, his salary was stopped.
- 4. After considering the respondent's reply dated **24.11.2020** 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 **29.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>29.01.2021</u>. The following were present:

- Shri Jyotish Sinha complainant
- Sunita Billa. Commissioner. Income Tax, Mumbai on behalf of respondent



Observation/Recommendations:

- 5. Both the parties were heard.
- 6. Complainant has alleged that he was not paid his salary for approximately 1 year.
- Respondent refuted the allegations by putting forward some serious facts. Respondent submitted that the Complainant was involved in some criminal conspiracy. Complainant was absent for a long time with sole objective of avoiding police interrogation. During this period, police visited Respondent establishment in search of the Complainant. He also applied for the leave however, his leave application was rejected and letter of rejection was intimated to him. During online hearing, the Complainant confessed that during the period of his absence he applied for Anticipatory Bail with respect to facts of conspiracy as submitted by the Respondent.
- 8. After perusal of the facts and documents submitted by both the parties, this court concludes the Complaint is not related any to disability issue. Cause of Complaint pertains to service issue between Respondent establishment and the Complainant. Therefore, this court concludes that intervention of this court in this case is not warranted.

9. Case is disposed off.

(Upma Srivastava)
Commissioner for

Persons with Disabilities







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: 11927/1024/2020

Complainant: Shri K. Siva Reddy & Ors., DM Finance, Bharat Dynamics Ltd,

Bhanur, Sanga Reddy, Telengana - 502305

E-mail: <sivareddy5826@gmail.com>

Respondent: The Chief Executive Officer, Bharat Dynamics Ltd, Plot No. 38, 39

TSFC Building, Financial District Nanakramguda, Gachibowli

Hyderabad, Opp. KARVY Millennium Towers, Telangana -

5000032

E-mail: <bdbdl@bdl-india.in>

The Secretary

Department of Public Enterprises, Public Enterprises Bhawan

Block No. 14, CGO Complex Lodhi Road, New Delhi - 110003

Complainant 40% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **03.03.2020** requested to direct the Department of Public Enterprises for implementation of OM issued by Department of Expenditure by removing additional Transport allowance to PwD employees outside the purview of ceiling limits (35% presently) of perks & allowance limits under Industrial Dearness allowances (IDA) also to PSU's, since these Conveyance/Transport Allowance and other benefits (such as special leave, special casual leave, transfer etc...) recommended in 7th pay commission to PwD employees, should be implemented automatically and paid along with salary from the date of appointment.

- 2. The matter was taken up with the Respondent vide letter dated **28.09.2020** under Section 75 of the RPwD Act, 2016.
- In response, DGM (C-HR), Policy & Legal, Bharat Dynamics Ltd vide letter dated 11.11.2020 submitted that no other allowance/benefit/perks will be kept outside the prescribed 50% ceiling except the four which have been mentioned in the DPE OM dated 26.11.2008 therefore, they have not extended the grant of Conveyance Allowance to PwD Executives.

4. After considering the respondent's reply dated **11.11.2020** 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 **22.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>22.01.2021</u>. The following were present:

Shri K. Siva Reddy - complainant

Shri Biplav Sinha, Dy. General Manager on behalf of respondent

Observation/Recommendations:

- 5. Complainant raised the issue that he is denied Additional Transport Allowance.
- 6. Respondent in its Reply submitted that perks/allowance/benefits are granted in accordance with Department of Public Enterprises, Ministry of Heavy Industries & Public Enterprises OM No. W-02/0030/2018-DPE (WC) dated 10.07.2018. As per Point (vi) of the OM, various allowance/benefits/perks are granted only up to ceiling limit of 50% of Basic Pay. Further, during online hearing it was notified that the upper ceiling limit of 50% has now been reduced to 35%.
- 7. DPE OM lists four allowances which are exempted from upper ceiling limit of 50% (currently 35%). Additional Transport Allowance is not mentioned in the list hence this allowance is covered under upper ceiling limit.
- 8. This court concludes that this is violation of Accessibility Rights guaranteed under Rights of Persons with Disabilities Act, 2016.
- 9. United Nations defines concept of 'Accessibility' in following terms -

"Accessibility is about giving equal access to everyone. Without being able to access the facilities and services found in the community, persons with disabilities will never be fully included. In most societies, however, there are innumerable obstacles and barriers that hinder persons with disabilities. ... An accessible physical environment benefits everyone, not just persons with disabilities. The Convention states that measures should be undertaken to eliminate obstacles and barriers to indoor and outdoor facilities including schools, medical facilities and workplaces. ... Transportation is a vital component for independent

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living, and like others in society persons with disabilities rely on transportation facilities to move from point A to point B. The term transportation covers a number of areas including air travel, buses, taxis, and trains. In many instances, these are inaccessible to persons with disabilities because either they cannot use them in the first instance (e.g. inaccessible buses, train stations), be more clear, use an actual example; relate to other rights: access to transportation provides access to other rights and vise versa. Longer-term the Convention foresees that all transportation be accessible to everyone in society. Immediate steps should ensure that persons with disabilities using public transportation are not at a disadvantage to others."

- 10. Above definition of 'accessibility' explains importance of making physical infrastructure accessible for Divyangjans and also explains importance of transportation for Divyangjans. If physical infrastructure like transport is denied to Divyangjan, it will amount to his/her exclusion from the society, rather than inclusion. Further, objective of policies of government establishments should be focused on eliminating the hinderances which are faced by the Divyangjans. However, a policy like placing upper ceiling limit of 35% of Basic Salary on Additional transport Allowance is in direct conflict with objective sought to be achieved by RPwD Act, 2016.
- 11. Hence, this court recommends that the Respondent shall give Additional Transport Allowance to the Complainant. The Department of Public Enterprises, Ministry of Heavy Industries & Public Enterprises is also recommended to amend its OM No. W-02/0030/2018-DPE (WC) dated 10.07.2018, so as to include Additional Transport Allowance/Double Transport Allowance in the list of perks/allowance/benefits exempted from upper ceiling limit.
- 12. The case is disposed off.

(Upma Srivastava)

Commissioner for
Persons with Disabilities







आयुक्त दिव्यांगजन न्यायालय मुख्य

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: 12425/1021/2020

Complainant: Dr. K.K. Soundra Pandian

e-mail: <soundra.pandian@cca.gov.in>

Respondent:

The Director, Indian Institute of Information Technology

Design & Manufacturing, IT Bhawan, Jabalpur

Engineering College Campus, Ranjhi, Jabalpur – 482011

e-mail: <director@iiitdmj.ac.in>

Complainant: 60% locomotor disability

GIST of the Complaint:

Complainant vide letter dated 12.11.2020 inter-alia submitted that after 12 years of service too, he was not got promotion and also denial of AGP 7000 equivalent to GP 6600.

- 2. The matter was taken up with the Respondent vide letter dated 19.11.2020 under Section 75 of the RPwD Act, 2016.
- 3. In response, Acting Registrar, PDPM, IIITDM, Jabalpur vide letter dated 11.12.2020 inter-alia submitted that Dr. KK Soundara Pandian was appointed as Research Engineer which was later re-designated as Technical Officer as the post is a non-teaching post, thus the question of giving AGP (Academic Grade Pay) does not arise. They further submitted that Technical Officers including Dr. Pandian could not be considered for promotion as the next post in the cadre is of Sr. Technical Officer (pay Level-12) which is a 100% direct recruitment as per the RPN 2016. As per the extant guidelines for grant of MACP in level 12 the APAR grading need to "very good" in all the APARS which are being considered. As APAR grading of Dr. Pandian is only "satisfactory" in 04 out of 05 APARs he is not eligible for grant of MACP.
- 4. After considering the respondent's reply dated 11.12.2020 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 29.01.2021

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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>29.01.2021</u>. The following were present:

- Dr. K.K. Soundra Pandian complainant
- Prof. Sanjeev Jain on behalf of respondent

Observation/Recommendations:

- 5. Both the parties were heard.
- 6. Complainant raised following two issues
 - a. Non granting of Academic Grade Pay (AGP) of Rs. 7000
 - b. Non granting of Minimum Assured Career Progression (MACP)

NON-GRANTING OF AGP

7. Respondent submitted that the Complainant was appointed as Technical Officer which is non-teaching post. AGP is granted only to officers holding teaching posts, hence, AGP cannot be granted to the Complainant.

NON-GRANTING OF MINIMUM ASSRED CAREER PROGRESSION

- 8. On this issue, the Respondent submitted that MACP is granted only to those who secure 'Very Good' benchmark in APAR. The Complainant, secured 'Satisfactory' benchmark in his APAR. Hence, he was not given MACP. Further, the Respondent assured that they will re-evaluate the APAR and reconsider the case of the Complainant for the purpose of granting MACP.
- 9. This court concludes that with respect to AGP, Complaint is not related to disability issue hence intervention of this court is not warranted.
- 10. On the issue of MACP this court recommends that legitimate rights of the Complainant be care of and he should not be deprived of due MACP, on grounds of disability. Respondent is requested to make reasonable accommodations as provided in Section 2 (y) of the RPwD Act, 2016 and consider grant of MACP on re-evaluated APAR.

11. Case is disposed off.

(Upma Srivastava)
Commissioner for Persons with Disabilities







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: 12366/1024/2020

Complainant: Shri Rajendra Suresh Pitale, Assistant Manager

Union Bank of India, LIC Hub Branch, 2nd Floor

Jeevan Prakash Building, Sir PM Road For, Mumbai -4000001

e-mail: <rajanp19071962@gmail.com>

Respondent:

The Managing Director & Chief Executive Officer

Union Bank of India, Central Office, 239, Union Bank Bhawan

Vidhan Bhawan Marg, Nariman Point, Mumbai – 400023

e-mail: <kalyankumar@unionbankofindia.com>

Complainant: 85% hearing impaired

GIST of the Complaint:

Complainant vide letter dated 27.09.2020 has requested to direct the Union Bank of India and others to issue a Special Identity Card to all Divyang Staff of Entire Banking Industry as per Section 08 of RPwD Act, 2016.

- 2. The matter was taken up with the Respondent vide letter dated 15.10.2020 under Section 75 of the RPwD Act, 2016.
- 3. In response, Assistant General Manager, Union Bank vide letter dated 09.11.2020 inter-alia submitted that Shri Rajendra Suresh Pitale joined e-Corporation Bank on 31.05.1989 as a Clerk under General – Deaf Category and at present, he is working as Assistant Manager at Mumbai – LIC HUB. Shri Pitale requested for issuance of special identify card in the format provided by him alongwith his appeal letter by incorporating respective physical disability of the employee, if any, on the identity card, under the provisions of Section 08 of the Rights of Persons with Disabilities Act, 2016. In this connection, Bank submitted that they have issued ID Cards for all employees for wearing while on duty with the fields containing Name, PF Number, Birth Date, Blood Group, Place of issue and date of issue and they are maintaining a list of its employees who are physically challenged and the protection & safety guaranteed under Section 08 of the Act will be ensured if the situation indicated therein araises.
- After considering the respondent's reply dated 09.11.2020 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 29.01.2021.



Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **29.01.2021**. The following were present:

- Shri Praveen Chandrakant Vaidya, Advocate representing complainant
- None appeared on behalf of respondent

Observation/Recommendations:

- 5. Both the parties were heard.
- 6. After hearing the representative of the respondent and observing the reply, it is viewed that the complainant is claiming to have all information about disability on the identity card issued by the Bank, as per Section 08 of RPwD Act. However, Section 08 of RPwD Act, 2016 is having following provisions:
 - 1. The persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.
 - II. The National Disaster Management Authority and the State Disaster Management Authority shall take appropriate measures to ensure inclusion of persons with disabilities in its disaster management activities as defined under clause (e) of Section 02 of the Disaster Management Act, 2005 for the safety and protection of persons with disabilities.
 - III. The District Disaster Managmenet Authority constituted under Section 25 of the Disaster Management Act, 2005 shall maintain record of details of persons with disabilities in the district and take suitable measures to inform such persons of any situations of risk so as to enhance disaster preparedness.
 - IV. The authorities engaged in reconstruction activities subsequent to any situation of risk, armed conflict or natural disasters shall undertake such activities, in consultation with the concerned State Commissioner, in accordance with the accessibility requirements of persons with disabilities.
- 7. Accordingly, respondent submission that this Section is not applicable in case of complainant claims for issuance of special identify card for persons with disabilities is convincing. However, the complainant is hereby made aware of that Department of Empowerment Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment has launched an online Portal namely "Unique ID for Persons with Disabilities" with a view to issue a Unique Disability Identity Card to each person with disabilities. Accordingly, complainant may apply for the same on the portal of DEPwD for issuance of Unique Disability Identity Card.

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In the light of the above, this Court does not find any merit in the complaint to

intervene, therefore, dismissed -

(Upma Srivastava) Commissioner for

Persons with Disabilities

Dated: 12.02.2021







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: 12414/1023/2020

Complainant: Shri M.L. Bachale

E-mail: <bachale.1965.ml@gmail.com>

Respondent: The Commissioner, Kendriya Vidyalaya Sangathan

18, Institutional Area, Shaheed Jeet Singh Marg

New Delhi - 110016

e-mail: <kvs.estt.1@gmail.com>

Complainant More than 50% locomotor disability

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 04.11.2020 में कहना है कि वह दिनांक 27.10.1992 से केंन्द्रीय विद्यालय संगठन में नियमित सेवा दे रहे है तथा वर्तमान में केंन्द्रीय विद्यालय संगठन, सी.पी.ई., इटारसी में पी.जी.टी. भूगोल के पद पर कार्यरत है। प्रार्थी का कहना है कि उन्हें प्राचार्य मानसिक, आर्थिक एवं व्यक्तिक रूप से प्रताड़ित कर रहे है तथा एक वेतन वृधि (68000 से 66000 + महगाई भत्ता) 02 वर्षों के लिए रोक दिया है।

- 2. मामला आरपीडब्ल्यूडी अधिनियम, 2016 की धारा 75 के तहत दिनांक 09.11.2020 को प्रतिवादी के साथ लिया गया।
- 3. सहायक आयुक्त (स्था.—1), केन्द्रीय विद्यालय संगठन, नई दिल्ली का अपने पत्र दिनांक 28.12.2020 का कहना है कि श्री एम.एल. बचले की शिकायत निराधार है बल्कि उनके खिलाफ एक अभिभावक श्रीमती ज्योति पवार द्वारा गंभीर शिकायत की गई है जिसमें उन पर बदतमीजी करने, सही से नहीं पढ़ाने व बच्चों का लंच खाने का आरोप लगाया है, जिसके लिए उनको चेतावनी पत्र जारी किया गया था। प्रतिवादी का आगे कहना है कि श्री बचले की सीसीएस (सीसीए) रूल, 1965 के तहत अनुशासनात्मक कार्रवाई करते हुए प्राचार्य द्वारा नहीं अपितु उपायुक्त, के.वि.सं., भोपाल संभाग द्वारा छोटे दंड स्वरूप वेतनमान के एक चरण को 02 वर्ष के लिए कम करने का लगाया गया था।

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- 4. प्रार्थी का अपने प्रति उत्तर दिनांक 31.12.2020 में कहना है कि उपरोक्त जवाब एकतरफा, कपटपूर्वक, मनगढ़ंत एवं झूठ है।
- 5. After considering the respondent's reply dated **28.12.2020** and the complainant's rejoinder dated **31.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **02.02.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>02.02.2021</u>. The following were present:

- Shri Makhan Lal Bachale complainant.
- Shri Aditya Sharma on behalf of the respondent.

Observation/Recommendations:

- 6. Both the parties were heard.
- 7. The respondent submitted that disciplinary action was taken against Shri Bachale as per rules and penalty was imposed. He has made a appeal to the concerned appellate authority which is pending and likely to be disposed off very soon. Shri Bachale was heard on phone.

8. After hearing both the parties, Court find no discrimination in the case on the ground of disability. Accordingly, case is disposed off.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.02.2021







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. 12254/1011/2020

Complainant:

Dr. Nitesh Kumar Tripathi, H.No.B-241, Gali No.11, 'B' Block, Sant Nagar, Burari, Delhi – 110 084.

Respondent:

Ministry of Health and Family Welfare, (Through the Secretary)
Maulana Azad Road,
New Delhi – 110 011.

12312

Disability: 65% locomotor

Gist of Complaint:

The complainant vide his complaint dated 25.08.2020 has referred to the results published by UPSC in the year 2018 and 2019 for Combined Medical Service Examination. The Respondent has left 2 unfilled vacancies for person with disabilities in Combined Medical Service Examination in the year 2018 and 24 unfilled vacancies for PwDs in the year 2019 without interchanging with available suitable PwD candidates while vacancies has been changed under rule of DoP&T dated 15.01.2018. He submitted that this is a gross violation of Section 34(2) of Rights of Persons with Disabilities Act, 2016. The complainant submitted that there must not be dual standard while dealing with matter concerning persons with disabilities in UPSC in two different examination as interchanging of vacancies under Rule 8.5 of DoP&T O.M. dated 15.01.2018 which has been implemented in CGSE 2019 but this has not been applied by interchanging unfilled vacancies of sub categories of persons with disabilities in CMSE 2018 AND 2019. There are chances of getting qualified PwDs sunder sub categories other than locomotor disabilities after 2024 as before the year 2019 only sub category of locomotor disabilities was suitable to get admission in MBBS Medical Course which is minimum eligibility for applying in Combined Medical Service Examination conducted by UPSC.

No comments have been received from the Respondent.

Observation/Recommendations:

3. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent :

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- As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate 4. 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 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.

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 person 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.
- 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 any3/-



person 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

- 6. 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.
- 7. Accordingly respondent is recommended to adhere with the provisions of RPwD Act, 2016 and circular issued by Govt. Of India for appointment of Persons with Disabilities. It is further recommended to ensure that the rights of persons with disabilities shall not be infringed.
- 8. Accordingly the case is disposed off.

Dated: 12.02.2021

(Upma Srivastava)

Commissioner for Persons with Disabilities







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. 11962/1011/2020

Complainant:

Shri R. Vinod, No. 1/1, Muthukrishnan Street, Pondy Bazar, T. Nagar, Chennai-600017.

Respondent:

NLC India Limited, (Through the Chairman & Managing Director), Corporate Office, Block-1, Neyveli, Cuddalore Dist., Tamil Nadu - 607 801.

Disability

60% multiple disability (45% locomotor + 30% visual impairment)

Gist of Complaint:

The complainant vide his complaint dated 13.05.2020 submitted that NLC India Limited has released an advertisement for recruitment to the post of Graduate Executive Trainee (GET) as per notification Advt.No. 02/2020. He submitted that this post is identified for persons with OA, OL, HH, B, LV categories and Multiple Disabilities amongst the above categories except deafblindness. Being a person with combination of locomotor and visual impairment, he was not selected to the post of Graduate Executive Trainee by Respondent.

The Executive Director (HR), NLC India Limited vide letter no. CORP/HR/417/32/2020 2. dated 28.11.2020 submitted that reservation for persons with disabilities has been followed by The Respondent submitted that the petitioner them as per the Government of India directives. could have applied either under the reservation notified in SI. No. 1.0 of the detailed Advertisement vide Advt. No.02/2020 and the degree of disability for considering under PwD reservation has been notified as 40% as per GOI directives in SI. No.5.1 of the detailed advertisement vide Advt. No.02/2020 or the Categories of disability identified suitable for the post of Graduate Executive The relaxation in qualifying marks will be applicable to persons with disabilities when candidates are not available under general standards for the posts reserved for pwds. Respondent submitted that the complainant has registered a public grievance through MCOAL online portal to give exemption for the qualifying mark in the competitive examination for job for persons with multiple disability categories and suitable reply has been uploaded in the CPGRMS online portal, GOI, MoC informing the facts.

...2/-



- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 02.02.2021.
- 4. The following persons were present during the hearing;
 - 1. Shri R. Vinod, the complainant.
 - 2. Shri Mohan U, General Manager/Recruitment for Respondent.

Observations and Recommendations:

- 5. After hearing both the parties, the Court is of the view that complainant's allegation is only apprehensive without any cause of action. Therefore, no intervention is required.
- 6. Accordingly the case is disposed off.

Dated: 12.02.2021

(Upma Srivastava) Commissioner for

Persons with Disabilities







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. 12340/1011/2020

Complainant:

Shri Amiya Kanti Ghosh, S/o. Shri Jayanta Kumar Ghosh, 306, N.S. Road, Jaynagar Banerjee Para, P.O.: Jaynagar Majilpur,

P.S.: Jaynagar,

Dist.: South 24 Parganas, West Bengal - 743 337.

Versus

Respondent:

The Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, No.40/C, Chittaranjan Ave., Chandni Chawk, Kolkata – 700 012.

Disability: 100% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 07.09.2020 submitted that Deptt. of Posts, West Bengal Circle had issued Notification no. RECTT/R-100/Online/GDS/Vol-VI dated 05.04.2018 for recruitment to the posts of Gramin Dak Sevak. The complainant applied to the post through online under Registration no. R36 Fi 371 A7C61B. He has passed the Madhyamik Examination in the year 2014 from West Bengal Board of Secondary Education by obtaining Grade-A. He belongs to OBC (Category-B). The OBC certificate has been issued to him by the Sub-Divisional Officer, Baruipur, South 24 Parganas. He got the Disability Certificate made from M.R. Bangur Hospital, Kolkata. The complainant received an intimation on 20.02.2020 from the Inspector Posts, Kakdwip, S.O. for document verification. He submitted all his original necessary documents for verification, but till date he has not received the joining letter. On 17.06.2020, the Commissioner for Persons with Disabilities, Govt. of West Bengal issued a letter vide memo no. Com/532 to the Chief Postmaster General, Deptt. of Posts, Govt. of West Bengal Circle for issuing an Appointment

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Ores of



Letter in his favour, but he has not received the appointment letter so far. The complainant further submitted that two candidates namely Shri Mintu Rahaman at SI. No.1218 (Registration No. R623BBE4174BD) and Shri Sayed Tahasinul Ahasan Rine at SI. No.1183 (Registration No. R7326D8F544DF) the post of GDS MC during the month of July 2020.

- The O/o the Chief Postmaster General, West Bengal Circle, Kolkata vide letter no. 2. Rectt./R-100/GDS/Cycle-1/PH/2020 dated 27.11.2020 submitted that a Notification for GDS online selection-cycle-I for filling up of 5778 posts of GDS MP, GDS MC & BPM was issued under no. Recct./R-100/Online/GDS/Vol-VI dated 05.04.2018 out of which 220 posts were reserved for PH In para-M of their Office notification dated 05.04.2018, permissible disability in candidates. respect of 'PH' candidate for GDS Mail carrier post were -OL (One leg affected), Low Vision (LV) & Hearing Impaired (HH). Inspite of declaration of eligibility criteria in respect of 'PH' candidate for the post of GDSMC in the notification dated 05.04.2018, the complainant submitted online application for the post of GDS-MC which was reserved for 'Low Vision', though he is a person with 100% blindness and not eligible for the post. From the foregoing facts it is clearly established that the complainant knowingly submitted online application though he was not eligible for the post of GDSMC as per the notification. The Respondent submitted that the criteria for online selection to the post of GDS was only the marks obtained in 10th Standard of approved Boards aggregated to percentage to the accuracy of 4 decimals and the selection was made as per automatic system generated merit list based on the candidate's online submitted application in accordance with the selection criteria as mentioned in para -N(1) & (2) of their office's notification dated 05.04.2018. As per online selection process the candidate who secured highest percentage of marks in 10th standard automatically received an SMS for his provisional selection on the prescribed date after selection online. Shri Amiya Kanti Ghosh, the complainant secured highest percentage of marks in 10th standard amongst all the candidates applied for the post of GDSMC. Based on the online submitted applications, his name was taken as selected in the automatic system generated merit The Respondent submitted that it is pertinent to mention here list against the post of GDSMC. that GDS are not Government Employees and are not getting salaries like other Government services. GDS are appointed as extra departmental agents and they get allowances for 3 hours or 5 hours in a day.
- 3. The complainant vide his rejoinder dated 28.12.2020 submitted that as per the Order No.17-08/2017 GDS, Ministry of Communication, Deptt. of Posts (GDS Selection) dated 21.06.2017 stated that persons with OL,B,LV and HH category are competent enough to do the job





of a Mail Carrier. He applied to the said post and was also selected to the post. His documents were also verified by the Respondent. The complainant's contention is that if two candidates with visual impairment namely Shri Mintu Rahaman and Sayed Tahasinul Ahasan Rine joined the service during the month of July 2020, then why he has been denied the appointment to the same post.

- 4. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 29.01.2021.
- 5. The following persons were present during the hearing;
 - 1. Shri Amiya Kanti Ghosh, the complainant
 - 2. Ms. Preeti Rai, Assistant Director of Post, for Respondent. Both parties were heard.

OBSERVATIONS & RECOMMENDATIONS

- 6. These batch of complaints is filed by 3 Divyangjans who suffer from 100% Visual Impairment. Common grievance expressed in the complaints is non appointment of the Complainants despite of being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.
- Respondent has submitted in its Reply that the whole selection process was completely automatic and was carried out using computer software without intervention of human beings. Complainants were selected on the basis of marks they secured in their Class 10th examination. No interview or written examination was conducted. The post for which the recruitment was carried could not be filled with Divyangjan suffering from 100% Visual Impairment.
- 8. The Respondent stated that as per Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities, if any post is already held by a Persons with Disabilities, it shall be automatically deemed to have been identified for Divyangjans. Moreover, Respondent informed that at the stage of filling up of Application Forms, no candidate was given opportunity to mention their disability sub category. Hence, names of Divyangjans suffering from 100% Visual Impairment could not be eliminated at the initial stage itself.
- 9. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.



- 10. Contention on the part of the Respondent that such candidates will not be able to perform the duties of a GDS is found to be presumptuous. The complainants are fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.
- 11. Hence, this court recommends that Respondent shall appoint the Complainants as per the test results and shall give them opportunity for at least 6 months. Further if the Complainants are able to carry out their duty efficiently then the Respondents shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.

12. The case is disposed off.

Dated: 12.02.2021

(Upma Srivastava)

Commissioner for Persons with Disabilities







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. 11847/1014/2020

onri Ashish Kumar Agarwal, 5 & 6, Mahendra Nath Roy Lane, Howrah-711101

Versus

Respondent:

Paschim Banga Gramin Bank, Head Office: Natabar Paul Road, Chatterjee Para More. Howrah, West Bengal - 711 101.

Disability:

100% visual impairment.

Gist of Complaint:

Shri Ashish Kumar Agarwal, the complainant vide his complaint dated 17.02.2020 submitted that he appeared in the Common Recruitment Examination for Group 'B' Office Assistant (Multipurpose) conducted by Institute of Banking Personnel Selection under Registration No. 1730643970 with Roll No.2863008852 under visual impairment category. He appeared in the Preliminary Examination on 18.08.2019 and appeared in the main examination on 20.10.2019. He cleared both the Preliminary Examination as well as the Main Examination. He received an appointment letter from Paschim Banga Gramin Bank directing him to join the Bank on 11th of As advised by the Bank by email, he got his document verification done on 22nd January. The complainant submitted that everything was fine until he received an email from the Respondent stating that "due to unavoidable circumstances the prior mails remain cancelled". He went to the Bank and tried to talk to concerned official as to what happened and why they were denying his candidature and asked them the unavoidable circumstances on which his candidature The complainant was warned not to come within their premises to get was kept on hold. information about the status of his appointment in future.

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- The General Manager, Paschim Banga Gramin Bank vide his letter dated 06.10.2020 2. submitted that the Complainant appeared for CWE, RRBs VIII conducted by IBPS and was provisionally allotted Paschim Banga Gramin Bank. The Respondent vide letter dated 06.01.2020 informed the complainant to be present for Final Verification of Biometric Impression and Original Certificates/Testimonials etc regarding the post applied by the Complainant. The Complainant appeared before the Respondent on 22.01.2020 along with all documents. The Respondent vide email dated 28.01.2020 Ref. No. PBGB/HO/PAD/2277/2019-20 dated 24.01.2020 erroneously forwarded an email purported to be 'Appointment Letter for Recruitment of Office Assistant (Multipurpose) under subject Appointment Letter'. The Respondent vide subsequent email dated 28.01.2020 intimated the Complainant to treat the earlier email as cancelled. The Respondent submitted that in view of the nature of duties performed by Office Assistant (Multipurpose), it is not out of place to mention that such duties cannot be performed by a candidate who is 100% visually impaired. The Respondent further submitted that the nature of operations of the Complainant is varied in nature (more specifically financial in nature) and any premature assignment will invite hardships to the Complainant.
- 3. **Hearings**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 22.01.2021.
- 4. The following persons were present during the hearing;
 - 1. Shri Ashish Kumar Agarwal, the complainant in person
 - 2. Shri Srikant Kumar Sahu, GM, for Respondent.

OBSERVATIONS & RECOMMENDATIONS

- 5. Facts of the case are unfortunate and unique. Both the parties to the Complaint accepted the following facts –
- a. Complainant appeared in recruitment process conducted for the post of Office Assistant.

b. He qualified the exam and his name appeared in merit list;

- c. Subsequently he was called for documents verification and medical examination. Both these stages were also successfully passed by him.
- d. Respondent has not issued appointment letter to the Complainant till date.
- 6. Respondent submitted that even though the Complainant has passed the recruitment examination he has not been appointed because the nature of job which has to be performed by Office Assistant is such that the Complainant will not be able to perform the job due to his disability.
- 7. Respondent's act of not appointing the Complainant even when he has qualified the examination is gross violation of rights of Divyangians as conferred by Rights of Persons with Disabilities Act, 2016.

- (124)
- 8. Post of Office Assistant (Multipurpose), Group B, is identified suitable for category 'Blind' by Ministry of Social Justice & Empowerment, Government if India. The ministry published lists suitable for different categories of Divyangjans in vide notification dated 29.07.2013. Recently, the Ministry reviewed and re-published the list vide notification dated 04.01.2021. in both the lists post of Office Assistant is identified suitable for Blind category Divyangjans. Hence, denial of appointment to the Complainant is violation of RPwD Act, 2016, Notification and instructions issued by Ministry of Social Justice & Empowerment and is an act of discrimination with Divyangjans.
- 9. Hence, this court concludes that the Complainant cannot be denied appointment by the Respondent. As far as ability of Complainant to perform the job is concerned, this court recommends that the Respondent is duty bound to make necessary infrastructural arrangements in order to provide suitable working environment for the Complainant. For instance, if the Complainant is given work which involves use of Computer device then the Respondent shall make arrangements for screen-reader software. If nature of job is such that interaction with third parties is required then the Respondent shall assign a non-divyang employee with duty to accompany the Complainant and provide aid in performing the job.
- 10. Further, Respondent is recommended to appoint the Complainant with immediate effect. This court takes serious note of the fact that a Divyangjan who despite of challenges faced by him cleared an examination and got selected for the post is denied appointment by the Respondent. Thereby violating of RPwD Act, 2016 and subsequent rules framed by the MoSJE, Government of India.

Dated: 12.02.2021

(Upma Srivastava)
Chief Commissioner

for Persons with Disabilities







COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन संशक्तिकरण 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. 12352/1011/2020

Complainant:

Shri Rajasekhar Bhimireddi, Sri Satya Sai Institute of Higher Learning (Deemed University), Prasanthi Nilayam, Anantapur District, Andhra Pradesh – 515 134

Respondent:

Banaras Hindu University, (Through the Registrar) Varanasi, Uttar Pradesh – 221 005.

Disability: 60% locomotor

Gist of Complaint:

Shri Rajasekhar Bhimireddi vide his compliant dated 24.09.2020 submitted that he had applied for the post of Assistant Professor (Physical Chemistry) against Rolling Advertisement No.01/2020-2021 of Banaras Hindu University. The eligibility criteria for this post is Master's Degree with 55% marks in a concerned/relevant/allied subject from an Indian University or an equivalent degree from an accredited foreign University. It was not mentioned anywhere in the advertisement that a particular specialization (Physical Chemistry) is required for this post, as was mentioned in another post (post code 30305, MA/M.Sc in Geography with specialization in Climatology. He obtained the Master's Degree in Chemistry from the Department of Chemistry, Banaras Hindu University. During his Master's degree course, he have also studied Physical The irrespective of specialization, Chemistry as papers. Physical/Organic/Inorganic/Analytical Chemistry always gives the degree in Chemistry only. As per guidelines, he fulfilled all the requirements for the applied post. He is the topper in the list of eligible and not eligible candidates for this post in the applied category, i.e. PwD, but was not called for the interview stating that PG Specialization is in Analytical Chemistry. The scheduled interview to the selected candidates was on 27.09.2020.

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- The Joint Registrar (Recruitment & Assessment Cell), Banaras Hindu University vide letter 2. no. AA/VI-RAC/CCC-PWD/R-Bhimireddy/2020/28 dated 28.11.2020 submitted that two posts of Assistant Professors (Post Code: 30489) with specialization of Physical Chemistry (one each under SC and PwDs category) and one post of Assistant Professor (Post Code:30300) with specialization of Analytical / Inorganic / Organic Chemistry under UR category were advertised along with other posts by the University vide rolling advt. 01/2020-2021 with the last date as 03.08.2020 for submission of downloaded application form along with enclosures. Shri Rajasekhar Bhimireddy was found eligible for the post of Assistant Professor (Post Code: 30489) under PwD category by the FAC-Chemistry on 18.09.2020 subject to following condition: "PG marks required to check the percentage of marks and specialization. Final decision about eligibility will be taken after having checked specialization at PG level. As well as five point certificate required as per Accordingly, the list of eligible and non eligible candidates were uploaded at Ph.D regulation. their website, i.e. www.bhu.ac.in/rac with condition that the candidates who have been made eligible conditionally by the concerned FAC, have to submit requisite document within the stipulated time for submitting objection, i.e. upto 21.09.2020. On receiving the required documents from the complainant, the FAC found that his PG level specialization was Analytical Chemistry as evident from his PG mark sheet whereas the criteria for short listing of the application had been specialization of Physical Chemistry at PG level. On 23.09.2020 a revised list of short listed, not short listed and not eligible candidates were uploaded at their website for interview scheduled on 27.09.2020 wherein Shri Rajasekhar Bhimiredy was not found eligible as he did not fulfill to the requirements as advertised, i.e. PG with Physical Chemistry as specialization.
- 3. The complainant vide his rejoinder dated 16.12.2020 submitted that nowhere in the advertisement it is mentioned that a PG Specialization in Physical Chemistry is required for applied post, i.e. Physical Chemistry (Post Code: 30489) as was mentioned in another post (post code 30305) M.A./M.Sc in Geography with specialization in Climatology. He submitted that as per BHU Rolling Advertisement No.01/2020-2021, the eligibility criteria for the post are a Master's Degree with 55% marks in a concerned/relevant/allied subject from an Indian University or an equivalent degree from an accredited foreign university. Does he have less than 55% marks in Master's Degree other than a Chemistry subject. The complainant further submitted that he has also studied Physical Chemistry as one of the subjects during his Master's Degree (except 4th Semester). Furthermore, he has received the highest degree (Ph.D) from Chemistry (it comes under Physical Chemistry) and having highest (topper) in Academic / Research score (among the PwD category).
- 4. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 02.02.2021.



- The following persons were present during the hearing;
 - 1. Dr. Rajasekhar Bhimireddi, the complainant.
 - 2. Ms. Sunita Chandra, Joint Registrar, BHU and Dr. S.K. Dhyani, BHU, for Respondent.

Observations and Recommendations:

- The Respondent submitted that the complainant was not found eligible for the post of Asst. 6. Professor (Physical Chemistry) which was reserved for persons with disabilities as he did not have the specialization of Physical Chemistry at P.G. Level, whereas his specialization at P.G. Level was Analytical Chemistry.
- The complainant submitted that he has studied Physical Chemistry at P.G. Level as one of 7. the subjects and also having degree of Ph.D which comes under the Physical Chemistry.
- After hearing both the parties, this Court is in the view that the main issue here is 8. "Complainant's eligibility for the post of Asst. Professor (Physical Chemistry). In this regard, the guideline is not very clear, as to why a person having highest degree, i.e. Ph.D in the subject is not eligible for a post which requires specialization in that subject at PG level only. The complainant possesses qualification more than the eligibility requirement and should have been called for interview. Therefore, it is recommended that guidelines for eligibility in terms of qualification, specialization etc are revisited by the appropriate authority, i.e. BHU and the UGC immediately. Ambiguity like this have a bearing on other such cases which affect the right of PwD persons adversely. Therefore, a copy of this Order may also be endorsed to UGC.

The case is disposed off. 9.

Dated: 15.02.2021

(Upma Srivastava) Commissioner for

Persons with Disabilities

Copy to:

The Secretary,

University Grants Commission (UGC),

Bahadur Shah Zafar Marg,

New Delhi - 110002.

for necessary action, please.







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. 12060/1014/2020

Complainant:

Shri Sunil Kumar,
RZF-371/4, Guru Nanak Marg,
Rajnagar Part 2,
Palam Colony,
New Delhi – 110077.

Versus

Respondent:

Airports Authority of India, (Through the Chairman)
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi – 110 003

Disability: 40% Locomotor Disability

Gist of Complaint:

The complainant vide his complaint dated 17.06.2020 submitted that he has been working as 'Safai Karamchari' in Airports Authority of India Guest House for the last 6 years. He has been removed from service without any prior notice. He does not have any complaint against him all these years. He worked during lockdown due to COVID-19 Pandemic. He was asked to pay Rs.5,000/- or he will be asked to leave the job. Last year he gave Rs.3,000/- in order to save his job. He submitted that in connivance with the Contractor, the Manager, Electrical and AGM, Electrical removed him from service. He has a loan of Rs.91,000/- for towards which he pays Rs.4,065/- to Rs.6,000/- every month. He submitted that he would not be able to pay back the loan. His wife is in family way and he do not have money for treatment.

2. The Asstt. Gen. Manager (Engg.(E)), AAI vide letter dated 04.12.2020 submitted that the complaint filed by the complainant is false and misconceived. They have denied that the complainant was working with AAI and dismissed from service. As per records, Shri Sunil Kumr was never employed by AAI, hence there was no employee employer relation between the complainant and AAI. AAI has no role t play with regard to the appointment or termination of the

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complainant as the workman was deployed by contractor M/s. Paatala Protection Services and was under the supervision/control of the contractor. The complainant was neither directly under the control of AAI nor he was in contact with AAI officials. The complainant was employed by M/s. Paatala Protection Services and in the pay role of the contractor. M/s. Paatala Protection Services was awarded the contract for Housekeeping and maintenance of Airports Authority of India Guest House at INA Colony for the year 2019-2020 vide letter dated 29.03.2019 for the period from 01.04.2019 to 30.04.2020. The Respondent submitted that the payment of wages and bonus as well as depositing of ESIC, PF was paid by the contractor. AAI never interferes in the engagement and dismissal of contractual workmen and he contractor is liable to being his own workmen to perform the job awarded to him. The Respondent has strongly denied the allegations of demanding money by AAI officials from the complainant. AAI has no role to play with regard to the Appointment or Termination of the complainant. The Respondent further submitted that they have received a communication from the present contractor, who on compassionate grounds has decided to employ the complainant.

3. The complainant vide his rejoinder dated 02.02.2021 submitted that every year the contractor is changed by AAI. He worked under contractor Stalwart Facilities from 01.05.2020 to 05.06.2020. He was not paid salary for five days worked in June 2020 under Stalwart Facilities. The record of working during this period has not been shown in record. During COVID-19 Pandemic also he worked and travelled 16 Kms on foot daily to do the duty as there was no public transport plying during the Pandemic period.

Observation/Recommendations:

- 4. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent:
 - a) to ensure that payment for five days is made to the complainant as per his work in June 2020 under Stalwart Facilities.
 - b) to instruct the concerned Contractor to reemploy the complainant back in view of Section 20 of RPwD Act, 2016.
 - c) This Court within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules, advises the respondent to be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.
 - d) To depanel and not engage such Contractors who exploit persons with disability and remove them from job.
 - e) The case is accordingly disposed off.

Date: 15.02,2021

(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. 11794/1011/2020

Complainant:

Dr. Nitin Kalinath Gorwade,

AT Post: Mamadpur (K.L),

Taluka : Chikodi, Dist. : Belgaum, Karnataka – 591 211.

Respondent:

Postgraduate Institute of Medical Education & Research

(Through the Director), Chandigarh – 160 012

Disability

: 50% locomotor disability

Gist of Complaint:

Dr. Nitin Kalinath Gorwade vide his complaint dated 09.12.2019 submitted that he served as Assistant Professor for one year in a Government Dental College and Hospital in Mumbai and Lecturer in Yogita Dental College for one year and eleven months. Presently he has been working as a Senior Resident in PGIMER, Chandigarh from 01.07.2017 till dated. Some surgeries which he did are very special and very rare Periodontist can only operate such cases. He appeared in Faculty interview in AIIMS Rae Barely, AIIMS, New Delhi, PGIMER Chandigarh and AIIMS Bathinda but he has been denied selection under PwD quota. Through an RTI, he came to know that AIIMS New Delhi recruited only 3 Faculty posts since 1995, PGIMER, Chandigarh recruited only 2 Faculty posts since 1995, AIIMS Rae Barely recruited only one Faculty posts and no one was recruited by AIIMS Bathinda under PwD quota. All these institutes are having lot of backlog seats. He submitted that he himself forced PGIMER to start PwD reservation in senior residency in 2017 as PGIMER had not been implementing PwD reservation in Senior Residency till July 2017. He has requested this Court to get information from the newly formed institutes as well as older institutes how many seats were reserved by them for Assistant Professors under PwD quota. In the matter of AIIMS Rae Barely, he has filed a case in Hon'ble CAT, Chandigarh which is subjudice.

2. The Respondent vide their reply dated 28.11.2020 has submitted that the Ministry of Health and Family Welfare has declared the PGIMER Chandigarh to act as mentor Institute for operationlization of various services in the New AIIMS viz. AIIMS, Rae Bareli & AIIMS Bathinda.

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Accordingly, the PGIMER, Chandigarh advertised 16 posts of Assistant Professor for AIIMS, Rae Bareli vide Advertisement No.PGI/RC/2018/077/1630 dated 21.04.2018 and 156 posts for Professor, Additional Professor, Associate Professor and Assistant Professor for AIIMS, Bathinda vide Advertisement No. PGI/RC/2019/007/2910 dated 08.07.2019. The PGIMER, Chandigarh also advertised for 134 posts of Assistant Professors for PGIMER, Chandigarh vide Advertisement No.PGI/RC/2019/001/0050 dated 04.01.2019. A perusal of above said advertisements would reveal that the 14 faculty posts in the following identified departments, i.e. non-clinical departments including the department of Dentitry were reserved for persons with disabilities, the details of which re as under:-

S.No.	Name of	Advertisement No.	The	Total no.	No. of PwD	No. & Name
0	Institute		Departments	of posts	candidates	of posts for which PwD
			which were	advertised in the	appeared for interview	candidate, if
			identified	in the identified	IIILEI VIEW	any, got
			suitable for PwD	depts.		selected
	AU1140 D	PGI/RC/2018/077/1630	Biochemistry,	4	01 in	Nil
1.	AIIMS, Rae	dated 21.04.2018.	ENT, Radio-		Dentistry	
	Bareli	Total posts	diagnosis &		,	
		advertised : 16	Dentistry.			
2.	AIIMS,	PGI/RC/2019/007/2910	Dentistry,	41	01 in	Nil
2.	Bathinda	dated 08.07.2019.	ENT,		Dentistry	
	Ballinaa	Total posts advertised : 156	Microbiology,			
			Psychiatry,			
			Pharmacology,			
			Radiology,			
			Radiotherapy			
			& Radiation			
			Medicine,			
			Speech			
			Therapy, TB & Chest			
			Diseases			
			(Pulmonary			
			Medicine),			
			Urology			
3.	PGIMER.	PGI/RC/2019/001/0050	Psychiatry,	23	03 (01 in	01 in the
0.	Chandigarh	dated 04.01.2019.	Radio-		Radiotherapy,	Deptt. of
		Total posts	diagnosis,		02 in	Radiotherapy
		advertised: 134	Radiotherapy,		Dentistry)	
			TB & Chest			
			Diseases			
			(Pulmonary			
10			Medicine),			
2			ENT, Urology, ENT (Speech			
			& Hearing),			
			Clinical			
			Psychology,			
			Anatomy,			
s.			Dentistry.			

The Respondent further submitted that the complainant, Dr. Nitin Kalinath Gorwade applied for posts of Assistant Professor for AIIMS, Rae Bareli, AIIMS, Bathinda and PGIMER, Chandigarh appeared for interview before the Standing Selection Committee on 19.06.2018 (for Rae Bareli), 22.10.2019 and

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23.10.2019 (for Bathinda) & 23.05.2019 & 24.05.2019 (for PGIMER, Chandigarh). However, he was not selected for the post of Assistant Professor due to his unsatisfactory performance in the interview before the Standing Selection Committee. In view of the unsatisfactory performance of the complainant in the interview before the Standing Selection Committee, it is wrong on the part of the complainant to claim that he has been denied the selection under PwD quota.

- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 12.01.2021.
- The following persons were present during the hearing;
 - 1. Shri Nitin Kalinath Gorwade, the complainant.
 - 2. Shri Mahender Singh, Admin Officer, PGIMER, Chandigarh

OBSERVATIONS & RECOMMENDATIONS

- 5. Complaint has alleged that the Respondent establishment discriminated against him despite of having a good academic record. Further, the Complainant has submitted that the Respondent has not reserved appropriate number of seats for Persons with Benchmark Disabilities in accordance with Rights of Persons with Disabilities Act, 2016.
- 6. Respondent submitted that it has been declared as mentor institute for operationalization of various services in AIIMS Rae Bareli and AIIMS Bhatinda. Respondent establishment issued notification inviting applications against various vacancies in AIIMS Chandigarh, AIIMS Rae Bareli and AIIMS Bhatinda. The Complainant applied for the post of Assistant Professor.

Non Selection Of The Complainant

- 7. The Respondent submitted that the Complainant was called for interview and was given Grade C, which meant 'Below Average Performance'. Marks/Grade given in the interview are based upon the candidate's performance in the interview process. Interview board's decision of grading a candidate cannot be interfered with in the absence of extra ordinary circumstances.
- 8. Therefore, this court concludes that the Complainant has failed to prove any instance of discrimination with respect to issue of his non selection.

Reservation Of Vacancies

9. Respondent establishment has submitted that it reserved total number of 14 posts, details of which are as follows –

AIIMS RAE BARELI -

Total number of posts – 16
Total identified posts – 04
Number of seats reserved for PwBDs – 0



133

AIIMS BHATINDA-

Total number of posts – 156

Total identified posts – 41

Number of seats reserved for PwBDs – 8

AIIMS CHANDIGARH -

Total number of posts –134

Total identified posts – 23

Number of seats reserved for PwBDs – 6

- 10. As per RPwD Act, 2016 it is the duty of Government establishment to reserve 4% of total vacancies, whether identified or non-identified, for PwBDs. Above details of the vacancies manifest that the Respondent has followed the statutory mandate of providing 4% reservation to PwBDs.
- 11. Therefore, this court concludes that the Respondent establishment has not caused any discriminatory practice against PwBDs. Hence, intervention of this court is unwarranted.
- 12. The case is accordingly disposed off.

Dated: 15.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







026361

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

226360

Case No: 12363/1021/2020

Complainant: Shri Praveen Sehrawat

S/o Lt. Shri K.C. Sehrawat, R/o H.No. 202

Auchandi, Delhi

E-mail: com>

Respondent: The Assistant General Manager, State Bank of India

Local Head Office, 11, Parliament Street, New Delhi

E-mail: <rm4.ao2delhi@sbi.co.in>

GIST of the Complaint:

Complainant vide complaint dated 30.09.2020 submitted that he joined the SBI as a Probationary Officer under PwD (OH) category on 15.05.2009 and in the year 2017-2018, he became eligible for promotion to the post of MMGS-III but no examination was conducted for promotion to various posts and promotions were made without conduction any exam. He alleged that despite being eligible he was not considered for promotion to MMGS-III without assigning any reason. He further alleged that he had requested for an advanced prosthetic leg which was rejected vide letter dated 10.10.2017 only on the sole ground that there is ceiling of Rs. 2,50,000/- for grant of prosthetic hand/leg.

- 2. The matter was taken up with the Respondent vide letter dated **15.10.2020** under Section 75 of the RPwD Act, 2016.
- 3. In response, Regional Manager, State Bank of India vide letter dated 16.12.2020 submitted that when the complainant was promoted to the MMGS-III Grade in May 2018, he accepted the said promotion without any objection or demur, so today he cannot be allowed to go back on such acceptance and claim that he ought to have been promoted in the year 2017. He further submitted that SBI reimbursed Rs. 6,24,000/- in full to the complainant in the year 2012 for his ten implant, however, as per the Bank's extant guidelines of March 2018, the ceiling for an artificial limb is up to Rs. 3 lakhs per hand/leg in cases of serious accident whereas in year 2017 it was 2.5 lacs. Thus, there is no question much less issue of any discrimination or harassment because Bank's extant guidelines are applicable to all similarly situated employees.



4. After considering the respondent's reply dated **21.11.2020** 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 **19.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 19.01.2021. The following were present:

- Shri Praveen Sehrawat, Complainant and Shri Chetan Wahi, Advcoate
- Shri Rajeev Kumar, Dy. General Manager on behalf of respondent

Observation/Recommendations:

- 5. Both the parties were heard.
- 6. The Complaint is filed with respect to following two issues
 - a) Non promotion to the post of MMGS-III, and
 - b) Non reimbursement of cost of advanced prosthetic leg.

ISSUE OF NON-PROMOTION TO THE POST OF MMGS-III

7. Complainant alleged that he was promoted to the post of MMGS-III in year 2018. However, during promotion year 2017-2018 he was denied promotion. On this issue this court observes that intervention of this court is not warranted because of two reasons, firstly, the Complainant has been given promotion and secondly the Complainant had opportunity to take recourse of appeal mechanism established by the Respondent establishment in this regard within stipulated time. The Complainant failed to do so and approached this court after delay of approximately 3 years hence this court finds no reason for interfering in the issue of Promotion.

ISSUE OF NON-REIMBURSEMENT OF COST OF ADVANCED PROSTHETIC LEG

- 8. Respondent expressed its inability to reimburse the cost of advance prosthetic leg. Reason given by the Respondent is that ceiling policy of the Respondent establishment only allows reimbursement up to Rs. 3 Lakhs Only.
- 9. This court finds it indispensable to explain concept of 'Accessibility'.
- 10. Accessibility is not defined in Rights of Persons with Disabilities Act, 2016.



11. United Nations defines concept of 'Accessibility' in following terms -

"Accessibility is about giving equal access to everyone. Without being able to access the facilities and services found in the community, persons with disabilities will never be fully included. In most societies, however, there are innumerable obstacles and barriers that hinder persons with disabilities. ... An accessible physical environment benefits everyone, not just persons with disabilities. The Convention states that measures should be undertaken to eliminate obstacles and barriers to indoor and outdoor facilities..."

- 12. Section 38 of Rights of Persons with Disabilities Act, 2016 lays down Special provisions for Persons with Disabilities having High Support Needs. As per the provision, appropriate government is duty bound to provide high support needs of a divyang in accordance with the policies and schemes framed for the purpose
- Objective of providing reimbursement to Divyangjans for 'assisting aids and devices' 13. is to make physical infrastructure accessible to them. Ultimate aim of reimbursement policy is to promote Divyangjans' physical rehabilitation as well as their capacity to participate in economic activities. Therefore, issue of reimbursement of cost of artificial limbs and other aids for Divyangjans is serious issue and any policy with respect to the same must be framed by the Respondent establishment after doing due diligence and with a forwardlooking approach. The objective behind making such a policy must be to expedite market entry of improved and innovative medical devices at appropriate cost. Another aim behind the policy must be to lower the reimbursement prices of older devices. As submitted by the Respondent establishment, there is blanket restriction of reimbursement of Rs. 3 Lakhs. No explanation was given by the Respondent as to why Rs. 3 Lakhs limit was imposed on reimbursement.Present ceiling policy which puts upper ceiling limit upon reimbursement cost seems to be opposite of these to aims and objectives. Such a policy shall restrict the entry of new and innovative medical devices and further, it will compel the Divyangjans to stick to older medical aids and devices as the older technology becomes cheaper over period of time in any economic system.
- 14. This court recommends that any policy which tends to restraint the development of Divyangjan must be amended. Complainant is not asking for luxuries of life he is merely asking for necessity of life which is important for accessing opportunities of life on an equal level with others.

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- 15. This court further recommends that Respondent establishment shall not restrict the reimbursement of assistive aids and devices of Divyangjans by putting unreasonable ceiling limits and proactively help the Complainant acquire the advanced prosthetic leg.
- 16. The case is disposed off.

(Upma Srivastava)

Commissioner for

Persons with Disabilities

Dated: 17.02.2021







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. 12227/1011/2020

Complainant:

Shri Vinay Srivastava, 120/213 (Pani ki Tanki Main Gate), Lajpat Nagar, P.S.: Najirabad, Kanpur Nagar, Uttar Pradesh.

Versus

Respondent:

Sainik School Society, (Through the Honarary Secretary) Ministry of Defence, Room No.101, D-1 Wing, Sena Bhawan, New Delhi – 110 001

Disability: 45% locomotor

Gist of Complaint:

The complainant vide his complaint dated 01.08.2020 submitted that the Sainik School Amethi (Uttar Pradesh) had advertised for applications for various Academic Staff and Administrative Staff for their School. The School had advertised for filling up 07 posts of 'General Employee (Regular)' and 03 posts of 'General Employee (Contractual) along with other posts. The fee for applying to these posts is Rs.500/- to be paid by Bank Draft. The complainant appeared in written test on 17.02.2020 in the College premises in Amethi. He happened to see two staff of the School at the gate of College on that day and they were telling that Rs. 4 lakhs to 5 lakhs are taken as bribe per post and he may go back to his home as there is no use of appearing in the written test. The result of the test was declared on 18.02.2020. Out of 10 posts, 1 post was reserved for PwD candidate, 1 post for Ex-serviceman and 1 post for female candidate. All the 10 posts were filled by candidates without any disability but not single candidate with disability was appointed.

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(139)

2. The Under Secretary, Sainik Schools Society vide letter no. 34(25)/2020/D(SSC) dated 15.12.2020 submitted that based on the vacancies released by Sainik Schools Society, Deptt. of Defence, Sainik School, Amethi had issued an advertisement of 07 vacancies for General Employee (GES)(Regular) in the newspaper on 21st and 22nd December 2019. The vacancies were reserved under the following categories;-

a) Scheduled Caste	-	01	
b) Scheduled Tribe		01	01 vacancy reserved for female.
c) Unreserved Cate	gory -	05	

Shri Vinay Srivastav appeared for the written examination with Roll No. 625 on 17.02.2020 which was conducted under CCTV surveillance and in the presence of the district officials for transparency. The complainant could not qualify the written examination so he was not called for further selection process. A reply in this regard has already been sent to the complainant by the Principal Sainik School, Amethi vide letter dated 02.07.2020. Ministry of Defence has also sent a reply to the complainant in this regard vide letter dated 18.09.2020. The recruitment process was completed in a transparent manner in the presence of Shri Ashutosh Mishra, AAO, a representative of District Magistrate Office, Amethi and Hav. Pradeep Kumar, Education, NCO a representative of Chairman, Local Board of Administration, Sainik School, Amethi.

- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 09.02.2021.
- 4. The following persons were present during the hearing;
 - 1. Shri Vinay Srivastava, Complainant.
 - 2. Lt. Colonel Chandra Prakash, Principal, Sainik School, on behalf of Respondent

Observation/Recommendations:

5. After hearing both the parties and perusal of available records, Court is in the view that there is no violation of any policy and Rights of Persons with Disabilities Act, 2016. Accordingly the matter is dismissed.

Dated: 18.02.2021

(Upma Srivastava)
Commissioner for
Persons with Disabilities







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

- 226362

Case No: 12476/1023/2020

Complainant: Shri Nanda Kishore Sahoo

e-mail: <nandasahoo72.dad@hub.nic.in>

The Controller General of Defence Accounts — \$26363 Respondent:

Ulan Bata Road, Palam Delhi Cantt. - 110010

e-mail: <cgda@nic.in>

Complainant: 60% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 03.12.2020 submitted that he is working in Defence Estates Office, Bhubaneswar nearest to home town as Assistant Accounts Officer and every year he has been ordered to be alerted for transfer either on organization senior or on the basis of station senior by Cadre Controlling Authority. Therefore, he had applied for the post of Accounts Officer on deputation basis in AIIMS, Bhubaneswar but Cadre Controlling Authority had refused to forward his application.

- The matter was taken up with the Respondent vide letter dated 15.12.2020 under 2. Section 75 of the RPwD Act, 2016.
- Sr. Dy. CGDA, Delhi Cantt. vide letter dated 15.01.2021 inter-alia submitted that as 3. per the advertisement given by AIIMS, Bhubaneswar dated 23.05.2020, the last date of submission of application was 30.06.2020. The applicant had submitted his application on 01.06.2020 to CDA, Patna and the same was forwarded to CGDA on 18.06.2020. They further submitted that the sanctioned post in r/o AAOs under CGDA is 3690 whereas only 3122 AAO's are actual in working position and there is a shortage of AAO's and thus this is a compelling grounds of public interest for withholding the application of Shri Nanda Kishore Sahoo as individual interest cannot be served ignoring the public interest. The Competent Authority after considering the entire facts could not consider the grievance of Shri Nanda Kishore Sahoo and he was informed vide communication dated 27.11.2020.
- Complainant vide rejoinder dated 21.01.2021 has requested to exempt him from 4. rotation transfer, assurance not be harassed and financial loss being not forwarded to higher post i.e. Accounts Officer.



5. After considering the respondent's reply dated **15.01.2021** and the complainant's rejoinder dated **21.01.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.02.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>12.02.2021</u>. The following were present:

- Shri Nadkishore Sahoo complainant
- Shri Raj Kumar Yadav, Advocate on behalf of respondent

Observation/Recommendations:

- 6. Both the parties were heard.
- 7. As per Rights of Persons with Disabilities Act, 2016, Rule position in respect of transfer of persons with disabilities is quoted 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. As per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.

9. Respondent shall either retain the complainant at Bhubaneswar or allow him to apply

for deputation to any other organization in the same station.

10. The Case is disposed off.

Commissioner for

Persons with Disabilities

Dated: 19.02.2021





Extra.

226365

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: 12459/1024/2020

Complainant: Shri M.G. Prabhakar

#6, MMG Layout, Near BEML, 2nd Stage

Rajarajeshwari Nagar, Mysuru – 570033 (Karnataka)

The Director of Accounts, O/o the Director of Accounts (Postal)

PAO Office, Telangana Circle, Hyderabad – 500001

e-mail: <dpshq.tlg@indiapost.gov.in> <daphyderabad@indiapost.gov.in>

226364

Complainant: Shri M.G. Vijayakumar - 100% visual impairment & 50% Mental

Retardation

GIST of the Complaint:

Respondent:

Complainant vide complaint dated **23.11.2020** submitted that his mother was getting family pension from Head Post Office, Mysuru after his father had passed away on 07.05.2008. He came to know that his brother Shri MG Vijayakumar is eligible for family pension since he is disabled, therefore, he had applied for extension of family pension in favour of his brother on 23.08.2019. Accordingly, the Director Accounts (Postal), Hyderabad has sanctioned the normal family pension of 9,000/- relief from 08.08.2019 i.e. from the date of issue of Guardianship Certificate. He further submitted that he again approached to Director of Accounts (Postal), Hyderabad to effect sanction of family pension as per 7th CPC from the date of his mother's death i.e. 07.05.2008 but till date, he has not received any reply. He has enclosed two similar cases granting family pension from the date of death and not from the date of Guardianship certificate issued.

2. The matter was taken up with the Respondent vide letter dated **09.12.2020** under Section 75 of the RPwD Act, 2016.



....3....

- 3. Accounts Officer, Pension I Sn., Office of the Director of Accounts (Postal), Hyderabad vide letter dated **05.01.2021** inter-alia submitted that in the instant case, either of the parents while in service or after retirement declared about the disability of their son Shri MG Vijay Kumar and neither declared guardian for their disabled son and legal guardian Sr. MG Prabhakar submitted guardian ship certificate w.e.f. 08.08.2019 and pension was authorized w.e.f. 08.08.2019 as per rule position of CCS Pension Rules 1972. Further, on receiving of his request for authorization of family pension w.e.f. date of death of their mother, their office directed pension sanctioning authority vide letter dated 03.12.2020 to inform the claimant to obtain a letter from National Trust that he is guardian since the date of death of their mother i.e. 07.05.2008 and reply from claimant is awaited.
- 4. After considering the respondent's reply dated **05.01.2021** and the complainant's rejoinder dated **18.01.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.02.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>12.02.2021</u>. The following were present:

- Shri M.G. Prabhakar, Shri Balasubramanyam Balu, Advocate on behalf of complainant
- Shri N. Ravi Kiran, AAO on behalf of respondent

Observation/Recommendations:

- 5. Both the parties were heard.
- 6. Present Complaint is filed by the guardian (hereinafter referred to as 'Complainant') of a Divyangjan (hereinafter referred to as 'Beneficiary'). Complainant submits that the mother of the beneficiary died in year 2008, however, the Respondent Establishment started issuing family pension to the beneficiary in year 2019. Complainant alleges that since the right of the beneficiary to receive family pension accrued from the date of death of beneficiary's mother (i.e. year 2008), hence denial of family pension from year 2008 to 2019 is violation of the beneficiary's disabilities rights.

- 144
- Respondent has submitted that it is inclined to grant family pension in favour of the beneficiary, however, considering the nature of disability of the beneficiary, such pension can only be given to the guardian of the beneficiary. Complainant who claims to be the guardian of the beneficiary, submitted the 'guardianship certificate' from year 2019, hence, the Respondent establishment started issuing family pension from year 2019. If the Complainant will produce his 'guardianship certificate' as proof of his guardianship of the beneficiary from year 2008 till 2019, the Respondent establishment will issue family pension in favour of the beneficiary starting from year 2008.
- 8. This court concludes that there is no instance of discrimination with the Complainant or the beneficiary. If the Complainant claims to be the guardian of the beneficiary then to prove his claim, the Complainant has to produce guardianship certificate. In absence of the certificate, it is not possible for the Respondent to issue family pension in favour of the beneficiary from retrospective effect. Therefore, it is the obligation of the Complainant to produce the guardianship certificate issued by the competent authorities. This Court recommends to the Respondent also to facilitate the complainant in getting the certificate made in case the concerned authorities are not doing the needful.

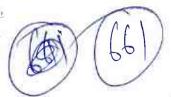
9. Intervention of this court in the present Complaint is not warranted

(Upma Srivastava)

Commissioner for

Persons with Disabilities

Dated: 19.02.2021





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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: 12502/1022/2020

Complainant: Shri Dillip Kumar Rout, Sr. Accountant

Admn-II, Section, O/o the Pr. AG (A&E)

Odisha, BBSR - 751001

e-mail: <dillip642@gmail.com>

Respondent: The Principal Accountant General

Office of the Principal Accountant General (A&E)

- 226369

Odisha, Bhubaneswar - 751001

e-mail: <dagadmae-od@nic.in> <agaeorissa@cag.gov.in>

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 14.12.2020 submitted that he has been working as a Sr. Accountant in the O/o the Principal Accountant General (A&E), Odisha since 19.01.1989 and the Accountant General (A&E) transferred him from A.G. Office, Bhubaneswar to DAG Branch Office, Puri on 09.12.2020 which is 80 Kms distance from his residence. He further submitted that he met with DAG (Admn) and AG (A&E) for cancellation of transfer order but they did not consider his request.

- 2. The matter was taken up with the Respondent vide letter dated **23.12.2020** under Section 75 of the RPwD Act, 2016.
- 3. Sr. Deputy Accountant General (Admn), O/o the Principal Accountant General, Odisha vide letter 22.01.2021 inter-alia submitted that transfer and posting is a routine feature as and when it is required in public interest/Administrative grounds therefore, transfer is done on the recommendation of Transfer and Posting Boards constituted for the purpose and with due approval of the Head of the Department. They further submitted that Puri is 60 kms from Bhubaneswar and Puri has a station having staff quarters where employees of that station are eligible to apply for accommodation.

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- 4. Complainant vide rejoinder dated **28.01.2021** inter-alia submitted that he already resided at Bhubaneswar for more than 31 years and he feels Bhubaneswar more comfortable compared to Puri due to arrangement of all required facilities for disable person at Bhubaneswar residence.
- 5. After considering the respondent's reply dated **22.01.2021** and the complainant's rejoinder dated **28.01.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.02.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 12.02.2021. The following were present:

- Shri Dillip Kumar Rout complainant
- Shri Dina Malik, Senior Deputy Accountant General on behalf of respondent

Observation/Recommendations:

- 6. Both the parties were heard.
- 7. Cause of action of the present complaint is transfer of the Complainant from Bhubaneshwar to Puri. Complainant is residing in Bhubaneshwar and employed in the Respondent establishment since last 31 years. After period of 31 years the Respondent establishment transferred the complainant to Puri along with other 9 employees because of administrative constrains.
- 8. This court concludes that there is no instance of discrimination by the Respondent establishment. Complainant is employed and residing in Bhubaneshwar since 1989. Therefore, it is evident from the fact that he got exemption from routine transfer for a very long period of time. Relevant O.M. on this point also lays down that Divyangjan employee would be exempted from the routine transfer which does not mean that such an employee can never be transferred in his entire career.

9. Given the fact that he has been transferred to a closest possible station, this court concludes that intervention of this court in the present complaint is not warranted.

10. Case is disposed off.

(Upma Srivastava)

Persons with Disabilities

Dated: 19.02.2021





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: 12444/1021/2020

Complainant: Shri Anil Kumar, R/o 5457, Gali No. 06

_226366 Near Shiv Mandir, New Chandrawal, Jawahar Nagar

North Delhi, Delhi - 110007

e-mail: <anilraj100787@gmail.com>

Respondent:

- 226368 - 226368 The General Manager, Northern Railway

Baroda House, New Delhi

e-mail: <gm@nr.railnet.gov.in>

The Divisional Railway Manager

State Entry Road, New Delhi e-mail: <drm@dli.railnet.gov.in>

Complainant: 80% hearing impairment

GIST of the Complaint:

Complainant vide complaint dated 23.11.2020 submitted that he is working as Electric Helper (Group 'D') in Electric Loco Shed, Northern Railway, Ghaziabad and he alleged that respondents are neither providing reservation in promotion through their Notifications dated 01.08.2019 & 16.10.2020 respectively nor maintaining reservation roster for persons with disabilities.

- The matter was taken up with the Respondent vide letter dated 01.12.2020 under 2. Section 75 of the RPwD Act, 2016. But despite reminder dated 04.01.2021, respondent did not submit any reply, therefore hearing fixed on 09.02.2021.
- In the meanwhile, Divisional Electrical Engineer/Admin, Northern Railway vide letter 3. dated 20.01.2021 informed that both the ongoing promotion cases figuring in the cited complaint have been cancelled for duly incorporating the reservation points for PwD category of Staff in promotion rosters of respective cadres.



Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <u>09.02.2021</u>. The following were present:

- Shri Anil Kumar complainant
- Shri Praveen Kumar, Dir. Electric Engineer, R.S., Ghaziabad on behalf of respondent

Observation/Recommendations:

- 4. Both the parties were heard.
- 5. During the hearing the respondent submitted that respondent has cancelled the process of promotion cases and will issue notification again incorporating the reservation roster point for persons with disabilities.
- 6. Based on above submission, Court concludes the matter as resolved and the grievance of the complainant has been redressed.
- 7. Case is disposed off.

Dated: 19.02.2021

(Upma Srivastava)

Persons with Disabilities







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. 12486/1014/2020

Complainant:

Ms. Debi Rani Mahata,

Clo. Sovaram Mahata,

P.O.: Mahim Nischinta, 22637 \
P.S.: Sankrail

Dist.: Jhargram,

West Bengal - 721 513.

Versus

Respondent:

Chief Postmaster General, No.40/C, Chittaranjan Ave., — 226372—Chandni Chawl

Kolkata - 700 012.

Disability: 100% visual impairment

Gist of Complaint:

The complainant vide her complaint dated 03.12.2020 submitted that she applied for the post of Gramin Dak Sevaks against the recruitment advertisement of West Bengal Postal Circle. On 2nd September she received an Letter of Intimation from the postal department informing her provisional selection for the post of GDS ABPM/Dak Sevak at Ichhabari B.O. under Contal H.O and requested to be present I.P.O. Contal Division on 16.09.2020 for document verification. verification, she was told that they could not select her as she is a person with visual impairment.

2. No comments have been received from the Respondent.

OBSERVATION AND RECOMMENDATION:

3. The complainant suffers from 100% Visual Impairment. The grievance of the complainant is against her non appointment despite being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.

...2/-



- 4. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.
- 5. The complainant is fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.
- 6. Hence, this court recommends that Respondent shall appoint the Complainant as per the test results and shall give her opportunity for at least 6 months. Further if the Complainant is able to carry out her duty efficiently then the Respondent shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.
- 7. The case is disposed off.

Dated: 19.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







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. 12467/1014/2020

Complainant:

Shri Firoz Ahmed.

Ward No.01,

Gandhi Nagar,

Tehsil: Jeeran,

Dist.: Nimach.

Madhya Pradesh - 458336.

22637

Versus

Respondent:

Canara Bank

-026374 (Through the Managing Director),

112, J.C. Road,

Bangalore - 560002.

Disability: 42% locomotor

Gist of Complaint:

The complainant vide his complaint dated 27.11.2020 submitted that the District Employment Exchange has sent his name for the post of Attendant under PH quota to Syndicate Bank on 18.01.2014. In April 2019 the Syndicate Bank was merged with the Canara Bank. On 10.08.2018 he was called by the Bank. After initial formalities, he was asked to join duty on 11.03.2019. He was given the job of cleaning and Sweeping for 3 hours a day and for that he was paid a wage of Rs.100/-. Sometimes he does the job for full day and was paid Rs.200-Rs.300 as wages. He says as per circular of the Bank, Rs.185/- is the wage fixed to be paid for doing 3 trours duty and Rs.560/- for doing duty whole day. He worked as an Attender for 9 months till 24.12.2019. He was removed from service after that.

The Chief General Manager, Canara Bank vide letter dated 11.01.2021 submitted that 2. Syndicate bank was amalgamated into Canara Bank w.e.f. 01.04.2020. submitted that Shri Firoz Ahmed as engaged as daily wager from 18.01.2014 in their Neemuch branch purely on day to day basis. He was never appointed after following any recruitment He was paid wages on the basis of the time period for which he worked, i.e. hourly process. basis or daily basis in tune with the guidelines of the concerned State Government / Minimum Wages Act. The allegation of the complainant that he was being paid less by the Bank in violation of the Bank's circular is false and hence denied. The Respondent submitted that Bank is having its own permanent employees, i.e. KHPs for cleaning, sweeping and such other jobs. In case

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली—110001; दूरमाषः 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 मविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें) (Please quote the above file/case number in future correspondence)

(52)

such HKPs go on leave for considerable period, branches/administrative units of the Bank, in case of any urgent requirement, engages person intermittently for sweeping / cleaning. The person so engaged is paid on daily basis in tune with the guidelines of the concerned State Government/Minimum Wages Act. The Respondent further submitted that post amalgamation of Syndicate Bank with Canara Bank, branches are having sufficient staff to perform their day to day functions, hence the complainant was not engaged by the branches further.

Observation/Recommendations:

- 3. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent :
 - a) The complainant was working as an Attender on daily wages.
 - b) The Respondent is recommended to pay the difference in the wages paid to Shri Firoz Ahmed, if any, by the Bank.
 - c) This Court within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules, advises the respondent to be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.

d) It should be ensured that PwD who have much less opportunity to compete and find another job, are not disengaged from employment enabling them to live a life of dignity.

e) The case is accordingly disposed off.

Dated: 19.02.2021

(Upma Srivastava)
Commissioner for
Persons with Disabilities







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. 12405/1011/2020

Complainant:

Radiology Department, Neigrihms Hospital Shillong, Meghalaya - 793 018

Versus

Respondent:

All India Institute of Medical Sciences, -226376 (Through the Director) Virbhadra Road, Shivaji Nagar, Near Barrage, Sturida Colony, Rishikesh, Uttarakhand - 249203

Disability: More than 70% hearing impairment

Gist of Complaint:

The complainant vide his complaint dated 19.10.2020 submitted that AIIMS Rishikesh had advertised for recruitment of Assistant Nursing Superintendent vide Advt No.2019/170 dated 15.02.2019. AIIMS Rishikesh has not reserved any post for the persons with hearing impairment in their above advertisement except one post for candidates with locomotor disability. .

- No reply has been received from the Respondent. 2.
- 3. Hearing: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.02.2021.
- The following persons were present during the hearing;

Complainant – Absent

Shri Pradeep Pandey, Law Officer and Shri Rajeev Choudhary, Registrar, for 2. Respondent.

...2/-



OBSERVATIONS & RECOMMENDATIONS

During the hearing the respondent submitted that the ANS Cadre is identified suitable for one leg persons with disabilities only. However recently AIIMS, Delhi following the direction of Hon'ble High Court has revised and added "Acid Attack Victim' as disability suitable for ANS Job. The persons with HH (Hearing Impaired) is not added suitable for this cadre. Therefore, complainant could not be considered.

The procedure and guidelines for recruitment and maintenance of reservation roster is given as under:

Ref: DOPT O.M. No.36035/02/2017-Estt (Res) dated 15.01.2018

Date of effect: Not specified. Hence, effective from 15.01.2018 i.e. date of issue of the Office Memorandum by the DOPT.

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) (i) autism, intellectual disability, specific learning disability and mental illness.
 - (ii) multiple disabilities from amongst persons under Clauses (a) to (d) including deafblindness;

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.

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.

To understand more practically, the following examples may help:

1. 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.

2. If the cycle as on 15.01.2018 started already and the first vacancy is filled by VI category, then 26th, 51st and 76th vacancies shall be filled in by the applicants belonging to (b), (c) and (d) category.

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3. 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.

- 4. If there are backlog vacancies, they are to be filled in by the categories for which they have been carried forward.
- 5. For inter-change of the vacancies, the procedure is laid down in the O.M. dated 15.01.2018.
- 6. The 4% is to be calculated on the number of vacancies in a particular group i.e. A/B/C.
- 7. The roster is to be maintained group wise i.e. A/B/C.
- 8. In Group B and C, it is 4% of total vacancies (not posts). In Group A, it is 4% of vacancies in identified posts.
- 9. This is a vacancy based roster and not post based roster.
- 10. 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.

6. Keeping in view the above, the submission of respondent is found satisfactory and case is accordingly disposed off.

(Upma Srivastava) Commissioner for Persons with Disabilities

Dated: 19.02.2021







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. 12361/1011/2020

Complainant:

Shri Anuj Goyal, 10, Ashoka Park Extension East Punjabi Bagh,

Delhi - 110 026.

versus

Respondent:

226378 Union Public Service Commission,

(Through the Secretary),

Dholpur House,

Shahiahan Road,

New Delhi - 110 069

Disability

80% locomotor

Gist of Complaint:

The complainant vide his complaint dated 19.09.2020 has pointed the attention of this Court to the Advertisement No.10/2020 advertised by Union Public Service Commission for different posts in different offices of Ministries. The complainant referred to vacancy no. 20091010412 inviting online applications for twenty five posts of Assistant Directors Census Operations (Technical) in Office of the Registrar General of India under Ministry of Home Affairs. The complainant submitted that the said advertisement does not allow the candidates identified as Persons with Benchmark Disabilities under Rights of Persons with Disabilities Act, 2016, the same relaxations that it allows the candidates belonging to the Scheduled Castes and Scheduled Tribes. The relaxation of age is given to candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes but similar concessions in terms of age have not been extended to in the case of candidates belonging to persons with Benchmark Disabilities. Similarly relaxation in terms of experience are allowed to candidates belonging to SC and ST categories but such relaxations are not extended to the persons with Benchmark Disabilities.

The complainant submitted that in the case of Writ Petition (Civil) No.4853/2012 in the case of Anamol Bhandari (Minor) vs Delhi Technological University the Hon'ble High Court of Delhi affirmed that "the people suffering from disabilities are equally socially backward, if not more, as those belonging to SC/ST categories and therefore, as per the Constitutional mandates, they are

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entitled to at least the same benefit of relaxation as given to SC/ST candidates." He submitted that Judgment was also uplead by the Hon'ble Supreme Court in the matter of Civil Appeal No.2718/2020 in the Case of Aryan Raj vs Chandigarh Administration & Ors.

The complainant further submitted that the Online Recruitment Application (ORA) for the said post is discriminatory among candidates from the category of persons with Benchmark Disabilities as it excludes a class of such persons from even applying for the position. As per the Disability Certificate issued to him by the Hindu Rao Hospital, Delhi, he is identified as a person with Both Arms Affected under the category of locomotor disabilities. The design of the ORA for the said post by the UPSC is such that it does not even allow him to apply for the said post. The complainant submitted that this exclusion violates his fundamental rights of equality and equal opportunities enshrined in the Constitution of India. He submitted that only HH, LV, OL and OA categories have been identified for the said post. Not allowing him a chance to apply violates his fundamental rights of equality and equal opportunities and results in his disenfranchisement. He further submitted that such discrimination and exclusion is observed in most of the application forms for recruitment by the UPSC. The complainant has requested for the following reliefs;-

- That the same relaxation in terms of minimum eligibility criteria corresponding to age and experience offered to the candidates belonging to the Scheduled Castes or the Scheduled Tribes be offered to the candidates identified as persons with Benchmark Disabilities.
- 2) That the ORA be redesigned in a way that it does not exclude any category of persons with Benchmark Disabilities. The fundamental rights of equality and equal opportunities of anyone must not be violates.
 - 3) That the identification of disabilities be understood as only illustrative. Instead of excluding a whole class of persons at the application stage itself on the mere presumption that they might be unfit, it is better to appreciate the variations and scope of disabilities and the fact that the candidate and the medical board are best suited to judge the capabilities of the candidates.
- 2. The Respondent vide their reply dated 28.12.2020 submitted that out of 25 vacancies (SC-04, ST-01, OBC-06, EWS-03 & UR-11) one vacancy was reserved for Physically Challenged person to the post of Assistant Director Census Operations (Technical) in the Office of the Registrar General of India, Ministry of Home Affairs advertised on 12.09.2020 vide Advt. No.10/2020. The post is suitable only for OL (one leg affected), OA (one arm affected), LV (Low Vision) & HH (Hard of hearing) sub-categories of PH candidates. The candidates were to apply through online mode only. The complainant's contention that age relaxation to persons with Benchmark Disability is vehemently denied as the same is unfunded and clearly an attempt to





misguide. In the advertisement it is clearly mentioned that age relaxation of 10 years to 'Physically Handicapped (PH) persons.' Also as per the existing instructions of the Commission, the qualification in respect of requisite experience can be relaxed upto 50% in cases where sufficient number of eligible PH candidates are not available for interview for the posts exclusively reserved and identified suitable for them. Moreover, the ORA system of the Commission allows submission of application for PH candidates, of the sub-categories for which vacancies are reserved, claiming The second averment of the Complainant regarding 50% of the requisite experience. discrimination among sub-categories of Persons with Benchmark Disability is also denied as the same is uninformed and more in the nature of demand for modification in the method of deciding suitability of the sub-categories of PH candidates for the post. The Respondent submitted that reservation and suitability of the post/vacancies are subject matters of the indenting Department/Ministry. For this post also, the vacancies have been advertised by the Commission as suitable for HH, OL, OA and LV sub-categories of PH candidates which is in accordance with the recruitment requisition submitted by the indenting Ministry, i.e. Ministry of Home Affairs and accordingly, the candidates of only these sub-categories were allowed to submit online applications.

The complainant vide his rejoinder dated 20.01.2021 submitted that the submissions of the 3. respondent in paragraph 1 are misleading. While the respondent indicates that Para 5(d) of the Advertisement No.10/2020 of the UPSC mentions age relaxation of 10 years to 'Physically Handicapped (PH) persons', this provision was not available when a candidate attempted to fill the application online. Further, this issue has been observed on multiple occasions. On the complaint of one Shri Rajat Kumar Sonkar, the UPSC amended the provision related to age relaxation for persons with disabilities in the ORA for the Indian Economic Service 2020. The complainant submitted that the respondent in Para 1 states that 'as per the existing instructions of the Commission, the qualification in respect of requisite experience can be relaxed upto 50% in cases where sufficient number of eligible PH candidates are not available for interview for the posts exclusively reserved and identified suitable for them'. The complainant submitted that there is no clause mentioned in this regard in the impugned advertisement for the Post of Assistant Director Census Operations (Technical), Office of the Registrar General of India (Vacancy Number: 20091010412) under Advertisement No. 10/2020 issued by the respondent. Failure to mention this essential information has resulted in violation of the fundamental rights to equal opportunities of the persons with benchmark disabilities. Further, he submitted that when he was attempting to apply for the post of Assistant Director Census Operations (Technical), nowhere in the impugned ORA was the complainant was asked whether he had 50% of the requisite experience. complainant pointed out to paragraph 2 of the respondent's reply to bring to light another



discriminatory aspect of the recruitment procedure. The identification of jobs (which is in terms of number of affected limbs/organs) is not only reflective of the most archaic and regressive understanding of disability bt is also discriminatory and exclusive. Such identification does not take account of the progress that technology has made. Whether or not the particular candidate is capable to, independently and effectively, perform all the functions that the job entails is what is to be examined instead of making assumptions on whether the persons can or cannot perform the functions. The complainant submitted that by rendering persons with certain types of disabilities ineligible to apply for the recruitment examination, the respondent is discriminating against a class of persons, which is forbidden under Article 15 of the Constitution of India. It is further submitted that respondent has failed to take not of the fact that there is a medical examination conducted by it This medical examination also includes a before making an appointment recommendation. disability examination. The complainant submitted that former Chief Commissioner for Persons with Disabilities late Shri P.K. Pincha in his letter no. D.P. No.16-7/CCD/2013 dated 21.06.2013 while challenging the provisions under O.M. No.36035/3/2004-Estt.(Res.) dated 29.12.2005 mentioned,

"One necessary implication of the provisions of Para 6 of the said O.M. is that while a person with disability can be appointed against an unreserved vacancy provided that the post is identified suitable for persons with disability of the relevant category, she/he cannot be appointed against an unreserved and unidentified post despite she/he getting selected purely on merit. Clearly therefore, to my humble way of thinking, this provision runs counter not only to the letter & spirit of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, but also to the fundamental rights enshrined in the Constitution of India. Besides such a provision is neither in consonance with the U.N. Convention on the Rights of Persons with Disabilities which India has since ratified nor it is in consonance with the principle that list of identified posts is only illustrative & not exhaustive as enunciated in Ministry of Social Justice and Empowerment Notification No. 16-25/99-N.I.-I dated 31.05.2001. The fact of the matter is that if a person with disability succeeds in convincing the selection panel that she/he can smoothly and effectively perform the functions & duties attached to a given job/post and it she/he gets selected purely on merit, she/he has a definite & distinct right to get recruited to the post irrespective of whether that post is identified or not"

4. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 12.02.2021.





- The following persons were present during the hearing;
 - 1. Shri Priyam, Advocate for Complainant
 - 2. Shri R.V. Sinha & Abhishek Dutta, U.S., for Respondent.

OBSERVATIONS & RECOMMENDATIONS

- Following points are raised by the complainant in the present complaint. 6.
- Age relaxation was not given to the Divyang candidates. a.
- Online mechanism of applying for the post was averse to the interests of Divyang b.
- Relaxation in essential qualifications, like experience, was given to ST/SC applicants,
- however it was not extended to Divyang applicants. Rights of Divyang candidates whose sub category is not identified suitable for the
- d. advertisement post are adversely affected.

AGE RELAXATION

It is evident from Para 5 of the advertisement that benefit of age relaxation was extended to Divyang applicants. The same is also evident from the fact that other Divyangjan successfully applied for the post by obtaining benefits of age relaxation. Hence no intervention of this court is warranted on this issue.

APPLICATION MECHANISM

It is needless to say that Respondent establishment is a reputed organisation which successfully conducts recruitment examination each year. Online mechanism for applying to the post is framed by the respondent on the basis of long experience and with an objective of extending maximum benefits to the applicants. To establish such mechanism is prerogative of the respondent establishment. However, there may be some problem in understanding such mechanism. Hence, on this point this court recommends that Secretary (Admin) of the Respondent establishment shall give an appointment to the complainant for proper explanation of the mechanism.

RELAXATION TO SC/ST

Obligation of the respondent establishment is to conduct examination as per the recruitment rules. Respondent establishment cannot frame such recruitment rules. It is responsibility of the organisation concerned, on whose behalf the examination is conducted, to forward appropriate Recruitment Rules to the Respondent establishment. Respondent establishment only reproduces the recruitment rules forwarded to it and conducts examination on the basis of the same. Hence no intervention of this court is warranted on this issue.



RIGHTS OF DIVYANG CANDIDATES WHOSE SUB CATEGORY IS NOT IDENTIFIED SUITABLE

Ministry of Social Justice & Empowerment (MoSJE) has published list of identified posts suitable for Divyangjan twice in last decade, first in 2013 and second in 2021. Identification of posts suitable for Divyangjans is a detailed and conscious exercise conducted by committee comprising senior officers of the concerned Ministries. Absence of such lists and not following the list may result into two kinds of situations, i.e. either it may lead to arbitrary action by the establishments or it may result into serious repercussions like accidental deaths or serious life threatening injuries to Divyangjan. Therefore, MoSJE publishes list of posts which are identified suitable for different categories of Divyangjans. These posts are identified keeping in view maximum benefits of the Divyangjans and different kinds of jobs which can be performed by Divyang without endangering their safety and physical comfort. Reason behind identification and publishing the list of identification post is to avoid adverse repercussions and to avoid litigations from other eligible applicants. Hence no intervention of this court is warranted on this issue.

11. The case is disposed off.

Dated: 19.02.2021

(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. 12408/1014/2020

Complainant:

Shri Dipankar Borah,

Vill: Duliagaon,

P.O.: Missamara, -

Dist.: Golaghat, Assam - 785618

Versus

Respondent:

Numaligarh Refinery Limited, (Through the Dy. General Manager), P.O.: Project, Dist.: Golaghat, Assam

Disability

60% locomotor

Gist of Complaint:

Dr. Samadrita Goswami, the complainant vide her complaint dated 28.10.2020 submitted that Shri Dipankar Borah appeared and cleared the Engineering Assistant (Operation) Trainee Grade V (Formerly Lab Analyst) post conducted by Numaligarh Refinery Limited (NRL) in the year 2011, 2015 and 2019 respectively but he had been rejected all these years. Due to the rejection he has been suffering from severe depression as his financial condition is also very poor. He secured 37% marks in B.Sc and he is the only candidate to clear the written examination conducted by NRI for the said post. Earlier NRL kept B. Sc qualifying marks as 35% but in the year 2019, it was raised to 45%. NRL rejected Shri Dipankar Borah thrice. The complainant has requested to give him a secured life by giving appointment at NRL on humanitarian ground.

2. The Dy. General Manager (HR), Numaligarh Refinery Limited vide letter dated 20.01.2021 submitted that PwD special drive vacancies for Laboratory Analyst (Trainee) had essential qualification criteria of B.Sc with Chemistry with minimum 35% marks in aggregate and Shri Dipankar Borah was one of the candidates whose name was forwarded by the District Employment Exchange, Golaghat against Laboratory Analyst (Trainee) post under special drive. There were altogether 6 candidates for interview and Shri Borah was placed 6th amongst the six PwD

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candidates appeared for the interview. Based on the merit list, PwD candidates were appointed for the positions.

Thereafter notification was issued to the District Employment Exchange, Golaghat on 12.08.2015 for filling up vacancies by persons with disabilities as a special drive for the post of QC Analyst (Trainee); Grade-VI-2 posts, Office Assistant; Grade-VI-3 posts and Office Assistant (Finance); Grade-VI post respectively. The minimum percentage of marks for all the positions was 45%. Shri Dipankar Borah was one of the candidates whose name was forwarded by the District Employment Exchange, Golaghat against QC Analyst (Trainee) post and there were altogether 7 candidates who appeared the interview for the position of QC Analyst (Trainee) and Shri Bora was placed 5Th in the merit list. Based on the merit list, PwD candidates were appointed for the position.

Another notification was issued to the District Employment Exchange, Golaghat on 27.11.2018 for filling up few vacancies, out of which one of the position was for Engineering Assistant (Operation)-Trainee; Grade-V- 6 post and amongst the 6 posts, 2 posts were reserved for PwD candidates (VH & HH). The essential educational qualification for the position, as mentioned in the notification, was B.Sc with Chemistry as a subject with minimum 45% marks in aggregate.

Thereafter the District Employment Exchange, Golaghat vide letter dated 04.01.2019 forwarded a list of 55 candidates. In order to reduce the recruitment time, NRL started the practice of not to verify the document before the written test of any recruitment drive. Accordingly, all the candidates whose names were forwarded by District Employment Exchange were issued Admit Card to appear for the written test. Shri Dipankar Borah was one of the candidates whose name was forwarded by District Employment Exchange, appeared the online written test and scored 33 marks out of 100.

The Respondent submitted that the documents of Shri Dipankar Borah were verified after written test and found that he secured 37.68% in B.Sc examination and he does not fulfil the minimum eligibility criteria. Therefore, he was not considered for further evaluation.

- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 09.02.2021.
- 4. The following persons were present during the hearing;
 - 1. Shri Dipankar Borah, the complainant & Dr. Samadrita Goswami, on behalf of complaiannt.
 - 2. Shri Rajib Kumar Bhattacharya, for Respondent.





Observation/Recommendations:

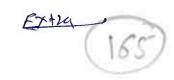
- 5. The representative of the complainant reiterated her written submission that Shri Dipankar Borah was the only candidate to clear the examination conducted by NRL. However, respondent submitted that the criteria for 45% marks in written examination was clearly mentioned in advertisement upfront. Further respondent submitted that the vacancy will be advertised once again considering the roster point etc.
- 6. After hearing both the parties, Court is of the view that since the respondent has mentioned the criteria of 45% upfront in the advertisement, therefore, there is no violation of any policy or RPwD Act, 2016 by the respondent. However, in terms of provisions of Section 3 & 2(y) of the Rights of Persons with Disabilities Act, 2016, the respondent can relax the eligibility criteria if suitably qualified and eligible candidates are not available so that posts do not remain vacant.
- 7. Accordingly the case is disposed off.

Dated: 19.02.2021.

(Upma Srivastava) Commissioner for Persons with Disabilities







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. 12424/1011/2020

Complainant:

Shri Janakalyan Majhi, Qtr No. NB/281, Naubazar, _ 2638 | Paradip,

Dist.: Jagatsinghpur,

Odisha

versus

Respondent:

226382 Paradip Port Trust, (Through the Chairman) Paradip Port, Odisha - 754 142.

Disability

: 40% Visual Impairment + 50% Hearing Impairment

Gist of Complaint:

The complainant vide his complaint dated 08.11.2020 submitted that he had published for the post of Junior Assistant under PwD category in Paradip Port Trust against their advertisement dated 26.06.2017. He has been selected for Skill Test. He was advised to get his medical done at SCBMCH, Cuttack on 18.01.2018 for verification of his disability and accordingly the report was sent to Paradip Port Trust. The Complainant submitted that CDMO, Jagatisinghpur had issued a Disability Certificate No. 05 on 03.11.2009 and Certificate No. 21121716497 dated 03.04.2017 on the ground of Low Vision/Both Eyes and was issued the Disability Certificate for 40% visual impairment. He feels mentally harassed. He submitted that due to lack of knowledge, he had only submitted the Disability Certificate of lower vision though he has also permanent hearing impairment problem and is under treatment for it since 1989. The complainant approached the Office of CDMO, Jagatsinghpur for issuance of Disability Certificate for hearing impairment as his Disability Certificate for low vision was not considered as it was not meeting the minimum requirement for disability by the Appellate Medical Board. He was referred to the Medical Board at SCB, Medical College & Hospital, Cuttack for final verification. He was issued Disability Certificate for 50% hearing impairment. The complainant has requested to instruct the Chairman, Paradip Port Trust to refer his case to the Appellate Medical Board, SCBMCH, Cuttack for re-verification to the Eye/Ear (ENT) Department about his disability.

...2/-



- The Sr. Dy. Secretary, Paradip Port Trust vide letter dated 13.01.2021 submitted that Shri 2. Janakalyan Majhi applied for the post of Junior Assistant against advertisement No. AD/RSC-22-183/2015(Pt.IV)/2193 dated 22.06.2017. The complainant had sought consideration against the post of Junior Assistant under Low Vision category. The Service Selection Committee had recommended selection of Shri Janakalyan Majhi to the post of Junior Assistant under SC category. The Under Secretary, Govt. of Odisha, Deptt. of Social Security & Empowerment of Persons with Disabilities forwarded the verification report of the Appellate Medical Board, SCBMCH, Cuttack on 06.02.2018 and it was found that percentage of disability of the complainant is 30% and that too temporary in nature which is the below the norm for securing Government Therefore, the next empanelled SC candidate Shri Alok Chandra Jena was appointment. appointed after verification of disability by the Appellate Medical Board. The Respondent submitted that as such there is no vacant post against the Advertisement dated 22.06.2017. The complainant further represented on 19.02.2018 to refer his case for examining his hearing impairment by the Appellate Medical Board. The Respondent vide their letter dated 11.04.2018 replied to the complainant that for verification of genuineness of disability as Hearing Handicapped, cannot be acceded to as he did not mention about the disability under HH category in his application for the post of Junior Assistant. The complainant has filed a writ petition before the Hon'ble High Court of Orissa vide W.P.(C) No.10147/2018 and Hon'ble Court has passed an interim order on 03.07.2018 that 'Any appointment to the post of Junior Assistant, SC (Persons with Disability), Paradipt Port Trust shall be subject to result of the writ applications". Based on the Hon'ble High Court interim order, appointment order issued to next candidate in panel under SC category, i.e. Shri Alok Chandra Jena is subject to the final outcome of W.P. (C) No.10147/2018.
 - 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 12.02.2021.
 - 4. The following persons were present during the hearing;
 - 1. Shri Sushant Kumar Tripathi, Advocate on behalf of Complainant on phone.
 - 2. Shri K. Thirumoolar, Deputy Secretary, Paradip Port Trust, for Respondent.
 - 5. During the hearing the Respondent submitted that the complainant has filed a writ petition before the Hon'ble High Court of Orissa vide W.P.(C) No.10147/2018 in the matter which was confirmed by the learned counsel representing the complainant.

Observation & Recommendation

- 6. Since the matter is sub-judice, therefore no further intervention is required in the case.
- 7. The case is disposed off.

Dated: 19.02.2021

(Upma Srivastava)
Commissioner for
Persons with Disabilities







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. 12358/1011/2020

Complainant:

Dr. Vishal Kumar Gaur, 2-D 109, Jai Narayan Vyas Colony, Bikaner, Rajashtan

Versus

Respondent:

Central University of Himachal Pradesh, (Through the Registrar), Camp Office, Near HPCA Cricket Stadium, Dharamshala, Dist. Kangara, Himachal Pradesh - 176215.

Disability: More than 60% locomotor disability

Gist of Complaint:

The complainant vide his complaint submitted that Central University of Himachal had vide Advertisement No.001/2019 dated 09.05.2019 had advertised for the posts of Professor in Computer and Information Science in their university. He applied for one of the posts. He was called for an interview on 13.09.2019. He came to know through some reliable source that the post of Professor in Computer and Information Science which he applied under disability head was given to a person without any disability which is against the DoP&T O.M. No. 36035/02/2017 Estt.(Raj.) dated 15.01.2018.

-026286

The Registrar, Central University of Himachal Pradesh vide letter dated 15.12.2020 submitted that their university had advertised vide Advt. No. 52-1/2010(CU) dated 10.082010 for appointment of Professors in various faculties of their university. Initial recruitment of teachers through direct recruitment basis was done during 2011-12. A total of 80 teachers during the first During 2011-12 recruitment, 3% reservation was given to the recruitment joined the University. persons with disabilities. Three Professors namely Dr. Muhammad Aatif, Dr. Saima Banu and Dr. Prakrati Bhargav were selected under visual impaired category.

2/-



In the present advertisement a total of 128 posts of Professors were to be recruited in the year 2019 and 4% posts were reserved for persons with disabilities. As per prevailing provisions of 4% reservation for persons with disabilities, it comes to 5.12 posts for PwDs. In the instant advertisement the University has accordingly earmarked 05 posts for PwDs. During the first phase of recruitment, the University had exhausted the quota of two OH categories with Visual Handicap (VH) category. The allotment of the instant 05 posts reserved for PwDs come as follows;

Post No.	Earmarked for Category as per Rules				
-1.	ОН				
2.	VH				
3.	ОН				
4.	VH				
5.	ОН				

Out of the above five posts the two posts comes for VH category and three posts comes for OH category. Since during the first phase of recruitment the University has already exhausted the quota of TWO OH category posts with VH categories. Hence over and above post filled up in VH category has now been adjusted by the University. Therefore, all the (05) posts have been earmarked for OH category only.

The National Platform for Disabilities Right and Duties, Chandigarh had given a complaint in the Commissioner for Persons with Disabilities, Govt. of Himachal Pradesh on 03.06.2019 against the advertisement of their University. The Commissioner recommended that one post is to be given to Visually Impaired (VI) persons out of 08 posts of PwDs and directions are issued to the University to pass corrigendum in this regard.

The Respondent University further submitted that one of the candidates who had applied for the post of Assistant Professor against visually impaired category had given a writ petition (CWP No.4160 of 2019) in the Hon'ble High Court of Himachal Pradesh, Shimla The Hon'ble High Court dismissed the writ petition and directed the respondent university to proceed in the selection process. The Respondent further stated that the as present Vice Chancellor has completed his five year term, the further process of selection of candidates were stopped for the time being till the new Vice Chancellor takes his charge.

3. The complainant vide his rejoinder reiterated that the University has violated the DoP&T O.M in the recruited of Professors.



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- 4. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.02.2021.
- 5. The following persons were present during the hearing;
 - 1. Shri Vishal Kumar Goar, Complainant.
 - 2, Shri Hemraj, Registrar for Respondent.
- 6. During the hearing the Complainant submitted that he had applied for the post of Professor in Computer Science under PH quota. He is already working as Assistant Professor in a Government College. The minimum qualifying marks for interview was 300. He got 500 plus points marks. He was called for interview. He was disqualified in the interview and was not selected for the post. When he sought information under RTI from the Respondent, he was informed that the complainant could not be selected as he was not found suitable for the post. The contention of the complainant is that when he is already been working as Assistant Professor in a Govt. College and has many numbers of papers published in his name, then why he has been denied the post of Professor.
- 7. The Respondent submitted that there were total 28 candidates who had applied for the post of Professor. Out of this 17 names of the candidates were shortlisted and were called for interview. The candidate with disability who was selected got 60 marks and the complainant got only 31 marks. He was not selected as he was found not suitable by the Selection Committee. The Respondent submitted that out of total posts, five posts were identified for PwDs. Out of five posts, two posts of PwDs were filled by Dr. Ranjit Kumar, Assistant Professor and Dr. Sunita Kumari, Assistant Professor. Both are persons with locomotor disabilities. One post of OH and two posts of VH is yet to be filled. The remaining three posts could not be filled due to completion of tenure of Vice Chancellor and it will be filled as and when the new VC joins.

OBSERVATIONS & RECOMMENDATIONS

8. After hearing both the parties, the Court observed that no exercise has been done towards roster maintenance by the Respondent. The Respondent is recommended to maintain proper roster and to re-advertise again to fill up the remaining posts reserved for Professors under disability quota.

9. The case is disposed off.

Dated: 19.02.2021

(Upma Srivastava)
Commissioner for

Persons with Disabilities







COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन संशक्तिकरण 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. 11830/1011/2020

Complainant:

Shri Saroj Kumar, Village Baradih, Post Office: Tilouthu, Dist.: Rohtas, Bihar-821 312.

Respondent:

Coal India Limited (Through General Manager {Personnel/Recruitment}), "Coal Bhawan", Premise No.04, MAR Plot No.AF-III, Action Area-1A, New Town, Rajarhat, Kolkata – 700 156.

Disability: 75%+5% (Locomotor + Visual Impairement)

Gist of Complaint:

Shri Saroj Kumar vide his complaints dated 12.02.2020 & 29.07.2020 submitted that Coal India Limited had advertised for recruitment of Management Trainees vide Advertisement No.01/2019 in which it did not specify / implement 4% reservation according to Rights of Persons with Disabilities Act, 2016. There were total of 1326 vacancies in various disciplines and 107 vacancies were reserved for persons with disabilities including 60 backlog vacancies but the number of vacancies reserved for PwDs were not shown discipline wise and disability wise with special reference to OH, VH, HH, ID and MD. Also no option has been made available in the column in the online application to mention the type of disability for multiple disabilities category.

The General Manager (P/Recct), Coal India Limited vide letter No.CIL:Rectt:CCPD:Saroj Kr:2768 dated 01.12.2020 submitted that Coal India Limited issued Open Rect. Advt. No.01/2019 for recruitment of 1326 Management Trainees in 11 disciplines including Community Development (CD) in the month of Dec. 2019. Provision for reservation for SC/ST/OBC-NCL/EWS and PwD under the Government of India Guidelines was made and accordingly, in the MT-2019 Rect. Advt. No. 01/2019, total 107 vacancies were shown as reserved for PwD, i.e. 60 backlog/carry forward and 47 current vacancies, distribution of which was done proportionately keeping in view the list of identified posts in CIL. Category-wise break-up of 107 vacancies is as under:

....2/-



Vacancies	VH	HH	OH	4th Category	Total
		21	0	11	60
Backlog	28		10	07	47
Current	16	14			107
Total	44	35	10	18	

At the time of advertisement/notification, the vacancies reserved for different categories of disabilities were not finalized, as such the same were not mentioned in the advertisement/notification. Since, there is no identified post for the Multiple Disabilities in the list of identified post suitable for executives of all categories of disabilities covered by the Rights of Persons with Disabilities Act, 2016 in CIL as such the same were not mentioned in the Therefore, vacancies of MT-2019 reserved for the 4th category advertisement / notification. including Multiple Disabilities will be carried forward to the next recruitment cycle/year as 'backlog/shortfall'.

- 3. Hearings: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 22.01.2021.
- The following persons were present during the hearing;
 - 1) Shri Saroj Kumar, Complainant absent.
 - Shri Harsh Pathak, Advocate for Respondent.
- The matter was adjourned for 09th February 2021. 5.
- The following persons were present during the hearing on 09.02.2021; 6.
 - Shri Saroj Kumar, Complainant.

S

- Shri Harsh Pathak, Advocate and Shri Chinmayananda Gupta, Chief Manager (Personnel), for Respondent.
- The complainant reiterated the submissions made by him in his original complaint. 7.
- The Respondent submitted that the provision of reservation for SC/ST/OBC-NCL/EWS and 8. PwD was made as per the Govt. of India Guidelines. In the MT-2019 Rect. Advt. No.01/2019, total 107 vacancies were shown as reserved for PwD, i.e. 60 backlog/carry forward and 47 current vacancies, distribution of which was done proportionately keeping in view the list of identified posts in CIL category-wise break-up of 107 vacancies is as under:

		1111	OH	4th Category	Total
Vacancies	VH	HH	On	4 Odlogor)	
Backlog	28	21	0	11	60
Current	16	14	10	07	47
	44	35	10	18	107
Total 44	44				3/



At the time of advertisement/notification, the vacancies reserved for different categories of disabilities were not finalized; as such, the same were not mentioned in the advertisement/notification. Further, after finalization, there is no identified post for the Multiple Disabilities in the list of identified post suitable for executives of all categories of disabilities covered by the RPwD Act, 2016 in CIL. Therefore, vacancies of MT-2019 reserved for the 4th category including Multiple Disabilities will be carried forward to the next recruitment cycle/year as "backlog/shortfall". Shri Saroj Kumar did not raise any grievance before the Grievance Redressal Officer, Coal India Limited till the time of shortlisting of the candidates were complete.

9. Observation & Recommendations:

After hearing both parties and perusal of the submissions made by them, the Court recommends to the Respondent that whenever the next post is advertised, the category of Multiple Disability shall be included in the advertisement as per the notification dated 04.01.2021 of DEPwD regarding identification of job for persons with Disabilities.

Dated: 19.02.2021

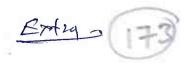
(Upma Srivastava)
Commissioner for

Persons with Disabilities

Encl: A copy of CIL's reply dated 04.02.2021 is enclosed for complainant's reference.







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. 12181/1131/2020

Complainant:

-026389 Shri Vitthal N. Myakall, Ragatipete Ward No.03, Ilkal-587125, Tq – Hungund, Bagalakot District (Karnataka) Email: satyamyakall22@gmail.com

Respondent:

- 296300 The Managing Director, (1)Canara Bank No. 112, J.C. Road, Bengaluru - 560002 Email: mdceo@canarabank.com
- 226291 The Branch Manager, (2)Syndicate Bank (now Canara Bank), Sri Vijay Mahantesh Mutt Bldg., Kanti Circle, Ilkal – 587125, Bagalkot District (Karnataka)

1. Gist of Complaint

- 1.1 The complainant, a person with 60% locomotor disability, filed a complaint regarding denial of loan Rs.10 Lakh under MUDRA Scheme by the Branch Manager, Syndicate Bank (now Canara Bank) [Respondent No.2].
- 1.2 As per the submissions made by the complainant he runs a hotel business for his livelihood in Ilkal, Karnatak. He has bank transactions & daily pigmies with the Respondent No.2. He had been already taken a loan of Rs.2 Lakh under MUDRA Scheme with Pagrati Grameen Bank and Rs.2 Lakh under Synd Yojan Loan from Syndicate Bank; and both the loans had been repaid by him before the scheduled time. With the improved market competition, he wants to improve his business.
- The complainant alleged that the Branch Manager of Respondent No.2 1.3 Bank is harassing him and asking security for granting the loan of Rs.10 Lakh

Page 1 of 2



under MUDRA Scheme. He further submitted that he is eligible for the loan of Rs.10 Lakh under MUDRA Scheme but the Branch Manager has rejected from availing the same without giving any proper reason.

- 2. On taking up the matter, the respondent filed their reply dated 07.12.2020 and submitted that the Branch Manager visited the unit of the customer/complainant who found that the complainant is running a small hotel, stock available in the hotel is approximately Rs.20,000/-. There were no proper table and chairs in the hotel, no name board for the hotel, even there was no adequate space for putting tables in the hotel. Not a single customer entered the hotel during the visit of the Manager. The complainant is selling tea and snacks at cheaper price only and per day business is less than Rs.500/- only. The complainant wanted to take advantage of MUDRA Scheme where collateral free loan upto Rs.10.00 Lakh is available and demanded Rs.10 Lakh for his hotel which is not feasible and viable. As such his loan proposal was rejected as his unit is not eligible.
- 3. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.02.2021.** The following were present:
 - (1) Shri Vitthal N. Myakall, complainant
 - (2) Shri Vijay Kumar B. Patil, Regional Manager, Canara Bank, for the respondent

4. Observation/Recommendations:

- 4.1 Both the parties were heard.
- 4.2 The submissions made by the respondent found to be satisfactory as they are based on objective criteria of evaluation/assessment as per prescribed procedure. The decision does not appear discriminatory on the grounds of disability to the right of availing loan from the respondent bank by the complainant.

4.3 The case is disposed off.

Dated: 19.02.2021

(Upma Srivastava)
Commissioner

for Persons with Disabilities





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

226392

Case No. 12597/1041/2021

Complainant:

Shri Mohak Kumar R/o 173, Nehru Apartments, Kalkaji, New Delhi-110019

Email: me.parmesh@gmail.com;

Respondent:

Secretary, Central Board of Secondary Education Shiksha Kendra, 2 Community Centre, 6263d3 Preet Vihar, Delhi-110092

Email: secy-cbse@nic.in

1. Gist of Complaint

- 1.1 Shri Mohak Kumar, M-19, a person with 50% Intellectual Disability filed this complaint regarding permission to use his own Keyboard in the Typing Test for the post of Jr. Assistant.
- 1.2 He submitted that he had qualified written exam held by CBSE for the post of Jr. Assistant and very soon his typing test would be held. He has been practicing typing on his mechanical keyboard and the results are very good. He wished to appear with the same Keyboard in his typing test in terms of Clause IX of the "Guidelines for conducting written examination for the Persons with Benchmark Disabilities" issued by the Department of Empowerment of Persons with Disabilities (Divyangian), Ministry of Social Justice & Empowerment, vide Office Memorandum No.34-02/2015-DD-III dated 29.08.2018, which reads as under:
 - "IX. In case, the persons with benchmark disabilities are allowed to take examination on computer system, they should be allowed to check the computer system one day in advance so that the problems, if any in the software/system could be rectified. Use of own computer/laptop should not be allowed for taking examination. However, enabling accessories

(Page 1 of 2)



for the computer based examinations such as keyboard, customized mouse etc. should be allowed."

- 1.3 The complainant had further submitted that Assistant Secretary (RC), Central Board of Secondary Education, New Delhi vide letter No.CBSE/Rectt.Cell/14(85)/Griv/2021/657 dated 18.01.2021 had replied to the complainant that 'Candidate won't be allowed to bring his/her own keyboard to the test center.'
- 1.4 The complainant, further, vide email dated 09.02.2021 intimated to this Court that his Skill Test (Typing Test) has been scheduled to be held on **20.02.2021**; and requested to find some solution before the scheduled date otherwise his purpose of filing would be defeated.

2. Submissions made by the Respondent:

2.1 On taking up the matter, CBSE filed their reply vide letter No.CBSE/Rectt.Cell/14(85)DR/2021/1547-1548 dated 12.02.2021 and submitted that the provisions contained in OM No.34-02/2015-DD-III dated 29.08.2018 issued by Ministry of Social Justice & Empowerment towards use of their own Key Boards, customized mouse etc will be allowed to Persons with Benchmark Disabilities for their skill test, if they so desire. Further, a Public Notice is being issued by the Board to this effect on its website. The case of Shri Mohak Kumar would be considered accordingly.

3. Observation/Recommendations:

In view of the facts mentioned above no further intervention is required in this matter and the case is accordingly disposed off with a copy of the reply filed by CBSE to the complainant.

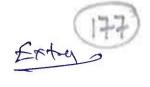
Dated: 19.02.2021

(Upma Srivastava) Commissioner

for Persons with Disabilities







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. 12420/1111/2020

Complainant:

Shri Shailesh Bachubhai Mehta
A-201, Soham Vasahat,
B/H. Laxmiwadi Cow School,
Alwa Naka, Vadodara -390011
Email: praju_kisaanbharti@yahoo.co.in;

Mobile: 6351144053

Respondent:

General Manager,
Western Railway,
1st Floor, GLO Building
Churchagte, Mumbai – 400020
Email: gm@wr.railnet.gov.in

1. Gist of Complaint

- 1.1 The complaint, a 60 year old person with 100% visual impairment filed the complaint regarding harassment and painful humiliation by Ms. Vandana More the concerned Desk Executive of Concession Department, Vadodara Division (BRC), Western Railway, Vadodara for issuing Physically Handicapped Unique Identity Card (PHUID).
- 1.2 The complainant had applied to the Office of Senior Commercial Manager, Vadodara Division (BRC), Western Railway, Vadodara for issue of PHUID with all the requisite documents in March, 2016. In March, 2017, the concerned Desk Executive, Ms. Vandana More telephonically informed the complainant that his disability certificate is not in format and she kept on insisting him repetitively for issue a fresh disability certificate. His Disability Page 1 of 4

सरोजिनी हाउस, 6, मगवान दास रोड, नई दिल्ली—110001; दूरमाषः 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

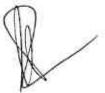
(कृपया मिवष्य में पत्राचार के लिए उपरोक्त फाईल / केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)



Certificate had been issued by Sir Sayaji Rao General Hospital, Vadodara on March, 2012. The complainant's concern is that how can a blind person ascertain the format of a certificate being given to him by a Competent Medical Authority. Literally, he has no command or control over certificate issuing authority as to provide him with a format being recognised and validated by Railway Authority. However, even the said requirement was honoured by the complainant and he got issued UDID on 28.09.2019 through the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment and resubmitted all fresh documents on 03.10.2019 for issuance of PHUID. The Concession Department of Vadodara Division took good 120 days thereafter and finally after long harassment and painful experience of humiliation and rejection, the said PHUID was issued to him on 30.01.2020.

2. Submissions made by the Respondent:

- 2.1 The respondent in their reply dated 31.12.2020 submitted that the complainant had not submitted the requisite documents viz (a) Concession certificate; and (b) Date of Birth proof with his application submitted by him on 27.03.2016 for issuing PHUID Card. The complainant was informed in this regard vide letters dated 10.03.2017, 24.04.2017, 31.08.2017 26.09.2017, 14.03.2018 28.09.2018 and 23.03.2018. Thereafter, the respondent's officials (Smt. Vandana Arora, Shri Rajeev Pathak and Shri Kuldeep Patil) had also met the complainant personally at his residence on 27.04.2017 for guiding/advising him as regards the requisite documents for issue of PHUID Card.
- 2.2 The complainant vide his application dated 27.03.2017 had provided a medical prescription of SSG Hospital, Vadodara while he was required to submit the Disability Certificate issued by the Government of Gujarat. On receipt of the proper application on 05.05.2017 from the complainant, it was sent to SSG Hospital, Vadodara for verification as per procedure, but SSG Hospital, Vadodara had rejected the application of the complainant vide their letter dated





- 26.08.2017. The complainant had been properly informed and requested to approach the respondent's office or send proper documents by post as per policy.
- On 22.10.2019, the complainant submitted his application but without stamp of Doctor's name on the disability certificate. He was contacted on phone on 23.10.2019 to submit the disability certificate duly stamped by issuing Doctor's name with Registration Number. His application was registered on 29.11.2019 and was sent for verification to SSG Hospital on 04.12.2020 and his PHUID vide WRPRTN 2482 dated 24.01.2020 was handed over to him as a special case at his residence on 29.01.2020.
- 2.4 As per policy any applicant desiring to avail the facility of PHUID is required to submit proper documents in proper format as per Railway Board's Directives issued vide Commercial Circular No.18 of 2015 and any other revision received from Railway Board from time to time. The Railway's officials have acted as per Railway Board Directives, Rules and procedure and always politely guided the complainant to submit the application along with the proper required documents to issue PHUID.
- 3. The reply of the respondent was forwarded to the complainant by Email to submit his Rejoinder which is awaited.
- 4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.02.2021.** The following were present:
 - (1) Shri shailesh Bachubhai Mehta, complainant
 - (2) Shri Pursottam Kumar, Div. Commercial Manager, Vadodara Railway Division for the respondent
- 5. Observation/Recommendations:
- 5.1 Both the parties were heard.
- 5.2 It is noted during the hearing that the matter has been resolved. Certificate of Concession has been received by the complainant. However,



(80)

complainant grievance for harassment and painful humiliation is also a matter of concern. This harassment could have been minimized if the Department has appointed a Grievance Redressal Officer exclusively for Persons with Disabilities to look after and redress such grievances as per Section 21 of the Rights of Persons with Disabilities Act, 2016.

- 5.3 Therefore, it is recommended that steps may immediately be taken to appoint a Grievance Redressal Officer.
- 5.4 The case is disposed off.

Dated: 19.02.2021

(Upma Srivastava) Commissioner

for Persons with Disabilities





Extra (181)

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. 12483/1092/2020

Complainant:

Shri Umendra Kumar Dwivedi, House No.157, Block-A, Sector-47, Noida-201303,

District-Gautam Budh Nagar (UP) Email: <u>ukdwivedigs@gmail.com</u>;

Respondent:

Divisional Railway Manager,
Northern Railway, 4-Railway Officer Colony
S.P.Marg, New Delhi-110021
Email: drm@dli.railnet.gov.in

1. Claim made by the Complainant:

- 1.1 Shri Umerendra Kumar Dwivedi, M-70, a person with 40% Locomotor disability, filed this complaint regarding not issuing Railway Concessional Photo Identity Card for life time.
- The complainant submitted that at the age of 52 years in a road accident he sustained disability. In the Concession Certificate issued to him by L.N.J.P. Hospital, Delhi it has been clearly mentioned that he cannot travel without the assistance of an escort. Secondly, in case of permanent disability, certificate will remain valid for (i) five years from the date of issue in respect of persons upto the age of 25 years; (ii) 10 years, in respect of persons in the age group of 26 to 35 years; and (iii) in respect of persons above the age of 35 years, the certificate will remain valid for whole life. The complainant claimed that since the Concession Certificate has been issued for whole life validity and he is a very Senior Indian Citizen, Indian Railway should issue him Railway Concessional Photo Identity Card for his whole life with the Escort also.

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2. Submissions made by the Respondent:

- 2.1 The Divisional Commercial Manager/SS cum PIO, DRM's Office, Northern Railway, New Delhi filed their reply in Affidavit and submitted that Indian Railways grant concession to persons with disabilities (Divyangjan) in extreme cases only for the last so many decades as a Social Commitment towards Certain Section of Society and not under any legal provisions. The financial burden of granting concessions is borne by the Railways themselves and not reimbursed by any agency including Ministry of Social Justice and Empowerment. Railways grant concession to only four categories of persons with disabilities i.e.
 - (a) Orthopedically Handicapped/Paraplegies persons who cannot travel without an escort-when travelling along or with an escort;
 - (b) Mentally retarded persons who cannot travel without an escort when travelling alone or with an escort;
 - (c) Person with visual impairment with total absence of sight when travelling along or with an escort; and
 - (d) Person with hearing and speech impairment totally (Both afflictions together in the same person) when travelling alone or with an escort.
- 2.2 The complainant Shri Umendra Kumar Dwivedi had already been informed that Railways have introduced Photo e-ticketing ID Card for online/offline reservation, vide letter No.2011/TG-I/10/e-ticketing for disabled/Pt.I dated 19.03.2015 under which it is clearly mentioned in Para 8 that "The Validity of card will be five years from the date of issue or till the last date up to which the concession certificate is valid, whichever is earlier". The Department of Northern Railway is following the work on the basis of Railway Board policy/guidelines. The e-ticketing card No.11488 issued to the complainant has already expired on 03.01.2020 which would be further renewed for five years after submitting the requisite documents i.e. (a) Concession Certificate; (b) Disability Certificate; (c) Photo (passport size); (d) Self attested Aadhaar Card; and (d) Original e-ticket Card (without lamination).
- 2.3 It is not possible to overlook the Railway Board Policy to issue Railway E-Ticketing Card to him for life time and being civilized citizen it is expected from him to obey government rules and regulations as it is same for all who are availing this facility.

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2.4 The respondent however furnished a copy of the Circular No.64 of 2017 dated 29.09.2017 issued by the Railway Board to Chief Commercial Managers of All Zonal Railways and has submitted that instructions regarding validity of photo ID Card have been partially modified. Clause iii of the said circular reads as under:

"Para 8 of Commercial Circular No.18 of 2015 and para (ii) of Commercial Circular No.28 of 2016 is substituted by the following:

'Validity of the photo ID card is co-terminus with that of concession certificate.'

2.5 The respondent has also submitted that complainant's Disability Certificate is life time valid, but he has not yet submitted his Concession Certificate to tell its validity.

3. Submissions made in Rejoinder:

- 3.1 In the rejoinder dated 20.01.2021, the complainant submitted that as per letter No. 520/CQ/NRDLD/R/T/20/000316 Dated 14/052019 by Shri Ajay Kumar, Divisional Commercial Manager/SS-cum-PIO, DRM Office Northern Railway, "Your Concession Certificate is valid for lifetime, you will get counter tickets, if the validity of your w-ticketing will expire, then it will be again submitted for this office for renewal further the period of five years". His statement clearly indicates that complainant's concession certificate was very much available with the respondent and so he could tell about its lifetime validity.
- 3.2 As per letter no. 520/CQ/NRDLD/RTI/20 Dated 02/12/2020 by the Divisional Commercial Manager/SS-cum-PIO, DRM Office Northern Railway, "In your case your Disability Certificate is lifetime valid but as you have not yet submitted your concession certificate, so we are unable to tell its (concession certificate) validity. As per Railway Board vide letter No. 2011/TG-I/10/e-ticketing for disabled/Pt.I New Delhi, dated 19/03/2015 under which it is clearly mentioned in para 8 that "The validity of the card will be 5 (Five) years from the date of issue or till the last date up to which the concession certificate is valid, whichever is earlier".
- 3.3 It may please be noted that it has been mentioned in the very first para 1 of the Railway Policy that the Physically Challenged Persons entitled for Railway concession





will approach nearest D.R.M. Office along with all the relevant documents viz. Concession Certificate and other documents, the said application being addressed to the Sr. DCM of the concerned division. As per para 2 of the Railway Policy, the D.R.M. office will get all the submitted documents including the Concession Certificate verified by the D.R.M. office staff-members. Ensuring of correctness of particulars and other factual details shall be the responsibility of the verifying official. On the basis of the Commercial Inspector's report, Sr. DCM will issue the Photo Identity Card to the Physically Challenged Person. As per para 4 of the Railway Board Policy, the concessional tickets shall be issued on the authority of this card only and the Concession Certificate will not be accepted for issuing concessional tickets.

- 3.4 The DCM, vide his letter dated 02/12/2020 stated that the complainant had not submitted his Concession Certificate. Even then the D.R.M. office could be able to not only get the Photo Identity Card, i.e., the E-Ticketing Card, prepared for the complainant on 04/01/2016 valid upto 03/01/2021 and showing the validity of Concession Certificate as Permanent (surprisingly without having his Concession Certificate) but also it was handed over to the complainant enabling him to purchase railway travel concessional tickets from his home only. The whole process indicates very clearly that Concession Certificate of the complainant had been lying with them for a long time and the DCM was lying that it was actually not with him. The complainant, being a Railway Passenger requested to ascertain the actual reason for such a great lie by the DCM.
- 3.5 E-Ticketing card is being made on the basis of the Concession Certificate as per the Railway Policy. When the Concession Certificate is lifetime valid, how the E-Ticketing Card cannot be valid lifetime.
- 4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 12.02.2021. The following were present:
 - (1) Shri K.V. Sharma, Advocate, for the respondent
 - (2) None appeared for the complainant



5. Observation/Recommendations:

- 5.1 The Learned Counsel for the respondent submitted that complainant's E-Ticketing Card would be prepared/renewed for life time validity i.e. till the date of validity of the concession card subject to submission of the following requisite documents:
- (i) Concession Certificate 02 copies
- (ii) Disability Certificate 02 copies
- (iii) Photo Passport Size 02 copies
- (iv) Self-attested Aadhaar Card 02 copies
- (v) Original E-Ticket Card (without lamination) No.11488 expired on 03.01.2021
- 5.2 From the email dated 12.02.2021 received from the complainant it appeared that he is presently living in US and could not appear during the hearing due to difference in time slot between US and India.
- The complainant is advised to submit the requisite documents as mentioned in Para 5.1 above to the concerned E-Ticketing Section of the respondent for the purpose of preparation/renewal of E-Ticketing Card. The respondent is advised to Prepare/Renew the E-Ticketing Card within 15 days from the date of receipt of the requisite documents from the complainant.
- 5.4 Accordingly the case is disposed off.

Dated: 19.02.2021

(Upma Srivastava) Commissioner

for Persons with Disabilities





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. 12253/1012/2020

Complainant:

26468 Shri Diwakar Kumar, B-IV/3, Old Doctor Colony. Near Saraidhela Police Station, Jagjivan Nagar, Dhanbad, Jharkhand - 826 001.

Versus

Respondent:

Coal India Limited, (Through the Chairman). "COAL BHAWAN" Premise No.04, MAR Plot No.AF-II Action Area-1A, New Town, Rajarhat, Kolkata -700156

Disability: 55% locomotor

Gist of Complaint:

The complainant vide his complaint dated 22.08.2020 submitted that he applied for the post of Management Trainee (Community Development Discipline) against Advertisement No. 01/2019 of Coal India Limited. He appeared in the computer based online test on 27.02.2020. The persons with locomotor disabilities were eligible to apply for the above said post of Management Trainees. The cut off marks has been released only for VH category candidates in the said discipline and not for OH candidates. The complainant submitted that he has been feeling aggrieved as he had scored a total of 90 marks (based on answer key released) and also separately qualified Paper 1 by scoring 55 marks and paper 2 by scoring 35 marks (the minimum qualifying marks were 30 for both papers). He has wasted his 3-4 months and left his earlier job also in the hope of getting this job.

The General Manager Pers.(Rectt.), Coal India Limited vide letter dated 26.11.2020 submitted that Coal India Limited (CIL) issued open Recruitment Advertisement No.01/2019 for recruitment of 1326 Management Trainees (MTs) in 11 disciplines including Community Development (CD) in the month of December 2019. Provision of reservation for SC/ST/OBC-

...2/-



NCL/EWS and PwD under the Govt. of India Guidelines was made. A total of 107 vacancies were shown as reserved for PwDs, i.e. 60 backlog/carry forward and 47 current vacancies. The distribution of 47 current vacancies was done proportionately keeping in view the list of identified posts in CIL. At the time of advertisement/notification, the vacancies reserved for different categories of disabilities were not finalized. As such the same were not mentioned in the advertisement/notification. Since OH and VH category of disability for CD discipline is in the list of identified posts suitable for executives in CIL, for all categories of disabilities covered by Rights of Persons with Disabilities Act, 2016, the same got reflected in the advertisement/notification. As there was no vacancy, current or backlog in CD discipline for OH category of disability, no candidate has been shortlisted for interview against OH category of disability. However, 07 VH vacancies of backlog and 01 VH from the current vacancies was allocated to CD discipline and accordingly candidates of VH category of disability have been shortlisted. Shri Diwakar Kumar had applied under OBC-NCL as well as PwD-OH (OL) quota for CD discipline against the MT-2019 Open Recruitment Advt. No.01/2019 and appeared in the online Computer Based Test held on 27.02.2020 but could not succeed in the CBT as a result he was not shortlisted for interview.

- 3. **Hearing**: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 15.01.2021
- 4. The following persons were present during the hearing;
 - 1) None appeared on behalf of complainant
 - 2) Dr. Harsh Pathak, Advocate for Respondent.
- 5. The Advocate of the respondent requested for a week time for filing the reply. Accordingly Court granted time upto 25.01.2021 to submit point-wise reply to this Court.
- 6. The next hearing in the matter was scheduled on 09.02.2021.

The following persons were present during the hearing on 09.02.2021;

- 1) Shri Diwakar Kumar, the Complainant.
- Shri Harsh Pathak, Advocate and Shri Chinmayananda Gupta, Chief Manager (Personnel), for Respondent.
- 7. The complainant reiterated the submissions made by him in his original complaint.
- 8. During the hearing the Respondent submitted that provision of reservation for SC/ST/OBC-NCL/EWS and PwD was made as per the Govt. of India Guidelines. In the MT-2019 Open Rect. Advt. No.01/2019, total 107 vacancies were shown as reserved for PwD, i.e. 60 backlog/carry forward and 47 current vacancies. Out of the total 107 vacancies shown as reserved for PwD (i.e. 60 backlog /carry forward and 47 current vacancies), the category wise distribution of 60 backlog



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Vacancies are as under:

Vacancies	VH	HH	ОН	4th Category	Total
Backlog	28	21	0	11	60

The Respondent submitted that at the time of advertisement/notification, the vacancies reserved for different categories of disabilities were not finalized; as such, the same were not mentioned in the advertisement/notification. Only category of disability suitable for the post was mentioned in the Advertisement/Notification issued by CIL not the reserved number of posts. Since OH and VH category of disability for CD discipline is in the list of identified posts suitable for executives in CIL for all categories of disabilities covered by RPwD Act, 2016, the same got reflected in the advertisement notification.

Shri Diwakar Kumar had applied under OBC-NCL as well as PwD-OH (OL) quota for CD discipline against the MT-2019 open Rect. Advt. No. 01/2019 and appeared in the online Computer Based Test (CBT) held on 27.02.2020 but could not qualify in the CBT. As a result, he was not shortlisted for interview.

OBSERVATIONS AND RECOMMENDATION:

- 9. The Court observed that the number of posts was not mentioned in the advertisement against each discipline and for each category which creates such issues. It was also noted that there was no vacancy left for OH candidates within Community Development because as per the roster all OH vacancies were filled. Therefore, his candidature for Community Discipline as also of any other OH candidate was not shortlisted for the interview.
- 10. The Court does not find any violation of the policy and RPwD Act, 2016, thus no intervention is required. However, the advertisements should be fully unambiguous in future.

11. The case is disposed off.

Dated: 22.02.2021

(Upma Srivastava)
Commissioner for

Encl: A copy of CIL's reply dated 29.01.2021 is enclosed for complainant's reference.