



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12056/1141/2020

Complainant:

Smt. Neha Swami,
B-85, Krishna Nagar,
New Pali road, Jodhpur-302006
Email: nks.26198@gmail.com

Respondent:

The Director,
All India Institute of Medical Sciences (AIIMS) Jodhpur,
Basni Industrial Area, MIA 2nd Phase,
Basni, Jodhpur – 342005 (Raj.)
Email: director@aiimsjodhpur.edu.in

1. Gist of Complaint

1.1 The complainant is a person with 50% locomotor disability (both lower limbs). Her husband is also a person with 58% locomotor disability. On 17.05.2020, during Lockdown due to COVID-19 Pandemic, she visited AIIMS Jodhpur with 11 weeks pregnancy having bleeding and pain in abdomen. Even after waiting 4 hours in the hospital, the Gynecologist at AIIMS Jodhpur refused to provide treatment and she was compelled to take treatment in a private hospital. The complainant alleged that due to gross negligence and delay in treatment at AIIMS Jodhpur, foetus died in womb and MTP done in private hospital under general anaesthesia. When she wrote her grievances to AIIMS Jodhpur administration, a committee was formed on 16.06.2020 for inquiry. Her husband was tortured for one month in the name of inquiry. Her husband and she were asked to appear before the Committee members along with her husband. The Chairman of the Committee, Dr. M.K. Garg asked very irrelevant and mental traumatic questions and tortured her and her husband. Due to the torture she had to take psychiatric treatment.

Page 1 of 4

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

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

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

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

1.2 With the endless efforts an FIR No.0141 was lodged on 26.06.2020 in Bansi Police Station under Section 315 and 34 IPC against Dr. M.K. Garg, Dr. Pratibha, Dr. Khusboo and Committee Members.

2. Submissions made by the Respondent

2.1 On taking up the matter, AIIMS Jodhpur in their reply dated 09.09.2020 denied the allegation raised by the complainant. The respondent submitted that for inquiry into the matter, an Inquiry Committee was constituted. The committee concluded that all the allegations made by the complainant could not be substantiated by the documents produced by her. The delay in treatment was caused due to his ignorance about hospital protocol and procedure. The Committee stated to have recommended that all Staff to be trained and advised to follow protocols during COVID times, to avoid spread of disease among hospital staff and admitted patients.

3. Smt. Neha Swami filed the rejoinder dated 07.10.2020.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **10.11.2020**. The following were present:

1. Smt. Neha Swami, the complainant
2. Shri Sanjeet Purohit, Advocate, on behalf of the respondent

5. Observation/Recommendations:

5.1 Both the parties were heard.

5.2 There are two main contentions of the complainant:

- (a) Due to negligence and malpractices of AIIMS, Jodhpur the complainant lost a precious baby and suffered harassment and mental trauma at the hospital
- (b) The enquiry committee specifically the chairperson setup by the respondent to look into this complaint tortured the complainant and her spouse during inquiry.

5.3 The complainant has stated in her complaint that she is an orthopaedic Divyangjan with both legs above 50%. The court has also noted that FIR has been registered in the same matter by the complainant on 26.06.2020.



5.4 The respondent has reiterated the findings of their enquiry report stating that the complaint made by the complainant could not be substantiated by the documents produced by her and that the delay in treatment was caused due to ignorance about the hospital protocol and procedure on the part of the complainant's spouse.

5.5 Both the contentions of the complainant can relate to any person and not necessarily to a Divyangjan. The fact that the complainant happens to be Divyangjan is only incidental in this entire matter and in no way forms the main cause of complaint. As such, this court sees no grounds of discrimination against a Person with Disability and hence the provisions of Section 3 of RPwD Act, 2016 are not applicable in this matter. This court observes that a non disabled person could have faced the same circumstances and the alleged action or inaction of the respondent was independent of the disability of the complainant.

5.6 Having said that, this court is unable to accept the recommendations of the enquiry report that the whole onus lies on the spouse of the complainant, him being unaware of the hospital rules and protocols. In this regard the first enquiry report conducted by Dr. Arvind Sinha is extremely relevant which lists the sequence of events which transpired on that day. There was negligence on the part of the medical personnel in guiding the complainant properly and not conducting the USG. It is not understood as to how the USG was denied to be undertaken on the grounds of COVID being prevalent in an institution like AIIMS hospital. The medical personnel have not behaved responsibly under the pretext of COVID and allowed the situation to deteriorate. The situation becomes even more serious taking into consideration the fact that the spouse of the complainant was an employee of the respondent and was familiar to the medical personnel. Though, the eventuality of this loss taking place anytime and anywhere (as correctly argued by the Chairperson Enquiry Committee) cannot be ~~delivered~~ ^{denied}, yet the possibility that the hospital erred in proper guidance and taking appropriate action within time cannot be ruled out.

5.7 The enquiry report of Dr. Garg is badly wanting on several aspects including not taking into cognizance the report of Dr. Arvind Sinha.

5.8 The contention of torture during the enquiry is refuted by the Chairman Enquiry Committee stating that the complainant abused and shouted at the enquiry committee and did not give proper responses. In the rejoinder dated Oct 7, 2020, the complainant has quoted verbatim certain statements of the Chairperson Enquiry Committee which are targeted towards disability of the complainant. Moreover, the aggrieved mental status of the complainant should



have been taken into account prior to making observations that the complainant needed psychiatric treatment as mentioned in the letter of Chairperson dated 18.06.2020. The version of the complainant should have been recorded at a later stage when she was in a better mental state and amenable to proper conversation. She should have been given more than one opportunity to appear before the committee before concluding the proceedings on Ex-parte basis.

5.9 This court is of the view that the enquiry was not really conducted properly after considering both the aspects of the case and was hurriedly concluded by putting all the blame only on the complainant and her spouse. This court would have appreciated had the Enquiry Officer recommended systemic improvements for better COVID protocols to prevent such instances in future as well as more empathy for the persons with disability on the part of the respondent's medical personnel. This court recommends to the respondent to be more sensitive in future while dealing with all patients including those with disability, to avert such unfortunate incidents leading to loss of reputation of a prestigious institution.

5.10 Case is disposed off.

Dated: 06.01.2021

Upma Srivastava
(Upma Srivastava)
Commissioner
for Persons with Disabilities



557



5

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: 12378/1022/2020

Complainant: Shri Banwari Lal Sharma, O/o ROC Cum OL, Ministry of Corporate Affairs, G – 6 & 7, Residency Area, Corporate Bhawan, Civil Lines, Jaipur – 302001
R-25691
e-mail: <banwari.sharma@mca.gov.in>

Respondent: The Secretary, Ministry of Corporate Affairs, 5th Floor, A – Wing, Shastri Bhawan, Dr. R.P.Road, New Delhi – 110001
R-25692

Complainant More than 40% locomotor disability

GIST of the Complaint:

Complainant vide e-mail dated 12.10.2020 inter-alia submitted that he is presently posted as Sr. Technical Assistant at ROC cum OL Jaipur and he had received an Office Order dated 28.04.2020 for transfer from Jaipur to New Delhi under the rotational transfer policy. He alleged that he submitted two representations on 30.04.2020 and 04.05.2020 to the Secretary, Ministry of Corporate Affairs to cancel the transfer order as per DoP&T's OM dated No. 36035/3/209-Estt. (Res) dated 31.03.2014 or provide option to choice of posting but no action has been taken.

2. The matter was taken up with the Respondent vide letter dated 26.10.2020 under Section 75 of the RPwD Act, 2016.

3. Dy. Secretary, Ministry of Corporate Affairs vide letter dated 14.12.2020 inter-alia submitted that on requests of Shri Banwari Lal Sharma on personal grounds, it has been decided to retain him at Jaipur for current year. His transfer may be considered next year for transfer-posting in 2021 as per the relevant guidelines/instructions of DoP&T and the Policy of the Ministry. He may also intimate about 'stations of his choice' in response to the circular for ART 2021.



Signature

Observation/Recommendations:

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

- 5. The case is accordingly disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.01.2021



559



7

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: 12086/1021/2020

Complainant: Shri A. Marimuthu, S/o S. Arunachalam, No. 06/19, GangaianmanKoil Street, Vadapalani, Chennai - 26
e-mail: <amarimuthu65@gmail.com>

Respondent: The Chairman, Railway Board, Railway Bhawan, Raisaina Road, New Delhi
e-mail: <edcc@rb.railnet.gov.in> <ddcc0609@ymail.com>

GIST of the Complaint:

Complainant vide complaint dated 18.06.2020 inter-alia submitted that Complainant was appointed as constable in the Railway Protection Force (RPF) on 25.09.1984 as a Constable and elevated to the rank of Head Constable (HC) w.e.f from 21.12.2006. Complainant met with a road accident on 10.07.2014 while returning to his residence after completing duties at RPF Office/GSD/PER. He was admitted in MN Orthopaedic Hospital, Opp. New Avadi Road, Kilpauk, Chennai-10 by the volunteering members of general public. Due to the above accident, he sustained injuries to left leg and multiple abrasions over the face and both forearms. Later, he was diagnosed with communicated Bicondylar fracture left tibia, for which he underwent and operation. Complainant has alleged that the respondent organisation is deny promotion because of disability which he acquired during employment. Subsequently, complainant was issued disability certificate by the Medical Director, Southern Railway Hd. Qrs, Hospital, Chennai -23 vide certificate No. HQ/MD/84/Z/AHH dated 07.01.2020 confirming his 40% disability. In the last, he has requested to promote him as Senior Clark on par with his Jr. Shri Lakshmikanthan, w.e.f. 20.05.2018 as approved by the Dy. CMM/GSD/PER in his order dated 20.05.2018 and his seniority may kindly be fixed on par with his Juniors in terms of IREM 1310 and Master circular No. 25.



Signature

...2....

2. The matter was taken up with the Respondent vide letter dated **12.10.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **16.11.2020**, respondent did not submit any reply, therefore hearing fixed on **24.12.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **24.12.2020**. The following were present:

- Complainant: Shri Arumugavel, advocate for complainant
- Respondent: none for the respondent

Observation/Recommendations:

3. Complainant was appointed as constable in Respondent establishment on 25.09.1984. at the time of appointment his grade pay scale was 2000. Later, Complainant acquired disability. At the time of acquiring disability, he was serving on the Grade Pay scale of 2400. He was found not competent to serve on the post he was already serving upon. Thereafter, he was found eligible to serve as Junior Clerk. Finally, on the recommendations of Screening Committee he was absorbed on the post of Junior Clerk on 17.03.2017. Grade Pay scale of Junior Clerk is 1900. Complainant has also alleged that he is eligible for the post of Senior Clerk.

4. Before proceeding further, it is pertinent to mention Section 20(4) of Rights of Persons with Disabilities Act, 2016. Provision is reproduced below –

Section 20 (4) - No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.



...3....

5. Two important elements of this provision which are relevant in the present complaint are that – a) employee who has acquired disability shall not be reduced in rank and b) if he is not suitable for the post he was holding, he may be shifted to other post but his pay scale and service benefits have to be kept intact.

6. In the present complaint, pay scale of the Complainant was reduced from 2400 to 1900. Pay scale at the time of appointment of the Complainant was 2000. Hence the new pay scale, i.e. 1900 is lesser than the pay scale at which he was appointed and also less than the pay scale he was employed upon at the time of acquiring disability.

7. Hon'ble Kerala High Court in SAJIMON KB v. KERALA STATE ROAD TRANSPORT CORPORATION 2019 SCC OnLine Ker 7139; (2020) 1 KLJ 513 held that when as per Section 20(4) of RPwD Act, 2016, an employee is eligible for lower category change, it does not stipulate anything to the lower scale of pay hence such employee would be eligible for protection of pay before the category change.

8. Hence, this court concludes that reducing pay scale of the Complainant from 2400 to 1900 is gross violation of provisions of RPwD Act, 2016. This court recommends that the Respondent shall secure and restore the pay scale and other service benefits of the complainant to the level at which they existed on the day before the Complainant was declared not suitable for the post he was holding just before acquiring disability.

9. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.01.2021



556



सत्यमेव जयते

10

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: 11431/1023/2019

Complainant: Shri Munna Lal
e-mail: <mlyadav.ankit@gmail.com>

Respondent: The General Manager (HR), State Bank of India, State Bank Building,
Madam Kama Marg, Mumbai – 400001
e-mail: <agmphr.lholuc@sbi.co.in> <cmid.lholuc@sbi.co.in>

Complainant: 100% visual impairment

GIST of the Complaint:

Assistant General Manager (L&D), SBI vide letter dated 14.11.2019 submitted that Shri Munna Lal was appointed in e-SBIN (SBBJ) as a Probationary Officer on 30.06.2015 and placed on probation/training vide offer of appointment letter dated 24.06.2019 wherein point no. "e" clearly states that "confirmation in JMGS-I will be subject to satisfactory completion of probation and passing of confirmation test. During the period of training/probation of more than two years he was provided an intensive training on the job and classroom training but he did not perform satisfactorily in the functional knowledge test and not even obtained the minimum qualifying marks. Therefore, it was decided that his probation/training period be extended in terms of Rule 16 (2) of SBI officer's Service Rules by a period of six months. He was re-administered a test on functional areas in which he was needed to score a minimum of 50% marks (45% for SC/ST/PwD candidates) but he did not obtain minimum qualifying marks, therefore, he was terminated from the service of Bank.

2. Complainant vide rejoinder dated 04.03.2020 inter-alia submitted that the termination from the post of the JMGS-I, after the conduction of the confirmation test is ex-facie illegal and unconstitutional. Rather the conduction of confirmation test is in itself violative of Article 14 of the Constitution of India. He further submitted that being a Divyangjan he was admitted to the service of the Respondent as JMGS-I against the seats reserved for the persons with disabilities. However, the confirmation test as conducted by the respondent did not ensure any such reservation, treating the complainant at par with general candidates.

3. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020 and on the request of the complainant's advocate case adjourned to **01.10.2020**. Following were present:

- Shri Praful Shukla, Advocate for the complainant
- Shri Ashutosh Ranjan, AGM on behalf of respondent

Observation/Recommendations:

4. Complainant was appointed in e-SBIN (SBBI) as a Probationary Officer and was placed on probation. One of the conditions mentioned in appointment letter no. P/REC/1219 dated 24.06.2019 was that conformation in JMGS-I will be subject to completion of probation and passing conformation test. After expiry of 2 years of probation period test on functionary knowledge was conducted to evaluate the complainant.

5. Complainant failed to secure minimum marks in the confirmation test. Thereafter, on expiry of 6 months re-examination was conducted. Complainant again failed to obtain minimum 50 percent marks. Thereafter, he was terminated from the services vide termination letter dated on 02.05.2018.

6. Section 19 of Rights of Persons with Disabilities Act, 2016, provides that appropriate government shall formulate scheme for the purpose of inclusion of persons with disabilities in all mainstream formal and informal vocational and skill development programmes. Further, Proviso of section 20(1) of RPwD Act, 2016 provides that every government establishment shall provide reasonable accommodation and conducive environment to employees with disability. Section 2(y) of the RPwD act quoted as under, has also been written to provide equality not only in letter but also in spirit between Divyangjan and other persons. It will not be out of context to mention here that the complaint is 100% Divyangjan being completely blind. Such candidates need more support, encouragement and hand holding to clear the examinations.

"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"



TRUE COPY



...3...

7. From the perusal of documents submitted by both the complainant and respondent, it is clear that no special time period for preparation was given to candidates belonging to Persons with disabilities category. Also in terms of number of chances which were given to candidates who fell outside the purview of Pwd category. Therefore, this concluded that respondent failed to provide conducive environment or reasonable accommodation to the complainant. Moreover, service record of the complainant was also not considered. Hon'ble High Court of Allahabad in the case of Minshu Saxena v. Union of India, 2012 SCC Online All 113, quashed the termination of the Petitioner in the case, whose service record was not considered by the Respondent at the time of termination.

8. Hence, in light of the reasons mentioned above and the fact that the complainant is 100% visually impaired, this court recommends the following:

- a. the termination shall be revoked;
- b. Respondent shall give another 6 months and conduct re-examination of the complainant on the expiry of 6 months;
- c. Respondent is also recommended to conduct special training of the complainant considering the difficulties he has to face because of nature and percentage of disability he is suffering from;
- d. The respondent shall provide question paper in Braille language and shall also provide extra time to the complainant;
- e. Respondent SBI, being a premier and large employer should set an example before other establishments with its policies which nurture and protect its Divyangjan so that they also rise in their career at par with their contemporaries.

9. Case is disposed off.



Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 07.01.2021

558



13

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: 11966/1021/2020

Complainant: Shri Rajan Bembey, Harris Lodge (East), Summer Hill, Shimla – 171005
e-mail: <bembeyrajan@gmail.com>

Respondent: The Director General Pers' E- 1, (DPC), Engineer-in-Chief's Br., Kashmir House, Rajaji Marg, New Delhi - 110011

Complainant 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 28.04.2020 inter-alia submitted that he is presently working as a Assistant Engineer in HQ C.W.E. Hills Shimla. He moved his application for promotion under PwD categories to the respondent on 21.05.2019 but his Department was in the process of finalizing a DPC list from Assistant Engineers to Executive Engineers without considering his name, therefore, he had filed a petition in the CAT, Chandigarh on 29.11.2019. The Hon'ble CAT, Chandigarh had directed to the Department to consider his representation in view of ratio laid down in judicial pronouncement relied upon him by passing a reasoned Speaking order within 02 months. He further submitted that Department had issued a Speaking order on 31.01.2020 denying him claim on the pretext that "Post of Executive Engr." is not found suitable for OH category as identified listed published by the Ministry of Social Justice and Empowerment.

2. The matter was taken up with the Respondent vide letter dated 11.08.2020 under Section 75 of the RPwD Act, 2016. But despite reminder dated 22.10.2020, respondent did not submit any reply, therefore hearing fixed on 17.11.2020.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 17.11.2020. The following were present:

- Complainant – Shri Rajan Bembey
- Respondent – absent



Observation/Recommendations:

3. This case is regarding promotion of the complainant Shri Rajan Bembey to the post of Executive Engineer.

4. His contention is that he was not being promoted on the grounds of his disability. The complainant had raised this issue before the CAT, Chandigarh also which in turn ordered the respondent to issue a speaking order. The respondent issued orders dated 31.01.2020 stating that "your claim for the promotion to the grade of Executive Engineer is denied, as the Group A post of Executive Engineer is not found suitable for the disabled person of OH category of OA as per serial no. 363 of Annexure C of Department of Empowerment of Persons with Disability."

5. Unfortunately by the time this case was listed for hearing i.e. on 17.11.20, the complainant had already retired on superannuation. Due to these circumstances the intervention of this court becomes limited. However, the following recommendations of this court remain significant for the respondent while dealing with similar cases in future.

a. This court is disappointed to note that the respondent did not choose to give any reply to this court's communications dated 11.8.2020 and reminder dated 22.10.2020. Had the respondent replied on time this court could scheduled the hearing much before the superannuation of the complainant which would have given relief to the complainant. Such irresponsible conduct on the part of the representatives of the respondent shall be noted for record, by the head of the Respondent.

b. It is a fact that as per the list of posts identified as suitable for PwDs the post of Executive Engineer (Civil) is found suitable for OL, OA & HH category of disabilities only. Yet, even if the complainant does not fall into this specific category it does not automatically imply that the respondent organisation had to necessarily deny promotion to the complainant.



[Handwritten signature]

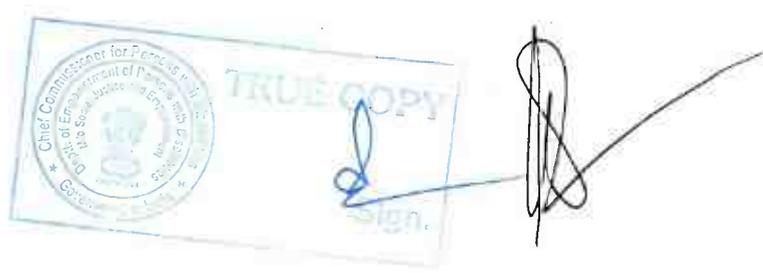
....3.....

- c. As clearly stated in the notification of the Department of Empowerment of Persons with Disabilities dated 29.7.2013 the list of posts being notified by this notification is not an exhaustive list and the ministries, departments, Public Sector Undertakings and the Autonomous Bodies may further supplement the list. Hence, any other post of equivalent seniority and scale should have been identified by the respondent and the complainant could have been promoted.

- d. This promotion to the post of Executive Engineer was also admissible in view of the contents of note 4 of the above notification as per which if a post is identified in the feeder grade the post in promotional grade should also stand identified. As the complainant was already working as an Assistant Engineer being the feeder grade and performing all the duties satisfactorily this could have been an enabling provision for promoting the complainant. This contention is strengthened by the argument of the complainant that in MES formation Assistant Engineer of all trades are merged into one common seniority list for promotion to the post of executive engineer without assigning any specific trade further to it hearing on.

- e. Section 20 of the RPWD Act specifically lays down that if an employee acquires disability during service and becomes disabled from discharging his duties then another post of equivalent scale can be identified and the employee can be posted against that post.

- f. As such this court is convinced that the speaking orders issued by the respondent have not covered the entire position of the case, were issued hastily and with the specific purpose of denying promotion to the complainant. At the time of issue of these speaking orders by the respondent the complainant was already working as Executive Engineer as an additional charge and the respondent was fully aware of the matter, which also entitled him to promotion.



....4.....

6. In view of the aforesaid position this court recommends that the complainant should have been promoted to the post of Executive Engineer prior to his superannuation as per prescribed procedure and regulations.

7. The case is disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 07.01.2021



566



सत्यमेव जयते

17

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12349/1011/2020

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

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

Disability : 50% hearing impaired

Gist of Complaint:

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

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

.....2/-

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

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

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

3. **Hearings** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 11.12.2020.
4. The following persons were present during the hearing ;
 - 1) Shri Rahul Kumar Upadhyay, the Complainant.
 - 2) Ms. Ruchira Gupta, Advocate for Respondent.

OBSERVATIONS & RECOMMENDATION

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

6. Whole recruitment cycle can be divided into following parts –
 - a) Identification of Posts suitable for PwD candidates.
 - b) Reservation given to Persons with Disabilities
 - c) Issuance of Notification
 - d) Examination Fees
 - e) Examination Process – Facilities provided during examination and Examination Centres.



[Handwritten signature]

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

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

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

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

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

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

10. Addition of any post from this list –

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

<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>



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

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

RESERVATION FOR PERSONS WITH DISABILITIES

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

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

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

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

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



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

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

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

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

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

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



[Handwritten signature]

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

ISSUING OF NOTIFICATION

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

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

EXAMINATION FEES

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

EXAMINATION PROCESS

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

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



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

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

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

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

RELAXED MINIMUM CRITERIA

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

SELECTION ON MERITS

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



30. Respondent establishment issued Advertisement No. 21005/RECT/2020, whereby vacancies for various posts were advertised. Complainant has alleged that reservation for PwBD was not provided. Respondent submitted that in Point (c) of Para 1.1 of the Advertisement in question clearly mentions that Reservation for PwD shall be granted. Point (c) is hereafter quoted –

“Reservation for vacancy of SC/ST/OBC-NCL/EWS as per Govt. of India instructions/rules.
Total number of vacancies are inclusive of number of vacancies for PwD.”

31. From the perusal of the advertisement, it is prima facie evident that Respondent has mentioned about reservation for PwBD in casual manner. Language and mode of mentioning reservation for PwBDs is in complete violation of DoPT OM dated 26.11.2012, detailed summary of which is mentioned above in Para 16 of this Order.

32. Therefore, this court recommends that Respondent shall compute the total number of vacancies and shall renotify the advertisement clearly indicating numbers of such vacancies. Respondent is also recommended to indicate clearly whether the posts advertised are suitable for PwBD and also the sub category for which the post is identified suitable. Further Respondent is recommended that while issuing notification again, OMs and relevant provisions of RPwD Act 2016 shall be taken into consideration. Comprehensive summary of the provisions is mentioned hereinabove.

33. The case is disposed off.

Dated: 07.01.2021

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



561



25

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. 11785/1011/2020

Complainant : Shri Harikumar, Harinilayam, CMC 1, Vellorevattom, Cherthala P.O., Allepey, Kerala-688524.

Respondent: Sree Chitra Tirunal Institute for Medical Sciences and Technology (Through the Director) Medical College P.O., Thiruvananthapuram, Kerala - 695 001.

Disability : 50% locomotor disability

Gist of Complaint:

The complainant vide his complaint dated 12.02.2020 submitted that Sree Chitra Tirunal Institute for Medical Sciences and Technology, Thiruvananthapuram (SCTIMST) vide Order No. P&A.I/X/57/SCTIMST/2014 dated 26.12.2014 the Governing Body vide its resolution had considered and approved to implement the recommendation of the Committee constituted for the implementation of reservation for persons with disabilities for number of posts including Junior Engineer (Instrumentation)-A. The SCTIMST vide notification dated 15.12.2018 invited applications for the post of Junior Engineer (Instrumentation)-A as unreserved vacancy (UR) on 15.12.2018. The complainant has submitted that SCTIMST has been recruiting General/unreserved persons against posts reserved for persons with disabilities. He has requested to conduct a roster verification of SCTIMST to find how many pwd candidates were recruited in Group 'A' and Group 'B' posts till now and also to stop all recruitment process in SCTIMST till backlog vacancies are filled for pwards.

2. The Director, Sree Chitra Tirunal Institute for Medical Sciences and Technology (SCTIMST) vide letter No. P&A.I/SCTIMST/2020 dated 27.10.2020 submitted that a category identified for persons with disabilities does not imply that all appointments are deemed to be reserved in that particular category. The Govt. of India stipulates to ensure 4% reservation for persons with disability candidates in various group of posts. Hence the statement that the post of Junior Engineer (Instrumentation) is reserved for PwD candidates is not factual and is only identified as suitable for the post. As on 01.01.2020, the Institute has appointed 26 candidates in Group 'C' category which is more than the 4% stipulated by the GoI reservation policy. As such the Institute does not have any backlog vacancy in Group 'C' category. The notification issued for the post of Junior Engineer (Instrumentation) by the Institute was for inviting applications through Intra-Institute recruitment, i.e. for employees within the Institute and the complainant



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

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

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

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

not being an employee of the Institute does not have any locus standi to apply for the post. The Institute has already conducted a special recruitment drive for Group 'B' vacancies during the year 2019 to fulfill the reservation norms for persons with disabilities. Although the recent special recruitment drive failed to find eligible candidates under PwD, Institute will re-notify the posts in future notifications in identified categories according to the guidelines of Govt. of India.

3. The complainant vide his rejoinder dated 05.11.2020 submitted that though the Institute had identified 34 posts for persons with disabilities vide Order No.P&A I/X/57/SCTIMST/2014 dated 26.12.2014, not even a single PwD candidate has been appointed in any of the said 34 posts which is evident from the RTI reply of the Respondent. Some of the PwD employees who have earlier secured employment to the post of Cleaning Attendant on their own merit prior to issuing of identification order identifying the postS suitable for PwD, through open competition under other categories such as General/SC/ST/OBC are the only 25 PwD candidates presently serving in the Institute. The Institute claims these 25 employees who secured employment through open competition as employees posted under PwD quota which is violation of all norms. The Governing Body of the Institute in its 104th Meeting dated 06.07.2019 directed that since appointments were already granted to persons with disabilities for the post of Cleaning Attendants, the recruited candidates are to be considered against the reserved vacancies. But no order in this regard have been issued till date by the Institute. There had also been instances of intentionally humiliating persons with disabilities after inviting them for selection.

4. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 08.12.2020.

5. The following persons were present during the hearing ;

- 1) Shri Hari Kumar, the complainant.
- 2) Ms. Beena P. Nair, Administrative Officer, for Respondent.

OBSERVATIONS & RECOMMENDATIONS

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

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

- a) Identification of Posts suitable for PwD candidates.
- b) Reservation given to Persons with Disabilities
- c) Issuance of Notification
- d) Examination Fees



[Handwritten signature]

- e) Examination Process – Facilities provided during examination and Examination Centres
- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection

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

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

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

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

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

11. Addition of any post from this list –

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



<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>

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

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

RESERVATION FOR PERSONS WITH DISABILITIES

- 12. This category can be divided into following 6 sub categories –
 - a) Quantum of reservation
 - b) Exemption
 - c) How vacancies shall be computed
 - d) Maintenance of Roster
 - e) When not filled – Inter se exchange and carry forward
 - f) Nature – horizontal

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

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

15. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for



[Handwritten signature]

exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

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

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

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

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



[Handwritten signature]

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

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

ISSUING OF NOTIFICATION

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

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

EXAMINATION FEES

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

EXAMINATION PROCESS

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



[Handwritten signature]

24. 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.

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

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

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

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

RELAXED MINIMUM CRITERIA

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



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

SELECTION ON MERITS

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

31. In the present complaint it is submitted by Complainant and accepted by the Respondent that vacancies for the post of Junior Engineer (Instrumentation). It has been alleged that the Respondent establishment did not reserve seats for PwBDs in the said recruitment. Respondent has submitted that the post of Junior Engineer (Instrumentation) is Group C post and Respondent establishment does not any backlog vacancy for PwBD candidates in Group C category.

32. As mentioned above in detail, nature of reservation for PwBDs is not post based but vacancy based, therefore, irrespective of the fact that no backlog of PwBD vacancies is present, Respondent establishment is bound to calculate the vacancies for PwBDs in accordance with DoPT circular dated 15.01.2018.

33. Therefore, this court concludes that not reserving even a single seat for PwBD is violation of Section 34 read with DoPT OMs. This court recommends that the Respondent shall re calculate the vacancies and shall reserve 4% of the vacancies for PwBD candidates. Respondent establishment is recommended to re notify the whole advertisement after calculation of reservation in accordance with Section 34 of RPwD Act 2016 and concerned OMs issued by DoPT.

34. The case is disposed off.

Dated: 07.01.2021

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



562



सत्यमेव जयते

33

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: 11768/1023/2020

Complainant: Ms. Sumita Hazarika, Advocate for the complainants, 235, New Chamber for Lawyers, Supreme Court of India, Bhagwan Dass Road, New Delhi – 110001

Respondent: The Registrar, University of Delhi, Delhi – 110007
e-mail: <registrar@du.ac.in>

Complainant Shri Rabindra Mohan Senapati, a person with 100% visual impairment
Ms. Preamsheela Jha, a person with 100% visual impairment
Shri Nand Kishore, a person with 75% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **06.02.2020** inter-alia submitted that the above named complainants are visually impaired persons who are working in the Braille Library which is an affiliated Branch of Central Library of Delhi University. The Complainants have been doing their work to the best of their ability. It was due to their perseverance and hard work that the complainants have been getting grade of "very good" in their APAR but the end of 2014, Dr. Narender Kumar, Dy. Librarian deputed as in-charge is continually harassing to the complainants. She further submitted that for the first time in 2017, all the visually impaired employees' workings in Braille Library were given a grading of "good" instead of "very good". He downgraded the APARs of the complainants who are working under him for the year 2017 – 18 from "very good" to "good" thereby depriving them of their promotions both under the MACP as well as regular promotion.

2. The matter was taken up with the Respondent vide letter dated **12.07.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **27.10.2020**, respondent did not submit any reply, therefore hearing fixed on **04.12.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.12.2020**. The Delhi University sought deferment of hearing, therefore, hearing re-schedule on **05.01.2020**. The following were present:



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

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

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

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

- Ms. Sumita Hazarika, Advocate on behalf of complainant
- Shri G.K. Pathak, Advocate on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.

4. Focus of the Complaint is harassment meted out by Dy Librarian. During online hearing, this court was informed that Dy. Librarian has now been transferred to another department. Since, the cause of grievance has now been transferred hence intervention of this court is not needful.

5. However, this court shall recommend that the Respondent shall be more sensitive towards Divyangjans. Moreover, Section 20 and Section 2 (y) of RPwD Act, 2016 is indispensable to be mentioned.

"SECTION 20 - (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment;

(3) No promotion shall be denied to a person merely on the ground of disability."

"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.

6. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.01.2021





सत्यमेव जयते

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

Case No. 11968/1011/2020

Complainant : Shri Pranjit Das, S/o. Ramkrishna Das, Chilakhana, Coochbehar-736 159.

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 03.06.2020 submitted that he had applied for the post of GDS MC at Krishnapur B.O. in the Cycle-1 GDS Recruitment of West Bengal Circle vide Notification No. RECTT./R-100/ONLINE/GDS/VOL-VI dated 05.04.2018. He got selected in the post and also received a letter of intimation. When contacted the Malda Postal Subdivision regarding this matter, he was given the attestation form and medical form and was asked to visit them for verification after filling up these forms. He reached there on 06.03.2020 as advised with proper and filled documents for its verification but the Respondent refused to verify his documents and told that he was not suitable for the post since he is a person with 100% visual impairment. He contacted the SI of Malda Postal Circle as suggested by the ASP. The SI not only refused to listen to him but also misbehaved with him. The complainant was told that he was wrongly been selected and he will allow him to do the job. When the complainant informed him that some of his friends having similar situation like him, were already been selected after their document verification, he ignored him and quit the conversation.

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 MP, GDS MC & BPM was issued under no.Rectt./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 was OL (One leg affected), LV (Low vision) and HH (Hearing impaired). In spite 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

....2/-



post of GDS-MC which was reserved for 'Low Vision', though he is 100% blind and not eligible for the post. It seems that the complainant knowingly submitted online application though he was not eligible for the post of GDSMC as per notification. The Respondent further submitted that GDS is not a Government employee and do not get salary like a Government Servant. GDS are appointed as extra departmental agents and they get allowances for 3 hours or 5 hours for the service in a day. Moreover the duty of Mail Carrier is to carry mailbag containing registered articles, parcels, Insured articles, other valuable documents and cash upto certain limit from one Post Office to another Post Office. The said work is not suitable / fit for a 100% blind candidate as decided by the competent authority.

3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.

- 4. The following persons were present during the hearing ;
 - 1) Shri Pranjit Das, the complainant.
 - 2) Ms. Neetu, Director, Postal Services, for Respondent.

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. During online hearing this court was informed by the Respondents that in Murshidabad, two Divyangjans suffering from 100% Visual Impairment are already employed on the post of Gramin Dak Sewak. 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.



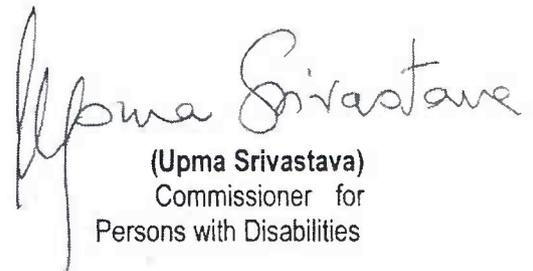
8. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance 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.

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: 12.01.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



564

38



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11946/1011/2020

R-25741

Complainant : Ms. Radhika Batra, House No.J-9, Khalsa Nagar, Near Sukhmani Park, Sriganganagar, Rajasthan – 335 001.

Respondent : Ministry of Finance (Through the Secretary), Dept. of Revenue, North Block, New Delhi-110001.

R-25742

Disability : 50% Locomotor

Gist of Complaint:

The complainant vide her complaint dated 13.03.2020 submitted that she had applied to the post of Chemical Assistant in Central Board of Indirect Taxes and Customs under PwD quota against an advertisement no.NR/2/2017 of SSC. On the recommendation of SSC, she received letter no. C.No.22-Estt./A/2016 dated 27.11.2018 from the Ministry of Finance, Deptt. of Revenue, Central Board of Indirect Taxes and Customs, Central Revenue Control Laboratory, New Delhi directing the complainant to fill up and return the Attestation Form duly completed on or before 26.12.2018. She submitted the required documents within the prescribed period, but she has not received any subsequent letter / Appointment Order. She made a representation to CRCL vide letter dated 31.07.2019 seeking information on her appointment letter but did not receive any response. She also submitted her grievance at CPGRAM portal. She submitted that she fulfilled all the criteria and has been validly and rightfully recommended by the Staff Selection Commission for the post of Chemical Assistant in CRCL, but she has been denied the appointment to the post of Chemical Assistant by CRCL.

2. The Under Secretary, Department of Revenue, Central Board of Indirect Taxes & Customs vide letter No.12034/13/2020-Ad.III.B dated 30.12.2020 has enclosed the comments dated 25.11.2020 received from the Joint Director (NFSG), Central Revenues Control Laboratory (CRCL). He submitted that the complainant had claimed two years' experience / part of experience for the post of Chemical Assistant, while pursuing B.Sc / M.Sc Course. The work done as part of B.Sc / M.Sc is academic in nature, as per prescribed curriculum. Therefore, the same could not be considered to be 'experience in Chemical Analysis or Research'. As such Ms. Radhika Batra's could not be considered. He submitted that since no offer of appointment was issued by CRCL to Ms. Radhika Batra (as she does not possess requisite experience as per RRs), therefore, her original dossier was returned to SSC. Therefore, the question of her appointment under PH category does not arise.



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

E-mail: ccpd@nic.in; Website: www.ccdlsabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाइल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.

4. The following persons were present during the hearing ;

- 1) Shri Aruj Dhingra, Advocate for complainant.
- 2) Mohammad Ashif, Under Secretary, D/o. Finance and Shri Ajay Kumar, Chemical Examiner Gr-I, CRCL, for Respondent

OBSERVATIONS AND RECOMMENDATIONS

5. Complainant has alleged that despite of qualifying competitive examination, she has not been appointed on the post. Respondent submitted in its reply that as per recruitment rules for the post of Chemical Assistant 2 years' experience in Chemical Analysis or Research in a Government Department or Autonomous or Statutory Body or Recognised Institution or University is essential. Further, Respondent submits that since the Complainant does not hold the requisite experience hence she has not been appointed.

6. Complainant has time and again submitted that Research work she did while pursuing B.Sc. and M.Sc. should be counted towards 'experience' as the advertisement does not specifically state that research experience should be post B. Sc and M. Sc.

7. This court concludes that there are no merits in the submissions of the Complainant. Any research conducted while pursuing academic courses cannot be considered as 'work experience'. It is settled principle that academic activities like internships, projects, research are part of academic curriculum, each student does it and cannot be considered as 'work' done after completing academic course. This court does not see any reason to deviate from meaning of 'experience' as it is understood in common parlance. 'Experience' can only be interpreted as experience gained after completing academic course. Hence, this court concludes that no intervention of this court is warranted.

8. Hence the case is disposed off.

Dated: 12.01.2021

Upma Srivastava
(Upma Srivastava)
 Commissioner for
 Persons with Disabilities



563



40

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. 12203/1013/2020

Complainant: Shri Debabrata Khanra, Vill : Chaksimultala, P.O.: Kumorchak, P.S.:
Nandakumar, Dist. : Purba Medinipur, West Bengal – 721 652.

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 20.07.2020 submitted that he has been selected for the post of GDS Packer under West Bengal Postal Circle. After getting the letter of intimation, he went to the Office of the IP of Mote Chandipur during first week of February 2020 for document verification and genuineness of certificates. After the verification, he was given an Attestation Form, Form of Character Certificate and Medical Fitness Certificate which he went to submit duly filled during the last week of February 2020 but he was told that he is not suitable for the post of GDS Packer since he is a person with visual impairment. He submitted that he had applied for a post that is reserved for persons with disabilities and has been selected on merit. But non selection created major mental issue to him.

2. The Assistant Director of Postal Services (Recruitment), O/o the Chief Postmaster General, WB Circle vide letter no. Rectt./R-100/GDS/Cycle-I/PH/2020 dated 11.12.2020 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. Rectt./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). In spite 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 post. The complainant has knowingly submitted online application though he was not eligible for

.....2/-

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाइल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

the post of GDSMC as per notification. The criteria for online selection to the post of GDS was only the marks obtained in 10th Standards 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 candidature's online submitted application in accordance with the selection criteria. As per online selection process the candidates who have secured highest percentage of marks in 10th standard automatically receive an SMS for his provisional selection on the prescribed date followed by system generated intimation letter. Shri Debarata Khanra secured highest percentage of marks in 10th standard amongst the applicants applied online for the same post and the system considered Shri Khanra as 'selected' for the post being more meritorious (highest %age of marks) and simultaneously online 'sms' was generated to the selected candidate from the 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 further submitted that GDS are not Government employees and do not get salaries like a Government Servant. GDS are appointed as extra departmental agents and they are getting 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 from one Post Office to another Post Office. The said work is not suitable/fit for 100% blind candidates as decided by the competent authority.

3. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.

4. The following persons were present during the hearing ;
- 1) Shri Debabrata Khanra, complainant.
 - 2) Ms. Neetu, Director, Postal Services for Respondent.

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.

...3/-



7. During online hearing this court was informed by the Respondents that in Murshidabad, two Divyangjans suffering from 100% Visual Impairment are already employed on the post of Gramin Dak Sewak. 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.

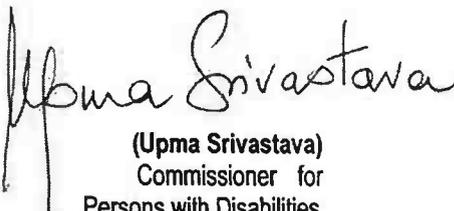
8. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance 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.

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: 12.01.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



56

43



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11878/1011/2020

Complainant : Ms. Geetayani Mishra, Dr. Bhimrao Ambedkar College, Yamuna Vihar, Main Wazirabad Road, Yamuna Vihar, Delhi – 110 094.

Respondent : Manipur University (Through the Registrar), Canchipur, Imphal-795003

Disability : 45% locomotor

R-25747

R-25748

Gist of Complaint:

The complainant vide her complaint dated 12.03.2020 submitted that Manipur University has advertised for recruitment of 52 posts of Professors, Associate Professors and Assistant Professors in different departments of their university through Advt. No. 01/2020 on 30.01.2020 but no posts were reserved for persons with disabilities.

2. The Registrar, Manipur University vide letter no. MU/5-124/2013/FCY dated 02.12.2020 submitted that Manipur University follows 200 point Roster System. As per roster system, the University reserves one post of Associate Professor in Life Science for persons with disabilities out of 52 posts of Professor/Associate Professor/ Assistant Professor vide Advertisement No. 1/2020 dated 30.01.2020.

3. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.

4. The following persons were present during the hearing ;

- 1) Dr. Om Mishra, On behalf of the complainant.
- 2) Prof. W.C. Singh, Registrar, Manipur University, for Respondent.

OBSERVATIONS & RECOMMENDATIONS

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

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

- a) Identification of Posts suitable for PwD candidates.
- b) Reservation given to Persons with Disabilities
- c) Issuance of Notification



...2/-

- d) Examination Fees
- e) Examination Process – Facilities provided during examination and Examination Centres
- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection

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

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

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

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

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

10. Addition of any post from this list –

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



45

<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>

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

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

RESERVATION FOR PERSONS WITH DISABILITIES

11. This category can be divided into following 6 sub categories –
- a) Quantum of reservation
 - b) Exemption
 - c) How vacancies shall be computed
 - d) Maintenance of Roster
 - e) When not filled – Inter se exchange and carry forward
 - f) Nature – horizontal

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

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

14. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the



procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPWD' in short). DEPWD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

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

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

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

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



[Handwritten signature]

- c) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.

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

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

ISSUING OF NOTIFICATION

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

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

EXAMINATION FEES

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

EXAMINATION PROCESS

21. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured.




Hence, while conducting examination government establishment has to ensure that test centers as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.

22. 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.

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

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

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

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

RELAXED MINIMUM CRITERIA

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



[Handwritten signature]

SELECTION ON MERITS

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

IRREGULARITIES IN THIS MATTER :

29. In the present Complaint it is stated that the Respondent Establishment issued advertisement for recruiting Professors, Associate Professors and Assistant Professors against 52 vacancies. However, the Respondent Establishment reserved only 1 vacancy for PwBDs. Respondent submitted that in its establishment 200 points reservation roster is made and as per the roster system only 1 vacancy is kept reserved.

30. At the outset, two irregularities can be pointed out –
- a) 200 points reservation roster;
 - b) Less than 4% reservation for PwBDs.

31. As stated above, as per DoPT OM dated 15.01.2018, it is positive obligation of government establishments to make 100 points reservation roster. Further, as per Section 34 of RPwD Act, 2016, it is mandatory for government establishment to reserve minimum 4 percent of total number of vacancies for PwBDs.

32. This court concludes that Respondent has failed to fulfil the statutory duties and follow DoPT guidelines with respect to maintenance of reservation roster and reserving vacancies for PwBDs. Therefore, this court recommends that the Respondent shall re calculate the vacancies and shall reserve 4% of the vacancies for PwBD candidates. Respondent establishment is recommended to re notify the whole advertisement after calculation of reservation in accordance with Section 34 of RPwD Act 2016 and concerned OMs issued by DoPT.

33. The case is disposed off.

Dated: 12.01.2021

Upma Srivastava

(Upma Srivastava)
 Commissioner for
 Persons with Disabilities



567



50

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: 12052/1024/2020

R-25849

Complainant: Shri Arvind Kumar Magarde
E-mail: <arvind.magrde@rediffmail.com>

Respondent: The Divisional Railway Manager, Central Railway, Nagpur, Maharashtra
e-mail: <drm@ngp.railnet.gov.in>

R-25850

Complainant: 60% Sickle Cell Disease

GIST of the Complaint:

Complainant vide complaint dated **27.06.2020** submitted that he is working in Nagpur Division as Office Superintendent. He alleged that respondent is neither providing him benefits of the transport allowance at double the normal rate nor the rebate income tax.

2. The matter was taken up with the Respondent vide letter dated **30.09.2020** under Section 75 of the RPwD Act, 2016.

3. Sr. Divisional Personnel Officer, Nagpur vide letter dated **04.11.2020** submitted that as per item (iii) of Railway Board's letter dated 03.08.2017, transport allowance is paid at double the normal rates in respect of categories visually impaired, orthopedically handicapped, deaf & dumb/hearing impaired, spinal deformity only and Sickle Cell Disease is not mentioned in that letter. He further submitted that the Chief Medical Superintendent, Central Railway Hospital, Nagpur has also confirmed about the disease, therefore, he cannot be considered as entitled for transport allowance at double the normal rate.

4. After considering the respondent's reply dated **04.11.2020** 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 **12.01.2021**. Before the hearing, it was found that complainant has passed away.



[Handwritten signature]

Observation/Recommendations:

5. It is observed that the complainant was eligible for double transport allowance as Sickle Cell Disease has been included in the New Rights of Persons with Disabilities Act, 2016.

6. This Court recommends payment of transport allowance at double the normal rate as per the extant Govt. of India rule from the date of issue of disability certificate to the complainant by medical authority. The same may be paid to the legal nominee alongwith other admissible benefits.

7. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.01.2021



568



सत्यमेव जयते

52

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: 12286/1023/2020

Complainant: Dr. Teena Khatik
e-mail: <teenakhatik70@gmail.com>

Respondent: The Director General, Railway Health Service, Railway Board, Rail
Bhawan, New Delhi – 110001
e-mail: <dgrhs@rb.railnet.gov.in><dhw@rb.railnet.gov.in>

Complainant: 75% locomotor disability

Gender: Female

GIST of the Complaint:

Complainant vide complaint dated **08.09.2020** inter-alia submitted that she has been working as Assistant Divisional Medical Officer in Divisional Railway Hospital, Pratap Nagar since 30.08.2018 and accordingly to her is being continuously harassed by Dr. Braham Prakash, Chief Medical Superintendent (CMS). Some events she has put in front of the Court: (i) intentionally, she was sent Karachiya Yard on duty with four male persons and there was no lady toilet. (ii) she was transferred from Pratap Nagar to Baroda Yard which is isolated and forest area. (iii) she was sent 80 km far Godhra on duty and she was insisted to attend trains call and she had to crossed the platform through stairs as there was no other option. (iv) forcefully she was called for emergency and rotational OPD duty during COVID-19 period without providing transport facility etc.

2. The matter was taken up with the Respondent vide letter dated **19.10.2020** 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**.

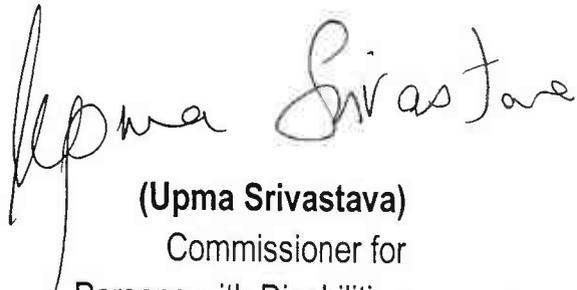
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **08.01.2021**. The following were present:

- Dr. Teena Khatik, Complainant
- Shri Chattar Singh Anand, Principal Chief Medical Director and Ms. Neeta Masurkar, advocate

....2....

Observation/Recommendations:

3. Both the parties were heard.
4. After perusal of the documents this courts makes following recommendations -:
 - i. Respondent shall expedite proceedings conducted by the Internal Complaints Committee (ICC) in order to deliver justice within a prescribed time limit.
 - ii. Complainant has to travel 14 K.Ms. daily in order to reach her place of work. Respondent shall assign duties to the Complainant nearby to her place of residence, so that she need not to travel long distance for the purpose of her job.
 - iii. DoPT has issued various guidelines from time to time laying down preventive measures which are to be followed during Covid-19 pandemic. These guidelines exempt Persons with Disabilities from attending office and allows them to work from home. These guidelines are still in continuation and hence the Respondent shall take these guidelines into consideration while assigning duties to the Complainant.
 - iv. During online hearing it was submitted by the Respondent that both the Complainant and one Mr. Brahm Prakash shall be sent for counselling sessions. The admission is accepted and the Respondent shall send both the parties for counselling sessions.
 - v. During online hearing this court was apprised by the Complainant that on number of occasions she was given death threats by the CMS. Respondent shall get this issue examined by the organisation head who shall reach to logical end as soon as possible, so that a divyang person can feel safe at workplace. If required appropriate disciplinary action shall be initiated against the CMS.
5. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.01.2021



56



सत्यमेव जयते

54

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: 12373/1022/2020

Complainant: Shri Pradeep Kumar, Power Grid Corporation of India Ltd, Abdullahpur, Yamuna Nagar, Haryana
e-mail: <pradeep.kumar2@powergridindia.com>

R-25853

Respondent: The Chairman cum Managing Director, Power Grid Corporation of India Ltd, Saudamini, Plot No. 02, Sector 29, IFFCO Chowk, Gurgaon (Haryana) – 122001
e-mail: <sakshi.mehta@powergridindia.com>

R-25854

Complainant: 80% locomotor disability

Gender: Male

Age: Approximately 35 years

GIST of the Complaint:

Complainant vide complaint dated 10.10.2020 submitted that he is working in Power Grid Corporation of India, Yamuna Nagar, Haryana, Northern Regional – II as a Technician and his colleague is working Northern Regional – I in Bhiwani Sub Station. He further submitted that they had submitted applications for mutual transfer in June 2020 and his colleague has been transfer but complainant's request is not considered.

2. The matter was taken up with the Respondent vide letter dated 21.10.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Sr. General Manager (HR), Power Grid Corporation of India Ltd vide letter dated 08.12.2020 submitted that Shri Pradeep Kumar was recruited as Jr. Technician (Trainee) against regional recruitment of Northern Region-II in 2010. Vacancies filled through Regional recruitment are based on regional roster points and are not of all India level and as per Power Grid's extant rules and guidelines transfer can only be considered after completion of 10 years of regular service. Shri Pradeep Kumar has not completed 10 years of regular service in his parent region after his regularization in 2011.

R

4. After considering the respondent's reply dated **08.12.2020** and the complainant's rejoinder dated **10.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **08.01.2021**.

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

- Shri Pradeep Kumar – complainant
- Shri Sudipta Dutta, Sr. General Manager (HR)

Observation/Recommendations:

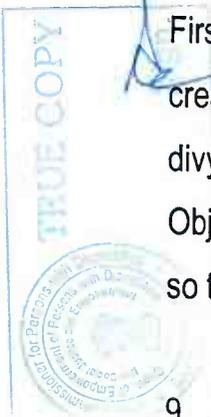
5. Both the parties were heard.

6. Complainant has alleged that he applied for mutual transfer. The co-applicant got the transfer however, the Respondent denied the transfer request of the Complainant citing a policy as per which an employee can be transferred only after 10 years of service (hereinafter mentioned as '10 years' service rule').

7. During online hearing it was admitted by the Respondent that 10 years' service rule is not explicitly written. A meeting was held in which the decision was taken that an employee can be transferred only after 10 years of service and on the basis of the minutes of the meetings, practice of not transferring employee before 10 years of service is followed.

8. This court concludes that Respondent is discriminating with Divyangjans on two counts. Firstly, a policy is made which is not explicitly in writing, causing injustice with Divyangjans as it creates confusion and uncertainty and provides room for arbitrary exercise of power. Secondly, divyang employees of the establishment are treated equally with the non divyang employees. Objective of Rights of Persons with Disabilities Act, 2016 is to assimilate Divyangjans in society so that they can enjoy basic right to life equally at par with others.

9. Section 20(2) of RPwD Act 2016 makes it mandatory for every government establishment to provide 'reasonable accommodation' to divyang employees. Reasonable accommodation is



...3.....

defined in Section 2(y) of RPwD Act, 2016. As per the definition, 'reasonable accommodation' means necessary and appropriate modification and adjustment, 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.

10. From the perusal of the facts of the Complaint it is clear that in transfer policy no reasonable accommodation is provided by the Respondent to divyang employees of the respondent establishment.

11. Therefore, this court recommends following -:

- a) Every policy which affects divyang employees of the Respondent establishment shall be written explicitly by the Respondent establishment;
- b) In line with provisions and spirit of RPwD Act, 2016, Respondent shall make/review the policies to ensure to Divyangjans the enjoyment or exercise of rights equally with others.
- c) Respondent shall transfer the Complainant to place of his choice.

12. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.01.2021



570



सत्यमेव जयते

57

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: 12359/1022/2020

Complainant: Shri Vikas, S/o Shri Amrit Lal, Machinist Grade – 3, Mechanical Workshop, Amritsar, Uttar Railway
R-25855 e-mail: <vv007665@gmail.com>

Respondent: The DRM (P), Northern Railway Delhi Division, New Delhi
R-25856 e-mail: <cpro@nr.railnet.gov.in>

Complainant: 100% visual impairment

GIST of the Complaint:

Complainant vide letter dated **09.10.2020** submitted that he is working in Northern Railway Mechanical Workshop, Amritsar as a Tech.-III/Machinist and his wife is also working in Allahabad Bank, New Delhi. He further submitted that he had requested for transfer from Amritsar to New Delhi as his wife is also visual impaired and is be in the family way. He alleged that his file was forwarded to DRM (P), Northern Railway by his office on **17.12.2019** but no action has been taken by the respondent on the application. He further submitted that his wife is also visual impairment and is in family way.

2. The matter was taken up with the Respondent vide letter dated **12.10.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **16.11.2020**, respondent did not submit any reply, therefore hearing fixed on **05.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.01.2021**. The following were present:

- Shri Vikas – complainant
- Shri Raman Kumar Sharma, Dy. CPO on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.



Alpna Srivastava

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

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

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

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

...2.....

4. The respondent is advised to note the following provisions of Rights of Persons with Disabilities Act, 2016 in this matter.

“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.”

Further, 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.

5. In view the explicit provisions of the RPwD Act, 2016 which prevail upon the transfer guidelines of the institution, the respondent are recommended to transfer the complainant to New Delhi or nearby within three months from the issue of these orders and the compliance report be furnished to this Court within 90 days.

6. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.01.2020



571



सत्यमेव जयते

59

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: 12369/1022/2020

Complainant: Shri Satish Chand Sharma, Officer Scale I, Punjab & Sind Bank, Branch
- Model Town, Bareilly
e-mail: <bossushubham@gmail.com>

Respondent: The Zonal Manager, Punjab & Sind Bank, Bareilly, Gagandeep Complex,
Uttar Pradesh - 243001
e-mail: <zo.bareilly@psb.co.in>

Complainant: 90% visual impairment

Gender: Male

Age: Approximately 54 years

GIST of the Complaint:

Complainant vide complaint dated **01.10.2020** submitted that he has been transferred to BO Janakpuri, Bareilly from BO Model Town, Bareilly and he has requested to reverse transfer order.

2. The matter was taken up with the Respondent vide letter dated **16.10.2020** under Section 75 of the RPwD Act, 2016.

3. In response, Zonal Manager, Punjab & Sind Bank vide letter dated **06.11.2020** submitted that Shri Satish Chand Sharma joined Punjab & Sind Bank as a peon on 09.06.1992 and currently working as an officer in Model Town Bareilly Branch since 07.08.2015. He further submitted that as per Transfer and Rotational Policy, he has been transferred at Branch Office Janakpuri, Bareilly and distance between both the Branches is 02 km and within radius of his residence.

4. Complainant vide rejoinder dated **11.12.2020** inter-alia submitted that Branch Janakpuri, Bareilly is not accessible due to stairs.



[Handwritten signature]

[Handwritten signature]

.....2.....

5. After considering the respondent's reply dated **06.11.2020** and the complainant's rejoinder dated **11.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **08.01.2021**.

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

- Complainant - absent
- Shri Pradeep Verma, Chief Manager

Observation/Recommendations:

6. Two points which are cynosure of the Complaint are -:
- a) Complainant who is 90% Visually Impaired has to climb stairs in order to reach his place of work;
 - b) New place of posting is at distant place from Complainant's place of residence.
7. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it mandatory for every government establishment to provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees. Therefore, on lines with the provision of RPwD Act, 2016 this court recommends the following -:
- a) Complainant shall be posted by the respondent at a work place which is easily accessible for him. No hindrance, like stairs or other kind of barriers must be in way of the place of work of the Complainant.
 - b) Taking into consideration the nature and percentage of disability of the Complainant, Respondent shall not post the Complainant very far away from the place of residence of the Complainant.
8. Case is disposed off.

Upma Srivastava
(Upma Srivastava)
 Commissioner for
 Persons with Disabilities



Dated: 15.01.2021

572



सत्यमेव जयते

51

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: 12172/1023/2020

Complainant: Smt. Savitri Arya
e-mail: <savi9956@gmail.com>

R-25861

Respondent: The Director, United India Insurance, 24, Whites Road, Chennai, Tamil Nadu - 600014
e-mail: <cmd@uiic.co.in>

R-25862

Affected person: Shri Sanjay Kumar a person with 55% locomotor disability

GIST of the Complaint:

श्रीमति सावित्री आर्य का अपनी शिकायत दिनांक 06.08.2020 में कहना है कि उनके पति श्री संजय कुमार आर्य युनाइटेड इंडिया इश्यूरेंस कंपनी लिमिटेड, शाखा कार्यालय, द्वितीय कानपुर में प्रशासनिक अधिकारी के रूप में सन् 1987 से कार्यरत है तथा उनके पति पर निराधार आरोप लगाकर वेतन कटौती और वसूली के दो आदेश पारित किये हैं तथा आरोप लागे गये हैं कि बिना बिल, वाकूचार तथा बिना अनुमोदन, गलत कोड से भुगतान लिया है। भारी जुर्माना और वसूली कि जानकारी : - 1. वेतनमान से दो वेतन वृद्धि कटौती एवं रूपये 762087/- रकम वसूली 2. वेतनमान से एक वेतन वृद्धि कटौती 3. अचल वेतन वृद्धि रोकना 4. भेदभाव पूर्ण निलंबन कर 50 प्रतिशत वेतन कटौती तथा निलंबन वापसी पर कटौती रकम अब तक वापसी नहीं। 5. पदोन्नति वर्ष 2016-17 से अब तक रोकना इत्यादि

2. The matter was taken up with the Respondent vide letter dated 14.10.2020 under Section 75 of the RPwD Act, 2016.

3. Chief Manager, United India Insurance Company Ltd vide letter dated 20.11.2020 submitted that the Smt. Savitri Arya has raised certain points and with regard to the two disciplinary proceedings, the said orders have been issued after following the necessary procedures as enumerated in United India Insurance Rules, 2014 and sufficient opportunity was provided to Shri Sanjai Arya during the said disciplinary proceedings and which has been done following the principle of natural justice. Therefore, the allegations as raised by Smt. Savitri Arya in her complaint are not correct.

उपमा श्रीकांतव

....2...

4. After considering the respondent's reply dated **20.11.2020** and the complainant's rejoinder dated **11.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **08.01.2021**.

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

- Shri Sanjay Kumar - complainant
- Shri Pradeep Kumar Mishra, Regional Manager

Observation/Recommendations:

5. Both the parties were heard.

6. After perusal of the documents submitted by both the parties and submissions made by both the parties this court concludes that no case of discrimination is made out against the complainant. As per the procedure prescribed in the Company, the complainant may approach the notified appellate Authority for his grievance. Hence, no intervention of this court is warranted.

7. Case is disposed off.

(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 15.01.2021



578



सत्यमेव जयते

63

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. 12040/1011/2020

R-2592

Complainant : Shri Sumit Kumar Singh, Room No.59, Gwyer Hall, University of Delhi, Delhi-110007.

R-25913

Respondent : National Institute for the Empowerment of Persons with Visual Disabilities (Through the Director), 116, Rajpur Road, Dehradun-248 001.

Disability : 100% visual impairment.

Gist of Complaint:

The complainant vide his complaint dated 03.06.2020 submitted that he has been pursuing M.A. Music from University of Delhi. He applied for the post of Music Teacher (Instrumental) in The National Institute for the Empowerment of Persons with Visual Disabilities (NIEPVD) against their Advertisement dated 28.09.2019. A meeting of Selection Committee was held on 12.03.2020 for the post of Music Teacher (Instrumental) reserved for visual impairment. He submitted that a candidate who had a degree of Vocal Music and not Instrumental Music has been selected and the age of the selected candidate also exceeds the maximum age limit published in the advertisement. His name was put on the waiting list though he has been fulfilling all the criteria required for the said post.

2. The Director, National Institute for the Empowerment of Persons with Visual Disabilities (NIEPVD) vide letter No. 29-2/20-Admn dated 05.11.2020 submitted that the maximum age as per the recruitment rules for the post of Music Teacher is 30 years. As per the Advertisement, the age limit was relaxable as per Government of India Rules for SC/ST/OBC/Physically Handicapped and Ex-Servicemen. The post of Music Teacher was reserved for visually impaired. The skill test for the post of Music Teacher was conducted on 12.03.2020. Shri Raju Maurya was selected for the post of Music Teacher and Shri Sumit Kumar was placed on waiting list no. 1. As Shri Raju Maurya is also a visually impaired candidate, the age relaxation for persons with disabilities was provided to him. His date of birth as per office records is 05.04.1982. Shri Raju Maurya posses the qualification of Instrumental Music in first division in subject Tabla from Prayag Sangeet Samiti, Allahabad (Roll No.8394) dated 30.06.2019. Shri Raju Maurya joined NIEPVD, Dehradun as Music Teacher on 25.09.2020.

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

...2/-

3. The following persons were present during the hearing ;

- 1) Shri Sumit Kumar Singh, the complainant and Shri Lavansh for the complainant.
- 2) Shri Kamalbir Singh Jaggi, Coordinator, D/o Special Education & Research and Director Incharge for Respondent.

Observation/Recommendations:

4. The Court has been informed by the Respondent that eligible visually impaired candidate is already appointed on the post. This Court does not find any violation of the Rights of Persons with Disabilities Act, 2016 and Circulars.

5. Accordingly, the case is disposed off.

Dated: 15.01.2021

Upma Srivastava
(Upma Srivastava)
 Commissioner for
 Persons with Disabilities





सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11902/1011/2020

Complainant : Ms. Poornimal K, H.No.3-222/2, Pagadamanu Street, Behind Sri Ram Bhajan Mandiram, Greamspet, Chittor, Andhra Pradesh – 517 002.

Respondent : Hindustan Aeronautics Limited (Through the Chairman & Managing Director), HAL Corporate Office, 15/1, Cubbon Road, Bangalore – 560 001.

Disability : 100% hearing impairment.

Gist of Complaint:

The complainant vide her complaint dated 07.02.2020 submitted that she appeared in the examination to the post of Admin/Commercial/Accounts Trainee (Channel C) against the Special Recruitment Drive Advertisement of Hindustan Aeronautics Limited for persons with disabilities vide Advt. No.HAL/HR/36(98)/PWBD(IV)/2019. She was called for document verification on 30.01.2020 at HAL Corporate Office in Bangalore. Her marks in Degree is 739/1500 which is 49.2% marks. She was told that 50% marks is the eligibility for the examination. Her contention is that if she has 1% less percentage of marks, then how come we was called to appear in the examination and then for document verification. She submitted that her husband, father sister, sister-in-law are all persons with disability. Her two daughters are studying in primary School.

2. The General Manager (HR), HAL vide letter no. HAL/HR/36(89)/SRD-PWD(G)/2020 dated 19.11.2020 submitted that a total of four attempts of SRD for persons with disabilities/Bench Mark Disabilities have been carried out by HAL to fill up the backlog vacancies from the year 2015. In the year 2019,i.e. during the fourth attempt of the SRD, Eight (8) unfilled vacancies (Group-C) of Admin/Commercial/Accounts Trainee (Channel-C) (Scale-5) were advertised [3 posts for visually handicapped (low vision) and 5 posts for Hearing Impairment. Ms. Poornimal K was one of the applicants for the said post under hearing impairment category of disability and under General/Unreserved Category. The cut off percentage of marks for unreserved/OBC/EWS candidates cannot be less than 60% and for SC/ST candidates not less than 50% in their qualifying examination. Keeping in view the fact that the number of applications received during the instant selection was less and since the advertised post was unfilled in the previous three attempts of SRD for PwDs, the cut off percentage in the qualifying degree was reduced to 50% in respect of unreserved & OBC candidates, in order to increase the number of eligible applicants for the said



...2/-

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

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

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

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

post. Also considering the fact that sufficient numbers of candidates were not available in the said selection in HH category who qualified in the Written Test on the basis of General Standards (i.e. 50% Marks), the same was relaxed to 40% for the purpose of shortlisting. Ms. Poornimal K has declared her percentage in the qualifying degree (B.Com) from Osmania University as 50% (i.e. marks obtained as 750 out of Max. Marks 1500). Accordingly, she was shortlisted and called for the Written Test based on the declaration made in the Application Form. It was clearly indicated in the Written Test Call letter that the candidates are being called for the written test based on the details/information furnished in the Application Form with respect to Age, Qualification etc. As per the results of the Written Test, the overall Merit of Ms. Poornimal K. was 13th amongst the 30 candidates (including visually handicapped and Hearing impairment candidates) appeared for the Written Test and 7th amongst 21 Hearing Impairment Candidates who appeared for written test. As the number of posts advertised under HH category were only five (5), the top five candidates (in order of merit) were called for document verification, (the five shortlisted candidates possessed 99%, 90%, 65%, 60% and 45% of disability). Thus retaining Ms. Poornimal K in the panel (2nd in the panel). The Written Test Score of Ms. Poornimal K was 78 out of 160. As the candidature of two selected candidates were not materialized due to non availability of documents and various other reasons, Ms. Poornimal K was called for the Document Verification vide letter dated 13.01.2020. It was clearly stated in the said call letter that shortlisting has been done based on Marks/Percentage indicated by her in the application to be supported with the certificates/documents. Further it was also stated that, the candidate has been called for the Document Verification based on the details/information furnished in the Application Form. During the Document Verification it was observed that the complainant declared percentage of her marks in Bachelor Degree (B. Com) as 49% (i.e. marks obtained as 739 out of 1500 instead of 750 marks out of 1500 as declared in the Application Form). Since there was a discrepancy in the percentage declared in the Application Form and Documents produced during the Document Verification, her candidature was not considered and the same was informed to the candidate vide email dated 13.02.2020. On cancellation of the candidature of Ms. Poornimal K, the next candidate available in the panel with 54% of Disability (Hearing Impairment) (OBC-NCL category) has been issued the provisional offer of appointment after verification of the documents.

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

4. The following persons were present during the hearing ;

- 1) The Complainant could not join the proceedings.
- 2) Shri Vijay, DGM (HR) and Ms. Karnika, Sr. Manager (HR).



[Handwritten Signature]
....3/-

Observation/Recommendations:

5. The respondent informed the Court that against the five vacancies reserved for such candidates, five candidates with hearing impairment who were found eligible were issued offer of appointment and their appointment is under progress.

6. The Court does not find any discrimination in the matter. Accordingly the case is disposed off.

Dated: 15.01.2021

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



573



सत्यमेव जयते

Extra 68

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. 12433/1032/2020

Complainant:

Shri Keshav Ram,
S/o Shri Balak Ram, Village – Sainj,
PO – Pandranoo, Teh. Jubbal,
District-Shimla-171206 (Himachal Pradesh)
Email: keshavjamihan@gmail.com

R-25889

Respondent:

The Director,
National Institute for the Empowerment of Persons with
Visual Disabilities (Divyangjan) [NIEPVD]
116, Rajpur Road, Dehradun – 248001 (Uttarakhand)
Email Id: director@nivh.org.in

R-25890

1. Gist of Complaint

1.1 The complainant, a person with 100% Visual Impairment filed this complainant regarding not issuing ITI Certificate since 2013-14 by the respondent.

1.2 The complainant submitted that he had successfully completed ITI Certificate course in the session 2013-14 from NIEPVD, Dehradun but the certificate of pass course has not been issued yet. He is an employee in the Higher Education Department, Government of Himachal Pradesh and his appointment is provisional. His department is issuing warning to submit ITI (COPA) Certificate otherwise his appointment would be cancelled. He has been requesting for the last six years to issue the Certificate but NIEPVD is making excuse that his certificate would be issued soon.



Page 1 of 2

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

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

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

2. Submission made by Respondent

2.1 The respondent filed their reply dated 28.12.2020 and submitted that the complainant Shri Keshav Ram had successfully completed the vocational training course 2013-14 of Computer Operator & Programming Assistant. NIEPVD has already issued the Marks Sheet for First and Second Sessions of his vocation training to Shri Keshav Ram. Moreover, the National Trade Certificate (NTC) is issued by the National Council for Vocational Training, Ministry of Skill Development & Entrepreneurship, Government of India. The respondent has already made several correspondences with the NCVT to issue the NTC. On receiving the Notice from O/o CCPD, NIEPVD on 22.12.2020 had contacted NCVT, Nanital to issue NTC certificate; and NCVT had assured that the certificate would be issued at the earliest possible. As soon as the certificate is received from NCVT, the same would be issued to the complainant.

3. The reply received from the respondent was forwarded to the complainant vide email dated 29.12.2020 for submission of rejoinder within 15 days. However, no rejoinder has been received yet from the complainant.

4. Observation/Recommendations:

4.1 From the perusal of the documents on record, it is observed that despite lapse of sufficient time and rigorous efforts made by NIEPVD since May, 2016, National Trade Certificates are yet to be issued by the NCVT, Ministry of Skill Development & Entrepreneurship. The complainant as well as the other persons with disabilities who have successfully completed the training might have been facing difficulties for want of National Trade Certificates. A copy of this recommendation is being sent to the Chairman, NCVT, MSDE to look into the matter and expedite getting the National Trade Certificates issued. NIEPVD is also advised to follow up.

4.2 The case is disposed off.

Dated: 18.01.2020



Upma Srivastava
(Upma Srivastava)
Commissioner
for Persons with Disabilities

577



70

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. 11987/1011/2020

Complainant: Shri Shailesh Shetty, BA, Shetty Compound, Near Jharandhaya Temple, Boloorkatte, Mangalore - 575 003.

Respondent : Central University of Kerala (Through the Registrar), Tejaswini Hills, Periyar (P.O.), Kasargod (D.T.), Kerala - 671 316.

Disability : 45% Hearing impairment.

Gist of Complaint:

The complainant vide his complaint dated 30.04.2020 submitted that he applied to the post of Assistant Professor in English in Central University of Kerala under Hearing Impaired category with eligible UGC NET score and Post Graduation degree in English. His application was not entertained as he was told that seats cannot be allotted for a person with hearing impairment in English department. He was told that they have reserved one seat under hearing impaired category in Education department and not in English department. He submitted that as per the reservation roster, the University has not reserved any seat for hearing impaired persons in English department till date.

2. The Registrar, Central University of Kerala vide letter No. CUK/LEG.SEC/NDC/2020 dated 25.11.2020 submitted that University had notified the vacant teaching posts by providing 4% reservation to PwD candidates in each post of Assistant Professor, Associate Professor and Professor vide Adv./T/1/2019 dated 14.06.2019. The total sanctioned posts in the cadre of Assistant Professor were 106. Hence, 4 posts are to be reserved for PwD candidates. The University had already filed 02 posts of PwD in Assistant Professor level. The remaining 02 posts are reserved for PwDs against said notification. One post of Assistant Professor was identified and reserved under category (b) - Deaf and hard hearing in the Department of Education. The recruitment against the said advertisement could not be conducted since the Vice Chancellor of the University was on extended period of tenure. Shortlisting of candidates was done for newly formed 04 departments only (Management Studies, Tourism Studies, Commerce & International Business & Kannada). The University has not shortlisted any candidates for interview in other departments including department of Education and Department of English. The Respondent submitted that the new Vice Chancellor took charge on 14.08.2020 and as per the decision of the Executive Council of the University vide Resolution No. EC:47:18 dated 25.09.2020, all the posts are to be re-notified since one year has elapsed. The re-notification will be done with a clause that the applications already submitted offline against Notification No.T/1/2019 will be considered provided

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarajini House, 6, Bhagwan Dass Road, New Delhi-110001; Tel.: 23386054, 23386154; Telefax : 23386006

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

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

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

they are updating their application online. The Respondent further submitted that the post of Assistant Professor in the Department of English was not reserved for PwD candidate in the Notification.

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

4. The following persons were present during the hearing;

- 1) Shri Shailesh Shetty, Complainant
- 2) Shri Pradeep Kumar, Dy. Registrar on behalf of the respondent

OBSERVATIONS & RECOMMENDATIONS

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

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

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

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

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



IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

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

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

10. Addition of any post from this list –

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

<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>

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

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

RESERVATION FOR PERSONS WITH DISABILITIES

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

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



[Handwritten signature]

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

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

14. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

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

16. Maintenance of roster– Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain group wise 100 points vacancy based Reservation Roster Register. Detailed method of maintaining and ear marking vacancies is laid down in Para 7.1 to 7.8 of the OM.

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



[Handwritten signature]

Such unfilled vacancy shall be carried forward in the subsiding recruitment year.

a. Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, it may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and mental illness; multiple disability from amongst persons above mentioned for disabilities.

b. Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.

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

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

ISSUING OF NOTIFICATION

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

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

EXAMINATION FEES

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



[Handwritten signature]

EXAMINATION PROCESS

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

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

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

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

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

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

RELAXED MINIMUM CRITERIA

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

29. AGE RELAXATION – As per DoPT OM No. 15012/1/2003-Estt.(D) dated 29.06.2015, age relaxation of minimum 10 years to PwBD-General candidates, 13 years to PwBD-OBC candidates and of 15 years to PwBD-SC/ST candidates is granted.



SELECTION ON MERITS

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

RECOMMENDATION FOR ACTION:

31. In the present complaint, it is submitted by the Respondent that due to administrative reasons, previous notification was withdrawn and new notification shall be issued within a period of 1 month. This court recommends that the Respondent while drafting and issuing new notification, shall follow the guidelines issued by DoP&T and other ministries from time to time as fully detailed above.

Dated: 18.01.2021

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities



585



सत्यमेव जयते

77

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. 11877/1011/2020

Complainant: Ms. Geetayani Mishra, A-471/10, Part-I, Sonia Vihar, Delhi – 110 094

Respondent : Central University of Himachal Pradesh (Through the Registrar), Dharamshala,
Distt: Kangra, Himachal Pradesh-176 215.

Disability : 45% locomotor

Gist of Complaint:

The complainant vide her complaint dated 12.03.2020 submitted that Central University of Himachal Pradesh vide its Employment Notice No. 006/2019 dated 28.11.2019 has advertised for appointment to various teaching positions in their University. She applied for one of these posts. The University did not give reservation for visually impaired persons for the post of Professors and Associate Professors. The University did not given reservation to VH persons in their earlier Employment Notice No. 001/2019 dated 09.05.2019 also.

2. The Registrar, Central University of Himachal Pradesh vide letter dated 11.12.2020 submitted that their University had started direct recruitment of Assistant Professors during the year 2011-12. Initially 80 Professors were appointed. 3% reservation were given at that time to candidates with disabilities and the following candidates were appointed under PH quota.

- i) Dr. Muhammad Hafeez, Assistant Professor – VH
- ii) Dr. Saima Banu, Assistant Professor – VH
- iii) Dr. Pragati Bhargav, Assistant Profesor - VH

In the year 2019 the University had advertised for 128 teaching posts under direct recruitment. Out of which the University had given 5 posts under reservation for persons with disabilities. Out of 5 posts, 02 posts were reserved for person with visual impairment and the remaining 3 posts were reserved for persons with locomotor disabilities because during the initial appointment, the University had used the quota earmarked for OH candidates for the appointment of VH persons. Therefore, during the current appointments the seats reserved for VH were converted to OH category before advertising for teaching posts by the University. Hence, the advertisement was given showing reservation of 05 posts for OH category. In the meantime, the case was filed with the Commissioner for Persons with Disabilities, Govt. of Himachal Pradesh by the National Platform for Disabilities Rights and Duties, Chandigarh against the employment advertisement issued by the Central University of Himachal Pradesh. The Commissioner for Persons with

....2/-

Disabilities, Govt. of Himachal Pradesh vide an order on 03.06.2019 to the Central University of Himachal Pradesh recommended it to reserve one post of VH candidate out of 05 posts reserved for locomotor disabilities. Thereafter, their University accordingly revised the reservation in posts in their employment advertisement.

OBSERVATIONS & RECOMMENDATIONS

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

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

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

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

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

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

7. In an organisation there may be number of posts which can not be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33



As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 16-15/2010-DD.III dated 29.07.2013 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

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

8. Addition of any post from this list –

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

<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>

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

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

RESERVATION FOR PERSONS WITH DISABILITIES

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

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



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

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

12. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

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

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

15. When vacancies cannot be filled - It may happen that in recruitment year some or all vacancies may not be filled up due to non-availability of suitable person with disability or for any sufficient reason. Under such circumstances, government establishment cannot convert such vacancies to unreserved category. Detailed procedure for conversion of such unfilled vacancies is laid down in



Para 8 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. As per the instructions mentioned in the OM, following steps have to be followed by government establishment –

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

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

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

ISSUING OF NOTIFICATION

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

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.



[Handwritten signature]

- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.

EXAMINATION FEES

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

EXAMINATION PROCESS

19. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured.

Hence, while conducting examination government establishment has to ensure that test centers as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.

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

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

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

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



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

RELAXED MINIMUM CRITERIA

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

SELECTION ON MERITS

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

IRREGULARITIES IN THIS MATTER :

27. In the present complaint it is stated that the Respondent Establishment issued advertisement for recruiting various teaching positions in their University. However, the Respondent University did not give reservation for visually impaired persons for the post of Professors and Associate Professors.

28. As stated above, as per DoPT OM dated 15.01.2018, it is positive obligation of government establishments to make 100 points reservation roster. Further, as per Section 34 of RPwD Act, 2016, it is mandatory for government establishment to reserve minimum 4 percent of total number of vacancies for PwBDs.

29. This court concludes that Respondent has failed to fulfil the statutory duties and follow DoPT guidelines with respect to maintenance of reservation roster and reserving vacancies for PwBDs. Therefore, this court recommends that the Respondent shall re-calculate the vacancies and shall reserve 4% of the vacancies for PwBD candidates. Respondent establishment is recommended to re notify the whole advertisement after calculation of reservation in accordance with Section 34 of RPwD Act 2016 and concerned OMs issued by DoPT.

30. Accordingly the case is disposed off.

Dated: 18.01.2021



Upma Srivastava
(Upma Srivastava)
Commissioner for

586



84

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. 11889/1011/2020

R-25934 Complainant : Dr. Nitesh Kumar Tripathi, H.No.8, A1 Block, Swami Vivekanand Marg, Sant Nagar, Burari, Delhi – 110 054.

R-25935 Respondent : Employees' State Insurance Corporation. (Through the Director General), Panchdeep Bhawan, Comrade Indrajeet Gupta (CIG) Marg, New Delhi – 110 002

Disability : 65 % locomotor

Gist of Complaint:

The complainant vide his complaint dated 20.04.2020 submitted that ESIC has published an advertisement in October 2018 for recruitment of 771 Insurance Medical Officers grade two under Special Recruitment Drive for persons with disabilities. In the earlier recruitment exercise of IMO Grade Two, reserved posts for persons with disabilities was published in the 2015 advertisement and more than half of these posts remain vacant. He submitted that these posts must be included in the 31 posts of current vacancies and special recruitment drive must be advertised at the earliest since more than one year and four months have already been passed without any action on the part of ESIC which is affecting the persons with disabilities.

2. The Assistant Director (MA), Employees' State Insurance Corporation vide letter No.A-14/13/1/2006-Med.VI dated 04.01.2021 submitted that as per Section 17(2) of ESIC Act, 1948, ESIC follows the Central Government rules and accordingly matter with regard to identification of posts in all cadres including cadre of GDMO has been taken with CHS. Vide letter dated 08.09.2020 CHS had been requested to provide a list of posts identified suitable for appointment of PwD alongwith details of category of disability identified. Subsequent reminder have also been issued on 23.10.2020 and 30.12.2020. The Respondent further submitted that on receipt of guidelines from CHS with regard to identification of posts alongwith details of category of disability identified as such vacancies including backlog vacancies will be advertised.

3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.



...2/-

4. The following persons were present during the hearing ;

- 1) Shri Nitesh Kumar Tripathi, the complainant.
- 2) No one represented the Respondent.

Observation/Recommendations:

5. 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.

(2) Where in any recruitment year any vacancy cannot be filled up due to nonavailability 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.



[Handwritten signature]

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

6. 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 could not be infringed.

7. The case is disposed off.

Dated: 18.01.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



576



सत्यमेव जयते

87

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: 12217/1024/2020

Complainant: Shri Tusarkanta Pattanayak, S/o Lt. Ramesh Chandra Nayak,
Badabalikani, Post-anoli, via-rahama, Dist-jagatsinghpur -- 754140
E-mail: <usarpattanayak1980@gmail.com>

Respondent: The Director, ESIC, Sub Regional Office, M/o Labour & Employment,
Govt. of India, B - 64, Sector - 57, Noida, Uttar Pradesh
e-mail: <sro-noida@esic.nic.in>

Complainant: 60% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 24.08.2020 submitted that he had worked in Bio-Med Pvt Ltd from 2006 to 2019. According to him, on 30.12.2016 when he was in office feeling unwell, his Company Manager advised him to medicine from the dispensary and take rest, therefore, he left office near lunch time for taking medicine from dispensary but on the way to dispensary he met with a serious car accident and became permanent 60% locomotor disabled. He further submitted that due to disability, Senior Officers pressurised him to left office therefore, there was no option, he had to left office on in 2019. He further submitted that he had applied for ESIC pension but ESIC denied for the same.

2. The matter was taken up with the Respondent vide letter dated 30.09.2020 under Section 75 of the RPwD Act, 2016.

3. सहायक निदेशक, विधि, कर्मचारी राज्य बीमा निगम, उप-क्षेत्रीय कार्यालय, नोएडा ने पत्र दिनांक 18.11.2020 के साथ प्रबंधक, कर्मचारी राज्य बीमा निगम, शाखा कार्यालय, गाजियाबाद के पत्र दिनांक 20.10.2020 को सलंगन किया है जिसमें बताया गया है कि बायो मेड प्रा. लि. द्वारा दिनांक 02.03.2020 को दुर्घटना रिपोर्ट फार्म 12 आनलाइन भरा गया जिसके अनुसार कर्मचारी तुषरकांत पटनायक दिनांक 20.12.2016 को फैक्टरी से ड्यूटी समाप्त



Signature

.....2.....

करके 5.30 बजे के बाद घर जा रहे थे जहां रास्ते में उसके साथ दुर्घटना घट गई। प्रार्थी का आगे कहना है कि नियम पुस्तिका पैरा संख्या 4, 16 के अनुसार लिखा गया है कि यदि कामगार किसी अपने काम से (यथा आराम करने, जलपान अथवा कुछ खाने) उस परिसर से बाहर निकल जाता है और इस प्रकार पूरी तरह नियोजक के नियंत्रण से परे चला जाता है तो ऐसी स्थिति में परिसर से बाहर और नियोजक की पहुंच से दूर निकलने पर वह किसी प्रकार की कानूनी सुरक्षा का हकदार नहीं रहता। तथा जांच में वास्तविक तथ्य सामने आने पर नियमानुसार मामला रोजगार चोट के रूप में अस्वीकार कर दिया जिसकी सूचना प्रार्थी को दे दी गई।

4. प्रार्थी का अपने पत्र दिनांक 01.12.2020 में कहना है कि उनके केस कि जाँच सही से करवाई जाए चूंकि प्रतिवादी द्वारा दी गई जानकारी सही नहीं है।

5. After considering the respondent's reply dated 18.11.2020 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 12.01.2021.

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

- Shri Tusarkanta Pattanayak – complainant
- Shri Vinod Nagpal on behalf of respondent (ESIC)

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant in his Complaint submits that he was employed in company named Bio-Med Private Limited from year 2006 to 2019. On fateful day of 30.12.2016, Complainant met with an accident and acquired disability. Further, he makes allegations against two establishments – one is Employees State Insurance Corporation ('ESIC' for short), another is the company which was employer of the Complainant. Complainant alleges that post accident, he applied for ESIC pension but was denied. Against his employer he alleges that due to his disability senior officers of the company pressurised him to leave the office and hence he left the office in year 2019.



.....3.....

...3....

8. It is submitted by ESIC that after conducting detailed investigation it was found that at the time the Complainant met with the accident, he was not commuting for employment purpose, rather he was commuting from one place to another for personal reasons therefore, he could not be granted pension. Further, this court was apprised by ESIC that the case of the Complainant was reviewed thrice and each time it was concluded that Complainant is not eligible for the pension as his case does not match the necessary requirements of the ESIC procedure.

9. Upon examination of the case this court concludes that the employer of the Complainant violated employment rights of the Complainant as guaranteed under Rights of Persons with Disabilities Act, 2016. Section 20(4) of the Act lays down that if any employee acquires disability during course of his employment, he shall not be dispensed with his services; further, such employee cannot be even reduced in rank or pay scale. Though, Section 20(4) lays down mandate for government establishments. Yet, this court considering the Objectives of RPwD Act 2016, concludes that effect of this provision must also be extended to non-government establishments. Objective of this Act is to assimilate the Divyangjans into main stream society so that they can spend their life with dignity and enjoy their basic fundamental rights equally with others. If private establishments shall be left out of scope of Section 20(4) it may amount to creating hinderance in path of achieving aims and objectives sought to be achieved by RPwD Act, 2016.

10. Therefore, this court by exercising its suo motu powers to investigate, vested in it by virtue of Section 75(b) of RPwD Act, 2016, decides to take cognizance of the Complaint against the employer of the Complainant, i.e. Bio-Med Private Limited and recommends that the Employer of the Complainant, i.e. Bio-Med Private Limited shall cancel the termination of the Complainant and shall re-employ the Complainant on any such post which is suitable for a Divyangjan. Further this court recommends that the Employer shall not reduce the pay scale of the Complainant.

11. Case is disposed off.

Upma Srivastava

(Upma Srivastava)

Commissioner for Persons with Disabilities



Dated: 20.01.2021

578



सत्यमेव जयते

90

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: 12374/1021/2020

Complainant: Shri Vijay Tammanna Sanadi, Office Superintendent, SEMT Wing,
College of Military Engineering, CME PO, Pune – 411031
e-mail: <vijaysanadi@yahoo.co.in>

Respondent: The Commandant, College of Military Engineering, CME PO, Pune –
411031
E-mail: <ccoymc@gmail.com> <dir1aeinc-mes@gov.in>

The Engineer-in-Chief, E-in-C's Branch, Integrated HQ of MoD (Army),
Kashmir House, Rajaji Marg, New Delhi – 110011

Complainant: 80% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 09.10.2020 submitted that he had been appointed as LDC on 16.05.1990 in the College of Military Engineering, Pune and he got promotion as a UDC on 19.04.2004 and after that promoted as Office Superintendent on 01.04.2018. He alleged that He alleged that if respondents would have maintained reservation roster for PwDs, he got first promotion on 16.05.1998. He has requested (a) to grant him next promotion to the post of UDC with retrospective effect and to the post of OS from 16 May 2003 in the seniority of UDC. (b) to grant further promotion to the post of Administrative Officer Gde-II on seniority basis with retrospective effect. (c) to give financial benefits from retrospective dates of promotions with 18% interest per year.

2. The matter was taken up with the Respondent vide letter dated 22.10.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Adm Offr-I, College of Military Engineering vide letter dated 28.11.2020 inter-alia submitted that representations of the individual were deliberated upon each time and replied to accordingly from time to time and his case was finally settled in Mar. 2017.



Handwritten signature

....2....

4. After considering the respondent's reply dated **28.11.2020** and the complainant's rejoinder dated **14.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **08.01.2021**.

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

- Shri Vijay Tammanna Sanadi – complainant
- Col. Anil Hadgekar, OIC, 'C' Company on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complainant submits that he was appointed on the pot of Lower Division Clerk (LDC) on 16.05.1990. Thereafter, his promotion was due on 19.04.2004 and then on 01.04.2018. He alleged that if the Respondent would have made Roster register on time, he would have been promoted on the due dates mentioned above.

7. Respondent replied that the Complainant's case was reviewed from time to time. Review DPC was also held after finalization of the roster and finally his case was settled in March 2017 with a conclusion that the Complainant could not be promoted then even if the roster had been in place. This court after perusal of the documents submitted and submissions forwarded during online hearing accepts the Reply of the Respondent. Hence, this court concludes that intervention of this court is not warranted.

8. Case is disposed off.

Upma Srivastava
(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 20.01.2021



574



सत्यमेव जयते

92

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: 12429/1023/2020

Complainant: Shri Nitin C. Kapadia, B/304, Krishnasagar Apartment, Near Chhipwad
R-25902 Jakatnaka, Valsad - 396001

Respondent: The General Manager (HR), Union Bank of India, Human Resources
R-25903 Department, Central Office, Union Bank Bhawan 239, Vidhan Bhawan
239, Vidhan Bhawan Marg, Mumbai - 400021

GIST of the Complaint:

Complainant vide letter dated 03.11.2020 submitted that his daughter is suffering Down Syndrome and having 90% disability and regular monthly expenses of her medical treatment is about Rs. 4000 to 5000/-. He alleged that he has been denied pension and leave encashment benefits by the Bank therefore, he has requested for release of Pension/Leave Encashment. The complainant was dismissed from the service.

2. The matter was taken up with the Respondents vide letter dated 23.11.2020 under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated 14.12.2020 inter-alia submitted that against non sanction of pension and leave encashment Shri Kapadia had filed Special Civil Application No. 20092 of 2019 before the Hon'ble High Court of Gujarat at Ahmedabad which was disposed off vide order dated 04.12.2019. As per Court's orders, necessary action has already been taken by the respondent. Now, the complainant sought relief on the ground of financial needs for look after his daughter who is having 90 % mental disabilities.

Observation/Recommendations:

4. After perusal of the rival submissions, the following have been observed :



...2...

- i) Complainant has already filed a Special Civil Application No. 20092 of 2019 before the Hon'ble High Court of Gujarat at Ahmedabad for the similar relief which was disposed off vide order dated 04.12.2019.
 - ii) The complainant was not sanctioned pension and leave encashment as per service rules not on account of account of discrimination on grounds of disability. Moreover, the complainant is not a person with disabilities.
5. In view of the above, since the matter has already been adjudicated by the Hon'ble High Court of Gujarat at Ahemdabad and it appears no discriminations on account of disability, no further intervention is required in the matter.
6. The case is disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.01.2021



581



सत्यमेव जयते

99

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: 12140/1021/2020

Complainant: Shri Rajwant Singh Multani, Assistant Manager, State Bank of India,
LCPC, Urban Estate, Phase III, Patiala – 147001
E-mail: <rajwant.multani@sbi.co.in>

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

Complainant: 60% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **10.06.2020** inter-alia submitted that he is working as Assistant Manager in State Bank of India, LCPC Urban Estate Phase-III, Patiala and he qualified written test for MMGS-II and zone of selection but was not considered for promotion under PwD quota.

2. The matter was taken up with the Respondent vide letter dated **07.10.2020** under Section 75 of the RPwD Act, 2016.

3. In response, General Manager (NW-II), State Bank of India vide letter dated **03.11.2020** submitted that as per the promotion policy of the Bank, there is no disability quota for PwD Officers for promotion to MMGS-II.

4. After considering the respondent's reply dated **03.11.2020** and the complainant's rejoinder dated **08.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.01.2021**.

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



TRUE COPY

Secu
Sign

- Shri Rajwant Singh Multani – complainant
- Shri Manoj Kumar Sinha, DGM on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.
6. Plethora of Complaints are filed before this court whereby denial of reservation in promotion is alleged. After perusal of various such Complaints this court has identified following two issues which need to be addressed in such matter:
 - i) Whether reservation in promotion to Group A and B is applicable for Persons with Benchmark disabilities (hereinafter mentioned as 'PwBD') and can be implemented being a horizontal reservation as against vertical reservation for other categories;
 - ii) Whether Government instructions are mandatory to be issued before implementation of reservation for PwBD in promotion to Group A and B.

Issue No. 1

7. 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."

8. 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.

9. 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."

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

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

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



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

12. 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.

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

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

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



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

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

"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."

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

Issue No. 2

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



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

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

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

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

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

22. Incidentally, Hon'ble Uttarakhand High Court in its judgment delivered in matter of UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLineUtt 865 reiterated the same with respect to Section 34 of RPwD Act of 2016. Relevant Paras of the judgment are reproduced below -:

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

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



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

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

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

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

28. In the present complaint, Respondent has denied reservation in promotion. Respondent has submitted that the Complainant claimed reservation in promotion to the post of Deputy Manager from the post of Assistant Manager. Both the posts are Group A posts and Respondent can not provide reservation in promotion within Group A posts. Hence, as per legal position and reasoning laid down above, this court concludes that Reservation in Promotion within Group A can not be denied by the Respondent.



29. Therefore, this court recommends that the Respondent may give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the judgment of the Supreme Court in Rajeev Kumar Gupta and others Vs Union of India and others. The matters of Complainant may be considered accordingly.

30. Case is disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.01.2021



582



102

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12382/1022/2020

Complainant: Shri Alpesh Bhagvanbhai Sutariya, LIG 165, Shastrinagar,
Bhavnagar, Gujarat – 364003
E-mail: <ab.patel3@gmail.com>

Respondent: The Supdt. of Post Offices, Bhavnagar Dn, Bhavnagar – 364001
E-mail: <dobhavnagar.gj@indiapost.gov.in>

Complainant 80% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **24.10.2020** submitted that he is working as Postal Assistant and earlier he was posted on deputation at Bhavnagar Head Office where ramps and accessible toilet for PwD were available but recently his deputation order is terminated and he has to join Ghogha Circle Sub Post Office where there are no facilities of toilet for PwDs and ramp available.

2. The matter was taken up with the Respondent vide letter dated **29.10.2020** under Section 75 of the RPwD Act, 2016.

3. Supdt. of Post Offices, Bhavnagar Division vide letter dated **24.11.2020** inter-alia submitted that complainant was transferred and posted at Bhavnagar Gogha Circle Sub Post Office on completion of tenure and he had worked at Bhavnagar Gogha Circle Sub Post Office during the period 29.06.2018 to 27.08.2019 i.e. more than one year. During tenure at Bhavnagar Gogha Circle Sub Post Office, he never raises any grievance regarding toilet/ramp facility. They further submitted that he was deputed to Bhavnagar Head Office on humanity ground after considering his request w.e.f. 28.08.2019 and now his deputation period terminated and he joined his parent office i.e. Bhavnagar Gogha w.e.f. 03.10.2020. They further submitted that Bhavnagar Gogha Circle is functioning in rented building and the matter for provision of toilet/ramp for disabled employee will be taken up with the land lord of the building.



TRUE COPY

Signature

Sign.

...2....

4. After considering the respondent's reply dated **24.11.2020** and the complainant's rejoinder dated **08.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **15.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.01.2021** The following were present:

- Shri Alpesh Bhagvanbhai Sutariya – complainant
- Shri H.A. Chudasma, Assistant Superintendent of Post on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard. After hearing both parties, the Court observes that the accessible environment is must for the efficient working of the complainant. Therefore Court recommends the respondent to construct accessible toilet and ramps in the Bhavnagar Gogha Circle Post Office ^{within} 03 months time to facilitate all persons with disabilities in general and complainant in particular.

6. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.01.2021



583



104

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12264/1022/2020

Complainant: Shri Sandeep Masal

R-25946 E-mail: <sandeepmasal5817@gmail.com>

Respondent: The Secretary, Ordnance Factory Board, Ayudh Bhawan, 10-A,

R-25945 S.K. Bose Road, Kolkata – 700001

E-mail: <arev.ofb@gov.in> <gmordfy_jal@sancharnet.in>

Complainant 70% hearing impairment

GIST of the Complaint:

Complainant vide complaint dated 28.08.2020 submitted that he has been working as DGM in Ordnance Factory, Varangao, Jalgaon, Maharashtra for last 02 years and recently he has been transferred to Ordnance Factory Training Institute Ischapore, Kolkata which is far away from his hometown. He has requested to cancel his transfer order and retain him either Varangao or any unit at Mumbai or Pune.

2. The matter was taken up with the Respondent vide letter dated 06.10.2020 under Section 75 of the RPwD Act, 2016.

3. The Director/G, Ordnance Factory Board, Kolkata vide letter dated 06.11.2020 inter-alia submitted that the Competent Authority has approved posting of Officer to Ordnance Factory Bhusawal, Maharashtra vide letter dated 14.09.2020 and he has been released from Ordnance Factory, Varangao on 16.09.2020 and has joined O.F., Bhusawal, Maharashtra which is less than 25 KMs from his previous place of posting..

4. Complainant vide rejoinder dated 10.12.2020 inter-alia submitted that this issue is not settled and requested to allow him to continue service at OF, Varangao.



...2....

5. After considering the respondent's reply dated **06.11.2020** and the complainant's rejoinder dated **10.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **15.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.01.2021**. The following were present:

- Shri Sandeep Masal – complainant
- Shri Sanjay Srivastava, Dy. Director General on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Genesis of grievance of the Complainant is related to transfer. Complainant was posted in Ordinance Factory in Varangaon. Later he was transferred to Ordinance Factory Ishapore. Complainant filed Complaint before this court and also requested the Respondent to cancel the transfer. Considering the challenges faced by the Complainant, the Respondent cancelled transfer to Ordinance Factory, Ishapore and was posted to Ordinance Factory, Bhusawal. As submitted by the Respondent and agreed to by the Complainant, distance between Ordinance Factory Varangaon and Ordinance Factory, Bhusawal is 20 KMs only.

8. It is also submitted by the Respondent that the Complainant was not the only one who was transferred. Along with the Complainant, 60 other employees were also transferred. Complainant also alleged that he was transferred even before the minimum tenure required for transfer got expired. Respondent submitted in Reply to this point that transfer before expiry of minimum tenure is done under administrative exigencies by High Level Committee.

9. After perusal of documents submitted and submissions made by both the parties, this court concludes no discrimination is met out with the Complainant. Distance between Ordinance Factory, Varangaon and Ordinance Factory, Bhusawal is just 20 K.Ms. Further, decision to transfer the Complainant was taken by high level committee and he was transferred along with 60 other employees of the company.



....3...

...3...

10. Considering distance between new place of posting and original place of posting and also administrative exigencies, this court concludes that no case of discrimination is made out and intervention of this court is not warranted.

11. The case is disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 20.01.2021



586



सत्यमेव जयते

107

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. 12403/1011/2020

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

Respondent : National Aluminium Company Limited (Through Chairman cum Managing Director) P/1, Nayapalli, NALCO Bhawan, Bhubaneswar, Odisha - 751 013.

Disability : 65% locomotor

Gist of Complaint:

The complainant vide his complaint dated 23.10.2020 submitted that NALCO had released an Advertisement No. 10200501 dated 10.10.2020 for recruitment of Medical Professionals (Doctors) where not a single vacancy has been reserved for persons with disabilities as per binding provisions under Section 34 of Rights of Persons with Disabilities, 2016. He has applied for the post of General Duty Medical Officer but the respondent has not informed about the acceptance of his candidature. He submitted that 100 point reservation roster has not been maintained by NALCO. He further submitted that all the benefits like age relaxation, exemption from payment of application fee, single window services for PwDs and accessible examination/interview venue must be provided to the persons with disabilities as per the spirit of RPwD Act, 2016. The complainant submitted that vacancy position number 1 must be reserved for persons with disabilities which have not been done in the present case. The vacancy position number 1, 26, 51 and 76 must be reserved for PwD candidate.

2. The Director (HR), NALCO vide letter No. CHRD/R&P/PWD/581/2020 dated 08.12.2020 submitted that NALCO had constituted an expert committee for identification for posts for persons with benchmark disabilities. Expert Committee had submitted recommendation for identification of post for persons with benchmark disabilities in respect of NALCO on 09.07.2019. This information regarding identification of posts is available on NALCO website : www.nalcoindia.com. As per the directive of Sec 34 of RPwD Act, 2016, NALCO is extending 4% reservation to all the persons with Benchmark disabilities. NALCO is also maintaining group-wise rosters in respect of persons with Benchmark disabilities as per the directive of the RPwD Act, 2016 read with the RPwD Rules, 2017 and procedure mentioned in O.M. No 36035/02/2017-Estt.(Res) dated 15.10.2018. The contention of the petitioner that in the advertisement No.10200501 not a single vacancy has been reserved for persons with disabilities is not correct. 5 posts for General Duty Medical Officer (GDMO) and 11

...2/-



posts Specialists in different medical disciplines have been notified. As regards reservation for PwDs, in para 8 under Reservation and Relaxation of the Advertisement, it has been clearly specified that 'Reservation/relaxation for PwDs candidates as per Govt. of India guidelines are applicable'. It has also been mentioned in the advertisement that " Appointment to the PwD candidates will be made after considering the nature of duties and responsibilities of the assignment, location etc and also considering that the disability is not likely to interfere with the performance and without possible deterioration of his/her health." In accordance with the above provisions in the advertisement, all the posts of GDMO and Specialists irrespective of disciplines are open for PwD candidates. Since these posts are open for different grades, it is not possible to ascertain the response from the PwD candidates with specific disability for a post in the particular discipline and grade. The Respondent submitted that Shri Tripathi also applied for the post of General Duty Medical Officer at E-2 Grade against the said Advertisement and his Application Number is NALCO0000234 received through online on 29.10.2020 and hard copy on 03.11.2020. The Rule of 4% reservation in the total cadre strength of Group 'A' (in case of executives including doctors) is being adhered to in Direct Recruitment and 100 point roster is being maintained.

3. The complainant vide his rejoinder dated 17.12.2020 reiterated that Respondent must be directed to submit 100 point reservation roster and all kinds of initiative taken to submit 100 point reservation roster and initiative taken for filling up reserved vacancies for PwDs from Group 'C' and Group 'A' service. Also details of recruited PwD candidates and all details regarding special recruitment drive and their outcome must be submitted to this Court. The Respondent is silent on the issue of Disabled Friendly examination and/or interview venue as per standards laid down by Govt. of India. The Respondent is silent on the issue of accessibility, extra time during examination and many other facilities for the candidates with disabilities.

Observation/Recommendations:

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

5. 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.

- (2) Where in any recruitment year any vacancy cannot be filled up due to nonavailability 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.

6. 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.

7. The case is disposed off.

Dated: 20.01.2021



Upma Srivastava
 (Upma Srivastava)
 Commissioner for
 Persons with Disabilities

587



110

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12261/1011/2020

Complainant : Shri Bimal Chandra Das, Vill: West Barasat, P.O. : Sutia Barasat, P.S.: Gaighata,
Dist. : North 24 Pargana, West Bengal -743 273.

Respondent: Railway Recruitment Cell (Through the Chairman), Eastern Railway, 56,
Chittaranjan Ave., Calcutta Medical College, College Square, Kolkata, West
Bengal-700012.

Disability : 40% locomotor disability

Gist of Complaint:

The complainant vide his complaint dated 26.08.2020 submitted that he applied for Group 'D' post against the advertisement of Railway Recruitment Cell, Kolkata. He gave the written examination on 24.11.2013 and got a score of 71.25 marks. His document verification was held on 04.06.2014. His medical examination was held on 10.07.2014 as per merit against notified vacancy in the ratio of 1:1 of E. No No.0112. He was declared provisionally qualified. RRC Kolkata is saying that the last empanelled candidate in OH category received 82.65 marks and as the complainant got less marks, he was not empanelled against E.N. No.0112. The complainant vide his another email dated 21.11.2020 submitted that RRC Kolkata did not publish the merit panel of PwD(OH) candidates after medical examination because Eastern Railway does not maintain proper reservation guideline as per Section 34 of Rights of Persons with Disabilities Act, 2016 and it totally violates the Section 34 of the Act. The complainant submitted that RRC Kolkata had published to fill up a total of 4179 vacancies of Pay Bank-1 and afterwards the vacancies were increased to 5709 out of which only 32 vacancies were reserved for persons with disabilities. He submitted that as per Section 33 of the Persons with Disabilities Act, 1995, a total of 171 vacancies should be reserved for persons with disabilities (i.e.OH-57, VH-57 and HH-57) but the Respondent reserved only 13 vacancies for OH candidate.

2. The Chairperson/RRC-ER vide letter No.RRC/ER/CCPD/12261/1011/2020/BCD dated 13.11.2020 submitted that the complainant had applied for Group 'D' post against E.N. No.0112. As per para 7.11 RBE 121/2005 the current panel shall be for a period of two years from the date of publication and accordingly the panel has already expired in 2017. Regarding candidate's assertion that D.V. was held in the ration 1:1, the statement is factually incorrect as per records.



21

While the candidate was indeed called for medical examination, empanelment was as per notified vacancies only. Merely sending for medical examination does not confer any right on the candidate for appointment. The Respondent submitted that the marks obtained by the last empanelled (PwD-OH) candidate is 82.65 and the marks secured by the candidate as per his complaint is 71.25 and hence he was not empanelled. The candidate's assertion that RRC-ER/Kolkata has published the cut-off marks of PwD-OH candidates as 70.52 is factually incorrect. He submitted that the final provisional panel of all empanelled candidates (including PwD-OH) candidates was published on 26.09.2015. The Respondent submitted that the marks secured by the last empanelled candidate is more than those secured by Shri Bimal Chandar Das and hence he was not empanelled and the panel also has expired in 2017. Hence consideration of candidature at this juncture is not permissible as per rules.

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) Shri Bimal Chandra Das, the complainant.
- 2) Ms. Madhu Saikar, Chief Staff & Welfare Inspector.

Both the parties were heard.

Observation/Recommendations:

5. It is noticed that the final panel published in 2015 by the respondent which has expired in 2017. The complainant obtained less marks than the last empanelled candidate. Though there is no violation on the ground of disability, but there is no reason to believe as to why the candidate was called for medical examination when he had not obtained the desired marks.

6. In the lights of the above, this Court advises the respondent to take care of the sentiments of the persons with disabilities and prepare panel for medical examination very carefully. No intervention of this Court is required.

Accordingly the case is disposed off.

Dated: 20.01.2021



(Upma Srivastava)
Commissioner for
Persons with Disabilities



584



सत्यमेव जयते

112

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: 12394/1023/2020

Complainant: Shri Rahul Sharma, H.No. 25, Village – Sultanpur, Sector – 128,
Distt. – Gautam Buddha Nagar, Uttar Pradesh – 201301
E-mail: <rsrbhardwajr@gmail.com>

Respondent: The Chairman & Managing Director, Balmer Lawrie & Co. Ltd, 21,
NS Road, Fairly Place, Kolkata, West Bengal – 700001
E-mail: <corpcomm@balmerlawrie.com>

Complainant 45% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 26.10.2020 submitted that he was selected as Assistant Manager – HR in Ms. Balmer Lawrie & Co. Ltd and joined Kolkata Office on 17.06.2020 but fell ill on 18.06.2020 therefore, self-quarantine for fourteen day in Guest house but during the period his health declined and he came to his hometown on 26.06.2020 after taking authorized leave respondent did not pay salary or not arrange medical treatment. He further submitted that due to lung infection and chest pain, he was not able to join office therefore, on 30.07.2020 he requested to competent authority to for sanction medical leave and transfer near native place. He alleged that respondent neither sanction him medical leave nor provided medical support and tried to pressurize him for written resignation. He has requested to provide job and pay all dues wages or salary.

2. The matter was taken up with the Respondent vide letter dated 02.11.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Chief Manager (HR & ER), Balmer Lawrie & Co. Ltd vide letter dated 26.11.2020 inter-alia submitted that Shri Rahul Sharma had accepted the offer of vacancy



....2...

at the Kolkata Office as Assistant Manager – HR and joined the same on 26.02.2020 without any objection and consider his disability, the Management extended Shri Rahul Sharma all possible help to make him comfortable by providing company guest house and extended the facility by fifteen days but he started expressing disinterest and discomfort at Kolkata and requested for transfer to an office near his native place at Gautam Budh Nagar. On being clarified that there was no vacancy at Delhi Shri Sharma was advised by the management to shift his family to Kolkata and the management was agreeable to extend allotment of company guest house, but he expressed his inability to do so, citing one reason or the other. Notwithstanding the sustained efforts made by the management, Shri Rahul Sharma submitted his resignation citing personal reasons on 24.08.2020 and all the allegations have been conjured up him to gain sympathy and somehow to get his job back at his desired place.

4. After considering the respondent's reply dated **26.11.2020** 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 **15.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.01.2021**. The following were present:

- Shri Rahul Sharma - complainant
- Shri Inderjeet Singh, Advocate, Shri Kaustav Sen, Sr. Manager, Legal and Shri Smit Dhar, Chief Manager, I/C

Observation/Recommendations:

5. Both the parties were heard. After hearing both the parties and documents available on record, this Court viewed that complainant has resigned citing personal reasons on 24.08.2020 from the job, which was accepted by the respondent and he was relieved. Now, the Respondent may like to consider whether they can allow the complainant to re-join on compassionate grounds.

6. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities



Dated: 21.01.2020

588



सत्यमेव जयते

174

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. 12353/1014/2020

Complainant : Shri Pardeep Kumar Arora,
C-12/511, Yamuna Vihar,
Delhi - 110 053

R-26000

Respondent: Income Tax Department (Delhi Zone)
(Through the Chief Commissioner),
Room No.164-166, Income Tax Bldg.,
Opposite MSO Building, ITO,
I.P. Estate,
New Delhi - 110 002

R-26001

Disability : 59% Hearing Impaired.

Gist of Complaint:

The complainant vide his complaint dated 24.09.2020 submitted he is a senior citizen aged 62 years. He is a graduate Civil Engineer with 38 years of experience which he got after passing direct final examination in Building in quantity surveying from Institution of Surveyors. The complainant after his retirement from the post of AE to use his skill and utilize the retired life, applied for registration as Valuer to the Income Tax Deptt. under the Chief Commissioner (Delhi Zone) after depositing requisite fee of Rs.1,000/- on 01.08.2019. He came to know that the file is still pending inspite of clearance from the concerned officials. When he pursued the matter with the Respondent on 30.07.2020, he was told that they are not going to register further names as there are several Valuers in the market. The complainant feels that this is against the Govt. of India policy and constitution to deprive he right of a person with disability. More than 14 months have lapsed but still his name has not been registered as Valuer by the Respondent.

2. No reply has been received from the Respondent.
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) Shri Pardeep Kumar Arora, the complainant.
 - 2) Shri Robin Singh, Assistant Commissioner, CC-III, for Respondent

...2/-

Observations & Recommendations

5. Complainant applied for the post of Valuer in September 2010. It is alleged by the Complainant that his application was rejected by passing verbal order that there are too many valuers already present in the market. Further, it is alleged that similar applications of non divyang persons with similar qualifications were accepted by the Respondent.

6. During online hearing it was submitted by the Respondent that application of the Complainant was processed in the month of July 2020. During that period cleanliness drive was going on as per which many Valuers were de-registered. During that period total number of registered surveyors were 729. Hence, his application was rejected.

7. Further, it was assured by the Respondent that Valuers' list will be reviewed during April 2021 and during that review process, application of the Complainant shall be favourably considered.

8. On the basis of assurance made by the Respondent this court concludes that further intervention of this court is not warranted hence the case is closed.

9. The case is disposed off.

Dated: 25.01.2021



Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12184/1023/2020

Complainant: Shri Manohar Lal
E-mail: <gk05743@gmail.com>

Respondent: The Superintendent, Military Hospital, Meerut, Meerut Cantt., Uttar
Pradesh

Complainant 100% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **07.03.2020** submitted that he is working as a Washer man in the Military Hospital, Meerut and he alleged that Shri Pratap Singh, UDC is messed up his leave record and reducing his salary.

2. The matter was taken up with the Respondent vide letter dated **19.10.2020** under Section 75 of the RPwD Act, 2016.

3. In response, Lt. Col., Military Hospital, Meerut vide letter dated **12.11.2020** submitted that Shri Manohar Lal was employed as 'Washerman' in Hospital on 01.10.1988 against a vacancy reserved for Blind Handicapped candidate and satisfaction of individual, his service/leave records was got audited and verified by the audit authorities i.e. LAO (B), C/o CDA (Army), Meerut Cantt in the presence of the individual and his son and he was satisfied and imposed his thumb impression as a token of correctness. They further submitted that on receipt of CCPD letter dated 19.10.2020, his service/leave records has again been checked and noted no discrepancy in his service/leave records. The record is found correct in all respect.

4. After considering the respondent's reply dated **12.11.2020** 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**.



Scanned
Sgn.

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

- Shri Manohar Lal - complainant
- Shri P.K. Vishesh on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard. The Court recommends that the respondent shall cross check and inform the complainant in writing, if the revised patient care allowance has been added to his salary with effect from 2017onwards. Further, his leave record may also be cross checked and confirmed if all due leave is reflected. A compliance report shall be submitted within 03 months to this Court.

6. The case is disposed off.

Upma Srivastava
(Upma Srivastava)
 Commissioner for
 Persons with Disabilities

Dated: 25.01.2021



591



118

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: 12300/1023/2020

Complainant: Shri Raju Turi, Village – Sealdanga, P.O. Samdi, Distt. – Paschim
Bardhaman (WB) – 713359
E-mail: <kiranturi38@gmail.com>

Respondent: The CMD, Eastern Coalfields Limited, HQ/Sanctoria, P.O.
Disergarh, Distt. Paschim Bardhaman – 713359, West Bengal
E-mail: <ecpersonneldept@gmail.com>

Complainant 80% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **04.08.2020** submitted that on 08.04.2018, he met a serious Mine accident while on duty in J.K. Nagar Colliery Colliery under Satgram Area of Eastern Coalfields Ltd and became disabled. He further submitted that since accident, company is paying a portion of idle wages and on 20.12.2019, the Medical Board after examining his physical condition assessed his disability as 80% permanent and also informed him that after six months his case will be reviewed by the Board. He alleged that Company cannot declared him "fit for duty" and other side company intentionally not declared him "unfit for duty" as that as per provision of national Coal Wages Agreement he can apply for the employment of his dependent son on compassionate ground.

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, General Manager vide letter dated **21.11.2020** submitted that as per the Employees Compensation Act, 1923, compensation amount of Rs. 6,13,632/- dated 11.08.2020 has been deposited to the Commissioner, Durgapur under the said Act for disbursement to the employee. They further submitted that there is a demand for concerned



Beoul

(Signature)

....2....

employee for declaring him Medically unfit and providing employment to his dependent under clause 9.4.0 of National Coal wage Agreement. However, this is not a case of medical Unfitness under NCWA but surely a case of Permanent Partial Disablement. Accordingly, all the applicable benefits as per the Employees Compensation Act, 1923 have been provided.

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 Raju Turi - complainant
- Shri P.K. Srivastava, General Manager on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard. The respondent submitted that Board for assessment and granting "unfit for work" is suspended and whenever the work of Board will be resumed, he will be assessed on priority.

6. After hearing both the parties, this Court is of the view that no intervention is required till the functioning of Board is resumed. However, respondent is recommend to adhere with the provision of RPwD Act section 20 (4) "No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service." Therefore, there can be no reduction in salary of the complainant by the respondent. The respondent shall confirm the same. The respondent shall also ensure that the complainant is posted to a office which is closest to his place of residence.

7. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 25.01.2021





सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12219/1023/2020

Complainant: Shri A.K. Sidh, AM (Civil), UP Zonal Office, NPCC Ltd, 1/43, Vikram
Khand, Gomti Nagar, Lucknow
E-mail: <adarshkrsidh@gmail.com>

Respondent: The CMD, NPCC Ltd, Corporate Office, Plot No. 148, Sector – 44,
Gurugram – 122003, Haryana
E-mail: <osdtocmdnpcc@gmail.com>

Complainant 45% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **01.05.2020** submitted that he was being forced and harassed financially by stopping the perks of pay and non-giving the leave for the regularization of his absence during lock down period by the UP Zonal Manager, NPCC Ltd, Lucknow. He has requested for release of payment for the month of April 2020 without any perks deduction as he is going to retire from services on **31.05.2020**.

2. The matter was taken up with the Respondent vide letter dated **19.10.2020** under Section 75 of the RPwD Act, 2016.

3. In response, General Manager vide letter dated **02.12.2020** submitted that Shri A.K. Sidh was exempted from roster for attending duty due to COVID – 19 and his absence period was regularized by concerned zone and payment of perks was duly released as per LPC issued by UP Zone vide LPC dated 26.11.2020.

4. After considering the respondent's reply dated **02.12.2020** 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 **19.01.2021**.



...2...

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

- Shri A.K. Sidh - Complainant
- Shri Venkat Ramana, Sr. Manager (HR) and Shri Subhash, Manager (HR) on behalf of Respondent.

Observation/Recommendations:

5. Both the parties were heard.
6. Complainant in his Complaint highlighted 3 issues –
 - a) Non payment of actual taxi fare paid by him while commuting to and from office during CoVid lockdown period.
 - b) Due benefits regarding T.A.
 - c) Issues related to non-payment of perks
7. Non-payment of actual taxi fare—Complainant was called to office during CoVid lockdown period. It is submitted by the Complainant that due to very scarce availability of taxi services during the lockdown, he had to pay more fare for travelling to and from his office hence Respondent establishment should have paid the actual amount and not the normal amount which is paid. Considering the disability and challenges which emerged during lockdown, this court concludes that Respondent establishment shall pay the actual taxi fare and not the normal taxi fare paid during pre-CoVid times to the complainant.
8. Due benefits regarding TA – it was alleged by the Complainant that policy with respect to TA was reviewed by the Respondent establishment. However, the Complainant was denied benefits of new policy. This court recommends that if the policy was reviewed and applied for the whole department then benefits of new policy cannot be denied to the Complainant as well and hence respondent establishment shall extend such benefits to the Complainant.



...3....

...3...

9. Issues related to non-payment of perks – Since the issue has been settled, hence no intervention of this court is warranted.

10. The case is disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 25.01.2021





सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12275/1092/2020

Complainant:

Ms. Reeta Namdev

R/o Plot No.110 Khera Village Extension,

ELD, Near Petrolpump and S.M. Krishna Public School,

Najafgarh, New Delhi-110043

Email: reetanamdev2012@gmail.com

Respondents:

(1) The Branch Manager,
Central Bank of India,
Mitraw Mitrao Branch, Dhansa Road,
Najafgarh, New Delhi-110043
Email: BMDELB2120@centralbank.co.in

(2) Managing Director & CEO,
Central Bank of India,
Chander Mukhi, Nariman Point
Mumbai – 400 021
Email: chairman@centralbank.co.in

1. Claims made by the Complainant

1.1 Ms. Reeta Namdev, F-37, a person with 100% Visual Impairment, filed a complaint regarding discrimination and deprivation of her rights to operate her bank account No.3050636433 by the Central Bank of India Mitraw Mitrao Branch, Najafgarh, New Delhi.

1.2 The stated to be a customer of the respondent bank and having her Salary Account for the last eleven years. She is also having FDs with the bank amounting to Rs.7.00 Lakh. She alleged as under:



- (1) Inappropriate and neglectful behaviour by the bank officials;
- (2) In March 2020, bank denied home delivery of cash requested on phone;
- (3) Bank is insisting to come with a witness for availing banking services;
- (4) Bank is also insisting for transfer of account to some other bank;
- (5) There is no talking ATM in the Branch of the bank; and
- (6) Bank is violating the guidelines issued by the Reserve Bank of India for providing banking facilities to the persons with disabilities.

1.3 She complained to have been passed through mental and physical hardships during Lockdown/Covid-19 due to the discriminatory behaviour by the bank. Since April 2020 she could not withdraw cash from the bank account and from 15 June 2020 all transactions of the bank account are stopped. The complainant requested to safeguard her legitimate banking rights and provide her all the banking facilities.

2. Submissions made by the Respondent

2.1 The respondent in their reply dated 27.11.2020 categorically denied the allegations labelled by the complainant and inter-alia submitted that all the banking facilities, cooperation and assistance as and when required by the customer were provided by the bank. No specific request for home delivery of cash was made by the complainant. However, home delivery of cash depends on availability of staff, rush in the branch, cash position, etc. on any particular day. The complaint arose during lockdown when the bank had with only skeletal staff. The bank did not shy away from filling up the RTGS form, however, as per bank's guidelines, presence of witness is mandatory for such transactions. The branch officials have been regularly filling her forms in the past and always gave her priority. The complainant was using alternate modes of delivery channels like ATM, POS and Online transactions, etc. since 20.05.2017 for making withdrawals, viz, lastly on 22.10.2020 an amount of Rs.20,000/- had been withdrawn by the complainant through ATM. On 29.10.2020, the complainant had taken Mobile Banking from the branch and has been doing her



transactions through online mode. The Higher Office of the respondent bank had received a complaint from the complainant on 19.08.2020 in which the Investigating Officer had found that the respondent branch has been extending good services to all its customers.

3. Submissions made in Rejoinder

The complainant filed his Rejoinder dated 17.12.2020 and reiterated her complaint refuting the reply filed by the respondent.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.01.2021**. The following were present:

- (1) Ms. Reeta Namdev, complainant
- (2) Ms. Manisha Kaushik, Regional Manager, for the Respondent

5. Observation/Recommendations:

5.1 Present complaint is related to ill-treatment of a divyang bank customer. It is alleged that the Complainant who is 100% Blind was not cooperated with in banking operations for which she visited the bank.

5.2 Objective of Rights of Persons with Disabilities Act, 2016 is inclusion of Divyangjan in main stream society. Plain reading of Section 24 of RPwD Act, 2016 hints that 'inclusion' includes financial inclusion as well. Further, it is not an exaggeration to say that accessibility of banking services is critical to build financial inclusion for Divyangjan. Hence, in order to make banking services more accessible for Divyangjan suffering from Blindness various institutions like Reserve Bank of India, Indian Bank's Association, Banking Codes and Standards Board of India have issued various guidelines.

5.3 Reserve Bank of India issued Statement on Developmental and Regulatory Policies dated October 4, 2017 whereby detailed Standard Operating Procedure related to dealing with Divyangjan is laid down. This statement can be accessed at – https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11163



5.4 Similarly, Indian Bank's Association issues guidelines stating that blind and low vision customers must be offered all banking services without any discrimination, at par with sighted customers. Banking Codes and Standards Board of India's code of banks commitment states "We will make our best efforts to make it easy and convenient for our special customers like senior citizens, differently-abled and illiterate persons to bank with us".

5.5 Further, one of the Aims and objectives of the RPwD Act, 2016 is to make the whole infrastructure more accessible for Divyangjan. Section 40 of the statute indicates towards the same.

5.6 In the present case, specific allegations related to ill-treatment are made against erstwhile Branch Manager. In its defence the Respondent organisation submitted that the Complainant approached the bank during Covid-19 lockdown period. Due to less working staff, the Complainant was requested to wait for some time. Further, it was submitted that senior level employee approached the Complainant with intent to apologise for inconvenience which might have been caused in consequence of Respondent's acts. Further, it was informed that erstwhile Branch Manager has also been transferred from the branch.

5.7 Hence this court recommends that the Respondent establishment shall adhere to the Standard operating Procedure laid down by RBI, as mentioned above. It is also recommended that Respondent establishment's Operating procedure with respect to Divyangjan shall be in conformity with RBI's Standard Operating Procedure. Further, considering the corrective measures already taken by the Respondent establishment, this court concludes that no further intervention of this court is warranted.

5.8 The case is disposed off.

Dated: 25.01.2021



Upma Srivastava
(Upma Srivastava)
Commissioner
for Persons with Disabilities

594



सत्यमेव जयते

Extra

127

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. 12412/1092/2020

Complainant:

R-26015
Shri Suresh Kumar,
Physiology,
RVRS Medical College, Bhilwara
Email: vishamgoyal@gmail.com
Contact No. 8947915303

Respondent:

- R-26016
- (1) National Highways Authority of India,
Through: Chairman,
G 5&6, Sector-10, Dwarka, New Delhi - 110075
Email: chairman@nhai.org
- R-26017
- (2) Ministry of Road Transport & Highways (Toll Section),
Through: DG(RD&SS),
Transport Bhawan, 1, Parliament Street, New Delhi, 110001
Email: dgrdss-rth@nic.in

1. Gist of Complaint

1.1 Shri Suresh Kumar, M-40, a person with 80% Locomotor Disability (Lower Limbs), filed a complaint regarding development of web portal for persons with disabilities and/or process all pending physical application requests for exempted Fastag as per Circular No.H-25016/02/2018-Toll, dated 08.01.2019 issued by the Ministry of Road Transport & Highways.

1.2 The complainant submitted that as per the said Circular dated 08.01.2019, the following Guidelines & Standard Operator Procedure (SOP) have been issued with regard to Fastag for exempted category of mechanical vehicle -



Page 1 of 3

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

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

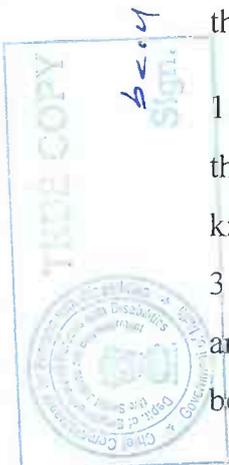
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

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

- (i) NHAI/the agency authorized by NHAI shall be single issuer of all exempted categories of FASTag across India. No member banks shall be allowed to issue exempted category FASTag from the date of issue of this SOP.
- (ii) Page No. 7 & 8 of the circular mentions that mechanical vehicles specially designed constructed for use of a person suffering from physical disability under code 34 are exempted.
- (iii) At Point No.3.1 it has been decided that receipt of application and internal scrutiny and processing of application shall be done online. (NHAI/Agency authorized by NHAI shall develop a web-portal for facilitating the issuance of Exempted FASTags and web-link of which may be provided in home page of web site of MoRT&H & NHAI). **Till development of such web-page, application can be made in physical form.**
- (iv) As per Point No. 3.2., the requisite Application, along with the applicable documents, will be submitted through the web-page (or physical application, till such web-page is made operational) by the self, or an authorized representative, to the respective Regional Office (RO), NHAI.
- (v) Point No. 3.3. says that all applications for exempted category of FASTag shall be submitted through the form (Refer Annexure-2 in attached SOP soft copy).

1.3 The complainant alleged that as web-portal is not developed till now, so within the time duration of release of this SOP circular to till date, many of PwD's have applied through physical application but most of them are still waiting for their Fastag. Complainant had submitted his physical application to the Regional Office of NHAI in the month of January.

1.4 Of course, vehicles are exempted at Toll Plazas, but on crossing through the lane for vehicles having no Fastag, most of Toll Plaza employees are not knowledgeable and they resist a lot to exempt the vehicle under category code 3.4. For a person with disability, it becomes impossible to come out of the car and explain that his/her vehicle is under exemption, this kind of troublesome is being faced by almost all PWD across India at toll plazas.



2. The Relief Claimed

NHAI Officials may be guided and instructed to take it on prior basis to develop web-portal at earliest possible at least for persons with disabilities; or/and to process all pending physical application requests within a time-frame of one month.

3. The matter was taken up with the respondents on 09.11.2020 followed by Reminder dated 09.12.2020, but no reply was received.

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

- (1) Shri Suresh Kumar, the complainant
- (2) Shri Pranshu Agrawal, Dy. Manager, NHAI HQ.
- (3) Ms. Aishwarya Gupta, COD, M/o RT&H

5. Observation/Recommendations:

Both the parties were heard.

5.2 The representative of Respondent No.1 submitted that the Web Portal has been developed and is in use the grievance of the complainant has been redressed. However, it is recommended that all the pending applications submitted by persons with disabilities for FASTag be processed and cleared. Further, the employees/officials posted at the Toll Plaza may be made aware and sensitized towards the right to equality with others of persons with disabilities; and no persons with disabilities should be deprived of his/her legitimate rights to avail the facility of FASTag on the ground of disability.

5.3 The case is disposed off.

Dated: 25.01.2021



Upma Srivastava
 (Upma Srivastava)
 Commissioner
 for Persons with Disabilities

595



सत्यमेव जयते

130

extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12407/1092/2020

Complainant:

Shri Vijaykumar Motiram Kukreja
B-306, Keshav Apartment, Near Kiran Park,
New Wadaj, Ahmedabad-380013
Email: vijay.kukreja172@gmail.com
Mobile: 9825763770

R-26618

Respondent:

AEI Section, Department of Heavy Industry,
Ministry of Heavy Industries & Public Enterprises,
Through: Secretary
Udyog Bhawan, New Delhi-110011
Email: shioff@nic.in

R-26619

1. Gist of Complaint

1.1 Shri Vijaykumar Motiram Kukreja, M-43, a person with 60% locomotor disability, filed complaint under the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] regarding not issuing GST Concession Certificate by AEI Section, Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprise [DHI, MHI&PE].

1.2 The complainant submitted that he had applied for GST Concession Certificate on 02.03.2019 to AEI Section, DHI, MHI&PE. The respondent vide their letter dated 27.03.2020 had advised to submit RC Book; and as per the advice of respondent he purchased new car and got registered with RTO to get RC. On 27.06.2019, he again submitted his application to the respondent for issuing GST Concession Certificate, but the respondent refused to issued the



same saying that there is no provision for issuing GST Concession Certificate after purchase of Car.

1.3 On taking up the matter, respondent vide their reply dated 04.12.2020 and submitted that the purpose of issuing the GST Certificate by DHI is to provide monetary benefit to the beneficiaries through receiving concession in GST rate at the time of purchase. Since the complainant had already purchased the Car he could not have got the concession even the department would have issued him the certificate as in the GST regime there is no provision of refund.

1.4 Rejoinder has not been found received from the complainant despite lapse of sufficient time.

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

- (1) Shri Vijaykumar Motiram Kukreja, complainant
- (2) Ms. Simmi Narnaulia, Under Secretary, DHI, M/o HI&PE

3. **Observation/Recommendations:**

3.1 Complaint relates to non-exemption of GST on vehicle purchased by Divyangjan – Locomotor Disability. Complainant alleged that he applied for GST exemption certificate. Later, by letter dated 27.03.2019 Respondent establishment advised the Complainant to submit RC Book. Keeping in mind the fact that RC Book can only be secured after purchasing vehicle, the Complainant purchased the vehicle and submitted the RC Book. Later he was informed by the Respondent that GST exemption certificate cannot be issued after purchasing the vehicle.

3.2 It is evident that some sort of erroneous communication was sent by the Respondent to the Complainant which resulted in considerable loss to the complainant. Therefore, this court recommends that Respondent shall explore the possibility of compensating this loss to the Complainant.



3.3 Further it is important to bring to the kind notice of the Respondent establishment that provisions like GST exemption on vehicles purchased by Divyangjan is granted with an objective of increasing mobility and accessibility of Divyangjan. If Respondent establishment would not exercise their duties diligently then such objective would never be achieved. Hence this court recommends that policy of the Respondent establishment should be clearly be laid down in black and white stating clearly when a person can and how he can apply for such exemptions, so that such communication gaps and errors may not happen in future.

3.4 The case is disposed off.

Dated: 25.01.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



596



सत्यमेव जयते

133

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No.: 12330/1093/2020

Complainant:

R-2662
Shri Pravin Nigam,
F/o Shri Vaibhav Nigam,
R/o Flat No.006, Block Narmada-1,
Pocket D-6, Vasant Kunj, New Delhi-110070
Email: pravin57nigam@gmail.com

Respondent:

R-2662
Delhi Development Authority
Through: Vice Chairman,
Vikas Sadan, INA, New Delhi-110023
Email: vcdda@dda.org.in

1. Facts Related to Complaint:

1.1 The complainant filed this complaint on behalf of his son Shri Vaibhav Nigam, a person with 50% mental retardation regarding refund of excess interest charged and issue of Conveyance Deed by Delhi Development Authority (DDA).

1.2 The complainant had been allotted a Flat bearing No.6, Block N-1, Pocket D-6 Vasant Kunj, New Delhi on 18.04.2011 by DDA on hire purchase basis. As required, an amount of Rs.15,43,417/- i.e. 25% of the total cost of the flat was paid to the respondent and EMIs of Rs.62,706/- were required to be paid for 15 years. Since the respondent was not in a position to give possession of the flat to the complainant, on 28.06.2012, the complainant had written to reduce the rate of interest charged on EMIs, but respondent did not give any reply. The EMIs



(Contd...Page-2)

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

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

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

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

were started from July, 2012. After two years of allotment, the possession of the flat was given to the complainant on 09.01.2013.

1.3 The complainant had filed a complaint against DDA before this Court – Case No.5226/1093/2015. On 25.04.2018, the respondent had appeared before this Court and demanded a sum of Rs.38,74,300/- which the complainant had paid. The complainant's contention is that as per Office Order dated 26.09.2018 of the respondent in case of hire purchase allotment of flats/built up shops/plots to eligible categories as per norms – simple interest @10% per annum on monthly reduced balance is to be charged, whereas the respondent has charged interest @ 15% per annum. The complainant has paid the instalments regularly. The respondent alleged to have been charged excessive interest to be refunded to the complainant. The respondent has to issue Conveyance Deed in the name of the complainant.

2. **Hearing:** Since no reply was filed by the respondent, the case was listed for hearing online through video conferencing on 15.01.2021. The following were present:

- (1) Shri Pravin Nigam, complainant
- (2) Shri Ashok Jangid, Dy. Director, MIG(Housing), for the Respondent

3. **Observation & Recommendations:**

3.1 During the hearing the representative of the respondent filed a written submission inter-alia stating that in the Order passed by this Court in Case No.5226/1093/2015, it has been stated that “the allegation made by the complainant that excess amount as interest have been charged by the respondent has no substance in the light of the allotment letter no. 2/365(665)2012/DDA10/VK/449 dated 29/03/2012 issued to the complainant and in terms of the Office Order No. F.21(Misc)9/INT/HAC/2001/49 dated 16/22.04.2002 of the respondent. In case the respondent is charging higher rate



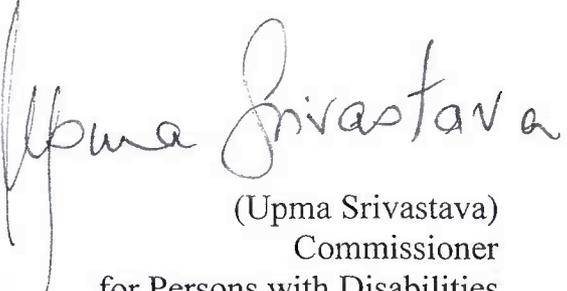
-- 3 --

of interest in comparison to the banks, the respondent may consider to charge interest from the persons with disabilities at par with the banks and other financial institutions to provide equality to the persons with disabilities” and the case was accordingly disposed of. Subsequently, a letter No.F2/365(665)12/DDA-10/VK/1439 dated 16.10.2017 had been issued to this Court to intimate that the advice had not been acceded to with the approval of Competent Authority of DDA. The allottee/complainant had requested to refund the excess amount of interest charged as per office order No.F.21(Misc.)9/Int./HAC/2001/2014/2018/252 dated 26.09.2018. Based on the advice of the Account Department of DDA, it was intimated that no excess payment was found in this case. The respondent further submitted that the allottee/complainant has applied for conversion from lease hold to free hold vide request ID 231575 dated 19.08.2020; the file is being examined and due action as per rules and procedures would be taken shortly.

3.2 After hearing both the parties, it was observed that there is no discrimination on the ground of disability being a routine administrative matter. However, it is recommended to issue Conveyance Deed to complainant without any further delay.

3.3. The case is disposed off.

Dated: 25.01.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



577



सत्यमेव जयते

136

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: 12298/1022/2020

Complainant: Smt. Nazhat Kausar, W/o Shaik Saleem, #15, 19th Cross, HBR
Layout, 5th Block, Kalian Nagar Post, Bangalore – 560043
E-mail: <nidashaik912@gmail.com>

Respondent: The Additional Director General (E) (SZ), All India Radio &
Doordarshan, Swami Shivananda Salai, Chennai – 600005
E-mail: <sgeddkbg@gmail.com>

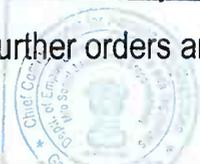
Complainant 55% hearing impaired

GIST of the Complaint:

Complainant vide complaint dated **14.09.2020** submitted that her husband Shri Shaik Saleem is working as Engineering Assistant at Doordarshan Kendra, Bangalore and he is on the verge of retirement left with just 02 years 07 months of service. She further submitted that he has been transferred from Bangalore to All India Radio, Chitradurga and they are not in position to move to Chitradurga as Shri Shaik Saleem's father is 88 old disabled person and his 77 years old mother is also disabled. She has requested to retain of Shri Shaik Saleem at Bangalore as he is serving as a main care giver of disabled wife and disabled parents.

2. The matter was taken up with the Respondent vide letter dated **07.10.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **18.12.2020**, respondent did not submit any reply, therefore hearing fixed on **19.01.2020**.

3. Before hearing, respondent vide letter dated **31.12.2020** inter-alia submitted that on account of stay granted by the Hon'ble CAT, Bangalore vide OA No. 478/2020 on 22.10.2020 filed by Shri Shaik Saleem and his Brother who is also working in DDK, Bangalore, they will not initiate any action of relieving the candidate from Doordarshan Kendra, Bangalore until further orders are received from the Hon'ble Tribunal.



Secy

....2....

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

- Complainant - absent
- Respondent - Madhav Reddy on behalf of respondent

Observation/Recommendations:

4. The matter was heard. It is viewed that Hon'ble CAT, Bangaluru has already granted stay on the transfer order of the complainant. Therefore, no intervention of this Court is required. However, for the benefit of complainant, the DOP&T circular dated 08.10.2018 position for transfer of care giver of persons with disabilities is as under:

"3 (i) A Government employee who is a care giver of dependent daughter/son/parents/spouse/brother/sister with specified disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints".

5. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 25.01.2021



604



सत्यमेव जयते

138

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: 12368/1023/2020

Complainant: Smt. Sneh Lata, E – 38, Prashant Vihar, Delhi – 110085

R-26052 E-mail: <ajmani.1963@gmail.com>

Respondent: The Chief People's Officer, PNB Housing Finance Ltd, 9th Floor

R-26053 Antriksh Bhawan, K.G. Marg, New Delhi – 110085

E-mail: <pnbhfl@pnbhfl.com>

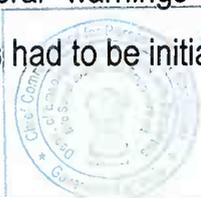
Complainant 52% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 19.09.2020 submitted that she had been working in PNB Housing Finance Ltd since 14th January 2003 but on 2nd September 2020, Company terminated her services due to challenging scenarios. She further submitted that she is 56 years old and remaining period of service was just 04 years therefore she has requested to withdraw the termination letter and restore job or give adequate compensation as there is no adverse allegation/report against her.

2. The matter was taken up with the Respondent vide letter dated 13.10.2020 under Section 75 of the RPwD Act, 2016.

3. In response, PNB Housing Finance Ltd vide letter dated 21.11.2020 inter-alia submitted that Company is facing tremendous financial pressure on account of the severe economic downturn caused by the ongoing COVID-19 and Company was forced to terminate the services of Smt. Sneh Lata and 36 other employees, all on account of purely financial consideration. If so required, the Company may be forced to terminate the services of more employees in the future due to the uncertainties in the prevailing economic climate. They further submitted that during the terms of her employment Smt. Sneh Lata had been issued several warnings in relation to her work and on two occasions, disciplinary proceedings had to be initiated against her.



Seen
Sign.

...2.....

4. After considering the respondent's reply dated **21.11.2020** and the complainant's rejoinder dated **16.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **15.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.01.2021**. The following were present:

- Smt. Sneh Lata - complainant
- Shri Ashish Kumar Singh, Advocate on behalf of Respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complainant alleged that her services were terminated arbitrarily. Respondent in its reply submitted that as per contract between the Complainant and Respondent, her services could be terminated by serving 3 months' notice. Complainant's service was terminated in accordance with the terms of the contract and the decision was taken under financial constraints. Moreover, Complainant was terminated along with 36 other employees of the Respondent establishment.

7. Further, during online hearing it was submitted by the Respondent that as on the date of hearing total number of 1,532 employees were working in the Respondent establishment. Out of 1,532 only 6 employees are Divyangjans. 6 is 0.39% of 1,532. Intent of the law makers as evident from Section 34 and 35 of Rights of Persons with Disabilities Act, 2016 is that at least 4% of total workforce of an establishment must comprise of Divyangjans. Clearly, 6 employees are far less than 4% of total workforce of Respondent establishment.

8. Moreover, the Complainant is 56 years old female suffering from 52% locomotor disability who is unlikely to find any other job. Termination the service of a Divyangjan who is approaching retirement is gross injustice with her. Hence, taking into consideration 4% criterion and other relevant factors as mentioned above, this court concludes that

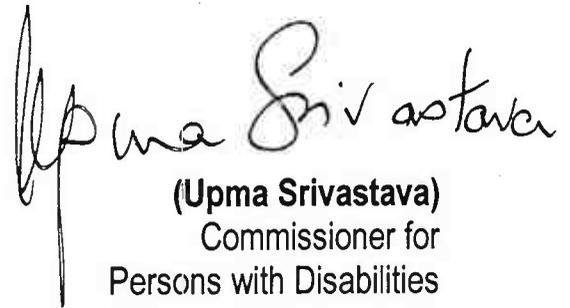


.....3.....

...3....

Respondent establishment has failed to abide by statutory duties in letter and spirit. Therefore, this court recommends that the Respondent establishment shall abate its decision of terminating the Complainant and shall continue her services in Respondent establishment.

9. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 25.01.2021



590



141

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: 12050/1022/2020

Complainant: Smt. Haramani Sahoo, W/o Shri Gyana Ranjan Sahoo, Plot No. 26,
Asiana Plaza, Cosmopolish Road, At/PO – Dumduma,
Bhubaneswar, Orissa -751019
E-mail: <gyana_r@yahoo.com>

Respondent: The Secretary, National Institute of Open Schooling, A-24/25,
Institutional Area, Sector – 62, Noida, Uttar Pradesh -201308
E-mail: <secretary@nios.ac.in>

Complainant 80% Autism child of Complainant

GIST of the Complaint:

Complainant vide complaint dated 26.06.2020 submitted that her son is suffering from Autism and under treatment at AIIMS, Bhubaneswar and also getting speech therapy in Odia Language at Bhubaneswar. She further submitted that her husband, 55 years old has been transferred from Regional Centre, Bhubaneswar to Bhopal vide order dated 06.12.2019 and due to transfer, she is facing lot of problem therefore she has requested to transfer Shri Gyana Ranjan Sahoo from Bhopal to Bhubaneswar.

2. The matter was taken up with the Respondent vide letter dated 26.08.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. Director (Administration), National Institute of Open Schooling vide letter dated 29.09.2020 submitted that NIOS, Regional Centre, Bhubneswar is having sanctioned strength of only one Section Officer and recently, as per the order of the Hon'ble High Court of Allahabad, one Section Officer was posted at NIOS, Regional Centre, Bhubneswar. Therefore, in view of the directions of the Hon'ble High Court of Allahabad, the sanctioned strength of NIOS, Regional Centre, Bhubneswar is already filled. However, transfer of Shri Gyana Ranjan Sahoo, Section Officer will be considered whenever vacancies are arisen at Regional Centre, Bhubneswar.



Signature

...2...

4. After considering the respondent's reply dated **29.09.2020** and the complainant's rejoinder dated **14.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **15.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.01.2021**. The following were present:

- Smt. Haramani Sahoo - Complainant
- Shri Gurudev Singh, Dy. Director (Admn.) on behalf of Respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complaint is filed by the mother of a divyang child who is suffering from Autism disorder. Complainant has alleged that her husband is employed in National Institute of Open Schooling and was posted at Regional Centre in Bhubaneshwar. Later he was transferred to Bhopal.

7. Complainant has sought relief that her husband's transfer from Bhubaneshwar to Bhopal must be terminated and he must be posted back to Bhubaneshwar Centre of the Respondent establishment.

8. Autism is a developmental disorder characterized by difficulties with social interaction and communication, and by restricted and repetitive behaviour. Autism spectrum disorder impacts the nervous system and affects the overall cognitive, emotional, social and physical health of the affected individual. The range and severity of symptoms can vary widely. Common symptoms include difficulty with communication, difficulty with social interactions, obsessive interests and repetitive behaviours.



....3...

....3....

9. Aims and Objective of Rights of Persons with Disabilities Act, 2016 is rehabilitation and assimilation of divyngs in main stream society. Autism disorder, as above mentioned, is a kind of disorder which makes it challenging for the person suffering from the disorder to comfortably interact and communicate with the society. Therefore, person suffering from autism spectrum disorder needs special training and care for purposes of rehabilitation and assimilation in the society.

10. DoPT with similar Aims & Objectives issued O.M No. 42011/3/2014 dated 06.06.2014. As per the O.M. government employee who is caregiver of divyang dependant is exempted from routine transfer. Reason behind the same is that such Government employee raises a support system over period of years which helps in rehabilitation of the dependant. O.M. further states that rehabilitation is a continuous process which continues for long period of time. Routine transfer of care giver employee may result in displacement of the dependant as well as that of the caregiver employee. Such displacement leads to hinderance in rehabilitation process of the divyang, thus frustrating the very Objective sought to be achieved by RPwD Act, 2016.

11. Further, rehabilitation is a process which requires support system comprising of preferred linguistic zones, special educators, friends, medical care, therapists etc. in the present complaint, divyang child hails from Odisha and is comfortable with Odia language. Hence, to expect that such child can live along with his care giver father in Bhopal, where Odia language is not used for communication at all is unjust and unfair. It shall amount to divesting the divyang child from his support system.

12. Implementation of High Court's order regarding posting of another Section officer in Bhubhaneshwar should not result in displacement and consequent grief to the child with disability and the family.

13. Hence, this court recommends that the employee, i.e. husband of the complainant, Gyana Ranjan Sahoo shall be transferred from Bhopal to Bhubaneshwar. During online



[Handwritten signature]

....4....

.....4....

hearing Respondent assured this court that this issue of transferring Sri Gyana Ranjan Sahoo back to Bhubaneshwar shall be considered favourably. Hence, this court recommends that even if there is only one sanctioned post of Section Officer in Bhubaneshwar, Sri Gyana Ranjan Sahoo shall be adjusted against some other post of similar nature and of same grade pay scale at the same station.

14. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.01.2021



661



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12411/1024/2020

Complainant: Shri Radhe Shyam, Storage & Inspection Officer, Central Warehousing Corporation, Regional Office, Scope Minar, 1st Floor, Core III, New Delhi

R-26046

Respondent: The Chairman & Managing Director, Central Warehousing Corporation, "Warehousing Bhawan", 4/1, Siri Institutional Area, August Kranti Marg Hauz Khas, New Delhi – 110016
e-mail: <warehouse@nic.in>

R-26047

Complainant More than 50% locomotor disability

GIST of the Complaint:

Complainant vide e-mail dated 27.10.2020 inter-alia submitted that he is working in Central Warehousing Corporation as storage & Inspection Officer and once in the year 1996 conveyance allowance @ 5% of basic pay including FDA subject to the maximum of Rs. 100/- per month w.e.f. 22.07.1996 was sanctioned to him but after few months, it was discontinued without assigning any reason.

2. The matter was taken up with the Respondent vide letter dated 03.11.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager (Pers.), Central Warehousing Corporation vide letter dated 01.01.2021 sought some more time as case is more than 15 years old and Shri Radhe Shyam has not represented on the matter until just 07 days before his superannuation.

Observation/Recommendations:

4. After perusal of the documents available on record, it is recommended to the respondent to follow necessary government instructions in time and implement the same for



....2....

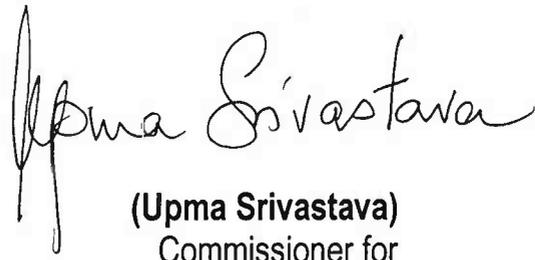
all employees who are persons with disabilities. As per the rule position in respect of Double Transport Allowance, as per the Department of Expenditure, Ministry of Finance, OM No. 21-1/2011-E.II (B) dated 5th August, 2013 is as under:

".....Double Transport Allowance shall be allowed to an orthopaedically handicapped Government employee if he or she has a minimum of 40% permanent partial disability of either one or both upper limbs or one or both lower limbs OR 50% permanent partial disability of one or both upper limbs and one or both lower limbs combined....."

5. In terms of aforesaid instructions, the complainant is eligible for double transport allowance in view of the valid disability certificate.

6. This Court recommends payment of transport allowance at double the normal rate from the date of appointment of the complainant in Central Warehousing Corporation and till his superannuation.

7. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 28.01.2021



599



147

सत्यमेव जयते

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

Case No. 11960/1011/2020

Complainant : Dr. Imran Uddin, 7/522, Nai Abadi, Rasalganj, Aligarh, Uttar Pradesh-202001.

Respondent : Aligarh Muslim University (Through the Registrar), Aligarh – 202 002.

Disability : 40% locomotor

Gist of Complaint:

Dr. Imran Uddin vide his complaint dated 11.05.2020 submitted that he was working as Assistant Professor (Contractual) in Interdisciplinary Nanotechnology Centre, Aligarh Muslim University, Aligarh since 20.09.2017 in the post reserved for persons with disabilities. The AMU Administration has unlawfully converted the above reserved (PwD) post into un-reserved (UR) category and appointed another candidate from the unreserved category. This was done to favour a particular student. During his tenure he published 11 Research Papers and has one Book Chapter to his credit. He also supervised five students. The complainant has requested this Court to examine the matter in order to determine the truth and ensure that AMU follow all the Supreme Court orders and make the roster for persons with disabilities.

2. The Aligarh Muslim University vide letter dated 07.08.2020 has replied to the complainant endorsing a copy to the Deptt. of Empowerment of Persons with Disabilities submitting that as per the appointment letters he was appointed temporarily as Assistant Professor (Contractual) against the post of Associate Professor in Interdisciplinary Nanotechnology Center of A.M.U, Aligarh. In the meantime, university prepared and implemented the reservation roster register 2018 as per the strict guidelines of Ministry of Social Justice and Empowerment and Rights of Persons with Disabilities Act, 2016. In the Roster 2018, one post of Assistant Professor vacated by Dr. Afzal Ahmad was reserved under OH category in the interdisciplinary Nanotechnology Center. The post of Associate Professor on which he was placed temporarily (Assistant Professor on contractual) was automatically eliminated in the Roster Register 2018 as per the guidelines of the Ministry of Social Justice and Empowerment. The AMU submitted that they have not favoured by individual while adopting preparation of Roster Register 2018 except the guidelines of Ministry of Social Justice and Empowerment and RPwD Act, 2016 and therefore, his complaint does not deem fit against university.



TRUE COPY

...

...2/-

-2-

3. The complainant vide his rejoinder dated nil submitted that he was working as an Assistant Professor (Contractual) against a PwD vacancy that was earmarked for a candidate with specialization in Biotechnology. This was the only Biotechnology position in the entire Engineering College. In 2018, his application was forwarded by the Dean (Engineering) for a Young Researcher of the Year Award. This was the only PwD position at Associate Professor level in the entire ZHCET that was converted into a general category Assistant Professor position on which a person with disability has already been working. Despite his research and teaching contribution, he was made jobless and remained so for a year which drained him mentally and financially. He further submitted that he is from a humble background and has no resource to fight back.

4. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 22.01.2021.

5. The following persons were present during the hearing ;

- i) Dr. Imran Uddin, the Complainant
- ii) Mr. Siraz Ahmed Khan, Assistant Registrar & others

6. The complainant stated that he was discriminated against being a disabled person on the grounds of following two actions of the respondent :

- (a) De-reserving the post of Associate Professor in Interdisciplinary Nanotechnology Centre, Aligarh Muslim University while formulating the roster for persons with disabilities in 2018.
- (b) Changing the specialization of the Assistant Professor in the same department which was reserved for person with disabilities candidates.

7. The respondent stated in their reply that the Aligarh Muslim University is committed towards protecting the rights of persons with disabilities and they have appointed the Grievance Redressal Officer and also have an Equal Opportunity Cell. Preparation of roster and changing of specialization of the post in a particular department are two mutually independent activities where the decision was taken by two different authorities. Reservation roster and identification of posts is the exercise conducted by administration and establishment wing of the university whereas the decision of changing the specialization was taken by the Chairman, Board of Studies of the concerned



...3/-

department which is a big Committee. As such the contention that the respondent was aiming to remove the complainant from the university is unacceptable.

Observations and Recommendations:

8. The Court after having heard both the parties in detail and having gone through the written submissions is of the view that there is no evidence of any discrimination being caused to the complainant. However, outcome of the bonafide actions of the university has caused the complainant losing his job which is unfortunate.

9. In view of the aforesaid situation, the Court recommends to the respondent to consider appointing the complainant in any appropriate department of the university as guest faculty taking into consideration his past relevant experience and good performance.

Dated : 28.01.2021


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



598



सत्यमेव जयते

150

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. 11890/1014/2020

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

R-26040

Respondent : Union Public Service Commission,
(Through the Secretary),
Dholpur House,
Shahjahan Road,
New Delhi – 110 069.

R-26041

Disability : 65% locomotor

Gist of Complaint:

The complainant vide his complaint dated 20.04.2020 referred to the results published by UPSC CMSE in the year 2018 and 2019 for Combined Medical Service Examination and result published by UPSC for Combined Geologists Examination 2019 and pointed out to the following facts against the preservation of the rights of the persons with disabilities as guaranteed under provisions of Rights of Persons with Disabilities Act, 2016. UPSC has left 2 unfilled vacancies for persons 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. The complainant submitted that this is a matter of non-implementation of Section 34(2) of Rights of Persons with Disabilities Act, 2016 that clearly mentions about filling up of a least 4% vacancies by interchanging among available vacancies. There must not be dual standard while dealing with matter of persons with disabilities by UPSC in two different examinations as interchanging of vacancies under Rule 8.5 of DoP&T O.M. dated 15.01.2018 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. The complainant has requested to fill up the 2 unfilled vacancies of Combined Medical Service Examination of 2018 and 24 unfilled vacancies of Combined Medical Service Examination of year 2019 by interchanging these unfilled vacancies from the available candidates of disabilities who appeared in these two years in UPSC CMSE 2018 and 2019 under Section 34(2) of Rights of Persons with Disabilities Act, 2016 in line of Combined Geologists Service Examination 2019 and vacancies of PwD must not be left vacant without interchanging among sub categories of available persons with disabilities in CMSE 2018 and 2019.

....2/-

2. The Under Secretary, UPSC vide letter No.09/15/2020 E. XIII dated 08.12.2020 submitted that the Commission conducted the Combined Medical Services Examinations 2018 & 2019 and the Combined Geo-Scientist and Geologist Examination 2019 based on Rules of the Examination notified by the Government in the Ministry of Health & Family Welfare and the Ministry of Mines respectively and recommended the names of the successful candidates based on the vacancies indented by them including vacancies reserved for PwD candidates. The Commissioner's role was to holding the examinations in question and recommend the candidates as per vacancies (category-wise) reported by the concerned Ministries (Departments). The Commission has not role in identification/reservation of posts/maintenance of Rosters for the Service/Posts. These activities fall under the domain of the respective Ministries/Departments. The participating services of the CMSE and CGS&GE and the respective CCA are indicted below.

S.No.	Service	Cadre Controlling Authority
1.	Junior Scale Posts in Central Health Service	Ministry of Health & Family Welfare
2.	Assistant Divisional Medical Officer in the Railways	Ministry of Railways
3.	Assistant Medical Officer in Indian Ordnance Factories Health Service	Ministry of Defence
4.	General duty Medical Officer Gr.-II in East Delhi Municipal Corporation, North Delhi Municipal Corporation and South Delhi Municipal Corporations.	South Delhi Municipal Corporation.
5.	General Duty Medical Officer in New Delhi Municipal Council.	New Delhi Municipal Council.

Combined Geo-Scientist & Geologist Examination

S.No	Service	Cadre Controlling Authority
1.	Geologist	Ministry of Mines
2.	Geophysicist	Ministry of Mines
3.	Chemist	Ministry of Mines
4.	Jr. Hydro Geologist (Scientist B)	Ministry of Jal Shakti.

Observation/Recommendations:

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

4. 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:—



[Handwritten signature]

[Handwritten signature]

- (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.

(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: 29.01.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



154



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12376/1021/2020

Complainant: Shri C.G. Sathyan, Jr. Admn. Officer, Research Section, AIIMS, New Delhi

R-26044

e-mail: <satyanaiims@gmail.com>

Respondent: The Director, All India Medical Sciences, Ansari Nagar, New Delhi – 110029

R-26045

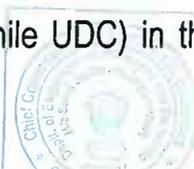
e-mail: <director.aiims@gmail.com> <director@aiims.edu>

GIST of the Complaint:

Complainant vide complaint dated **14.10.2020** inter-alia submitted that he was appointed as Lower Division Clerk in the AIIMS on **04.10.1999** under PwD quota and after that he got promotion in year 2008 as a UDC. He alleged that as per existing rule of the Institute, he was eligible for next promotion after completing of 05 years regular service but the Institute had given next promotion as UDC on **01.04.2008** against the unreserved quota instead of PwD quota. He further alleged that a similar case was considered by the Recruitment Cell, AIIMS recently.

2. The matter was taken up with the Respondent vide letter dated **22.10.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **26.11.2020**, respondent did not submit any reply, therefore hearing fixed on **08.01.2020**.

3. Administrative officer, AIIMS vide letter dated **27.11.2020** submitted that there are two of mode of promotion for the post of Sr. Administrative Officer i.e. (i) 75% by promotion (ii) 25% by Limited Departmental Competitive Examination and the eligibility criteria for mode of 75% by promotion is, Lower Division Clerks with 05 years of regular service in the grade. Shri Wajid Ali and Shri C.G. Sathyan, who represented for promotion under PwD quota are Orthopedically handicapped had joined the post of JAA (erstwhile LDC) on 23.09.1999 and 04.10.1999 respectively and got promotion to the post of Sr. Admin. Assistant (erstwhile UDC) in the year 2008, however, they had completed the residency,



[Handwritten signature]

[Handwritten signature]

....2....

period for promotion in the year 2004. He further submitted that reservation for PwD candidates in promotion is applicable since 1995 but no reservation roster for PwD was being maintained/finalized for promotion for reasons not recorded but now they are maintaining reservation roster based on current vacancies in promotion. He further submitted that as per reservation roster only 02 posts of Sr. Admn. Assistant falls under PwD quota and out of which one filled up with UR (HH category) and other is available for ST (LV category). Shri Wajid Ali and Shri C.G. Sathyan, who represented for promotion under PwD quota are orthopaedically handicapped and both of them belongs to UR category.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 08.01.2020. The following were present:

- **Shri C.G. Sathyan - complainant**
- **Shri Santosh Kumar, AO, AIIMS on behalf of respondent**

Observation/Recommendations:

4. Both the parties were heard.
5. In the present case, Respondent admitted that the Complainant was denied promotion on due dates because the Roster was not prepared by the Respondent establishment. Further, the Respondent expressed his inability to grant promotion to the Complainant because of following reasons:
 - a) Posts for Divyangjans were identified after preparation of Roster and henceforth only two posts were reserved for Divyangjans. One was reserved for General-PwBD candidate and other was reserved for ST-PwBD candidate.
 - b) Senior Admin. Assistant is Group B post and reservation in promotion to Group B post is not applicable.

ISSUE RELATED TO PREPARATION OF ROSTER AND IDENTIFICATION OF POSTS

....3....



[Handwritten signature]

....3....

6. Respondent has made submission that both the Complainants became eligible for promotion in year 2004. However, they were denied promotion because practice of preparing Reservation Roster was not followed at that time.

7. Respondent denied promotion to the Complainants because of its own fault. Policy of reservation for PwDs exists since year 1989 and became statutory duty by effect of Persons with Disabilities Act, 1995. It is settled principle of law that in adjudication of a case no party is allowed to take benefit of his own wrong (*Commodum ex injuria sua nemo habere debet*) Hence, non-preparation of Reservation Roster is fault of the Respondent and the Complainant can not be made to pay the cost for it.

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

SENIOR ADMINISTRATIVE OFFICER IS GROUP B POST AND RESERVATION IN PROMOTION TO GROUP B POST IS NOT APPLICABLE

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

10. Therefore this court recommends that the Respondent shall promote the Complainants to the post of Senior Admin. Assistant.

11. Case is disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 29.01.2021



602



सत्यमेव जयते

157

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: 12375/1021/2020

Complainant: Shri Wajid Ali, Jr. Admn. Officer, SET FACILITY, Research Section,
AllIMS, New Delhi

R-26048

e-mail: <doodhli77@gmail.com>

Respondent: The Director, All India Medical Sciences, Ansari Nagar, New Delhi –
110029

R-26049

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

GIST of the Complaint:

Complainant vide complaint dated 14.10.2020 inter-alia submitted that he was appointed as Lower Division Clerk in the AllIMS on 23.09.1999 under PwD quota and after that he got promotion in year 2008 as a UDC. He alleged that as per existing rule of the Institute, he was eligible for next promotion after completing of 05 years regular service but the Institute had given next promotion as UDC on 01.04.2008 against the unreserved quota instead of PwD quota. He further alleged that a similar case was considered by the Recruitment Cell, AllIMS recently.

2. The matter was taken up with the Respondent vide letter dated 22.10.2020 under Section 75 of the RPwD Act, 2016. But despite reminder dated 26.11.2020, respondent did not submit any reply, therefore hearing fixed on 08.01.2020.

3. Administrative officer, AllIMS vide letter dated 27.11.2020 submitted that there are two mode of promotion for the post of Sr. Administrative Officer i.e. (i) 75% by promotion (ii) 25% by Limited Departmental Competitive Examination and the eligibility criteria for mode of 75% by promotion is, Lower Division Clerks with 05 years of regular service in the grade. Shri Wajid Ali and Shri C.G. Sathyan, who represented for promotion under PwD quota are Orthopedically handicapped had joined the post of JAA (erstwhile LDC) on 23.09.1999 and 04.10.1999 respectively and got promotion to the post of Sr. Admin. Assistant (erstwhile UDC) in the year 2008, however, they had completed the residency, period for promotion in the year 2004. He further submitted that reservation for PwD candidates in promotion is

....2....

applicable since 1995 but no reservation roster for PwD was being maintained/finalized for promotion for reasons not recorded but now they are maintaining reservation roster based on current vacancies in promotion. He further submitted that as per reservation roster only 02 posts of Sr. Admn. Assistant falls under PwD quota and out of which one filled up with UR (HH category) and other is available for ST (LV category). Shri Wajid Ali and Shri C.G. Sathyan, who represented for promotion under PwD quota are orthopaedically handicapped and both of them belongs to UR category.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 08.01.2020. The following were present:

- **Shri Wajid Ali – complainant**
- **Shri Santosh Kumar, AO, AIIMS on behalf of respondent**

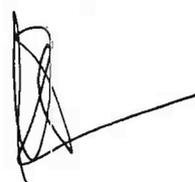
Observation/Recommendations:

4. Both the parties were heard.
5. In the present case, Respondent admitted that the Complainant was denied promotion on due dates because the Roster was not prepared by the Respondent establishment. Further, the Respondent expressed his inability to grant promotion to the Complainant because of following reasons:
 - a) Posts for Divyangjans were identified after preparation of Roster and henceforth only two posts were reserved for Divyangjans. One was reserved for General-PwBD candidate and other was reserved for ST-PwBD candidate.
 - b) Senior Admin. Assistant is Group B post and reservation in promotion to Group B post is not applicable.

ISSUE RELATED TO PREPARATION OF ROSTER AND IDENTIFICATION OF POSTS

6. Respondent has made submission that both the Complainants became eligible for promotion in year 2004. However, they were denied promotion because practice of preparing Reservation Roster was not followed at that time.



3....

7. Respondent denied promotion to the Complainants because of its own fault. Policy of reservation for PwDs exists since year 1989 and became statutory duty by effect of Persons with Disabilities Act, 1995. It is settled principle of law that in adjudication of a case no party is allowed to take benefit of his own wrong (*Commodum ex injuria sua nemo habere debet*) Hence, non-preparation of Reservation Roster is fault of the Respondent and the Complainant cannot be made to pay the cost for it.

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

SENIOR ADMINISTRATIVE OFFICER IS GROUP B POST AND RESERVATION IN PROMOTION TO GROUP B POST IS NOT APPLICABLE

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

10. Therefore this court recommends that the Respondent shall promote the Complainants to the post of Senior Admin. Assistant.

11. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 29.01.2021





सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12246/1023/2020

Complainant: Shri Bijay Kumar Sahu, AO (DmKet), LIC of India Divisional Office,
Ainthapali, Sambalpur – 768004
E-mail: <bk.sahu96@gmail.com>

Respondent: The Chairman, Life Insurance Corporation of India, 5th Floor, West
Wing, Yogakshema, Jeevan Bhima Marg, Nariman Point, Mumbai –
400021, Maharashtra
E-mail: <co_welfare@licindia.com>

Complainant 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **03.06.2020** submitted that he is working in the LIC of India, Sambalpur Divisional Office as a AO and he is being continuously harassed and insulted by Shri Manoj Kumar Panda, Sr. Divisional Manager. He alleged that Shri Panda has recommended to the higher authority for his transfer out of State and intentionally damaged CR rating just to stop promotion which has become due. He further alleged that in the year 2017, he got promotion to the next higher cadre and after that due to his CR damage exercise done by Shri Panda he is not getting promotion.

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 (Personnel), LIC vide letter dated **11.11.2020** inter-alia submitted that the matter of transfer is sub-judice in Hon'ble Court under WPC 11693/2018 where at present stay on transfer is continuing as per the directions of Hon'ble High Court. They have also enclosed the comments of Sambalpur Divisional Office and Patna Zonal office and according to them, they have not received any complaint regarding harassment from the complainant side. They further submitted that CR of any officer at present is a two tier system. First Reporting Officer under whom the officer directly works makes assessment of his performance and fill up the reporting format. Secondly, after reporting of the CR, it is reviewed by an officer of one cadre higher.

....2....

4. After considering the respondent's reply dated **11.11.2020** and the complainant's rejoinder dated **21.12.2020**, 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 Bijay Kumar Sahu – complainant
- Shri B. Majhi, Regional Personnel on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complaint was highlighting two issues –

- a) Transfer of the Complainant;
- b) Harassment by one Mr. Manoj Kumar Panda, SDM, Sambalpur Division.

7. With respect to issue of transfer it was submitted that the issue is pending before Hon'ble High Court of Orrisa which has stayed the transfer of the Complainant. Hence, this court shall refrain from intervening into the issue of transfer.

8. Another complaint made by the Complainant pertains to harassment. On this issue submission was made which warrants intervention of this court. The Complainant filed his Complaint before Grievance Redressal Officer of the Respondent establishment; however, no action was taken by him. It was further submitted by the Complainant that the Grievance Redressal Officer is junior in rank to the alleged harasser, i.e. Manoj Kumar Panda hence, it is difficult for officer junior in rank to take any punitive action against his senior.

9. Harassment of Divyangjan is serious issue. Legislature of this country used its legislative rights in 1995 and 2016 to enable Divyangjans with rights in order to uplift Divyangjans' position in society to bring them at par with other members of the society. Harassment of divyang employee who is working diligently in an organisation is matter of serious concern and warrants serious action.



....3....

....3....

10. Section 75 of Rights of Persons with Disabilities Act, 2016 enabled this court to inquire into issue of deprivation of rights of Divyangjans and take up matter with appropriate authorities for corrective action.

11. Therefore, this court recommends that the Respondent establishment shall constitute an inquiry into the Complaints of harassment of the Complainant. It is recommended that Inquiry Officer shall be senior in rank to Manoj Kumar Panda. Such Inquiry report shall be submitted within 3 months of its constitution.

12. Further, it is recommended that sanctions imposed by Manoj Kumar Panda against the Complainant shall be reviewed by a duly constituted Committee along with APAR review.

13. With respect to appointment of Grievance Redressal Officer ('GRO'), it is to bring to the kind attention of the Respondent establishment that basic objective Section 23 of RPwD Act, 2016 is to redress the grievance of divyang employee at the earliest point of time and to establish a system whereby Divyangjan need not to approach any court or tribunal to get justice. However, appointment of junior rank officer as GRO frustrates the basic objective of the provision because for an officer junior in rank, it would be difficult to take action against a senior employee, when a complaint is filed against such senior officer. Hence, this court recommends that the Respondent establishment shall appoint a GRO of sufficient seniority so that justice can be given at the earliest.

14. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 29.01.2021



605



163

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12456/1031/2020

Complainant:

Shri Bhadur Lal,
S/o Shri Sohan Lal,
R/o Malpur Dinga, Tehsil Bhalwal,
District-Jammu-181206 (J&K)
Email: bhadurlal20150@gmail.com
Mobile: 9419100256

R-26654

Respondent:

Registrar,
Central University of Haryana,
Jant-Pali, Mahendergarh-123031 (Haryana)
Email: registrar@cuh.ac.in

R-26655

1. Gist of Complaint

1.1 The complainant, Shri Bhadur Lal, M-25, a person with 100% Visual Impairment filed this complaint regarding denial of admission to Ph.D. programme 2020-2021 under PwD category by the Central University of Haryana.

1.2 The complainant submitted that he has passed M.A.(Education) from Central university of Haryana in May 2020 with 67.50% marks. He appeared in interview for taking admission to Ph.D. (Education). In the final selection list of candidates for undergoing Ph.D, only one candidate (in Hindi Deptt.) was included under PwD category whereas as per the reservation policy in vogue, at least 11 candidates @ 5% reservation should have been selected out of total 221 candidates/aspirants.

2. Submissions made by the Respondent

2.1 The respondent in their reply dated 04.01.2021 submitted that 5% reservation is admissible to PwD candidates in admission in Central University

Page 1 of 2

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

E-mail: ccpd@nic.in; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

of Haryana (CUH). Due to small number of seats offered by the Departments for M.Phil./Ph.D. admission, there was administrative difficulty in providing 5% reservation department-wise. Hence, the matter was put up before the Standing Committee (Admissions) which is having one member as representative of PwD category.

2.2 In pursuance of the resolution passed by the Standing Committee (Admissions) in its meeting held on 08.10.2020, the Central Admission Advisory Committee 2020-21 consisting of one member as representative of PwD category, prepared the Seat Matrices in which 5% reservation to PwD candidates has been provided taking University as a single unit and the seats were allotted to the Departments alphabetically to implement the 5% reservation to PwD candidates. CUH offered a total of 36 seats in M.Phil. and 221 seats in Ph.D. A total of 02 seats in M.Phil and 11 seats in Ph.D. were reserved for PwD candidates and the seats were allotted to the departments in alphabetical order to implement to reservation in Research Programmes.

3. Submission made by complainant in Rejoinder

3.1 The complainant in his rejoinder dated 23.01.2021 submitted that he is satisfied with the reply furnished by the respondent University and withdrew his complaint.

4. Observation/Recommendations:

The reply filed by the respondent appears to be satisfactory. No further intervention is required in this matter and the case is closed.

Dated: 29.01.2021

Upma Srivastava
(Upma Srivastava)
Commissioner
for Persons with Disabilities



606



सत्यमेव जयते

165
Extra

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

Case No. 12480/1032/2020

Complainant:

R-26056
Shri Amit Kumar Goswami,
R/o B-7/63, Flat No.F-1, PO-Kalyani,
Nadia, West Bengal-741235
Email: kalyani.amit1@gmail.com

Respondent:

R-26057
The Registrar,
Central University of Tamil Nadu,
Neelkudi Campus, Kangalancherry,
Thiruvarur-610005
Email: registrar@cutn.ac.in

1. Gist of Complaint

1.1 Shri Amit Kumar Goswami, M-35, a person with 75% Locomotor Disability (paraplegia – wheelchair bound) filed this complaint regarding permission for online entrance test and online course work during Covid-19 Pandemic

1.2 The complainant submitted that persons with disabilities are the most vulnerable in this COVID-19 pandemic situation, it is very much dangerous for them to travel during this period. The Central Government has issued guidelines to stay home for disabled people.

1.3 The complainant requested to issue guidelines for online entrance test and online course work for the candidates with disabilities like him.

2. Submissions made by the Respondent

2.1 The respondent filed their reply dated 11.01.2021 and submitted that as per the ordinance of the University, the admission to all the concerned are conducted through an all India level test, where the centers are predetermined in the admission notification and the candidates have to physically attend the

Page 1 of 2

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

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

entrance test. However, all support and facilities are provided to differently abled persons at the test centre. The entrance test for CUCET 2020 was conducted in offline mode after adhering to all precautions COVID-19 during 18-20 September, 2020 at various centers including for PwD candidates. Similarly for part time Ph.D admission with test centre at Chennai and Thiruvavarur with all facilities for PwD had been notified. Since the paper was OMP based, it was mandated for all the candidates to appear physically to attend the test. Even the admission test for UGC-JRF conducted by NTA is in offline mode and the candidates have to physically attend the test at the designated test centers. The conduct of entrance test in offline mode is as per the decisions taken by the authorities, so that the students from rural area are asked to attend the test, where internet/electricity connection is still a challenge. The conduct of offline test was notified well in advance and it was for all the candidates including the petitioner. Therefore, the request for online test by the petitioner was not considered to maintain the sanctity of the exam, as it will not be possible for us to monitor the exam remotely within the available resources.

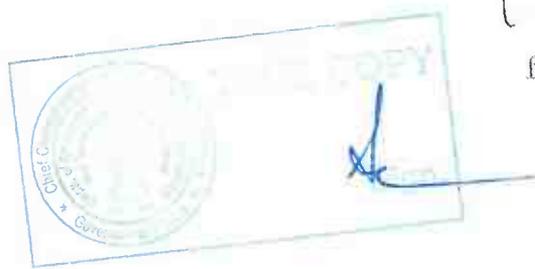
3. The reply filed by the respondent was forwarded to the complainant on 13.01.2021 for submission of Rejoinder/Comment by the complainant. No Rejoinder/Comment has been received from the complainant despite lapse of stipulated time.

4. **Observation/Recommendations:**

The reply filed by the respondent appears to be satisfactory. No further intervention is required in this matter. The case is closed.

Dated: 29.01.2021

Upma Srivastava
(Upma Srivastava)
Commissioner
for Persons with Disabilities



609



सत्यमेव जयते

167

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. 11942/1011/2020

Complainant :

Shri Sanjay Kumar Bhandari,
Vill : Sukki,
P.O. : Sukki, P.S. : Khajauli,
Madhubani, Bihar – 847228.

R-26085

versus

Respondent :

Life Insurance Corporation of India,
(Through the Managing Director),
Central Office, "Yogakshema",
Jeevan Bima Marg,
Mumbai – 400 021.

R-26084

Disability : 45% locomotor disability

Gist of Complaint:

Shri Saurabh Kumar, Secretary, TOSHIYAS, Patna submitted that Shri Sanjay Kumar Bhandari had applied for the post of Assistant under PwD category in LIC of India. He appeared in the said examination under Roll No. 1271019753 but he was not selected which is discrimination and violation of Rights of Persons with Disabilities Act, 2016. The LIC has advertised the vacancies in a span of 10 years. 242 vacancies were to be filled up in Patna-2. 194 candidates were appointed. The results of remaining 48 seats were not declared and the Respondent is giving no information about the status of these posts. Shri Sanjay Kumar Bhandari had filed a complaint in PMO P.G. Portal vide complaint no. PMOPG/E/2020/0026508 in Jan. 2020. This complaint reached the main branch of LIC on 01.02.2020. The complainant along with Shri Sanjay Kumar Bhandari met Shri Lakshmi Kant Gupta of LIC office and apprised him about the difficulties being faced by Shri Bhandari. They were told that the complaint they were referring to may have been received by their Divisional Office but they did not get any positive reply from them also.



2. The Chief (Personnel), Life Insurance Corporation of India vide letter dated 19.11.2020 submitted that Shri Sanjay Kumar Bhandari appeared for the Main Examination on 22.12.2019 but could not obtain the minimum qualifying marks for PwD candidates and did not get selected in the recruitment process. The question of offering appointment to Shri Sanjay Kumar Bhandari does not arise. Hence the request of the complainant to appoint Shri Sanjay Kumar Bhandari is not possible since he has not cleared the selection procedure enumerated in notification. This

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

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

complaint by Shri Saurab Kumar on behalf of Shri Sanjay Kumar Bhandari is nothing but an effort to mislead their commission particularly when the candidate himself is very much aware of his ineligibility for appointment to the post of Assistant consequent upon his failure to pass Main Examination held on 22.12.2019. With regard to the complaints bearing nos. PMOPG/E/2020/0026508 dated 12.01.2020 & PMOPG/E/2020/0065555 dated 08.02.2020 registered on CPGRAM Portal being referred to by Shri Saurabh Kumar, copies of the reports dated 01.02.2020 & 18.02.2020 have been sent directly to the complainant at his registered address. The Respondent has denied the contention of the complainant that vide their letter dated 01.01.2020 & 18.02.2020, they had endorsed the candidature of Shri Sanjay Kumar Bhandari and acknowledged alleged irregularities/violation by the concerned offices. The Respondent submitted that as provided in Section 21 of RPwD Act, 2016, they have notified 'Equal Opportunity Policy' which is available on their website. Further in compliance with Section 23 of RPwD Act, 2016, they have appointed Grievance Redressal Officer at Central Office/Zonal Office/Divisional Office/Branch Office/SSO.

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 Saurabh Kumar, Complainant.
- 2) Shri S.K. Samantaray, Sr. Divisional Manager, LIC
- 3) Shri Binay Kumar Saxena, LIC, Patna.

Both the parties were heard.

Recommendation & Observations:

5. The respondent submitted that total 242 vacancies were advertised out of which 10 vacancies were reserved for the persons with disabilities. The persons with disabilities were given 10 years of age relaxation. Finally, five persons with disabilities who qualified the examination were given appointment. Since the candidate of the complainant did not secure the minimum qualifying marks, therefore, could not be given appointment.

6. The complainant's submission to reduce the minimum qualifying marks and giving appointment to the candidate as five vacancies are remaining vacant cannot be accepted as there is no such policy available for reducing the minimum qualifying marks. However, Court recommends that respondent shall provide all the information such as number of candidates, the marks obtained by each of them and minimum cut of marks etc. to the complainant within 30 days of receiving this Order.

7. Accordingly the case is disposed off

Dated: 29.01.2021




(Upma Srivastava)
Commissioner for
Persons with Disabilities