



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12636/1011/2021

### Complainant:

Shri Pankaj Kumar,  
H. No.447, Rithala Village,  
Near Sector-5 Bus Stand,  
Rithala,  
Delhi – 110 085.

R-27897

Versus

### Respondent :

Union Bank of India,  
(Through the Chairman)  
Union Bank Bhawan,  
239, Vidhan Bhavan Marg,  
Nariman Point,  
Mumbai – 400 021.

R-27898

**Disability : 100% Hearing Impairment**

### Gist of Complaint:

Shri Pankaj Kumar, a person with 100% hearing impairment vide his complaint dated 03.03.2021 submitted that he had applied for the post of PTS in Andhra Bank (Presently Union Bank of India) against their Recruitment Advertisement published in Rashtriya Sahara Newspaper on 19.03.2017. He was called for document verification by the Bank on 19.12.2017. As advised, he went for the document verification at Zonal Office of Andhra Bank in Rajendra Nagar, New Delhi. After the document verification he was not informed about the result of the examination by the Bank.

*Mana Sivastava*

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2. The matter was taken with the Chairman, Union Bank of India vide letter dated 04.03.2021.

3. The General Manager (HR), Union Bank of India vide letter dated 06.05.2021 submitted that the case pertained to the erstwhile Andhra Bank. The erstwhile Andhra Bank has been amalgamated with Union Bank of India vide Gazette Notification dated 04.03.2020 w.e.f. 01.04.2020. He submitted that most of the averments made in the complaint dated 03.03.2021 are false except some averments. The Delhi Regional Office of the Bank vide its notification dated 17.03.2017 invited applications from eligible candidates for filling up of 27 vacancies in the cadre of PTS on 1/3<sup>rd</sup> Scale wages for Delhi. Particulars of vacancies are as below :

| Sl. | State | SC | ST | OBC | UR | Total | Of which earmarked for Hearing Impaired |
|-----|-------|----|----|-----|----|-------|---|
| 1   | Delhi | 1  | 2  | 14  | 9  | 27    | 1                                       |

The Respondent submitted that e-Andhra Bank received 127 applications, out of which 68 were found eligible and remaining 59 were found ineligible. As per recruitment rules the Selection Committee had tabulated all the eligible candidates in the order of their merit. Of the 27 vacancies notified, 18 candidates were shortlisted. In that 14 (SC-1, ST-2, OBC-2 & UR-9) were filled immediately and 4 candidates were kept in waitlist. 13 vacancies {ST-1, OBC-12 (out of which 1 Hearing Impaired)} could not be filled due to non-availability of eligible candidates.

*Uma Sivastava* 2 | Page

In the recruitment process for Delhi, the complainant Shri Pankaj Kumar had also applied for the post of PTS on 1/3<sup>rd</sup> Scale Wages under PwBD (HI) duly declaring his qualification as 10<sup>th</sup> pass in his application. Based on his declaration, he was called for certification verification only and not for interview. On scrutiny of documents, it was observed that Shri Pankaj Kumar had not submitted Domicile Certificate. However, from his 10<sup>th</sup> class examination & Birth Certificate, it was found that he is from "Jharkhand" state and had also passed 12<sup>th</sup> examination which was suppressed by him at the time of applying for the post. Since the complainant has failed to produce domicile certificate evidencing that he was domicile of New Delhi and was overqualified for the post, his application was found ineligible. The Bank has not meted out any discrimination against the complainant. The Respondent further submitted that no separate communications were sent to the ineligible candidates as per the practice/policy of the bank.

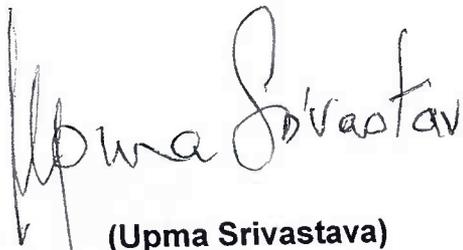
4. No rejoinder to the Respondent's reply dated 06.05.2021 has been received from the Complainant.

**Observation/Recommendations:**

5. The reply of the Respondent is satisfactory and it is observed that there is no discrimination of the complainant on account of disability.

6. The case is disposed off accordingly.

Dated: 02.07.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12680/1011/2021

#### Complainant:

Shri Sunny,  
S/o Hariom Hooda,  
Hanuman Colony,  
H.No.245/7, Gali No.3,  
Gohana Road,  
Rohtak, Haryana – 124001

R-27899

Versus

#### Respondent :

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

R-27900

**Disability** : 60% locomotor

#### Gist of Complaint:

Shri Sunny, a person with 60% locomotor disability vide his complaint dated 26.03.2021 submitted that he had applied for the post of Junior Executive (Engineer Civil) in Airports Authority of India against their Advt. No. 3/2020 against PwD quota on 17.08.2020. The minimum qualification required is Bachelor's Degree in Engineering/Technology in Civil with minimum 60% marks from a recognised university or from an apex Institution, i.e. IIT recognized by Government of India. The medical requirement asked was candidates with OH (locomotor disability ) or HH (Hearing impaired). He had secured 62.30% marks in B. Tech (Civil) in the year 2017 and passed the GATE 2019. Thus he fulfils all the required minimum qualification for the post of Junior Executive (Engineer Civil). AAI vide a Corrigendum dated

*Upma Shresthava*

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

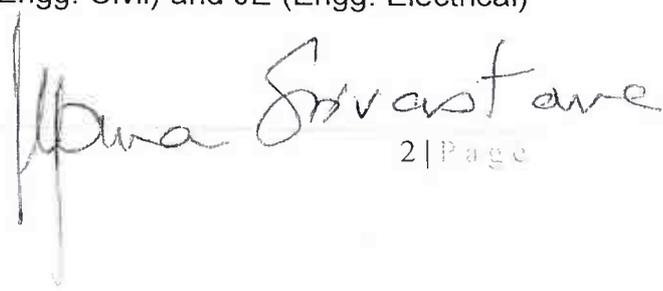
E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

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

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

31.08.2020 changed the disability mentioned in the advertisement, i.e. OH and HH to HH only against Serial No. 1 in the Advertisement. He made a representation to AAI and made an RTI in this regard but received no reply from the Respondent. AAI called for Document Verification only those candidates with HH category who scored 21.15 marks. He submitted that he was not called for Document Verification inspite of scoring 23.77 marks. AAI declared the final result of 14 posts out of 15 posts against serial no. 1 on 20.02.2021 leaving the result of one post undeclared. The complainant has requested prayed this Court direct the respondent to appoint him on the basis of merits.

2. The Executive Director (HR), Airports Authority of India vide their email dated 01.05.2021 submitted that in order to conduct direct recruitment through GATE 2019 Marks, the concerned Cadre Controlling Section had initially provided 30 vacancies (including 2 vacancies for PwD) each for the post of Junior Executive (Engg. Civil) and JE (Engg. Electrical) respectively. Subsequently, in view of the austerity measures due to the pandemic situation, it was decided to reduce the vacancies to 50%. Accordingly Advt. No.03 of 2020 was released for filling up 15 vacancies (UR-8, EWS-1, OBC-2, SC-2, ST-2, PWD-1 OH (OA) or 1-HH) w.e.f. 03.08.2020 to 02.09.2020 for the post of Junior Executive (Engineering Civil) along with 15 vacancies for the posts of JE (Engg. Electrical) and 150 vacancies for the post of JE (Engg. Electrical). At the time of releasing the advertisement, the type of disability for the PwD category for the post of JE (Engg. Civil) and JE (Engg. Electrical)

  
Anurag Srivastava  
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had not been received from the concerned cadre controlling section. After releasing the advertisement, an e-file was received from the concerned Cadre Controlling Section informing the type of disability for one vacancy for both the posts of Junior Executive (Engg. Civil) and Junior Executive (Engg. Electrical). Accordingly a corrigendum was issued on 31.08.2020 amending the type of disability as 1-HH for the post of JE (Engg. Civil) and 1-OH (OL) for the post of JE (Engg. Electrical). The Respondent submitted that since it was already brought to the notice of candidates for the post of Junior Executive (Engg. Civil) through corrigendum that the one vacancy for the PwD category reserved for HH category, only those PwD candidates who informed HH as their type of disability in their application were considered for Document Verification. The Respondent submitted that all the three candidates shortlisted under HH Category did not meet the requisite eligibility criteria as mentioned in Advertisement No. 03/2020 and the Corrigendum issued in this regard. Hence no candidate was selected for the vacancy reserved for the PwD remained unfilled.

3. The complainant vide his rejoinder dated 16.06.2021 submitted the he is fully eligible for the post of Junior Executive (Engg. Civil) in all respects and is having requisite qualification for the said post at the time of advertising the vacancies. The applicant comes in OH(OA) category and at the time of advertising the said vacancies, candidates of OH(OA) category was included but later on OH (OA) category was removed and candidates of HH category were only called for Document Verification but the complainant was not called for Document Verification by AAI.



**Observation/Recommendations:**

4. As per the documents available on record, this Court does not find any discrimination on the ground of disability and violation of Government of India Instructions in this regard.

5. The case is disposed off accordingly.

Dated: 07.07.2021

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



सत्यमेव जयते

Extra

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12633/1131/2021

### Complainant:

Ms. M. Geetha

R-27956  
R/o Door 13/119, Anandagiri 2<sup>nd</sup> Street,

Kodaikanal-624101

District – Dindigul (Tamil Nadu)

....Complainant

### Respondent:

Branch Manager,

Indian Bank, Kodaikanal-624101

District – Dindigul (Tamil Nadu)

R-27957  
**Email:** [kodaikanal@indianbank.co.in](mailto:kodaikanal@indianbank.co.in)

....Respondent

### 1. Gist of Complaint

1.1 Ms. M. Geetha, F-35, a person with 50% Locomotor Disability filed a complaint dated 03.01.2021 regarding denial of providing loan for self-employment by the respondent Indian Bank, Kodaikanal Branch, District-Dindigul (Tamil Nadu).

1.2 The complainant submitted that she has a Bank Account in the respondent bank and from where she wanted to avail a personal loan to buy a new computer as the one she was using stopped functioning during COVID period. She alleged that she had gone to the bank but no action was taken by the respondent. She also submitted that she had taken a personal loan in the year 2010 from the respondent bank and repaid by 2012 in two years.

1.3 The complainant requested to help her getting a loan.

### 2. Submission made by the Respondent

2.1 On taking up the matter, the respondent filed their reply dated 12.03.2021 and inter-alia submitted that the complainant had already

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

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://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)

availed one loan with the respondent bank in August 2010 for Rs.40,000/. The EMIs of that loan were not repaid regularly and, therefore, the loan was finally settled as One Time Settlement on 06.08.2012.

2.2 While enquiring about her past credit history through CIBIL report (Control No.377, 90, 10956), the CIBIL report was showing that she had obtained 02 loans and both were written-off. As per Credit Management Policy of RBI, those applicants, whose previous loans were already in "WRITTEN-OFF" status, any fresh loan cannot be given. Her CIBIL Credit Score at that time was 644 and personal Score was 590. The loan applications with CIBIL Score of above 700 to 800 may be favourably considered for any loan sanction. In the case of complainant, her score was below the acceptable level for new loan. Therefore, in compliance with the credit policy of RBI, her loan application could not be processed.

### 3. Submission made in the Rejoinder

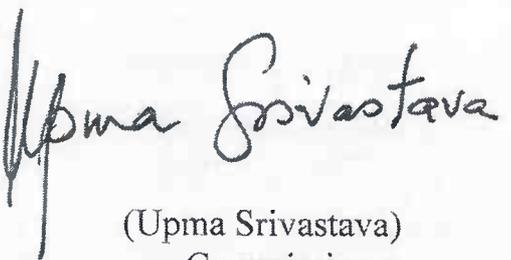
A copy of the reply filed by the Respondent bank was sent to the complainant for submission of her Rejoinder, but no rejoinder was found received from the complainant.

### 4. Observations/Recommendations

4.1 The reply filed by the respondent bank is satisfactory as per the procedure for sanction of loan. The complainant may approach the bank and follow due procedure. There appears no discrimination on account of disability.

4.2 The case is accordingly disposed off.

**Dated: 12.07.2021**



(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12700/1011/2021

### Complainant:

Shri Lawesh Kumar,  
S/o. Shri Narayan Dass,  
R/o VPO Baliyali,  
Distt. Bhiwani,  
Haryana

R-27968

Versus

### Respondent 1 :

Railway Recruitment Board,  
(Through the Chairman),  
Railway Colony,  
Near Railway Station,  
Chandigarh – 160 002.

R-27969

### Respondent 2 :

Railway Recruitment Cell (RRC),  
(Through the Chairman)  
Northern Railway,  
Lajpat Nagar-I,  
New Delhi – 110 024

R-27970

Disability : 80% locomotor

### Gist of Complaint:

Shri Lawesh Kumar, a person with 80% locomotor disability vide his complaint dated 13.04.2021 submitted that he had applied for Group 'D' post in Northern Railway against PwD quota. He appeared in the examination and qualified the same, but he is still waiting for the result which is pending due to non-verification of his Disability Certificate. The Railway Recruitment Board,

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Chandigarh did not consider his Disability Certificate. He was also not issued the joining letter so far. This Court had earlier vide order dated 18.10.2021 directed the Railway Recruitment Board to accept all Disability Certificates issued by the authorised Government Hospitals and not to insist on a particular format of the Disability Certificate from persons with disabilities.

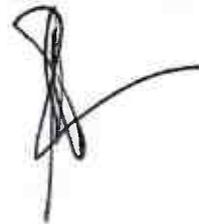
2. The matter was taken up with the Chairman, RRB, Chandigarh and the Chairman, RRC, Northern Railway, Delhi vide letter dated 15.04.2021.

3. The President, Railway Recruitment Board, Chandigarh vide letter dated 05.05.2021 submitted that Shri Lawesh Kumar had applied online for the Level-I posts against Centralized Employment Notice No. 02/2018 as a PwD/LD(OL) candidate. He appeared in the CBT Examination on 17.09.2018. The CBT result was declared on 04.03.2019. He obtained 18.13557455 whereas the required qualifying mark is 40 and therefore, he did not qualify in the CBT for further stages of recruitment process. Hence he was not considered for further stages of recruitment process. The Respondent stated that viewing of question papers, responses and keys was provided to all the candidates through the link dated 11.01.2019 and further on 09.03.2019. He further stated that the final cut off marks of PwD of LD/OL category was 58.82877. The question of not considering the candidate for his appointment on the basis of Disability Certificate is not correct and has no meaning in the case. The Respondent further submitted that the Member Secretary, Railway Recruitment Board, Chandigarh has already been nominated as Grievance Redressal Officer as well as CPIO in RTI cases. The Respondent further submitted that the above named candidate did not send any grievance to their office.



The Chairman, RRC, Northern Railway, Delhi vide letter dated 03.06.2021 submitted that CBT Test for the recruitment of CEN-02/2018 (Level-1 posts as per 7<sup>th</sup> CPC) was conducted and list of shortlisted candidates on the basis of merit for further stage i.e, PET, DV & ME had been published accordingly with the cut off normalized marks for each category by the Railway Recruitment Board/Chandigarh. As per Railway Board letter No. E(NG)-II/96/RR-1/62 dated 08.07.2005, minimum pass mark of 40% for General candidates and 30% for SC/ST & OBC candidates, 02 marks below the minimum qualifying marks for each category viz, UR/OBC/SC/CT be given a relaxation in the standard of suitability if suitable number of PwBD candidate not qualifies in the general standard. Further for conducting other activities like PET, Document Verification, Medical Examination and publication of Panel for above recruitment shall be carried out by their office, i.e. RRC/NR. As per the information received from RRB/CDG, Shri Lawesh Kumar, S/o. Shri Narayan Dass has obtained 18.13557455 normalized marks against the minimum qualifying marks of 40 marks and last cut off marks of PwBD (LD/OL) category was 58.828777 and he did not qualify in the CBT for further stages of recruitment process.

4. The complainant vide his rejoinder dated 01.06.2021 submitted that percentage of disability in his Disability Certificate is 80% which is bench mark of multiple disability. Before the year 2018-2019 there was no bench mark for multiple disability. He had applied for Group-D post. In April 2020 the Railway has sent a link in which there was an option to apply for persons with multiple disabilities, but the Railway did not validate his Disability Certificate. He was called for Medical Examination by the Northern Railway Hospital in



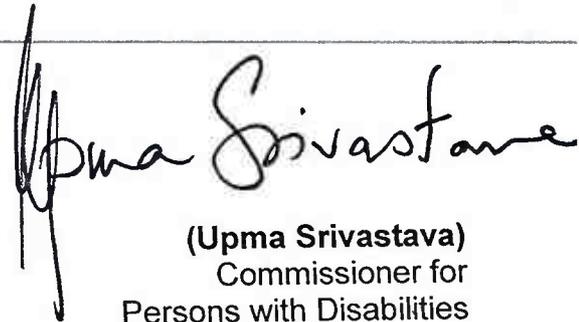
New Delhi. He did not know how he has failed in the examination when he was called for Medical Examination by the Railways.

**Observation/Recommendations:**

5. After perusal of documents submitted by both the parties, it is observed that there is no discrimination on account of disability as the candidate could not obtain the minimum qualifying marks. However, this Court advises the Respondent to follow proper stipulated guidelines for examination for PwBDs in each case meticulously.

6. The case is disposed off accordingly.

Dated: 13.07.2021



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12676/1011/2021

### Complainant:

Ms. Asha Rawat,  
D/o. Shri Dinesh Singh,  
Vill : Dural Bagan,  
P.O: Toli (Jakheti)  
Patti Kafolsyun,  
Dist. : Pauri Garhwal,  
Uttarakhand -246176.

R-27971

Versus

### Respondent :

Uttarakhand Gramin Bank,  
(Through the Chairman)  
18, New Road,  
Dehradun,  
Uttarakhand – 248001.

R-27972

**Disability** : 100% visual impairment

### Gist of Complaint:

Ms. Asha Rawat, a person with 100% visual impairment vide her complaint dated 26.03.2021 submitted that she applied for PA Clerk post in Uttarakhand Gramin Bank. She cleared the exam but when she went to bank along with the documents, they said that she was supposed to click on "No" option instead of "Yes" in DXS box. She took the help of cyber cafe for filling up the form who clicked on the "Yes" option instead of "No". Due to her disability, she was not able to cross check the application form.

2. The matter was taken up with the Chairman, Uttarakhand Gramin Bank vide letter dated 06.04.2021.

*Upma Srivastava*

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3. The General Manager of Uttarakhand Gramin Bank vide letter no. UGB/HO/2021-22/PER/106 dated 29.04.2021 submitted that bank carries out a routine exercise on yearly basis to arrive at the number of vacancies to be filled in a particular financial year including the ones lying under various reserved categories as per Government guidelines on the Reservation Policy. As a participating bank, the required list is handed over to the Institute of Banking Personnel Selection (IBPS) which as per the Bank's mandate advertises the vacancies and applications are invited under different reserved and general categories/sub-categories for online application. The responses filled up by the candidates are considered for all purposes and are final. The relevant text from reply by IBPS vide letter no. 168 dated 19.04.2021 in response to request made by respondent for category change of the candidate as given below-

**“...Para 2 of the Advertisement dated 01.07.2020 for CRP RRB IX provides for the fact that provisional allotment is done on the basis of merit-cum-preference of the candidates, keeping in view all the criteria including Government guidelines on reservation policy” &**

**“2. The category of the candidate as mentioned in his/her application form is considered for all purposes and there can be no change in the same as stated in the said Advertisement. (Clause B i.e., Eligibility Criteria)”**

In the present case, Ms. Asha Rawat, while getting her application form filled up at the cyber cafe as per her own admission, had entered her status as DXS (Dependent of Serviceman Killed in action) which is a part of EXS ( Ex Servicemen) category in which she was failed to produce the document. The bank, in absence of any supporting document, was left with no choice other than to cancel her candidature. They have quoted the judgement by the

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Hon'ble Supreme Court which squarely holds the applicant responsible for their mistakes. The judgment is quoted below –

**“3. In a similar case, the Hon'ble Supreme Court of India held that, if a person commits a mistake in filling up the application form, he must suffer the consequences of the mistake. The Hon'ble Court highlighted that today in the era of computerization where human intervention is reduced to the least it becomes important for applicants to ensure that online applications are filled up properly. It is not a case where the applicant was applying for a low paid job therefore, they should know the importance of correctly filling up online application forms. ((T Jaikumar Vs. Jaypu and Ors. (2008/9 SCC/403))”**

The Bank having a sympathetic view on account of complainant's disability enquired with the IBPS as to any change in the category of Ms. Asha Rawat is possible at this stage so that the candidature of the complainant could be accommodated. Reply of the IBPS not being in affirmative as evident from the above quoted text as also from the full text as appended herewith, it was not possible for the Bank to accept the candidature of Ms. Asha Rawat.

**Observation/Recommendations:**

4. The reply of the Respondent is satisfactory and it is observed that there is no discrimination of the Complainant on account of disability.
5. The case is disposed off accordingly.

Dated: 13.07.2021

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12693/1011/2021

### Complainant:

Shri Sidheswar Naik,  
S/o Shri Srimukha Naik,  
At / Po : Dera,  
Via : Talcher,  
Dist. : Angul,  
Odisha – 759103.

R-27973

Versus

### Respondent :

Paradip Port Trust,  
(Through the Chairman)  
Administrative Building,  
Paradip,  
Dist. : Jagatisinghpur,  
Odisha – 754142.

R-27974

**Disability** : 45% locomotor

### Gist of Complaint:

Shri Sidheswar Naik, a person with 45% locomotor disability vide his complaint dated 12.04.2021 submitted that he was a candidate for the post of Legal Assistant (Class-III post) in the Recruitment Advt.No. AD/RSC-22-183/2015 (Pt.I)/3500 dated 21.07.2016 of Paradip Port Trust, Odisha against Special Recruitment Drive for backlog vacancies of PwDs. As he was the only candidate available for the said post, he has been considered for the post and the Secretary, Paradip Port Trust verified his all original certificates except his experience certificate. As there was no other candidate available for the post, the Secretary, Paradip Port Trust did not issue him the joining letter due to lack

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of experience certificate till date. The said post is still vacant due non availability of suitable candidate. Recently the Paradip Port Trust had published an advertisement to fill up the above two backlog vacancies of Legal Assistant on contractual basis.

2. The Secretary (I/C), Paradip Port Trust vide letter dated 11.06.2021 submitted that Shri Sidheswar Naik had applied for the post of Legal Assistant against their advertisement under Special Recruitment Drive for clearing backlog vacancies of PwDs against their Advt No. AD/RSC-22-183/2015 (Pt.I)/3500 dated 21.07.2016. In order to ascertain the suitability of the candidate, the complainant was advised to attend their office along with all original certificates for verification on or before 15.10.2016. Shri Naik presented himself for the certificate verification on 14.10.2016 but he was unable to submit the required proof of his experience certificate. Shri Naik submitted the Experience Certificate later on 21.10.2016. The Experience Certificate submitted by Shri Naik is from the Secretary, State Bar Council, Odisha showing that he is practicing as an Advocate at Talcher Court, Talcher as against the recruitment of 05 years experience in a legal establishment / Industrial / Commercial / Govt. Undertaking. He was unable to produce the experience certificate as per Recruitment Rule and therefore, his candidature for the post of Legal Assistant was rejected. At present, filling up of post by Direct Recruitment has been banned by the Ministry vide letter dated 19.11.2019. In view of the restriction imposed by Ministry, Paradip Port Trust had issued advertisement for 02 Assistant (Legal) on contract basis which is no way linked with the Special Recruitment Drive for Backlog Vacancies of PwDs advertised on 21.07.2016.



3. The complainant vide his rejoinder dated 29.06.2021 submitted that he never said that Pardip Port Trust refused his appointment on ground of disability. He submitted that Paradip Port Trust has not been banned by the Ministry for any Direct Recruitment but it is mentioned to take prior approval of Ministry before appointment. He submitted that vacant post as per advertisement published in 2016 for Legal Assistant as a pre-approved post of Ministry and it is a backlog post as per provision of reservation of roster. The post cannot be kept as vacant neither by the Paradip Port Trust nor by the Ministry. By keeping vacant the post, they are hampering the fundamental rights of persons with disabilities. He submitted that as per the Govt. of India Rules, the Pardip Port Trust should give him appointment by relaxing the eligibility criteria.

**Observation/Recommendations:**

4. It is observed that the complainant <sup>was</sup> ~~could~~ not able to produce the required experience certificate for 05 years of working as per Recruitment Rules of Pardip Port Trust. As such this Court does not find any discrimination on the ground of disability in this regard.

5. The case is disposed off accordingly.

Dated: 13.07.2021

  
 (Upma Srivastava)  
 Commissioner for  
 Persons with Disabilities



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extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12504/1031/2020

R-27960

### Complainant:

Shri Hemant Kumar  
B-413, Phulchand Gardenia Appt,  
Power House Chouck, Chutia,  
Ranchi-834001 (Jharkhand);  
Email [iitd.hemant@gmail.com](mailto:iitd.hemant@gmail.com)

### Respondent:

Indian Institute of Management Ranchi  
[Through: Director]  
Suchana Bhawan, 5<sup>th</sup> Floor,  
Audrey House Campus, Meur's Road,  
Ranchi-834008 (Jharkhand)  
Email: [director.office@iimranchi.ac.in](mailto:director.office@iimranchi.ac.in)

R-27961

### 1. Gist of Complaint

1.1 Shri Hemant Kumar, M-36, a person with 80% Locomotor Disability (Lower Limbs) filed this complaint regarding denial of admission under disability quota to Executive Ph.D Programme, 2020 (Operations Management Stream) in Indian Institute of Management Ranchi (IIM Ranchi).

1.2 The complainant submitted that he is currently employed as Assistant Director, Census Operations (Technical), Dte. Of Census Operations, Jharkhand, Office of Registrar General of India under Ministry of Home Affairs, Govt. of India. He applied to IIM Ranchi for the admission to the said Ph.D Programme in the month of March, 2020 under the Persons with Benchmark Disability reservation category and paid an amount of Rs.1000/- towards application fee applicable for such candidates

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as against the normal fee of Rs.2000/-. IIM Ranchi vide email 24.06.2020 called him on a very short notice to appear for personal interview on 25.06.2020. He scored 61.8 Marks with 13 Rank. The result of successful candidates was announced on 09.07.2020. When he did not find his name in the list of successful candidates under PwD quota, he inquired vide email dated 09.07.2020 followed by reminders dated 18.08.2020 and 26.08.2020 drawing their attention to various provisions of RPwD Act, 2016 as well as to the judgement of the Hon'ble Supreme Court of India in Civil Appeal No.2718 of 2020 (arising out of SLP (Civil) No.21429 of 2019) titled Aryan Raj Vs Chandigarh Administration dated 08.07.2020 regarding reservation of persons with disabilities in higher educational institutions. IIM Ranchi was also requested to review their decision in view of the law and Hon'ble Apex Court decision. Finally, IIM Ranchi, informed that Ph.D programme does not have any such quota for admission to the said programme; and they are not in a position to review their decision in view of the 'Rank Based on Final Score' criterion. IIM Ranchi did not even reply to the legal notice served in this regard by the advocate of the complainant.

1.3 Complainant requested for granting admission in Executive Ph.D Programme, 2020 in the Operations Management Stream from Academic year 2020-2021; to build up co-operative and disabled friendly Research environment for Persons with Benchmark Disabilities; suitable compensation; and the present case may not be disposed off until the direction are complied with.

## **2. Submissions made by Respondent**

2.1 IIM Ranchi filed their reply dated 22.01.2021 and inter-alia submitted that Section 32 of the RPwD Act, 2016 would only apply to "Government Institutions" and "other higher educational institutions who are receiving aid from the Government". IIM Ranchi being a body corporate in terms of the Indian Institutes of Management Act, 2017 [IIM Act, 2017], cannot be termed as a Government Institution particularly in view of Section 4 and Section 9 of the IIM Act, 2017. As regards the other category of educational institution as mentioned in Section 32 of RPwD Act, 2016, it would also not apply to IIM Ranchi. Section 32 of the RPwD

Act, 2016 stipulates reservation of not less than 5% seats for Persons with Benchmark Disabilities in higher educational institutions, however, IIM Act, 2017 though in recognition of the persons with disabilities, has only mentioned that the Institute may make special provisions for employment or admission of such persons, but does not make reservation/special provisions for admission as mandatory.

2.2 It was a specialised programme invented and designed by IIM Ranchi and there were only 5 seats available. At the time of filling up of the application form, the complainant was aware that there was no reservation whatsoever. The advertisement did not disclose any kind of reservation; and seeking admission in terms of the provisions of RPwD Act, 2016 cannot be allowed. The complainant had never applied as a "Person with Benchmark Disability" and there is no question of his candidature being considered under the said category.

2.3 The provision of reservation can be done for other academic courses but for the programme like of Ph.D, it was not feasible and therefore was not provisioned.

2.4 The present complaint relates to admission for the year 2020 wherein the entire admission was completed on 08.07.2020. There were altogether 05 seats available and on the basis of the merit list, 05 candidates were offered to pursue the course.

**3. Submission made in Rejoinder:**

3.1 Complainant filed his rejoinder dated 02.02.2021 and reiterated his complaint. He inter-alia added that IIM Ranchi is continuously facilitated by Ministry of Human Resource Development, Government of India with the extensive support of the Government of Jharkhand by various resources like free of cost land(around 60.04 acres) for permanent campus , cent percent grants (grants head 31, 35 & 36 in plan and non-plan) of MHRD (for initial ten years i.e. During 2009-2019) , prompt support of several government department/ agency like CPWD,PWD, Ranchi Police, Ranchi Nagar Nigam, Jharkhand Bijli Vitaran Nigam, officers (even secretary level officers , DC and SP as members in governing body) of

Govt of Jharkhand as well as MHRD, Govt of Jharkhand (Which is clearly mentioned in his various Annual Report currently of 2018-2019). In Page 9 of IIM Ranchi annual report 2018-2019 *“Indian Institute of Management Ranchi, the ninth member of the prestigious Indian Institutes of Management family, was established on December 15, 2009 under the Societies Registration Act, 1860, under the aegis of the Ministry of Human Resource Development, Government of India with the extensive support of the Government of Jharkhand”*

3.2 In terms of Section 4 of The Indian Institutes of Management Act 2017, it is a body corporate is similar status of IIT's/NIT's /DTU (Reference : judgement passed by Hon'ble High Court of Delhi in WP(C) No. 4853 of 2012, titled - Anamol Bhandari (Minor) Through His Father/Natural Guardian Versus Delhi Technological University.

3.3 That RPwD Act, 2016 came into force on 27.12.2016 whereas the Indian Institutes of Management Act, 2017 came into force on 31.12.2017 in term of corporate by the same name as mentioned in column (5) of the Schedule. However, IIM Ranchi was established in 2009 with the fully support of government fund up to ten years. Hence Section 32 of the RPwD Act, 2016 Act is applicable on IIM Ranchi with stipulating reservation of not less than 5% seats for persons with the benchmark disabilities in higher educational institutions.

3.3 There are several stream (around eight) including Operations Management in Executive Ph.D program each stream having around 3-5 seats i.e. Total 20-30 seats. In advertisement IIM Ranchi did not mention regarding “no reservation” even IIM Ranchi given 50% relaxation in application fee for PwBD candidates i.e. Paid Rs 1000/- instead of Rs 2000 for UR . Thus, at the time of filling up of the application form undersigned clearly mentioned the “Category OBC at SN.9 and PWD at SN.11 in Personal Details section as required in application form of IIM Ranchi that means institute was also aware about provision of reservation for PWD as well as OBC otherwise there was no need to ask category related personal information or may be institute demanding such information for further discrimination on the basis of case and disabilities.



3.4 The reply filed by IIM Ranchi is without supporting documents, is not based on facts even lying in most of the points or trying to deviate from the original facts i.e. misleading.

**4. Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.07.2021**. The following were present:

- (1) Shri Hemant Kumar, complainant in person
- (2) Shri Satish Kumar, Chief Administrative Officer; and Adv. Radha Krishnan Gupta for the respondent

**5. Observation/Recommendations:**

5.1 Both the parties were heard.

5.2 Grievance filed by the Complainant is that his candidature for Ph.D. course offered by the Respondent establishment was not considered as per laws with respect to reservation for Divyangjan in higher education institutions.

5.3 Respondent submits that it is not bound to provide reservation and has buttressed the contention on the basis of following reasons –

- a) Respondent is not bound by Rights of Persons with Disabilities Act, 2016; and
- b) Respondent is established by IIM Act, 2017 and hence independent to form its own rules.

Each of these contentions is dealt with separately.

**5.4 RESPONDENT’S CONTENTION – RPwD Act, 2016 is not applicable on the Respondent institution**

Respondent submits that RPwD Act, 2016 is not applicable and to buttress the claim Respondent has raised two points –

- a) IIM Ranchi is a body corporate and hence cannot be termed as ‘government’.

b) Section 8 of IIM Act, 2017 empowers the Respondent establishment to form its own rules.

Both these points are contra legem, i.e. against the law.

#### 5.5 POINT (i) – IIM RANCHI IS A BODY CORPORATE

Section 32 of RPwD Act, 2016 is relevant in this regard. Section 32 of RPwD Act, 2016 lays down that 5 percent seats will be reserved by all government institutions of higher education and other higher educational institutions receiving aid from the government.

5.6 As per last two annual reports available on the Respondent establishment's website - <https://iimranchi.ac.in/p/annual-reports>, Respondent received government aids both in financial year 2018-19 and 2017-18. Therefore, as per language of Section 32, Respondent is bound by the mandate of Section 32.

5.7 Moreover, in the landmark judgment of DISABLED RIGHTS GROUP AND ORS. v. UNION OF INDIA AND ORS.; (2018) 2 SCC 397, Hon'ble Supreme Court held that all higher educational institutions receiving aids from the government are bound to reserve seats for Persons with Disabilities. Though the above judgment was decided under PwD Act, 1995, it is applicable under 2016 Act because the two provisions are exactly same except that the quantum of reservation has been raised from 3% in the older Act to 5% in the new Act. Except the quantum of the reservation, the whole provision is exactly the same. The same was noted by the court and it was held that under Section 32 of 2016 Act, the legal position is same and all higher educational institutions receiving aids from the government shall be bound by Section 32 of 2016 Act.

5.8 In the same judgment hon'ble Supreme Court laid down that all the Government higher educational institutions and other educational institutions receiving aid from the government shall submit list of the number of disabled persons admitted in each course every year to the Chief Commissioner and/or the State Commissioner (as the case may be). It will also be the duty of the Chief Commissioner as well as the State Commissioner to enquire as to whether these educational institutions have fulfilled the aforesaid obligation.



5.9 POINT (ii) - SECTION 8 OF IIM ACT EMPOWERS IIM TO MAKE ITS OWN RULES

Section 8 reads as follows –

“8(1) Every Institute shall be open to all persons irrespective of sex, race, creed, caste or class, and no test or condition shall be imposed as to religious belief or profession in admitting or appointing members, students, teachers or workers or in any other connection whatsoever.

(2) No bequest, donation or transfer of any property shall be accepted by any Institute which in the opinion of the Board involves conditions or obligations opposed to the spirit and object of this section.

(3) The admission to every academic course or programme of study in each Institute shall be based on merit assessed through transparent and reasonable criteria disclosed through its prospectus, prior to the commencement of the process of admission by such Institute:

Provided that nothing in this section shall be deemed to prevent the Institute from making special provisions for the employment or admission of women, persons with disabilities or for persons belonging to any socially and educationally backward classes of citizens and, in particular, for the Scheduled Castes and the Scheduled Tribes:

Provided further that every such Institute shall be a Central Educational Institution for the purposes of the Central Educational Institutions (Reservation in Admission) Act, 2006.”

5.10 It is well settled principle of Indian law recognised by Hon’ble Supreme Court in number of cases that special law on a point supersedes general law. Maxim is - generaliaspecialibus non derogant (general things do not derogate from special things). It is clear from the reading of Section 8 that it is general in nature, whereas, Section 32 of RPwD Act, is special law on the issue of reservation for Persons with Disabilities.

5.11 RESPONDENT'S CONTENTION – IIM Act came after RPwD Act and hence RPwD Act is not applicable on IIMs.

Merely because IIM Act came afterwards does not make it immune from mandate of other legislations. Respondent's contention that even though IIM Act came afterwards and still does not have provision for reservation, can be negated by the contention that even though IIM Act came on later date, it does not exclude applicability of RPwD Act, 2016.

Further, principle of *generaliaspecialibus non derogant*, as discussed above is applicable on this issue as well.

5.12 Hence this court concludes that Section 32 is applicable on the Respondent establishment and it is bound by the mandate of the provision. This court recommends that Respondent shall give reservation as per the provisions of RPwD Act, 2016 in all higher education programmes. Since, admission process for academic year 2021 is closed & 5 seats were filled way back, hence, Respondent shall consider adjusting the Complainant in next admission cycle, i.e. 2022 academic year.

5.13 The respondent shall also ensure that such lapses do not occur in future and replies which are entirely contrary to law are not furnished to this Court. As mentioned in Paras 5.7 & 5.8 the Respondent shall fully comply with the judgement in all future selections & appointments in the organisation.

5.14 Accordingly the case is disposed off.

Dated: 19.07.2020

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



सत्यमेव जयते

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extra

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

**Case No. 12735/1033/2021**

**Complainant:**

Shri Siddharth Shrivastava,  
S/o Shri Sanjay Narayan Shrivastava  
R/o House Near Mahavir School,  
Swarajpuri Road, Gaya-823001 (Bihar)  
Email: [shrinsiddharth@gmail.com](mailto:shrinsiddharth@gmail.com)

R-28054

Shri Himanshu Singh,  
S/o Shri Virendra Singh,  
R/o Village – Sathiaiw, Post-Fazilnagar,  
District – Kushinagar – 274401 (UP)  
Email: [i2withsingh@gmail.com](mailto:i2withsingh@gmail.com)

R-28055

Shri Peddiraju Goutham Cheran Teja,  
S/o Shri Peddiraju Venkatah,  
R/o Village – Muthireddipalle,  
Post – Kodair Mandal – 509102  
District – Mahabubnagar (Telangana)  
Email: [gouthampeddiraju@gmail.com](mailto:gouthampeddiraju@gmail.com)

R-28056

**Respondent:**

The Director,  
National Institute of Technology Warangal,  
National Institute of Technology Campus,  
Fathimanagar, Warangal-506004 (Telangana)  
Email: [director@nitw.ac.in](mailto:director@nitw.ac.in)

R-28057

**1. Gist of Complaint:**

1.1 Shri Siddharth Shrivastava, M-18, 45% Low Vision; Shri Himanshu Singh, M-17, 40% Low Vision; and Shri P. Goutham, M-19, 40% Low Vision filed jointly a complaint dated 20.05.2021. They alleged that NIT

*Upma Sivasankar* (Page 1 of 3)

Warangal has terminated them from the Institute cancelling their admissions (in disability quota) on the ground that that they are not having Benchmark Disability as mentioned in their respective Disability Certificate.

**2. Submissions made by the Respondent**

2.1 On taking up the matter, the respondent filed their reply dated 17.06.2021 and submitted that the above complainants have also filed Writ Petition in Hon'ble High Court for the State of Telangana at Hyderabad vide No.12773 of 2021. The Hon'ble Court at the admission stage passed interim suspension order on 07.06.2021. The matter is now subjudice.

2.2 However, the Respondent has inter-alia informed that the Joint Seat allocation Authority/Central Seat Allocation Board (JOSAA/CSAB) provides provisional admission to PwD candidates based on the medical certificate uploaded by them (which needs to be verified later) but they need to undergo the physical examination by the Medical Boards constituted by the respective participating Institutes (PI) of JOSAA/CSAB for confirming their admission. Whatever, medical certificate uploaded by the PwD candidate during online counselling process is treated as provisional. They were sent to MGM Hospital, Warangal/Regional Eye Hospital (REH), Warangal. The complainants were not meeting the PwD eligibility criteria prescribed by the Ministry of Social Justice and Empowerment, their admission was cancelled as per JOSAA/CSAB 2020 business rules and their student Ids were blocked accordingly. Further, the candidates have got provision admission, under specific quota of PwD candidates, and they would not have got admission, if they had not claimed this reservation.

**3. Submissions made in Rejoinder**

3.1 A rejoinder vide email dated 01.07.2021 has been filed by the complainants. They have submitted that their Disability Certificates are completely correct and valid as they have been issued by the respective State Governments. Wrong procedure has been followed by JOSSA/CSAB as well as NIT Warangal and whole of the system are trying to prove that their Disability Certificates are wrong. If the respondents

*[Handwritten Signature]*  
Srivastava  
(Page 2 of 3)

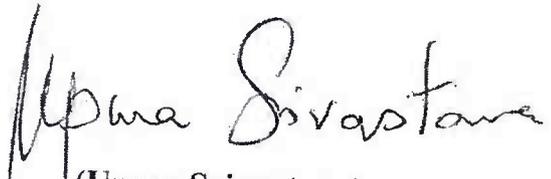
have doubt, they should issue the letter to the issuing authority/Govt. Hospital for clarification of disability instead of making them responsible.

3.2 The complainants have submitted that they have orders (Enclosure – viii) of Hon’ble High Court Hyderabad to open the college I.D. by suspending the operation of the impugned orders of cancellation of admissions but NIT Warangal is rigid to not open the I.D.

**4. Observation/Recommendations:**

Since the matter is subjudice before the Hon’ble High Court of Telangana at Hyderabad, no further intervention is required in this matter; and the case is closed.

**Dated: 20.07.2021**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



सत्यमेव जयते

Extra 31

## 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. 12632/1141/2021

### Complainant:

Shri Satyendra Nath Dutta,  
Section Officer ,  
Department of Empowerment of Persons  
with Disabilities (Divyangjan)  
5<sup>th</sup> Floor, Pt. Deendayal Antyodaya Bhawan,  
CGO Complex, Lodhi Road, New Delhi-110003  
Email: [sn.dutta@gov.in](mailto:sn.dutta@gov.in); Mobile: 9625306741

R-2858

### Respondent:

Delhi Development Authority  
Through: Vice Chairman,  
D-Block, Vikas Sadan, INA, New Delhi-110023  
Email: [vcdda@dda.org.in](mailto:vcdda@dda.org.in)

R-2859

### 1. Gist of Complaint

1.1 Shri Satyendra Nath Dutta, M-59, a person with 50% Cerebral Palsy, Spastic Quadriplegia filed this complaint regarding harassment by DDA Officials and not providing information sought vide RTI applications dated 09.08.2019 and 05.02.2020 with regard to allotment of MIC/HIG (Application No.117179, Scheme DDA19/1479] to him being a wait-listed registrant.

1.2 The complainant had submitted an application online for allotment of an L.I.G. Flat in Vasant Kunj, New Delhi on 10.06.2019 under DDA Housing Scheme, 2019, but he remained unsuccessful in the draw of the scheme. He sought following information under RTI vide application dated 09.08.2019 relating to result of the draw from Ministry of Urban Development [MoUD]:

*Mpna Sivastava*

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

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

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in); Website: [www.ccdisabilities.nic.in](http://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)

- (i) Total number of applications, submitted by Applicants with Disabilities online in DDA Housing Scheme, 2019;
- (ii) Total number of applications of Applicants with Disabilities, rejected by DDA Housing Scheme, 2019;
- (iii) Total number of Builders, Promoters and Colonizers in Delhi, approved and recognized by Ministry of Urban Development – to furnish their names and addresses;
- (iv) Total number of Property Dealers, affiliated to and recognized by both Ministry of Urban Development and DDA;
- (v) Meaning, definition, scope and applicability of “Power of Attorney”; and
- (vi) Up-to-date status of regularization of unauthorised colonies in Delhi.

MoUD forwarded his RTI application to DDA but till date he did not receive any reply from DDA.

1.3 DDA vide their letter No.F1(385)19/Cordn./H/Pt.8/1578 dated 19.11.2019 advised the complainant to deposit registration money Rs.1.00 Lakh - for LIG/one bed room; and/or Rs.2.00 Lakh for MIG/HIG Category 2 & 3 by 14.12.2019 without fail.

1.4 On 12.12.2019, the complainant paid Rs.2.00 Lakh to DDA.

1.5 On 13.12.2019, the user/caller from Mobile No.7840005004 from DDA confirmed to the complainant that he was getting an MIG Flat. The user/caller of Mobile No.7840005004 did not disclose anything about his name, whereabouts, and credentials.

1.6 On 14.12.2019, the complainant rang Mobile No.7840005004 from his official Landline No.24369057 and he was confirmed that ‘the payment of Rs.2.00 Lakh was received by DDA and he was going to get an MIG Flat which was confirmed.’

1.7 Since the complainant did not heard anything from DDA, he made a call on Mobile No.7840005004 and sought an appointment with the Assistant Director (Coordination)-Housing/PIO, DDA, but he was

*Upma Sivastava*  
(Page 2 of 5)

astonished to discover that the payment of Rs.2.00 Lakh was refunded and deposited on 03.02.2019 in his SBI account number 65044873277.

1.4 The complainant filed complaints, applications/appeals under RTI to the Chairman, DDA and Central Information Commission respectively for forcible and formidable action against Asstt. Director (Systems); Asstt. Director (Housing); and the Caller/User of Mobile No.7840005004 of DDA, but he did not get any response from any of the authorities.

1.5. The complainant, vide application dated 05.02.2020, requested DDA to furnish the following information:

- (1) Disposal of his application dated 09.08.2019 by Assistant Director, System, DDA;
- (2) Name, Designation, whereabouts and credentials of the caller from mobile number 7840005004 and his role in refund of Rs.2,00,000/- to him on 03.02.2020;
- (3) In case, he was required to file FIR and petition against DDA then, full address of concerned Police Station and Competent court of law as well as nature of petition;
- (4) His eligibility for legal aid, to be appointed and sponsored by DDA as a token of compensation to him for the tremendous harassment caused to him by DDA in violation of the instructions from the Authorities of Ministry of Housing and Urban Affairs (Delhi Division), Nirman Bhawan, New Delhi; and
- (5) His eligibility and entitlement for compensation from DDA.

1.6 The complainant prayed to this Court for the following reliefs –

- (a) To get the information made available to him from DDA as sought through RTI applications dated 09.08.2019 and 05.02.2020;
- (b) To get imposition of penalty on derelict Public Information Officers of DDA, effective without any further delay by CIC at the earliest and in a transparent manner;
- (c) To decide compensation from DDA to him in the light of RPwD Act, 2016;

(d) To decide the merit of his applications dated 10.06.2019 and 12.12.2019 under DDA Housing Scheme 2019 as well as latest application dated 03.02.2021 under DDA Housing Scheme 2021 for allotment of MIG Flat;

(e) To find out with the help of Delhi Police the name, address, whereabouts and credentials of the user/caller of Mobile No.7840005004; and

(f) To initiate appropriate and ancillary action against Dy. Registrar (CR-1) Central Information Commission, in public interest.

**2. Submission made by the Respondent**

2.1 The matter was taken up with the respondent by this Court vide Notice dated 05.03.2021 followed by reminders dated 22.03.2021 and 06.04.2021 to submit their comments on the complaint on affidavit along with requisite documents, but respondent did not file their comment.

2.2 However, FFA/Dy. Director (System), DDA vide email dated 27.04.2021 endorsed to this Court a copy of the Reply of RTI addressed to the complainant Shri Satyendra Nath Dutta, vide Letter No.DD(S)/RTI/HS/2021/29/274/2021 dated 27.04.2021.

2.3 In the said RTI reply it was intimated that total 841 applications were received online from Persons with Disabilities in DDA Housing Scheme 2019 and all the applicants with disabilities were considered in draw of the DDA19 Scheme; no applicant with disability was rejected. The complainant/applicant had deposited Rs.2.00 Lakh vide Challan No.90191323 dated 12.12.2019 and his application was considered in Waitlisted draw of DDA19 Scheme, but the applicant was unsuccessful and his money was refunded to him.

2.4 Total 785 applicants were deposited the registration money including waitlisted draw of DDA19 and 49 Flats were included in the draw. Total 39 applicants with disabilities were included and only 02 applicants with disabilities were allotted in Vasant Kunj Flats under Waitlisted applicants as per reservation policy of DDA.

*Mpma Srivastava*

### 3. Submission made in Rejoinder

3.1 The complainant filed his rejoinder dated 02.06.2021 to the RTI reply filed by DDA and inter-alia submitted that the information is perfunctory which was furnished after around two years and that too after several letters and reminders from the offices of other officers of DDA, Secretariat of Lt. Governor and Chairman, DDA and from the Court of Chief Commissioner for Persons with Disabilities were endorsed to Systems Division. This is ample evidence of the callous, stolid, criminal, apathetic and anti PwD attitude of the officers especially public information authorities of Systems Division of DDA.

3.2 The reply filed by DDA is an artful dodgery and prevarication every now and then with a view to mock with the compulsions and limitations of Persons with Disabilities. DDA has intentionally not furnished any information against query No.2 of his RTI application dated 05.02.2020.

3.3 It is not understood whether he is still a wait-listed applicant or not, because his online application for MIG flat under DDA Housing Scheme, 2021 has also been unsuccessful and application fee of Rs.2.00 Lakh has been refunded by DDA.

3.4 He requested whether he is required to compel himself further for submitting online applications for MIG flat of DDA before his retirement on attaining the age of superannuation in November, 2022.

### 4. Observation/Recommendations:

4.1 From the facts submitted above it is obvious that the complainant was not successful in the draw, hence the money was refunded to him as per rules by DDA. There is no discrimination on the ground of disability.

4.2 Accordingly the case is disposed off.

**Dated: 20.07.2021**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



सत्यमेव जयते

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Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No.12631/1101/2021

### Complainant:

Shri Jethanand L. Bhatia,  
J-404, Orchard Godrej Garden City,  
Village: Jagatpur, Ahmedabad (Gujarat)  
Email: [jlhatia2011@gmail.com](mailto:jlhatia2011@gmail.com)

### Respondents:

- (1) Regional Manager,  
State Bank of India, Region-II,  
Regional Business Office,  
CN Vidyalaya Campus,  
SM Road, Ambawadi, Ahmedabad-30015  
Email: [agm2.aao@sbi.co.in](mailto:agm2.aao@sbi.co.in)
- (2) The General Manager,  
The Kalupur Commercial Co.Op. Bank Ltd.,  
Head Office: Kalupur Bank Bhavan,  
Near Income Tax Circle, Ashram Road,  
Ahmedabad-380014,  
Email: [info@kalupurbank.com](mailto:info@kalupurbank.com)
- (3) The General Manager,  
The United Co. Op. Bank Ltd.  
5 to 7, Manibhadra Avenue, Nr. S M Bridge Corner,  
Shyamamal Cross Road, Vejapur,  
Ahmedabad-380015  
Email: [ho@ucbl.co.in](mailto:ho@ucbl.co.in)
- (4) The General Manager,  
Bank of Baroda, 3<sup>rd</sup> Floor, BOB Towers,  
Opp. Law Garden, Ellisbridge,  
Ahmedabad-380006  
Email: [zm.ngz@bankofbaroda.com](mailto:zm.ngz@bankofbaroda.com)

(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](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

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

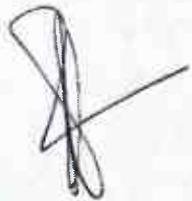
**1. Gist of Complaint**

1.1 Shri Jethanand L. Bhatia, M-55, a person with 50% Locomotor Disability (Left Lower Limb), filed a complaint dated 12.02.2021 regarding inaccessibility of the respective branches of the respondents' Bank/Offices and ATMs. The complainant furnished some photographs of the respondents' Banks and alleged that –

- (i) The ramp is not provided at all Banks (Branches/Offices and ATMs) and wherever ramps are provided, they are not constructed as per standard specifications (length and slope). Thus they are almost unusable by needy persons.
- (ii) The ramps are never aligned with road or footpath. For this reason, any persons with disability/senior citizen cannot access the ramp from road or footpath (imagine the wheelchair bound person wanting to enter the premises from road).
- (iii) The ramps are built without standard SS Railings endangering the person who needs support to walk on the ramp.
- (iv) The same position is with steps/stairs which don't have anti-skid surface and standard SS Railings at majority of places.
- (v) The premises don't have anti-skid surface at most of the places. Instead glossy tiles are used on surface.
- (vi) The reserved parking is never provided at almost all premises.
- (vii) No proper signage boards are installed.

1.2 The complainant prayed for the following reliefs –

- (i) The Banks must engage the Architect of Repute familiar with the needs of special persons and standardize the specifications for building Ramps and stairs / steps for hassle free access into Bank premises and ATMs. Not only this, it has to monitor the new premises being built and improve upon the old premises having faulty designs.
- (ii) All premises must undergo accessibility audit by experts.
- (iii) The ramp and stairs to be constructed as per Harmonized Guidelines and Space Standards for Barrier Free built environment for Persons with Disability and Elderly Persons February, 2016 published by Ministry of Urban Development. Government of India – New Delhi ([www.cpwd.gov.in](http://www.cpwd.gov.in))



**2. Submission made by the Respondent No.1**

2.1 No response has been received from Respondent No.1 – SBI Ahmedabad so far despite final reminder and lapse of statutory time.

**3. Submission made by the Respondent No.2**

Respondent (No.2), The Kalapur Commercial Co-op Bank Ltd., Ahmedabad filed their reply dated 03.04.2021 vide email dated 16.04.2021, and submitted that on receipt of the complaint, the matter of non-availability of Ramp at their Patrakar Colony Branch was taken up on priority for easy accessibility of Divyangjan. The work was assigned to contractor and as on date the ramp is available for use by the public. A photograph of the ramp was also furnished by the respondent. The respondent also expressed their apology for the inconvenience caused to the complainant.

**4. Submission made by the Respondent No.3**

4.1 Respondent (No.3), The United Co-operative Bank Ltd., Ahmedabad filed their reply dated 13.04.2021 and submitted that they had taken steps in this regard and the work had been assigned to contractors for the same; it would be completed in a week as suggested in the notice to file comment.

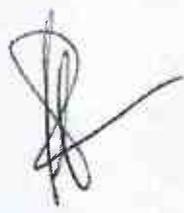
**5. Submission made by the Respondent No.4**

5.1 Respondent No.4, Bank of Baroda, Ahmedabad in their reply dated 17.04.2021 furnished a few photographs and submitted that the ATM situated at their Banks’s Relief Road Branch had been provided ramp with standard specification with slope in specified range.

**6. Submission made in the Rejoinder**

6.1 In the rejoinder dated 29.06.2021, the complainant submitted that the ramp constructed at the entrance of the United Co.op. Bank appears to be in order. Such a facility is created only after intervention of CCPD Office. The ramp was to be constructed when the branch had begun the operations. The Managers of the Bank have no sensitivity towards the persons with disabilities and senior citizens.

6.2 The Banks may be advised to conduct access audit of all their branches and offices for providing ramps wherever is not provided and improve the ramp which is not as per specifications.



## 7. Observations/Recommendations:

7.1 To achieve accessibility at the Built Environment; Transportation and Information; and Communication Eco-System etc., the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, Government of India has launched a nationwide campaign under 'Accessible India Campaign' – 'Sugamya Bharat Abhiyan' for the persons with disabilities and reduced mobility.

7.2 Respondents are advised to make the Banks/ATMs/Office premises accessible and barrier free/disabled friendly in terms of the provisions made under Sections 40 to Section 46 of the RPWD Act, 2016 read with the Rules 15 and 16 of the Rights of Persons with Disabilities Rules, 2017.

7.3 Accordingly the case is disposed off.

**Dated: 22.07.2021**

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



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12611/1022/2021

Complainant: Shri Rakesh Surya  
24/FF, VFJ Estate,  
Near Kala Mandir, Sector-1  
Jabalpur-482009

R-28073

Mobile No: 09425324927  
E-mail: [suryarakesh25@gmail.com](mailto:suryarakesh25@gmail.com)

Respondent: The Secretary  
Ordnance Factory Board (OFB)  
Ayudh Bhawan,  
10-A, S.K. Bose Road,  
Kolkata-700001 India

R-28074

Contact No: 0091-33-22430472-0476, 0091-33-22485077-5080  
E-mail: [sec.ofb@nic.in](mailto:sec.ofb@nic.in)

### GIST OF COMPLAINT

The complainant Shri Rakesh Surya, vide complaint dated 13.02.2021 by Email submitted that he is suffering from 60% severe Locomotor Disability with seizure disorder after an attack of Viral Encephalitis and now belongs to Permanent Physically Disabled category. The complainant can walk with great difficulty and most of the time with support and also have problems of seizure attacks when the complainant needs immediate Medical attention. The complainant submitted that he is currently serving as IOFS officer of SAG Grade.

The Complainant further submitted that according to the DoPT OM under ref (2), provides for certain preference in transfer / posting/deployment of candidates belonging to Persons with Disabilities category and also exemption from the rotational transfer polity/transfer, to allow to continue in the same job and also preference in place of posting at the time of transfer / promotion. The OM also provides for considering choice of place of posting in case of persons with disabilities. The complainant submitted that in Jabalpur at least 20 posts are available of his level, in 04 ordnance Factories and 01 Training Institute. The complainant further submitted that his wife is also posted as Tehsildar at Ranjhi, in Madhya Pradesh Civil Service, in Jabalpur. He had also requested earnestly and appealed to OFB to Civil Service, to consider the provision of posting of husband and wife at the same station as per DoPT OM under ref(3).

The complainant submitted that due to the Covid pandemic time and besides being from PwD category, he also has comorbidities like hypertension and hyperglycemia (dangerously high blood sugar) for which he is dependent on Insulin and the fact that he had suffered from Viral Encephalitis.

Therefore, the complainant submits his request to kindly consider posting him to a place in Jabalpur only, so that he can seek immediate medical help, as rushing to Jabalpur from Katni in case of seizures may prove fatal.

*Usha Srivastava*

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2. The matter was taken up with the Respondent vide letter dated 22.02.2021 under section 75 of the RPwD Act 2016.

3. In response, Dy. Director/G Shri Shreya Bhardwaj, Director General, Ordnance Factories, vide their letter dated 29.3.2021 Inter-alia submitted that Shri Rakesh Surya, AGM requesting to cancel his transfer order to Ordnance Factory Katni and to post him to any unit at Jabalpur.

4. The respondent submitted the following points for consideration:

i) The complainant (Officer) has been posted in VFJ for the last 16 years and was promoted to the SAG grade on 14.07.2020. The officer was posted to RCSCR at Nagpur (Maharashtra) vide OFB Order No: 381/4856/Per/G dated 13.08.2020. The respondent submitted to mention that the transfer order of Shri Rakesh Surya to RCSCR was subsequently cancelled considering his representation. The respondent submitted that a fresh transfer order, posting the officer to Ordnance Factory, Katni (Madhya Pradesh) had been published vide OFB order no: 381/4910/PER/G dated 08.02.2021.

ii) The respondent submitted that DOPT O.M. No. 36035/3/2013-Estt(res) dated 31.03.2014 stated that "As far as possible, the Persons with Disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, they submitted that preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints. Further they submitted that officer has already been posted at VFJ for the past 16 years. As per the OFB policy transfer policy at point no. 17 states "No officer should be posted at the same station for more than 12 years in entire service career".

iii) The respondent further submitted that the complainant has been recently posted at OFKAT which is also in Madhya Pradesh. As far as posting of husband and wife at same station as per DOPT rules is concerned, the officer's wife is working with Madhya Pradesh State government with service liability for transfer to anywhere within the state of Madhya Pradesh.

iv) The postings in Ordnance Factories are decided based on the functional requirements, production targets, etc and not just with reference to vacancies calculated on the basis of old sanctioned strength. The position of workload as decided by annual production targets is an important factor in allocation of human resource. The respondent further submitted that the applicant has been posted to a station where his services can be gainfully utilized with due consideration for his differently abled status. The applicant has more than 10 years of service left and it would be extremely difficult to keep him in the same station only.

5. The respondent in view of the above facts submitted that the claims of the officer lack any merit. The action of OFB so far has been considerate and sympathetic towards the applicant.

6. The complainant filed his rejoinder dated 27.04.2021 to the reply filed by the respondent and submitted that the respondent (OFB) has also neither notified "Equal Opportunity Policy"

U. S. Srivastava

after due registration of the same with Hon'ble Chief Commissioner nor has annexed the same policy along with comments against clear directives. The complainant submitted that the OFB has no idea about any Grievance Redressal Officer in any units of OFB, nor is it available on OFB.

The OFB has mainly relied on the fact that the undersigned has been posted at Jabalpur for 16 years completely ignoring the fact that the respondent became Physically Disabled only 5 years ago and thus the need of his request.

7. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.07.2021. The following were present:

- i) Adv. Swapnil Ganguli - Complainant
- ii) Nivedita, Director OFB; Shreya Wadhwa, Dy. Director - Respondent

8. **Observations & Recommendations :**

- a) Complainant submits that he was posted in Jabalpur. Thereafter, transferred from Jabalpur to Nagpur. After the transfer, he requested the respondent to retain him at Jabalpur. Thereafter, his transfer to Nagpur was cancelled and he was transferred to Katni. He is wheel chair bound. Complainant is completely dependent on his wife, who is also posted in Jabalpur. He has sought relief from this court to be retained in Jabalpur station as there are vacancies available in Jabalpur station.
- b) Respondent submits that complainant is posted in Jabalpur since last 16 years. On 14.07.2020 he was promoted to SAG Grade and was transferred to Nagpur. On the complainant's request his transfer was cancelled and fresh transfer orders were issued and he was transferred to Katni. As per transfer policy on the respondent, no officer can be posted at same station for more than 12 years in entire service career. Posting of officers is done on the basis of operational requirement. Submission of Complainant that vacancies are present is entirely based on mis calculation by the Complainant.
- c) The issue which arise for consideration in this Complaint is whether transfer of the Complainant to Katni violates rights of Divyang employee guaranteed under Rights of Persons with Disabilities Act, 2016.
- d) Complainant has challenged the transfer order on the ground that he is wheel chair bound and is completely dependent on his wife. Fact of disability of the Complainant is undisputed.
- e) Law applicable in factual matrix of the Complaint is Section 20(2) of Rights of Persons with Disabilities Act, 2016. Provision makes it mandatory for every government establishment to provide Reasonable Accommodation, barrier free and conducive environment to Divyang employee. Reasonable Accommodation as defined in Section 2(y) of RPwD Act, 2016 means necessary changes and modifications to ensure that Persons with Disabilities can enjoy rights equally with others. Further, DoPT O.M. No. 36035/3/2013 - Estt. (Res) dated 31.03.2014 lays down that Divyang employees may be exempted from routine transfer and may be retained in same job where their services could be optimally utilised.

Upma Srivastava

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- f) Objectives of all the laws and guidelines are to utilise the services of Divyangjan as effectively as possible. Disability presents natural barriers in day-to-day functioning of Divyangjan, however, it does not make him completely ineffectual. Hence, legislature has incorporated concept of Reasonable Accommodation in RPwD Act, 2016 in order to utilise the skills of Divyangjan. In absence of these laws, Divyangjan would face double challenge of facing natural barriers related to disability and difficulties which arise due to nature of job and associated challenges like transfer.
- g) Further, in order to counter the contention of the Respondent that transfer policy of the establishment mandates transfer of an employee after 12 years of posting, Complainant submitted a list containing names of the employees who were posted in the same location for more than 12 years. Hence, this is enough proof that the Respondent establishment does not adhere to transfer policy in the strictest sense of the term.
- h) Respondent shall consider the present Complaint with empathy and shall implement Section 20(2) read with Section 2(y) of RPwD Act, 2016 and DoPT O.M. in letter and spirit. The condition of the complainant requires reasonable accommodation and should be given.
- i) This court recommends that the Respondent shall retain the Complainant in anyone of the three factories situated in Jabalpur.
9. This case is disposed off.

Dated: 22.07.2021

(Upma Srivastava)  
  
Commissioner for  
Persons with Disabilities



Extra

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12662/1011/2021

#### Complainant:

Ms. Shweta Awasthi,  
RZ-23 A, Ground Floor,  
Main Sagarpur,  
Near Jain Mandir,  
Delhi - 110046

- R28 B7

Versus

#### Respondent :

General Insurance Corporation of India,  
(Through the Chairman cum Managing Director),  
"Suraksha", 170, Jamshedji Tata Road,  
Churchgate,  
Mumbai - 400 020.

- R28 B8

**Disability** : 90% visual impairment.

#### Gist of Complaint:

Ms. Shweta Awasthi, a person with 90% visual impairment vide her complaint dated 18.03.2021 submitted that the General Insurance Corporation of India in one of its advertisements for recruitment of Scale I Officers, out of total of 2 vacancies reserved for persons with benchmark disabilities it failed to mention under which four categories these seats are vacant. She also referred to the Office Memorandum F. No. 34-02/2015-DD-III dated 29.08.2018 of Deptt. of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment where it is mentioned that ".....in case of other category of person with benchmark disabilities, the provision of scribe/reader/lab assistant can be allowed on production of a certificate to the effect that the person concerned has

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physical limitation to write and scribe is essential to write examination on his behalf from the Chief Medical Officer/ Civil Surgeon / Medical Superintendent of a government health care institution as per proforma at appendix I". She submitted that in all the exams conducted by IBPS this clause is not being followed while National Testing Agency and UGC follows this clause scrupulously. On selecting disability as Hearing Disability the clause for scribe doesn't closes in an online examination form. For example she said, an hearing impaired candidate having also physical limitation to write and having certificate to that effect as in appendix (I) cannot avail services of scribe which is against the said guidelines.

2. The matter has been taken up with the CMD, General Insurance Corporation of India vide letter dated 23.03.2021.

3. No comments have been received from the Respondent.

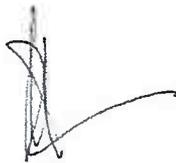
4. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 07.07.2021.

5. The following persons were present during the hearing ;

1. Ms. Shweta Awasthi, complainant in person
2. Shri N.B. Sonawane, Dy. General Manager & Grievance Redressal Officer, on behalf of Respondent.

#### **OBSERVATIONS & RECOMMENDATION**

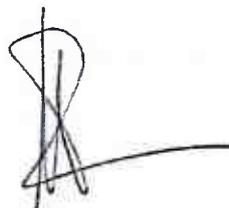
6. Plethora of Complaints are filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.



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
  - 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

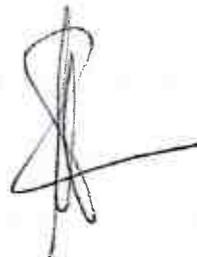
10. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 38.16./2020-DD.III dated 04.01.2021 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

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

11. Addition of any post from this list –

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

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



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

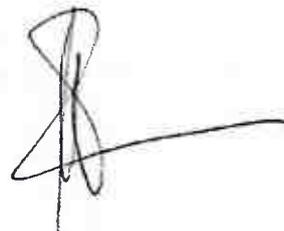
(c) Point 4 of the notification dated 04.01.2021 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.

#### **RESERVATION FOR PERSONS WITH DISABILITIES**

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

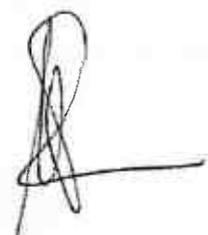


posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

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 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.

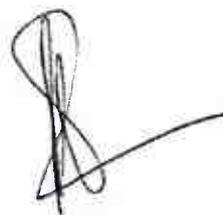


Method is same for recruitment to group A, B and C posts. (DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018)

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.

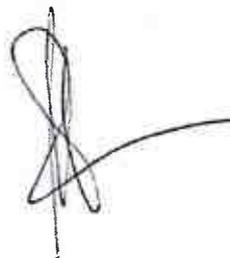
19. It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.

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**

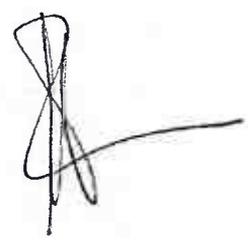
22. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.

**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.

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.



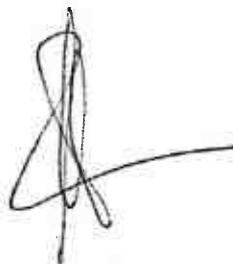
26. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.

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.



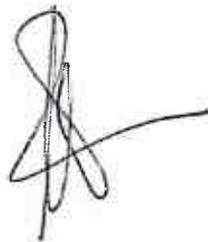
### SELECTION ON MERITS

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 entitled for the reserved vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability

31. 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.**”

32. 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.



33. Therefore, this court recommends the Respondent to indicate clearly in forthcoming advertisements (if any) whether the posts advertised are suitable for PwBDs 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.

34. The case is disposed off accordingly.

Dated : 23.07.2021.

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



सत्यमेव जयते

Extm

56

## 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. 12581/1011/2021

In the matter of

**Complainant:**

Shri Saahil Vats,  
Vill : Jorarpur,  
P.O. : Pachauri,  
P.S. : Deepnagar,  
Nalanda,  
Bihar – 803101.

-R28135

Versus

**Respondent :**

State Bank of India,  
(Through the General Manager),  
Central Recruitment and Promotion Department,  
Corporate Centre,  
Atlanta Building,  
3<sup>rd</sup> Floor,  
Nariman Point,  
Mumbai – 400 021.

-R28136

**Disability** : 100% visual impairment.

**Gist of Complaint:**

Shri Saahil Vats, the complainant, a person with 100% visual impairment vide his complaint dated 29/01/2021 submitted that he had applied for the post of Clerk in State Bank of India under EWS Visually Impaired category. He secured 72.50 marks in the preliminary examination which was more than secured by UR (69.25), EWS (67.50) and VI (58.75) candidates. He appeared in the main examination on 31.10.2020 in which he received less marks than other candidates under VI (96.25) and UR (91.0) categories. However he secured more marks, i.e. 90.25 than candidates

1 | Page



under EWS (82.25) category, but still he was not selected for the post of Clerk in SBI, Uttarakhand.

2. The matter was taken up with the General Manager, State Bank of India vide letter dated 02.02.2021.

3. The General Manager (CRPD), SBI vide letter no. CRPD/CR/2020-21/727 dated 22.02.2021 submitted that appropriate number of vacancies are kept reserved by the Bank for persons with disabilities as per the provisions of the Rights of Persons with Disabilities Act, 2016. Additionally, the Bank extends undernoted relaxation to the persons with disabilities in the recruitment of Junior Associates in clerical grade:

- a. Relaxation of 10 years in upper age limit.
- b. Relaxation of 5% in minimum qualifying marks in the Main Exam.
- c. Waiver of application fee.
- d. Compensatory time of 20 minutes for every one hour of test.
- e. Facility of using scribe to the candidates as per Government of India Guidelines.

The Respondent submitted that Shri Saahil Vats has applied for the post of Junior Associates under EWS and PWD-VI category for the State of Uttarakhand. There were 250 vacancies for the State of Uttarakhand and 10 vacancies were reserved for PwD as detailed below:

Locomotor Disability -3, Visually Impaired-2, Hearing Impaired-3 and D&E categories-2.

The final results for recruitment of Junior Associates has been processed by considering the own merit in the exam, i.e. if a PwD candidate has not availed any relaxation in the examination, he/she is also considered for selection on own merit in General Category/Parent Category. Since Shri Saahil Vats has availed relaxations in the examination, he has been considered under PwD – VI category. Further, there were two vacancies reserved for Visually Impaired (VI) category for the State of Uttarakhand and two VI candidates have been selected for the State of Uttarakhand. The cut off marks for VI category for Uttarakhand was 96.25 marks and marks secured by Shri Saahil Vats was 90.25. Therefore, he could not be selected for the post of Junior Associates.

4. **Hearing** : The case was fixed for hearing through video conferencing by the Commissioner for Persons with Disabilities on 20.04.2021. The said hearing has been postponed in view of lockdown due to COVID-19 pandemic. Finally the online hearing in the case was fixed for 01.07.2021.

5. The following persons were present during the hearing on 01.07.2021 :

- 1) Shri Saahil Vats, the complainant was not able to log in due to some technical problem. Tried to speak to him over phone but could not talk to the complainant.
- 2) Shri Saurabh Srivastav, General Manager for Respondent.

#### **Observations and Recommendations:**

6. After hearing the Complainant and the Respondent the Court observed that selection of candidates have been made on merit and two visually impaired candidates were selected as they have performed better in the

examination. Therefore, the Court found no violation or discrimination to the complainant on account of disability.

7. The case is disposed of accordingly.

Dated : 27.07.2021

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



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12660/1023/2021

Complainant: Smt. Radha Rani  
E-mail: <b2a2ni@gmail.com>

- R28131

Respondent: The General Manager  
Bank of India, Star House 1, Plot C5  
G-Block, 2<sup>nd</sup> Floor, West Wing, Bandra-Kurla  
Complex, Bandra (East), Mumbai – 400051  
e-mail: <cgro.boi@bankofindia.co.in>

- R28132

Complainant: Shri Bani Bhushan Pandey, 40% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **12.03.2021** submitted that her husband joined Bank of India as a Clerk in 1984 and in 2009 he was Head Cashier but due to brain haemorrhage & left side paralysis her husband became disabled, thereafter, Bank demoted him as a General clerk in 2009. She further submitted that her husband succeeded in promotion examination test from Clerk to Officer-JMG-1 in April 2015 but Bank transferred him 50 km far from residence. She has sought relief as under:

- Pay him from February 2009 the pay of Head Cashier post which he was holding before disability
- Reinstatement his promotion as GBO Scale – 1 with retrospective effect and consequential benefits i.e. 01.04.2015 accordingly promotion to GBO Scale – 2 which was due from 01.04.2019 as officer Scale – 2 etc.

2. The matter was taken up with the Respondent vide letter dated **16.03.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **19.04.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **12.07.2021**.

....2....

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

- Complainant - absent
- Kartik, Sr. Manager, HQ; Rajesh Kumar, Deputy Zonal Manager on behalf of respondent

**3. Observations & Recommendations**

4. Complainant submits that her husband who is Divyang, joined as clerk in 1984 and acquired disability in 2009. At the time of acquiring disability, he was posted as head cashier in Sarthua branch, 70 KMs away from Patna, his native place. After acquiring disability, he was transferred to Patna on request, however, he was demoted to post of general clerk, depriving him of pay of head cashier. Then the Complainant passed promotion exam and was promoted to GBO Scale 1 officer in April 2015. Thereafter, he was transferred to Maner, 50 KMs away from Patna which causes hardship in commutation. 'Undelivered fund' (details not given) not given despite of Banking Ombudsman Orders. Was also dragged to jail on 26.08.2016, but not been charge-sheeted yet.

5. Respondent submits that the Complainant's husband has superannuated in February 2021, all his superannuation benefits have been settled. He was not demoted from the post after acquiring disability in year 2009. He himself requested for reversion and hence his demand was acceded to. To support the contention, Respondent submitted copy of hand written letter of the Divyang employee whereby, employee has requested the Respondent to revert his post from officer to clerk. On the point of 'undelivered funds', Respondent submits that his application is under process and the issue will be resolved in accordance with the rules and procedure of the Respondent establishment.

6. This court recommends that the Respondent shall settle the issue of 'undelivered funds' as soon as possible. He may also be transferred to Patna in his native place.

7. Case is disposed off.

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

Dated: 27.07.2021



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

Extra

62)

Case No: 12612/1024/2021

Complainant: Shri Ravi Kumar Sharma, Dilajaak Colony - R28133  
H.No. 305, Aarya Nagar, in front of Police Line  
Shahjahanpur - 242001 (U.P.)

Respondent: The General Manager  
Ministry of Defence, Ordnance Clothing Factory  
Shahjahanpur, Uttar Pradesh - 242001 - R28134  
E-mail: <ocfs.ofb@nic.in>

Complainant: 50% locomotor disability

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 15.02.2021 में कहना है कि उनके पिता आर्डनेन्स क्लोदिंग फ़ैक्ट्री, शाहजहाँपुर से दिनांक 31.05.1986 को फोरमैन के पद से रिटायर हुए थे तथा पिता के रिटायर होने के उपरांत प्रार्थी वर्ष 1990 में दुर्घटना से दिव्यांग हो गए। प्रार्थी का आगे कहना है कि दिनांक 27.10.1994 को पिता के देहांत उपरान्त उनकी माताजी को पेंशन मिल रही थी लेकिन दिनांक 22.01.2007 को माताजी के देहांत उपरान्त पेंशन बंद हो गई। प्रार्थी का आगे कहना है कि उन्होंने पारिवारिक पेंशन हेतु आवेदन पत्र प्रतिवादी को दिया जिसके उत्तर में प्रार्थी को निर्देश दिया गया कि नवीतम विकलांगता प्रमाण-पत्र प्रस्तुत करें चूंकि विकलांगता प्रमाण पत्र काफी पुराना है प्रार्थी ने आरोप लगाया है कि जब नवीनतम विकलांगता प्रमाण पत्र दिया तो प्रतिवादी ने अपने दिनांक 03.02.2021 पत्र द्वारा सूचित किया कि विकलांगता प्रमाण पत्र माता की मृत्यु के बाद का होने के कारण पारिवारिक पेंशन के मामले में कोई कार्यवाही सम्भव नहीं है।

2. The matter was taken up with the Respondent vide letter dated 22.02.2021 under Section 75 of the RPwD Act, 2016.

3. कार्यप्रबंधक, आयुध वस्त्र निर्माणी, शाहजहाँपुर का अपने पत्र दिनांक 17.03.2021 में कहना है कि श्री रवि कुमार शर्मा द्वारा दिये गये पारिवारिक पेंशन हेतु आवेदन के साथ विकलांगता प्रमाण पत्र दिनांक 28.02.2011 का संलग्न था जोकि उनके माता पिता की मृत्यु के उपरान्त का बना था तथा उसमें यह अंकित नहीं था कि प्रार्थी की विकलांगता उनकी माता की मृत्यु दिनांक 22.01.2007 से पहले की है जिसके कारण उनको नया प्रमाण पत्र जारी करने हेतु सूचित किया गया । प्रतिवादी का आगे कहना है कि पीसीडीए, इलाहाबाद के आब्जेकशन के आधार पर श्री रवि कुमार शर्मा को निर्माणी के पत्र दिनांक 03.02.2021 द्वारा सूचित किया गया कि उनका विकलांगता प्रमाण पत्र माता पिता की मृत्यु के उपरान्त जारी किया गया है अतः पारिवारिक पेंशन केस के संबंध में अग्रिम कार्यवाही करना सम्भव नहीं है।

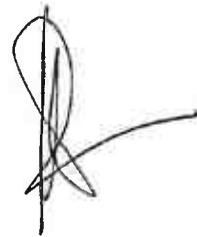
4. After considering the respondent's reply dated 19.02.2021 and the complainant's rejoinder 31.03.2021, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 07.07.2021.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 07.07.2021. The following were present:

- Complainant – absent
- Shri Ashutosh Shukla, Jr. Works Manager on behalf of respondent

**Observation/Recommendations:**

5. Complainant submits that father of the Complainant retired on 31.05.1986 from the post of foreman. Complainant met an accident and became disabled in 1990. Father of the Complainant died on 27.10.1994 Mother died on 2007. Complainant applied for Family Pension on 24.12.2014. Disability Certificate dated 01.11.1990 was submitted. Since Complainant lost the original copy of the Disability Certificate hence duplicate copy certified by the Hospital which issued the Certificate, was submitted. When application for Family Pension was rejected, Complainant submitted Disability Certificate dated 26.10.2017. This certificate declares him as 'unable to earn livelihood'.



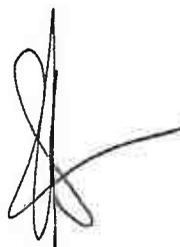
6. Respondent submits that the claim of the Respondent was rejected because Disability Certificate he submitted in original does not prove him disabled on the date of mother's death. His mother received pension after demise of his father.

7. Respondent put reliance on O.M. No. 1/18/2001-P&PW(E) dated 25.01.2016 laid down that even if divyang child obtains disability certificate after death of employee/pensioner or her/his spouse, benefits of family pension can be extended to the child on the basis of such certificate if a) the authority is satisfied that the child is unable to earn his livelihood and b) the child was suffering from the disability on the date of death of employee/pensioner or her/his spouse. The same O.M. reiterates the rule position established in O.M. 1/18/01-P&PW(E), dated 30.09.2014 that in case the child produces disability certificate of permanent disability, issued prior to the death of employee/pensioner or her/his spouse then the child need not to obtain disability certificate afresh. Hence, litmus test in such situation is that whether or not the child was suffering from disability on the date of death of the employee/pensioner or her/his spouse.

8. However, in the present set of facts, Complainant could not produce disability certificate in original, certifying him disabled on the date of death of his father or mother. During online hearing Respondent informed this court that no such certificate was produced by the Complainant either in original or in duplicate.

9. It is duty of the Complainant to submit all the documents including disability certificate along with the application, which can enable the Respondent to take decision on the application of the Complainant. Hence, Complainant is recommended to submit certified copy of Disability Certificate dated 01.11.1990.

10. Moreover, Disability certificate dated 26.10.2017 declares the Complainant as 'unable to earn livelihood'. Hence, this court recommends that the Respondent shall take



into consideration both certificates, dated 01.11.1990 and 26.10.2017 in order to decide the issue of family pension. Even if certified copy in duplicate is filed by the Complainant; Respondent shall take into consideration the certified copy the same. However, Respondent is at liberty to cross check and verify the authenticity of certified duplicate copy, if it is submitted by the Complainant.

11. Case is disposed off.

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

Dated: 28.07.2021



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: 12625/1022/2021

Complainant : Shri Anuj Rawat  
Regtl. No. 050040031  
B-15, Friends Enclave, Shah Nagar,  
Dehradun, Uttarakhand-248001

Mobile No : 09410150477  
E-mail : [anujsr81@gmail.com](mailto:anujsr81@gmail.com)

Respondent : The Directorate General  
ITB Police Force,  
Block-II, CGO Complex,  
Lodhi Road, New Delhi-110003

Mobile No : 011-24369482, 24369483  
E-mail : [rectsupport@itbp.gov.in](mailto:rectsupport@itbp.gov.in)

### GIST of Complaint:

The complainant Anuj Rawat, F/O Master Unmukt Rawat 6 years old is suffering from "Autism Spectrum Disorder" with 70% Disability. The complainant working in Indo-Tibetan Border Police Force (in short ITBP) as Subedar Major (General Duty) (in short SM/GD), and presently under transfer to 48 Bn ITBP at Katihar (Bihar). He further submitted that recently, he was posted at 23 Bn ITBP at Dehradun with attachment to JAG Branch (Legal Cell) of HQ (Northern) Ftr. ITBP at Seemadwar, Dehradun. The Complainant also mentioned that his wife is also a working women in Veterinary Dept. of Uttarakhand and presently posted at Dehradun. The complainant has filed a complaint dated 24.02.2021 under the RPwD Act, 2016 regarding his posting/transfer at home town Dehradun on extreme Compassionate / medical grounds for taking care of his disabled son.

2. The matter was taken up with the Respondent vide letter dated 5.3.2021 under Section 75 of the RPwD Act, 2016.

3 In response, Inspector General (Estt). Directorate General, ITB Police, MHA/Govt. of India vide letter dated 30.03.2021, submitted that the complaint has been examined Dte. General, and found that the allegation levelled by the individual are baseless, therefore his complaint is liable to be rejected in view of the details of the case given as under:

i) The respondent submitted that Shri Anuj Rawat has been posted in Dehradun since 2014 and as per transfer policy he was transferred out from Dehradun to other location in 2018 but as per the request of petitioner and for taking care or his disabled child he retained in Dehradun on compassionate ground.

ii) For transfer in JEB 2020, petitioner had submitted an application with request to consider his transfer on extreme compassionate/medical grounds for taking care of his disabled child to following Unit/Foundation:

a) SHQ(Dehradun), b) HQ (N) Ftr, c) 50 Bn d) 19 Bn e) 8 Bn

iii) The respondent further submitted that petitioner had been considered and he was transferred to 19<sup>th</sup> Bn on compassionate ground in February 2020 but he did not report in 19<sup>th</sup> Bn.

iv) As per the seniority list of Insp (GD), petitioner has been approved for appointment to the rank of SM (GD) vide this Dte Gen. Order No. 1.19012/12/2019/Estt-17641-99 dated 24.8.2020 and in view of vacancy position of SM (GD) in the Force, he has been transferred to 48<sup>th</sup> Bn Katihar (Bihar) where tertiary level medical care facilities are available.

v) As per the transfer policy of the Force tenure in Soft Area (SA) is prescribed for 3 years whereas, complainant is posted in S.A since 2011 and remained posted in home zone since 2014.

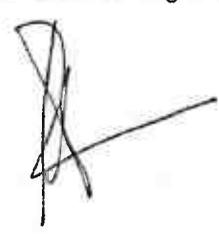
vi) Complainant had submitted a representation dated 14.12.2020 against his transfer to 48<sup>th</sup> Bn and requested to retain/post him at HQ(N) FTR Dehradun or SHQ(Dehradun) or 23 Bn Dehradun due to treatment & rehabilitation of his disabled son. His case considered at Dte. Gen. sympathetically, but rejected vide this Dte Gen Message No. 5363 dated 22.1.2021 being devoid of merit as complainant has already availed home zone posting since 2014 and optimum opportunity of 6 years as Home Zone posting for treatment of son as well as posting as couple case as per existing guidelines have already been extended to the Petitioner.

vii) The respondent submitted that presently 67 posts of SM (GD) are sanctioned in the Force and only 1 post of SM (GD) is sanctioned in the Unit. SM (GD) of the unit is confidential subordinate officer to the Commandant. He is responsible for keeping the commandant acquainted with any occurrence which may be to the prejudice of good order and discipline, or which may endanger the general feeling or good name of the force. Due to the limited posts of SM (GD) in the Force it is not feasible to retain the Petitioner at present location for a long time.

viii) The respondent submitted that the MHA OM dated 7<sup>th</sup> April 2017 and 19<sup>th</sup> March 2018, Complainant has already been exempted from the routine exercise of transfer in the year 2018.

4. The complainant in their rejoinder dated 05.04.2021 submitted that Estt. Gen. seems to be superficial and not covered with the true aspects & genuine grievance of his case and as such, the answer to the said reply is being given in following terms:-

i) The complainant stated that he was posted in Dehradun since October 2014 by the Dept. on the grounds of 'couple case' since his wife is also a Govt. Employee in Uttarakhand Govt. When he was transferred to Dehradun, his younger son was not born. He came in this world in the year 2015 and they came to know about his disease 'autism spectrum disorder' only after about 2 years of his birth and started his treatment thereafter. Besides taking treatment from Doctors, he is also taking services of a Special Educator for his training, on occupational therapist for motor skills and sensory needs of his son and also taking services of Special School, which takes lots of efforts, money and time.



ii) The complainant further stated that as regards to his transfer in JEB-2020 to 19<sup>th</sup> Bn ITBP, Sarhan (Himachal Pradesh) is concerned, it is intimated that due to COVID-19 pandemic and prevailing lockdown situations in the year 2020, before the Department could relieve him for 19<sup>th</sup> Bn, he has been transferred out to 48<sup>th</sup> Bn Katihar on promotion/appointment to SM rank.

iii) The complainant further submitted that Dept. at Katihar tertiary level medical care facilities are available is concerned; it is submitted that treatment of 'autism Spectrum Disorder' is still in a nascent stage in our country and only few big/developed cities have some facilities for its treatment & training programmes and as such, tertiary level medical facilities like such interior location of Bn. At Katihar may not help his son to get recovered from his problems. Besides above, it is also intimated that his wife is a working women in Uttarakhand Govt. and as such, it is not possible for him to keep his family outside Dehradun (Uttarakhand) with him.

iv) The complainant submitted that he was posted in soft area in the year 2011-2013 only after serving for more than 6 years in Hard & Extreme Hard Areas in H.P & North-East since 2005-2011. He was then posted to hard area 23 Bn ITBP since 2014. As per present transfer policy of ITBP issued vide standing order no: 02/2020 home zone posting has been considered as soft posting.

v) The complainant has already been relieved from 23 Bn ITBP on dated 21.01.2021 to 48<sup>th</sup> Bn Katihar (Bihar) and he is presently posted here in Katihar in compliance of the orders of Dte. Genl. ITBP.

The complainant most humbly requested to consider his request/grievance sympathetically and favour his posting at home town Dehradun in any locations i.e. Hqrs. Northern Ftr. Or Sector HQR. Or 23 Bn ITBP for few more years in order to take proper care, treatment & rehabilitation of his differently abled son for the sake of his future.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.07.2021. The following were present:

- i) Shri Anuj Rawat - Complainant
- ii) Shri Som Prakash, Assistant Commandant – Respondent

6. **Observations & Recommendations:**

i) Complainant submits that he was posted in Dehradun; thereafter he was transferred to Katihar Bihar. His son is affected by Autism (disability percentage – 70%) Complainant submits that His son's rehabilitation training is going in Dehradun. His transfer to Bihar will hamper his son's rehabilitation process.

ii) Respondent submits that the Complainant has been posted in Dehradun since 2014. As per transfer policy his transfer was due in 2018 but he was retained in Dehradun on his request. Initially in 2020 he was transferred to 19<sup>th</sup> Bn (situated in Himachal Pradesh) on compassionate ground. But he failed to join his duties in 19<sup>th</sup> Bn. Thereafter, on 24.08.2020 he was transferred to Katihar Bihar. As per transfer policy no one can be posted in staff area for more than 3 years. Dehradun is categorized as staff area and the complainant is posted there since 2011. His representation was rejected because in 2014 he was posted in home zone which is Dehradun and no one can be posted in home zone for more than 6 years. Moreover, there is only one post of Subedar Major which is vacant in Dehradun and therefore, his retention in Dehradun is not feasible.

iii) This court is compelled to strike balance between administrative exigencies in retaining the Complainant in Dehradun and interests of Divyang son of the Complainant. Since, there is no vacant post of Subedar Major in Dehradun hence; it is not feasible to retain the Complainant in Dehradun. However, it is also unjust to post him 1000 of K.Ms. away from Dehradun, where rehabilitation process of Divyang child is going on.

iv) Attention of the Respondent is attracted towards principle of Reasonable Accommodation. This principle is enumerated in Rights of Persons with Disabilities Act, 2016. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality.

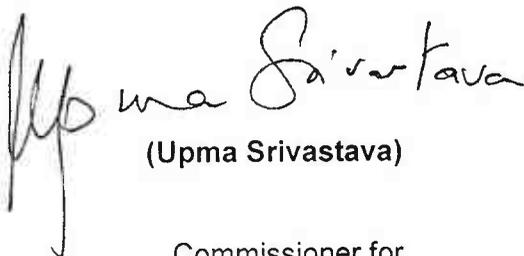
v) Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality; it is component of duty not to discriminate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

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment".

vi) Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modifications and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others.

vii) Hence, this court recommends that Respondent shall post the Complainant at any location in Uttarakhand, except Dehradun, so that he can remain close to his Divyang child and monitor his rehabilitation process. Retention of Complainant in Uttarakhand will also result in smooth rehabilitation of the Divyang child as he will not have to move outside Dehradun.

7. This case is disposed off.

  
(Upma Srivastava)

Commissioner for  
Persons with Disabilities

Dated: 28.07.2021



सत्यमेव जयते

Extra

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12623/1022/2021

Complainant : Shri Sanjay Kumar Gupta  
House No: 2800-B, Gali No. 207  
Vishram Nagar, Trinagar  
Delhi-110035  
Mobile No : 09810414585  
E-mail: [sanjay0028@yahoo.co.in](mailto:sanjay0028@yahoo.co.in)

-R28143

Respondent : Chairman-cum-Managing Director  
Engineering projects (India) Ltd.  
Core-3, SCOPE, Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110003  
E-mail : [epico@epi.gov.in](mailto:epico@epi.gov.in)  
[cmd@engineeringprojects.com](mailto:cmd@engineeringprojects.com)  
Contact No : 011-24361666  
Fax: 011-24363426

-R28144

### GIST OF COMPLAINT

The complainant Shri Sanjay Kumar Gupta, vide complaint dated 25.02.2021 submitted that his son aged about 10 years (Master Vivaan Gupta) is suffering from Down Syndrome with severe Intellectual disability with 90% Disability. The complainant further submitted that Disability certificate in respect of his son Master Vivaan Gupta issued by the Institute of Human Behaviour & Allied Sciences (IHBAS), Delhi. The complainant submitted that disability certificate is under process of renewal. Fresh assessment and examination of the complainant's disabled son by the Medical Board has been done and the renewed disability certificate will be issued by IHBAS, Delhi shortly.

The complainant submitted that his son is wholly dependent for his daily needs including toilet needs, eating food, bathing, wearing clothes etc. Some of the other problems associated with complainants Down Syndrome child include delay in speech and language development, delayed physical development, sleep disorder, low immunity attention problems, stubbornness etc. The complainant disabled son is accustomed to a set routine and particular environment and does not accept changes in his environment and surroundings. He needs frequent medical care and treatment of various behavioural issues whenever needed.

The complainant further submitted that mother of his disabled son have divorced in the year 2016 and complete legal custody of his disabled son is with the complainant. Complainant got remarried in November 2019 but his disabled son from first marriage is not much attached to his step-mother. Complainant's parents are very old (aged about 75 years) and are suffering from old age related problems.

The complainant is working as Additional General Manager (Finance) in Engineering Projects (India) Ltd, a Govt. of India Enterprises under the administrative of Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises. The complainant was posted at Northern Regional Office of the company at New Delhi. Complainant was transferred

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](mailto:ccpd@nic.in); Website: [www.ccdisabilities.nic.in](http://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)

from Northern Regional Office of the company situated at New Delhi to North East Regional Office situated at Guwahati under rotational transfer vide transfer order dated 27<sup>th</sup> October 2020.

The complainant submitted that Pursuant to his transfer, complainant made a representation dated 31<sup>st</sup> October, 2020 to Executive Direct, in –Charge HR Division, Corporate Office through his Reporting officer that his son is suffering from Down Syndrome which falls under the category of benchmark disability under section 2(r) of the Rights of Persons with Disabilities Act, 2016 and as per DOPT OM No: 42011/3/2014-Estt. (res) dated 8<sup>th</sup> October, 2018 is eligible for seeking exemption from routine exercise of transfer/rotational transfer being main care giver of person with disability covered under DOPT OM.

The complainant further submitted that his transfer out of his present station of posting i.e. Delhi would have a very adverse bearing on the systematic rehabilitation of his disabled son and requested to consider his transfer with Delhi taking humanitarian view.

The complaint further submitted that during posting at Guwahati, in spite of various requests made telephonically and through complainants personal visits to Corporate Office of the company, management took no action to provide relief to the complainant by transferring the complainant back to Delhi to take of his disabled child.

The complainant is under acute mental stress and is compelled to approach to the Hon'ble Chief Commissioner for Persons with Disabilities for getting relief under the provisions of RPwD Act 2016.

- i) Directing the company to transfer the complainant back to this hometown Delhi with immediate effect so as to enable him to take care of his disabled son.
- ii) Directing the company for not taking any disciplinary action against complainant for not joining duties at Guwahati after he was disallowed leave extension after 13<sup>th</sup> February 2021.
- iii) Directing the company to regularize the period of service complainant has to remain absent from Guwahati office under compulsion to attend to his disabled son till date he is transferred back to Delhi & period of leave should be treated as special leave/duty.
- iv) Directing the company to make suitable policies for ensuring compliance of the provisions of the Rights of Persons with Disabilities Act, 2016.

2. The matter was taken up with the Respondent vide letter dated 22.02.2021 under section 75 of the RPwD Act 2016.

3. In response, General Manager (HR), Pramod Kumar Sahoo, vide their letter no: DLI/HRM/PER/1733 dated 24.03.2021 Inter-alia submitted that the complainant during his service period with EPIL has not given any information to the management of EPIL that his son is suffering from Down syndrome with severe Intellectual disability (90%).

The respondent further submitted that during his service period with EPIL, the complainant has not given any information that his son is wholly dependent for his daily needs



...3...

including toilets needs, eating food, bathing, wearing clothes etc. Some of the other problems associated with complainant's Down syndrome Child include delay in speech and language development delayed physical development, sleep disorder, low immunity, attention problems, stubbornness etc.

The respondent further submitted that the complainant since his joining in EPIL, he has been working in Delhi for more than 18 years continually. He has been transferred to NERO, as per the requirement of his services by EPIL at NERO, Guwahati.

The respondent further submitted that after his transfer, he has submitted his representation to the ED (HR & Admin), requesting for exemption from his transfer to NERO but ED (HR & Admn) advised him to submit his representation to the appropriate Authority through his reporting officer not directly to the HR Division. After that the complainant has not represented his case. Further, in this regard the respondent submitted that Engineering Projects Ltd is a commercial organisation under the control of concerned Administrative Ministry.

Accordingly, the employees of EPIL are neither civilians nor Govt. Employees. Hence, DOPT guidelines are not applied in EPIL particularly relating recruitment / promotion / transfer / postings etc., instead DPEs guidelines along with the directives from its Board of Directors are applicable.

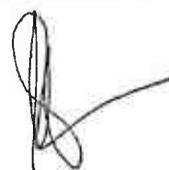
The respondent further submitted that EPIL Management has no information about the assurance given by the EPIL Management that he will be transferred back to Delhi within two weeks. No threat of disciplinary action has been given by any of the officer of the EPIL Management.

The respondent further submitted that EPIL Management has been providing the equal opportunity to all the employees in matters like Recruitment, Promotion, Employees training, Transfers / Postings etc. No discrepancy is being done in respect of employees under the category of disability in the company. In all the policies of the Company Equal Opportunity is being provided to all the employees without any discrimination against any employed persons with Disabilities.

Therefore, the respondent submitted that the request for transfer of Shri Sanjay Kumar Gupta will be considered as and when the vacancy of AGM (Finance) arises in our New Delhi Office/s.

4. The complainant in their rejoinder dated 12.04.2021 submitted the following facts:-

i) The contents of the reply of the company M/s Engineering Projects (India) Limited (EPIL) to para no.1 & 2 of the complaint dated 24.02.2021 are not true. Complainant is regularly submitting disability certificate of his son to the company every year for the last five years and on which basis Company is giving income tax deduction under section 80 DD of the Income Tax Act, 1961 (which section deals with deduction under Income Tax Act for support and maintenance of a differently abled dependent). Copies of TDS on Salary certificate in form no. 16 issued by the company giving deduction under section 80 DD since financial year 2016-17.



ii) The complaint has been confirmed by the company. Complainant joined the company at its Corporate Office situated at New Delhi in the year 2002. Subsequently complainant was transferred from Corporate Office to Northern Regional Office, other office of the company situated at New Delhi in the year 2016. Further complainant was transferred to North East Regional Office situated at Guwahati, in state of Assam (more than 1900 kms away from his native place, Delhi) vide order dated 27 October, 2020 on rotational transfer.

iii) Contents of the reply of the company to para no.6 of the complaint are not true. No response was received by the complainant from ED (HR & Admin) on the representation. If the ED (HR & Admin) was of the opinion that the representation should be made to some other authority, he should have referred/forwarded the representation to that appropriate authority. Hence, the question of making the representation again did not arise.

EPIL is a government company in which more than 99.98% of the paid-up share capital is directly held by the Central Government through the President of India. Instructions issued vide DoPT Office Memorandum F. No. 42011/3/2014-Estt.(Res) dated 08 October, 2018 for implementation of the one of the basic underlying intents of Rights of Persons with Disabilities Act, 2016 i.e. rehabilitation of person with disability, are equally applicable to EPIL.

iv) The complainant humbly prayed to this Hon'ble Court to grant following reliefs to the complainant by directing the respondent company:

a) To transfer the complainant back to Delhi, his native place, immediately so that the process of systematic rehabilitation of his son can continue and he can take care of his son giving kind consideration to age and disability of his son.

b) To not to take any disciplinary action against the complainant and regularize the period of service during which complainant is forced to remain on leave in order to take care of his severely disabled son by treating period of leave as special leave (i.e. for the period 03.02.2021 to till date he is transferred back to Delhi).

c) To not to stop payment of salary to the complainant under pretext of unauthorized absence and release of his salary along with arrears.

d) To sensitize officers of the company towards the cause of persons with disabilities.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.07.2021. The following were present:

- i) Shri Sanjay Kumar Gupta - Complainant
- ii) Smt. Seema Pandey, AGM (Legal) – Respondent

6. **Observations & Recommendations:**

i) Complainant submits that his 10 years old son is Divyang with Down Syndrome. Percentage of his disability is 90%. He is wholly dependent on the Complainant for daily basic needs like eating, bathing etc. Complainant was earlier posted in New Delhi, then transferred to Guwahati on 27 October 2020. He claims that because of the transfer, systematic rehabilitation of his son will get effected. He applied for leave on 3.02.2021 and thereafter applied for extension of leave. However, Respondent establishment did not sanction the leave and his

salary was withheld for this period. Complainant has prayed for his transfer to Delhi and to direct the company not to take disciplinary action for not joining duties in Guwahati.

ii) During the course of proceedings, Respondent transferred the Complainant to Delhi from Guwahati. However, his salary was still withheld. Hence, the issue which remains unresolved is that of Complainant's salary deducted during the time of his absence. Principle of Reasonable Accommodation is enumerated in Rights of Persons with Disabilities Act, 2016. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality.

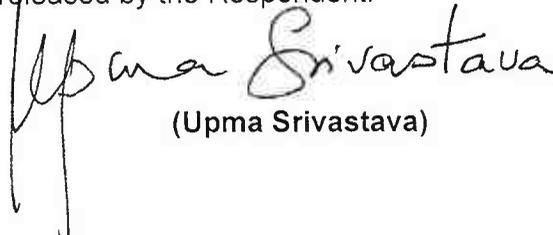
iii) Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality; it is component of duty not to discriminate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

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment".

iv) Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others.

v) Therefore, this court recommends that Respondent shall regularise leave of the Complainant by admissible leave. Further, salary of the Complainant for period during which he applied for leave and could not join duties in Guwahati shall be released by the Respondent.

7. This case is disposed off.

  
(Upma Srivastava)

Commissioner for  
Persons with Disabilities

Dated: 28.07.2021



सत्यमेव जयते

Extra

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12664/1022/2021

Complainant: Shri Janardan Dubey  
Retd. Section Officer, AFHO  
On behalf of Master Tripurari Dubey  
Q. No. 90, Type -III,  
Timarpur, delhi-54

Mobile No : 09711379157  
E-mail : [janardandubey1947@gmail.com](mailto:janardandubey1947@gmail.com)

Respondent: The DRDO  
Directorate of Personnel (DOP)  
DRDO Bhawan  
Rajaji Marg, New Delhi-110011  
E-mail : [dop\\_aa@hqr.drdo.in](mailto:dop_aa@hqr.drdo.in)  
[Dte\\_pers@hqr.drdo.in](mailto:Dte_pers@hqr.drdo.in)

#### GIST of Complaint:

The complainant Janardan Dubey, Retd. Section Officer, AFHQ, Care Giver of Master Tripurari Dubey filed a complaint dated 17.03.2021, regarding transfer the father of a nine year old grandson (Master Tripurari Dubey) with 50% Intellectual Disability.

The complainant submitted that the he is grandfather of a Master Retarded child who is merely 09 year old named Master Tripurari Dubey and his percentage of disability is more than 50%. He is already under treatment for epilepsy/seizures alongwith various abnormalities from various Govt. and Private Institutions. He is stated that Master Tripurari, what speaks, no one else be able to understand what is he speaking?

He further submitted that his son (Shri Sunil Kumar Dubey) who is father of a Mentally Retarded son Master Tripurari Dubey was posted in DTRL, DRDO, Delhi up to 13<sup>th</sup> of November 2020. Without providing any chance of hearing he alongwith number of colleagues, posted out from DTRL Delhi to DGRE Chandigarh due to some merger between the two laboratories of DRDO.

The complainant also submitted that father of Master Tripurari Dubey wrote a letter to Director DTRL for exemption from transfer narrating his all situations of having a Mentally Retarded Child with lot of other problem with supporting instruction/guidelines from DOPT vide OM No. 4201/3/2014-Estt. (Res) dated 6<sup>th</sup> June 2014 via official email including head quarter of DRDO but all in vain and nothing has been done fruitful.

The complainant further submitted that being a disciplined and obedient Govt. Employees he joined at DGRE Chandigarh in prescribed time. After joining him again requested for transfer back in Delhi based any office of DRDO, enclosing relevant Medical Certificate of Master Tripurari Dubey. But all attempts made by the Sunil Kumar Dubey father of Master Tripurari Dubey got failed as his application has not been even forwarded with proper procedure and kept in the Dustin with the consent of Director DGRE.

The complainant submitted that this family is facing a lot of hardship to look after the Mentally Retarded Child and Sunil's old age Mother who is on the bed for the last more than one and surviving with the help of Oxygen Concentrator and Bi-Pap Machine.

The complainant further submitted that Govt. Accommodation was allotted in the name of my son Shri Sunil Kumar Dubey after his retirement from Govt. Service with the condition that he will accommodate and look after us in this accommodation. Within a very short period the Dte of Estates may initiate eviction proceedings against this accommodation and they will be forced to be on street.

The complainant is requested to O/o CCPD may intervene this matter and issue directions to the DGRE Authority and DRDO Hqrs to call back his son Shri Sunil Kumar Dubey, sr. Translation Officer in Delhi at the earliest.

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

3. The respondent filed their reply dated 21<sup>st</sup> June 2021 and submitted that:-

i) Shri Sunil Kumar Dubey had applied for posting / transfer to any Delhi based DRDO Lab on compassionate ground. His application was not considered as he was the only employee posted in Rajbhasha Anubhag, DGRE, Chandigarh.

ii) DGRE, Chandigarh has now informed that the case of Shri SK Dubey, Sr. Trans. Officer for transfer to any Delhi based DRDO Lab on compassionate ground is being forwarded for consideration to DRDO Headquarters. They have also stated that Shri Rajiv Kumar das, Sc 'F' has already been appointed as Grievance Redressal Officer for PwDs at DGRE, Chandigarh.

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

- i) Shri Janardhan Dubey - Complainant
- ii) Shri M.K. Gairola, Sr. Admn. Officer-1 – Respondent

5. **Observations & Recommendations:**

i) Complaint is filed by grandfather of the divyang child, on behalf of employee who is son of the Complainant and father of the divyang child. The employee was posted in Delhi lab till 13.11.2020. Thereafter he was posted out to DGRE Chandigarh. Reason for the transfer was merger of DRDO labs. Complainant submits that there is LASTEC Lab in Delhi, which remained in Delhi even after merger of the labs. After the merger process, 100 employees were adjusted in LASTEC Lab, Delhi. Aggrieved employee applied for transfer to LASTEC Lab which was rejected. Reason for grievance of the Complainant is that employee's transfer out of Delhi will cause set back to rehabilitation of the Divyang child. Hence, he has sought relief to cancel the transfer to Chandigarh and adjustment in LASTEC Lab, Delhi. It is also submitted that the employee lives in government accommodation along with his Divyang son. If the employee is transferred out of Delhi, he will be under duty to surrender the government accommodation which would deprive the divyang child of basic necessity like home.

ii) Respondent submits that Complainant's adjustment in LASTEC, Delhi is not possible since he is the only employee posted in Rajbhasha department in Chandigarh office.

Chandigarh Lab has informed that despite of no other employee in Rajbhasha department his transfer application has been forwarded to DRDO Head Quarters.

iii) Further during online hearing Respondent submitted that DGRE of Respondent establishment has given recommendation in favour of the Complainant's transfer to Delhi Lab.

iv) This court expresses satisfaction with positive step taken by the Respondent establishment. Preamble of RPwD Act, 2016 lists certain principles for empowerment of persons with disabilities. Two such principles are -:

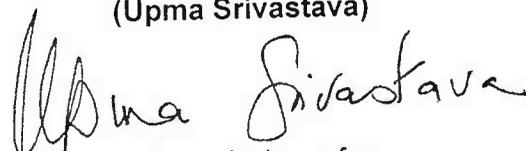
Respect for inherent dignity, individual autonomy and independence of divyangjan; and  
Full and effective participation and inclusion in society

v) In case of Divyang child with Intellectual Disability, rehabilitation process is indispensable to achieve these principles. Transfer of the employee out of Delhi will certainly hamper the rehabilitation process of the divyang child. Same is reflected in DoPT O.M. No. 42011/3/2014-Estt.(Res), dated 08.10.2018, which lays down that government employee, who serves as care giver of divyang child is exempted from routine/rotational transfer. Respondent's recommendation is in harmony with the DoPT O.M.

vi) This court recommends that Respondent shall retain the employee in Delhi office. Further this court recommends that till the employee is transferred back to Delhi, he shall be allowed to retain government accommodation already allotted to him.

6. This case is disposed off.

(Upma Srivastava)

  
Commissioner for  
Persons with Disabilities

Dated: 28.07.2021



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: 12685/1023/2021

Complainant: Shri Raj Kumar Wadhera  
E-mail: <vadera.raju@yahoo.com>

Respondent: The Managing Director & Chief Executive Officer  
Head Office, Canara Bank, Jeevan Prakash Building  
113-I, JC Road, Bengaluru, Karnataka – 560002  
E-mail: <rajakrishnan.r@canarabank.com>

Complainant: Congenital heart disease disability class 3a (40% - 59%)

#### GIST of the Complaint:

Complainant vide complaint dated 31.03.2021 submitted that he is working as a Manager in E-Syndicate Bank and recently his Bank has been merged with Canara Bank. He further submitted that in 2017, AIIMS had issued a disability certificate of 40%-59% to him (Congenital heart disease disability class 3a (40% - 59%)). He alleged that his department 'Syndicate Bank' did not incorporate this certificate in his HR profile for two years in spite of repeated requests to them.

2. The matter was taken up with the Respondent vide letter dated 07.04.2021 under Section 75 of the RPwD Act, 2016.

3. General Manager, Canara Bank vide letter dated 03.07.2021 inter-alia submitted that as per the certificate issued by AIIMS, Cardio-Neuro Centre, New Delhi - he is suffering from Atrio-Ventricular Septal Defect with severe pulmonary hypertension and said disability is not classified under Specified Disability categories in the RPwD Act, 2016.

4. Complainant vide rejoinder dated 08.07.2021 inter-alia submitted that Bank is challenging the authority of Medical Board constituted by AIIMS and taking decision without referring his case to Medical Board of Canara Bank.

#### Observation/Recommendations:

5. After perusal of documents available on record, the Court is in view that disability as mentioned in the disability certificate is not covered under the Rights of Persons with Disabilities Act, 2016. Therefore, no intervention of this Court is warranted in the matter.

6. Case is disposed off.

(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 30.07.2021



सत्यमेव जयते

Extra

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12665/1023/2021

Complainant: Shri Kamalendru Chakraborty  
E-mail: <kamalendu559@gmail.com>

- R28130

Respondent: The Chief Postmaster General  
O/o the Chief Postmaster General  
West Bengal Circle, Kolkata – 700012  
E-mail: <cpmg\_wb@indiapost.gov.in>

- R28128

The Superintendent  
Office of the Superintendent, RMS "H" Division  
Kolkata – 700004  
E-mail: <ssrmhdn@gmail.com>

- R28129

Complainant: 50% Mental Retardation

#### GIST of the Complaint:

Complainant vide complaint dated **18.03.2021** submitted that he had applied for family pension on 08.02.2017 as a dependent disabled sibling of Central Govt. Servant Late Nirmal Kr. Chakraborty, Ex-MM but till date he has not received family pension.

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

3. In response, Respondent No. 01 vide letter dated **23.04.2021** informed that the complaint has been forwarded to the Office of the Superintendent, RMS "H" Division, Kolkata for necessary action. But no response has been received, therefore SRM, RMS, "H" Division implead as respondent No. 02 and hearing fixed on 12.07.2021.

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

- Shri Kamalendru Chakraborty - complainant
- Shri Anupam Ghosh & Tarun Karmakar on behalf of respondent

**Observation/Recommendations:**

5. Both the parties were heard.
6. Complainant submits that his father was employee in Respondent establishment, died while in service on 25.01.1976. Mother died on 25.04.2009. He applied for Family Pension on the basis of disability, which was denied by the Respondent.
7. Respondent submits that Complainant's application was rejected because of two reasons. Firstly, because as per the rule, Family Pension claimant has to prove that he was disabled on the date of death of the employee or the pensioner (mother in this case). Mother died in 2009 and father/employee in 1976. Disability certificate presented is dated 2018 hence cannot grant Family Pension. Secondly, because after the death of Complainant's father, case was filed in civil court for declaration of successors. In the court's order dated 25.08.1980, name of the complainant as successor is absent implying that he is not the successor of the employee.
8. This court expresses its satisfaction with the rule position relied upon by the Respondent. Intervention of this court in the present Complaint is not warranted.
9. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 28.07.2021