



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. 12446/1092/2020

### Complainant:

Shri Danish Mahajan  
Village & Post – Shahpur Kandi,  
Tehsil – Dhar Kallan,  
District – Pathankot, Punjab-145029  
Email: [Danish.mahajan88@gmail.com](mailto:Danish.mahajan88@gmail.com)

### Respondents:

(1) Aditya Birla Health Insurance Co. Limited,  
[Through: CEO & Whole Time Director]  
9<sup>th</sup> Floor, Tower-1, One Indiabulls Centre,  
Jupiter Mills Compound, 841, Senapati Bapat Marg,  
Elphinstone Road, Mumbai-400013  
Email: [care.healthinsurance@adityabirlacapital.com](mailto:care.healthinsurance@adityabirlacapital.com)

(2) Insurance Regulatory and Development Authority of India,  
[Through: The Chairman]  
115/1, Financial District, Nanakramguda,  
Hyderabad-500032  
Email: [irda@irdai.gov.in](mailto:irda@irdai.gov.in)

### 1. Gist of Complaint

1.1 The complainant filed this Complaint regarding denial of Health Insurance Policy by Aditya Birla Health Insurance Co. Ltd. to him and his wife Smt. Shilpa, both persons with 100% Visual Impairment.

1.2 The complainant submitted that on 02.10.2020 he had applied for a Health Insurance Plan - Aditya Birla Active Assure for himself and his wife with an annual coverage of INR Rs.5.00 Lakh and deposited a premium amount of

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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)

Rs.8567/- for the same. The respondent rejected the proposal due to Medical Risk Assessment Report. The complainant has highlighted that no medical examination was conducted at the time of application and the only document submitted in this regard by the complainant was the Disability Certificates of him and his wife.

2. The matter was taken up with Aditya Birla Health Insurance Co. Ltd., the Insurer; and Insurance Regulatory and Development Authority of India (IRDAI) for submission of their comments.

**3. Submissions made by the Insurer - Respondent No.1**

3.1 Respondent No.1 in their reply dated 31.12.2020 submitted that the Insurance is for covering the unforeseen risks and on basis of the facts of the present case, it cannot be ascertained presently that what other medical conditions may arise due to present condition of the Proposer and his wife. Hence such risk cannot be Insured in line with the Board approved Underwriting Policy of the Company; and the product specific underwriting manual filed with IRDAI.

**4. Submissions made by IRDAI – Respondent No.2**

4.1 Respondent No.2 in their reply in affidavit dated 29.12.2020 and inter-alia submitted that Insurers evaluate the proposals received from individuals and entities/organisations and issue appropriate health insurance policies. This process of evaluation is called underwriting in insurance parlance. Insurers design insurance products offering health insurance coverage. Once insurance policy is issued the insurers are duty bound to honour the claims as per the terms and conditions of the policy contracts.

4.2 Respondent No.2 specified that as per Regulation 8 of HIR, 2016 any proposal for health insurance may be accepted as proposed or on modified terms or denied wholly based on the underwriting policy of the concerned insurer as

approved by the Board of the Insurance Company. The underwriting policy shall cover the approach and aspects relating to offering health insurance coverage not only to standard lives but also to sub-standard lives. It shall have in place various objective underwriting parameters to differentiate the various classes of risks being accepted in accordance with the respective risk categorisation. Thus, insurance companies shall have the norms covering Persons with Disabilities (Divyangjan) in their respective underwriting policies.

4.3 IRDAI vide its circular No.IRDAI/HLT/MISC/CIR/129/06/2020 dated 02.06.2020 has instructed all the insurance companies to disclose their underwriting philosophy and approach with regard to providing health insurance coverage, inter-alia, to persons with disabilities. Denial of a proposal by the insurer shall be communicated to the prospect in writing; by recording the reasons for denial and that the denial of the coverage shall be the last resort that an insurer may consider. The objective criteria based on underwriting is applicable even while dealing with providing insurance coverage to persons with disabilities.

4.4 Underwriting the risks proposed for insurance is the business prerogative of the insurers as they undertake the liability by accepting the insurance coverage to the lives to be insured.

4.5 Insurance is a contract of utmost good faith and both the parties are duty bound to make disclosures that are material to the contract. It is necessary that the proposer who knows everything about himself/herself furnishes all the material information in the proposal form. Based on the answers of the proposer to the questions in the proposal form, the insurance company examines the acceptability of the proposal for insurance and the terms on which the acceptance can be made inter-alia on the decision of calling for medical examination or any further tests that may be required to assess the risk correctly and take an informed decision.

4.6 Calling/not calling for medical examination cannot be regarded as the fundamental for issuance of health insurance policies, it is as per the Board approved Underwriting policy of an insurance company. Insurance companies shall evolve Underwriting policy based on sound, prudent and objective criteria taking into account the market segment while formulating underwriting policy.

5. The replies filed by the respondents were forwarded to the complainant for submission of his rejoinder which is still awaited.

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

1. Shri Danish Mahajan, complainant.
2. Shri Mahesh Radhakrishnan, HOD (Legal), Aditya Birla Health Insurance Company Ltd., Mumbai.
3. Shri D.V.S Ramesh, GM (Health), Shri N. Sheshagiri Rao, Manager (OSD) and Ms. Sageena A, AGM (Legal) on behalf of IRDAI.

7. **Observations/Recommendations:**

7.1 Both the parties were heard.

7.2 Complainant alleges that he forwarded proposal to buy health insurance product from Respondent No 1, i.e. Aditya Birla Group. His proposal was denied and that the Respondent No. 1 denied to sell health insurance scheme product to the Complainant because of his disability. His contention was that many similarly placed persons have been given health insurance.

7.3 IRDIA, Respondent No. 2, in its written Reply submitted that it is regulatory authority and regulates the functioning of public as well as private sector insurance companies. Further it submitted that as per insurance business scheme, buyer intending to buy insurance product has to forward his proposal to the Insurance Company which evaluates the proposal. This process of evaluation is called 'underwriting'. After underwriting, it is prerogative of the Insurance Company either to accept or reject the proposal. IRDIA does not have any role in underwriting process. Further, IRDIA submits that by circular dated 02.06.2020, it instructed all the insurance companies to disclose their underwriting philosophy with respect to Divyangjan on their websites.





7.4 During online hearing, IRDIA specifically submitted that it cannot direct the insurance companies to frame specific policies for any group of people.

7.5 During online hearing, Respondent No. 1, i.e. Aditya Birla Group explained its reasons for denying insurance proposal to 100% Visual Impaired. As per the Respondent No. 1, reason for denying insurance products to persons with severe percentage of disabilities is basic philosophy of insurance. Insurance is a concept based on 'pooling'. People of similar background & risk profile, i.e. those who are under acceptable levels of tolerant limits, are placed in one single group. Each member of this group contributes to cover an unwanted situation, like an accident or disease, which may arise in future. Such contribution is called 'premium'. Hence, such policies must be fair and reasonable for all the members of the group. Any person whose level of risk is higher in comparison to the other members of the group, cannot be made member of the group since it will result into discrimination with other members of the group who are at lower levels of risk. Therefore, people with higher percentage of disabilities are denied insurance products.

7.6 Respondent No.1 also suggested that a separate group of people with higher level of risks can be created, in which people belonging to higher risk levels may be included.

7.7 Section 24 Rights of Persons with Disabilities Act, 2016 mandates that the appropriate government shall formulate schemes related to social security and health of Divyangjan. Section 24 is reproduced below –

*24. Social security - (1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the Community ...*

*(3) The schemes under sub-section (1) shall provide for –*

*(j) Comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Schemes, or any other statutory or Government-sponsored insurance schemes.*

7.8 Section 14 of IRDAI Act, 1999 lays down duties, powers and functions of IRDAI. As per the provision it is the duty of IRDAI to promote and regulate professional organisations connected with the insurance and re-insurance business.

7.9 Considering Section 24 of RPwD Act, 2016 read with Section 14 of IRDAI Act, 1999, it is certain that IRDAI is under statutory mandate to ensure that comprehensive insurance policy is made for Divyangjan.

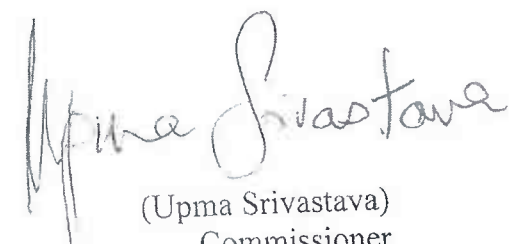
7.10 Its responsibility does not end with mere issuing of circulars. It should, through a consultative and advisory role, proactively ensure that Insurance Companies, private as well as public, form separate pools for higher risk people and design insurance products dedicated for Divyangjan.

7.11 It was also informed by IRDAI that it framed policies with respect to Divyangjan, e.g., disclosure of underwriting policies for Divyangjan by insurance companies. This court further recommends that IRDAI shall ensure that its guidelines are effectively followed and insurance companies are disclosing the underwriting policies which are available on the websites of the companies for easy access to Divyangjan.

7.12 The Respondent No.2 is Aditya Birla Health Insurance Group shall also revisit this particular case and re-examine if a proposal could be made to the Complainant for health insurance.

7.13 Accordingly the case is disposed off.

Dated: 01.03.2021

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

भारत सरकार/Government of India

Case No. 12498/1011/2020

### Complainant :

Shri Ashok Kumar,  
S/o. Gopi Chand,  
Village : Khairpur,  
P.O.: Bistrakh,  
Dist.: Gautam Budh Nagar,  
Greater Noida,  
Uttar Pradesh – 201 307.

R-26614

### Versus

### Respondent :

National Institute for the Empowerment of Persons with  
Intellectual Disabilities,  
(Through the Director)  
Manovikas Nagar,  
Secunderabad – 500009.

R-26615

Disability : 70% locomotor

### Gist of Complaint:

Shri Ashok Kumar, the complainant vide his email dated 10.12.2020 submitted that he had applied for the post of Principal in NIEPID Model Special Education Centre, Noida against Employment Notice no. 03/2019 but his name was not found in the Screening List which he feels is a discrimination to a PwD person like him.

2. The Director, NIEPID, Secunderabad vide letter dated 08.02.2021 submitted that the Institute notified the vacancy for the post of Principal, NIEPID, MSED, Noida under UR-OH category vide employment notification no. 2/2020 for which the last date for receipt of applications was 15.06.2020. In the meanwhile, the complainant vide email dated 26.05.2020 requested permission to apply for the post through email. In response to this, they conveyed to him vide letter dated 12.06.2020 to apply for the post through email provided that the same is in the prescribed format as per the notification. The complainant was also informed to send hard copy of application along with all the relevant documents as per the terms and conditions of the notification. The date of receipt of applications to the post was also extended to 30.07.2020 but the complainant submitted his application on 03.08.2020, i.e. after the last date for extended period for receipt of applications. Therefore, his application was not considered for the post. Since none of the candidates found eligible for the post, the post of Principal, NIEPID MSEC, Noida is being re-advertised and the complainant may apply for the post against the forthcoming notification.

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

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

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3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 19.02.2021.

4. The following persons were present during the hearing ;

1. Shri Ashok Kumar, the complainant.
2. None appeared for Respondent.

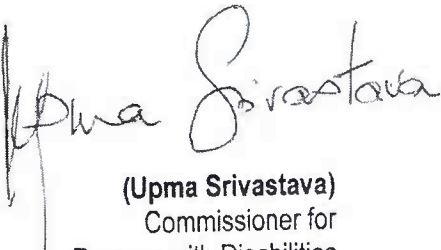
#### **OBSERVATIONS & RECOMMENDATIONS**

5. The Court observed the Respondent has stated in their reply that no candidates were found eligible for the post of Principal in NIEPID, MSED Noida under OH category and they will re-advertise the post of Principal.

6. The Complainant is advised to apply afresh for the post in future in time limit.

7. The case is disposed off.

Dated: 01.03.2021

  
(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. 12457/1014/2020

### Complainant :

Shri Subhankar Bhunia,  
Betuliachak,  
Post : Lalpur,  
Dist. : Purba Medinipur,  
P.S. : Bhagwanpur,  
West Bengal – 721 601.

### Versus

### Respondent :

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

Disability : 100% visual impairment

### Gist of Complaint:

The complainant vide his complaint dated submitted that he had applied to the post of Gramin Dak Sevak (Packer) against the advertisement of West Bengal Postal Circle. The Inspector of Posts, Belda 2<sup>nd</sup> Sub-Division vide letter dated 25.01.2020 informed the complainant regarding his provisional selection for the post of GDS Packer and requested him to be present before the Inspector of Posts, Belda 2<sup>nd</sup> Sub-Division along with the required documents and certificates for verification of records. The complainant went for the document verification on 07.02.2020. After the formalities, he was given the selection letter. He completed all the formalities including the medical test and also submitted a bond worth Rs.2500/-. But after some days he was told that he has been rejected him due to his blindness. The complainant submitted that he didn't understand why he has been rejected after completion of all the required formalities.

2. No comments have been received from the Respondent.

....2/-

**OBSERVATION AND RECOMMENDATION:**

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

Dated: 02.03.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

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सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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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: 12380/1023/2020

Complainant: Shri N. Visakamurthy, ML  
Assistant Govt. Advocate, Room No. 413 – D  
Department of Legal Affairs, Ministry Law & Justice  
Shastri Bhawan, New Delhi – 110001  
e-mail: <brejeshrajsharma65@gmail.com>

R-26592

Respondent: The Secretary, Department of Legal Affairs  
Ministry of Law & Justice, Shastri Bhawan, New Delhi  
e-mail: <secylaw-dla@nic.in>

R-26593

In charge, Central Agency Section, Department of Legal Affairs  
Ministry of Law & Justice, Supreme Court Compound, New Delhi  
e-mail: <rajiv.mani68@gov.in>

Complainant: 100% visual impairment

### GIST of the Complaint:

Complainant vide complaint dated 21.10.2020 submitted that he was selected for the post of Assistant Govt. Advocate (AGA) under PwD category through UPSC and he received a letter from the Department of Legal Affairs, Ministry of Law & Justice to report to the In-charge, Central Agency Section (CAS) by 28.09.2018 but CAS refused to accept his joining due to visual impairment. Thereafter, The Secretary, Department of Legal Affairs given the work of ALA in place AGA vide letter dated 09.10.2018 whereas his appointment to the post of AGA was notified in the Gazette vide Notification dated 15.11.2018 w.e.f. 28th September, 2018. He further submitted that he had successfully completed two years of service by working in the cadre of AGA and doing the work of ALA in main Secretariat, Shastri Bhawan, New Delhi and now Department is saying to clear the AoR Exam within a period of 02 years.

2. He further submitted that he had successfully completed two years of service by working in the cadre of AGA and doing the work of ALA in main Secretariat, Shastri Bhawan, New Delhi and now Department is saying to clear the AoR Exam within a period of

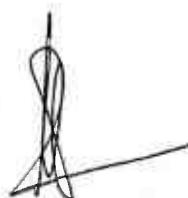
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02 years but one of the main conditions for appearing in AoR exam is that one has to get trained under an AoR of ten years standing Senior Advocate for a period of one year then only one will be eligible to appear in the AoR exam conducted by Supreme Court of India. He has requested to direct the respondent to declare that he had completed the probationary period and his employment is regularized and give the work of AGA by posting him in Central Agency Section to which he was selected.

3. The matter was taken up with the Respondent vide letter dated **27.10.2020** under Section 75 of the RPwD Act, 2016.

4. The Director, Department of Legal Affairs vide letter dated **16.12.2020** inter-alia submitted that UPSC had recommended Shri Visakamurthy for appointment to the post of AGA and accordingly, he was directed to report to In-charge, Central Agency Section (CAS), however, on his appointment, CAS has stated that they cannot accommodate him as they were not in a position to render him any secretarial or other assistance. The Department had, therefore, posted him in the Main Sectt. Since then, he is performing Advice work and not the duties of Govt. Advocate cadre. As such, he is not in a position to undertake the compulsory 01 year training under an AOR and, therefore, not eligible to sit in the AOR exam which is otherwise to qualify within 02 years of his joining as AGA as per the condition stipulated in his appointment letter, therefore, declaring his employment regularized without fulfilling the condition of qualifying AOR exam may not be appropriate. The representations submitted by the complainant are under active consideration and a reference has been made to DoP&T for their views to dispose of his representations with regard to his entitlement for carry forward of Leave benefits, Grant of annual increment for the year 2018 and carry forward of LTC. As regards migration from the post of Assistant Government Advocate to the post of Assistant Legal Adviser, the existing ILS Rules have no such provision.

5. After considering the respondent's reply dated **16.12.2020** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.02.2021**.



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

- Shri N. Visakamurthy, ML - complainant
- Madhubala Soni, Under Secretary on behalf of respondent

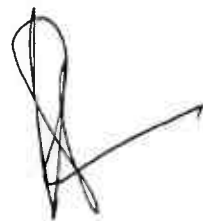
**Observation/Recommendations:**

6. Both the parties were heard.

7. Facts of this case are unique. Complainant was selected by UPSC on the post of Assistant Government Advocate (AGA). However, he was denied the post of Assistant Government Advocate because of Low Vision. Instead, he was made to perform job of Assistant Legal Advisor (ALA). The reason given by the Respondent for making the Complainant perform job of ALA is that the Respondent could not accommodate the Complainant who suffers from Low Vision because the Respondent (CLA) was not in the position to render him any secretarial or other assistance.

8. Further, the Complainant was denied opportunity to appear in AOR examination as he was not performing duties of AGA instead performing advice work only. Since he has not appeared and qualified exam of AoR hence his employment cannot be regularised, because qualification of AoR is essential for regularisation of his service.

9. Facts of the case are perfect example of gross discrimination, apathy and harassment with a divyang employee. When the Complainant was selected on the post of AGA, he was assigned work of ALA because the Respondent was not able to provide reasonable accommodation to the Complainant and not because of any fault of complainant. Facts not only reflect the incompetence of the Respondent to accommodate divyang employees, it also shows indifferent attitude of the Respondent towards rights of Divyangjans. Respondent are certainly blameworthy for wasting time and career opportunities of the Complainant. UPSC issued advertisement for the post of AGA, recruitment process was conducted for the post of AGA, Complainant was selected for the



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post of AGA, then it is beyond reasonable comprehension as to why the nature of the work assigned to the Complainant was changed to ALA from AGA. Furthermore, denying future prospects (like eligibility for AOR and regularization) connected with the post of AGA because the Respondent were incompetent to assign secretarial assistance is adding insult to injury of the Complainant and manifestation of blatant disgrace of the Respondent.

10. Facts of the case reflect towards arbitrary exercise of power and no consideration for a PwD by the Respondent, which has term 'justice' in its name. Arbitrary actions of the Respondent culminated into unnecessary ordeal faced by the Complainant. In addition to that, Respondent tried to take shelter behind rules prescribed for regularisation of the post and also tried to establish that the complainant is not a PwD.

11. At this juncture this court finds it indispensable to mention 3 important provisions of Rights of Persons with Disabilities Act, 2016.

SECTION 2(h) - "discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

12. By denying the work of AGA and furthermore denying the Complainant benefits connected with the post of AGA, on which he was selected and failing to even regularize his service. Respondent has performed an act of restricting the Complainant from performing functions of a post of AGA on equal basis with others. It is also apparent that this discrimination was purely on the basis of disability and inefficiency and resourcelessness of the Respondent.

13. Further Section 3(5) of RPwD Act, 2016 mandates that the appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities. 'Reasonable Accommodation' is defined in Section 2(y) of RPwD Act, 2016. As per the provision –

Section 2(y) - "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others



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14. Actions of the Respondent are complete violation of mandate of Section 3(5) of RPwD Act, 2016. In fact the actions of the Respondent are obverse of statutory mandate prescribed. Respondent was under obligation to provide facilities in order to ensure that divyang employee can exercise rights equally with others. However, the Complainant was denied two things – first, facilities to enable the Complainant perform the functions of the post of AGA, he was selected on and secondly opportunity to perform the job of AGA he was selected on resulting in double injury to him.

15. Therefore, this court recommends that a) the Probation Period of the Complainant shall be regularised b) Relaxation shall be given for appearing in the examination of AoR c) All necessary secretarial assistance shall be made available to him.

16. Compliance report in the matter shall be sent to this Court within 02 months of the issue of these orders.

17. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 02.03.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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भारत सरकार/Government of India

Case No: 12567/1021/2020

Complainant: Shri Pradeep Kumar Srivastava  
Flat No. 202, Jai Stuti Apartment  
107/108-A, Jawahar Nagar, Kanpur  
e-mail: <bharatviklangsewa35@gmail.com>

Respondent: The Managing Director  
Punjab & Sind Bank, Bank House -21  
Rajendra Place, New Delhi - 110008  
e-mail: <ho.ga@psb.co.in> <ho.hrd@psb.co>

Complainant: 100% visual impairment

### GIST of the Complaint:

शिकायतकर्ता का कहना है कि वह दिनांक 02.06.2018 से पंजाब एण्ड सिंध बैंक, कानपुर में स्केल-1 पर पदोन्नति से अधिकारी पद पर तैनात है तथा अगली पदोन्नति के लिए 03 वर्ष अधिकारी के पद पर कार्यकाल पूरा न होने की वजह से उन्हें सन् 2021 में हो रही पदोन्नतियों से वंचित कर दिया गया है प्रार्थी का आगे कहना है कि जबकि स्केल-3 से कुछ लोगों को 03 वर्ष की अवधि में 13 माह की छूट प्रदान की गई है।

2. The matter was taken up with the Respondent vide letter dated **25.01.2021** under Section 75 of the RPwD Act, 2016.

3. The General Manager (HRD), Punjab and Sind Bank, New Delhi vide letter dated **03.02.2021** submitted that the relaxation are given in promotions in the cadres wherein it is difficult to find the suitable number of candidates, as such the relaxations were given in the cadre from MMGS-III to SMGS-IV, SMGS-IV to SMGS-V, SMGS-V to TEGS-VI and TEGS-VI to TEGS-VII. The minimum qualifying service for promotion from JMGS-I to MMGS-II i.e. from Officer to Manager is 03 years. Shri Pradeep Kumar Srivastava has not completed 03 years of service in Officers' cadre and no relaxation were given in the promotion from Officer to Manager i.e. JMGS-I to MMGS-II therefore, he is not eligible to participate in the promotion process 2021 - 22.



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4. After considering the respondent's reply dated **03.02.2021** and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **19.02.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.02.2021**. The following were present:

- Shri Pradeep Kumar Srivastava – complainant
- Shri Laxman Singh Bhandari, Dy. General Manager on behalf of respondent

**Observation/Recommendations:**

5. Both the parties were heard.

6. During the hearing representative of the respondent informed that Shri Pradeep Kumar Srivastava has not completed 03 years of service in Officers' cadre and no relaxation was given in the promotion from Officer to Manager i.e. JMGS-I to MMGS-II to any candidate belonging to any category. Therefore, he is not eligible to participate in the promotion process 2021 – 22 and he will be eligible for participate in the next promotion process.

7. In light of the facts and material available on record, the respondent shall consider the case of Shri Pradeep Kumar in the next promotion process i.e. after fulfilment of eligible criteria, if any.

8. Case is disposed off.

Dated: 02.03.2021

  
(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: 12501/1024/2020

Complainant: Shri Suneel Tyagi  
R-26596 R-26596  
R-6/84, Rajnagar, PS – Kavinagar  
Ghaziabad, Uttar Pradesh - 201002  
e-mail: <suneeltyagi1163@gmail.com>

Respondent: The Director General  
R-26597 R-26597  
Air Force Naval Housing Board  
Air Force Station Race Course, New Delhi – 110003  
e-mail: <directorgeneral@afnhb.org>

Complainant: 80% Locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated 12.12.2020 submitted that he Air Force Naval Housing Board does not have any relationship with the armed forces and they have launched a project in Meerut under the name of Jalwayu Tower Meerut Scheme in which complainant had booked a flat in Category B-I in December 2016. The total cost of the flat which was fixed by the opposite party was Rs. 30,96,000/- included cost for providing flat on first floor and also for providing open space parking. He alleged that now respondent is charging extra for providing flat on first floor and for Open Space Parking.

2. The matter was taken up with the Respondent vide letter dated 23.12.2020 under Section 75 of the RPwD Act, 2016.

3. Assistant Manager (Legal), Air Force Naval Housing Board vide letter dated 13.01.2021 inter-alia submitted that it is wrong and denied that there was any agreement for providing flat on 1<sup>st</sup> floor. Complainant should be put to strict proof in support of his claim and at the time of booking/registration of a flat, no flat number is allotted to any of the allottee so no allottee could be sure of the location of his flat. After considering the request and disability status of the complainant, as a special case, Board of Management of

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Respondent approved for allotment of 1<sup>st</sup> Floor Flat to complainant. Since 1<sup>st</sup> floor flats in the project have additional area of terrace so as per terms of allotment, it is to be charged in addition to the basic cost of flat. Respondent is charging for additional area for terrace and open space parking as per the terms of allotment mentioned in the allotment letter dated 03.02.2017.

4. After considering the respondent's reply dated **13.01.2021** and the complainant's rejoinder dated **02.02.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **19.02.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.02.2021**. The following were present:

- Shri Suneel Tyagi – complainant
- Shri Bhupinder Kumar, Assistant Manager (Legal) on behalf of respondent

**Observation/Recommendations:**

5. Both the parties were heard.

6. Following points were raised by the Complaint<sup>ant</sup> :-

- a) Builder has levied 'Equalisation Charges' and hence discrimination has been caused.
- b) Builder has provided parking facility at distance from the flat allotted and has charged for the same.

EQUALIZATION CHARGES

7. During online hearing it was submitted by the Respondent that Equalisation Charges were levied, using the same formula, on other allottees who are not Divyangjans. Therefore, this court concludes that on this issue there is no cause of discrimination with Divyangjan hence on this issue intervention of this court is not warranted.



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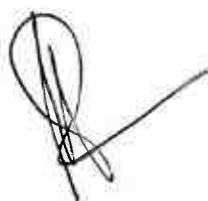
PARKING FACILITY

8. During online hearing this court asked the Respondent if parking space allotted to the Complainant was at a far distance from the flat allotted to the Complainant. Respondent could not answer the question. This court takes serious cognizance of this fact. Any officer representing any party is expected to be well versed with the facts of the case.

9. Therefore, this court concludes that if the parking space allotted to the Complainant is not at the nearest possible distance from the flat allotted to the Complainant then it shall amount to discrimination with the Complainant. This court concludes that this is violation of Accessibility Rights conferred under Rights of Persons with Disabilities Act, 2016.

10. United Nations defines concept of 'Accessibility' in following terms –

*"Accessibility is about giving equal access to everyone. Without being able to access the facilities and services found in the community, persons with disabilities will never be fully included. In most societies, however, there are innumerable obstacles and barriers that hinder persons with disabilities. ... An accessible physical environment benefits everyone, not just persons with disabilities. The Convention states that measures should be undertaken to eliminate obstacles and barriers to indoor and outdoor facilities including schools, medical facilities and workplaces. ... Transportation is a vital component for independent living, and like others in society persons with disabilities rely on transportation facilities to move from point A to point B. The term transportation covers a number of areas including air travel, buses, taxis, and trains. In many instances, these are inaccessible to persons with disabilities because either they cannot use them in the first instance (e.g. inaccessible buses, train stations), be more clear, use an actual example; relate to other rights: access to transportation provides access to other rights and vice versa. Longer-term the Convention foresees that all transportation be accessible to everyone in society. Immediate steps should ensure that persons with disabilities using public transportation are not at a disadvantage to others."*



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11. Above definition of 'accessibility' explains importance of making physical infrastructure accessible for Divyangjans and also explains importance of transportation for Divyangjans. If physical infrastructure like transport is denied to Divyangjan, it will amount to his/her exclusion from the society, rather than inclusion

12. Therefore, this court recommends that the Respondent shall allot the nearest possible parking space to the Complainant within the boundaries of the project. Further, the Respondent shall not charge cost for allotting such parking space. Respondent shall also take into consideration that such parking space is designed according to design prescribed in the latest National Building Code issued by Bureau of Indian Standards.

13. Case is disposed off.



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

Dated: 02.03.2021



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: 12475/1022/2020

Complainant: Shri Umeshkumar Mali  
e-mail: <khushimms@gmail.com>

Respondent: The Director General, Force Head Quarter  
Border Security Force, Block 10, CGO Complex  
Lodhi Road, New Delhi – 110003  
e-mail: <edpdte@bsf.nic.in> <dgbbsf@bsf.nic.in>

Complainant: Master Utkarsh Mali 70% Chronic Neurological condition

### GIST of the Complaint:

Complainant vide complaint dated **23.10.2020** submitted he is working as Constable presently posted in Kozikode, Kerela since 2019 and he has having 06 year old son who is suffering from Leucodystrophy with Spastic Quadriparesis. He further submitted that he has requested for transfer to STC/STS or Ftr HQ BSF Bangalore on medical ground for treatment of his disabled child at NIMHANS, Bangalore but despite several correspondence his request was not considered.

2. The matter was taken up with the Respondent vide letter dated **16.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **18.01.2021**, respondent has not submitted reply, therefore, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **19.02.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.02.2021**. The following were present:

- Shri Umeshkumar Mali – complainant
- Shri Shailesh Kumar, 2<sup>nd</sup> In Command on behalf of respondent

### Observation/Recommendations:

3. Both the parties were heard.

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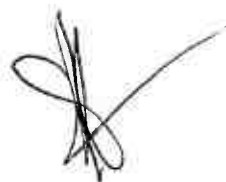
4. Complainant is care giver of 6 years old dependant son who suffers from Leukodystrophy, a disability which affects central nervous system of the child. Percentage of disability of the child is 70 percent. Complainant is serving as constable in the Respondent establishment and is posted in Kozikode, Kerala. He has prayed for his transfer to Bangalore, where he can provide proper treatment to his son.

5. In response, the Respondent has submitted that in Bangalore station of the Respondent establishment there are already too many employees posted on compassionate basis. Hence, the Respondent shall not be able to transfer the Complainant to Bangalore station.

6. Leukodystrophy can cause problems with movement, vision, hearing, balance, ability to eat, memory, behaviour, and thought. Leukodystrophies are progressive diseases meaning that the symptoms of the disease tend to get worse over time. Certainly, life of a person suffering from this disease is full of challenges.

7. Aims and Objective of Rights of Persons with Disabilities Act, 2016 is rehabilitation and assimilation of divyangs in main stream society. Leukodystrophy disorder, as above mentioned, is a kind of disorder which makes it challenging for the person suffering from the disorder to adjust comfortably with the daily functions of life. Therefore, such person needs special training and care for purposes of rehabilitation and assimilation in the society.

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



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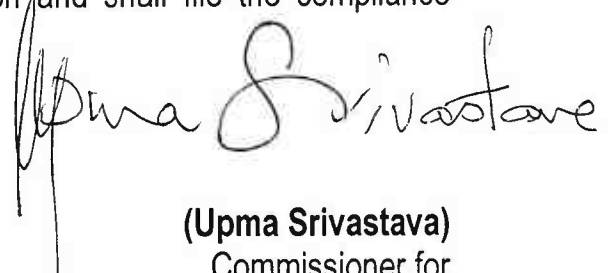
9. Therefore, it is certain that a child suffering from disorder of this nature needs best medical care and infrastructure, which is unfortunately not available in Kozikode, where the Complainant is posted at present.

10. This Court is not pleased with the reasons of the Respondent for denying the transfer of the Complainant. Too many employees on postings in Bangalore station on compassionate basis does not ipso facto extinguish the claim of the Complainant who is care giver of a Divyangjan whose medical treatment needs are rare and limited because of lack of resources in this country.

11. Hence this court recommends that the Respondent establishment shall evaluate the needs of Divyangjans. After diligent evaluation, the Respondent shall reach to a reasonable conclusion as to whose need is most imperative and who needs to be posted at Bangalore station more than other.

12. Further, considering the nature and percentage of disability of the dependant child of the Complainant, this court recommends that the Respondent establishment shall transfer the Complainant within 3 months of this recommendation and shall file the compliance report of the same.

13. Case is disposed off.



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

Dated: 02.03.2021



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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: 12512/1022/2020

Complainant: Shri Wasim Mehdi, Flat No. 06  
Shah Mansion, Bank Road, Patna – 800001  
e-mail: <wasim.mehdi@gmail.com>

Respondent: The Chief General Manager, State Bank of India  
Local Head Office, West of Gandhi Maidan  
Patna – 800001  
e-mail: <cmir.lhopat@sbi.co.in>

Complainant: 60% Locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **22.12.2020** submitted that he is working as Chief Manager in State Bank of India, Patna and on 30.09.2020, he has been transferred from Patna to Bokaro Steel City, Jharkhand. He has requested to cancel his extant transfer order and post him at Patna Centre which is his present place of posting.

2. The matter was taken up with the Respondent vide letter dated **24.12.2020** under Section 75 of the RPwD Act, 2016.

3. Chief Manager (HR), State Bank of India, Patna vide letter dated **22.01.2021** inter-alia submitted that Shri Wasim Mehdi after serving the Bank at Muzaffarpur Centre for more than 19 years was transferred to Patna Centre on 09.12.2013 and in the present place of posting i.e. Patna Centre, he has completed for more than 07 years. They further submitted that the representation dated 01.10.2020 of Shri Wasim Mehdi for stay at Patna Centre has been re-considered by the Competent Authority of the Bank and as because the transfer of Shri Wasim Mehdi was as per policy of the Bank and as per administrative exigencies of requirement of Senior Management Level Officer at Bokaro Centre, the Competent Authority did not find merit in his application.

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4. Complainant vide rejoinder dated **04.02.2021** inter-alia submitted that he was transferred to Muzaffarpur in July 2003 at different offices in different positions. In Dec. 2013, he was transferred to Patna and during the period, he has been posted in different positions at three different offices. He has requested to consider his case sympathetically.

5. After considering the respondent's reply dated **22.01.2021** and the complainant's rejoinder dated **04.02.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **19.02.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.02.2021**. The following were present:

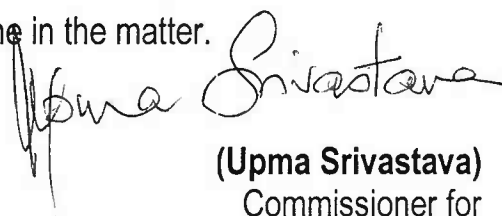
- Shri Wasim Mehdi – complainant
- Shri Mayank Sekhar, AGM on behalf of respondent

**Observation/Recommendations:**

6. Both the parties were heard. Respondent reiterated their written submissions and submitted that as a onetime measure and in deferment to the centre stay norms, they may propose posting him at Patna upto June 20, 2021. The concerned officer will be advised to identify his preferable place of posting (s), other than Patna, to which if otherwise administratively feasible, he will be posted after June 30, 2021.

7. After hearing both the parties, the Court is in the view that complainant is holding a very Sr. position in the Organization and his transfer is not merely a routine transfer, rather it is based on bank policy and administrative consideration. Further respondent is also advising the complainant to identify his preferable place of posting to post him after June 2021. Therefore, complainant is advised to provide his choice of posting other than Patna and join to his choiced place of posting.

8. This Court do not find any merit to further intervene in the matter.



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

Dated: 02.03.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12367/1023/2020

Complainant: Shri Brijesh Sharma, Administrative Officer  
Maulana Azad Medical College, 2 Bahadur Shah Zafar Marg  
New Delhi – 110002  
e-mail: <brijeshrajsharma65@gmail.com>

Respondent: The Dean, Maulana Azad Medical College (MAMC)  
2nd Bahadur Shah Zafar Marg, New Delhi – 110002  
e-mail: <deanmamc.2012@gmail.com>

Complainant: More than 40% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated nil inter-alia submitted that during the pandemic Covid – 19 lockdown period, he was forced by Dean, MAMC to attend the office regularly. Therefore, in this regard, he met the Dean on 21.07.2020 and apprised about the difficulty being faced in attending the office in writing along with copies of OM issued by DoP&T but no response was received and Officers insisted him to attend office on alternate days, therefore, he attended the office on alternate days. He further submitted that Dean had issued a Circular dated 06.08.2020 directing all the Administrative Officers to attend the office regularly on daily basis and follow usual office working hours and marked the attendance in the register kept in her Personal Branch which has had a recent history of three Corona positive cases.

2. He has requested that the Competent Authority in the Health and Family Welfare Department, GNCT of Delhi be directed to ensure enforcement of his rights and observance of obligations on the part of the authorities as specified in the Act and as per Government orders/guidelines/circulars there under namely: (i) providing non-threatening atmosphere at workplace (ii) withdrawal of illegal orders directing him to attend office every days (iii) exemption from marking written attendance on the attendance register kept in the Dean (iv) designate a person with disability as Grievance Redressal Officer at MAMC

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

4. Dean, Maulana Azad Medical College, New Delhi vide letter dated **01.12.2020** inter-alia submitted that memorandums issued by the M/oSJ&E, DEPwD and DoP&T were neither applicable nor binding to MAMC as the same were not issued by the State Government. Complainant had not attended the office despite the directions issued vide circular dated 01.06.2020 and a memorandum dated 17.06.2020 with the direction to attend the office on regular basis. However, the complainant had attended the office on 21.07.2020 and thereafter he was attending office on alternate days (01 or 02 days in a week). During the meeting on 21.07.2020, seeing his prior conduct, the complainant was informed by the other members including the Dean of MAMC that the current unprecedented situation required him to participate and perform duties. The complainant was further informed that there has been no direction to that effect issued by the State Government and other members were wilfully performing duties.

5. After considering the respondent's reply dated **01.12.2020** and the complainant's rejoinder dated **05.01.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.02.2021**.

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

- Shri Brijesh Sharma – complainant
- Shri Muzaffer Imtyaz, Admn. Officer on behalf of respondent

**Observation/Recommendations:**

6. Complainant submitted that he was forced to attend office during Covid-19 lockdown period. Respondent did not refute the submissions of the Complainant rather it submitted that Government of Delhi did not issue any Order exempting Divyangjans from attending office. Neither Government of Delhi endorsed the similar Order issued by Union of India, hence, the Complainant was asked to attend the office.

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7. It is bewildering and astonishing that Divyangjans were completely forgotten by Government of Delhi. Union of India issued guidelines exempting Divyangjans from attending office. Order No. 40-3/2020-D dated 24.03.2020 was issued by Ministry of Home Affairs, Union of India, imposing lockdown. Subsequently, by Letter dated 24.03.2020, Ministry of Home Affairs, Union of India advised all the states and Union Territories to list essential services which were essential and were required to be kept functional during lockdown period. Later by O.M. No. 11013/9/2014-Estt(A-III) dated 27.03.2020 DoPT instructed all the departments and ministries that while drawing up roster for staff who are required to attend essential services, the concerned departments and ministries may consider that employees who are "Persons with Disability" (PwD) or "Divyangjans" are exempted. Hence, it is certain that as per Orders issued by Union of India, Divyangjans were exempted from attending essential as well as non-essential services.

8. Similar empathy is expected from all the departments and government of all the states. Covid – 19 was a pandemic which affected Divyangjans of whole country equally. The disease did not make any difference between Divyangjans living inside and outside Delhi and whether in Govt. of India or State Government. Hence, absence of guidelines in a state are astonishing.

9. Hence this court recommends that Orders issued by Union of India exempting divyangs from attending office shall be extended to employees of Delhi Government. Further this court recommends that in the present Complaint, if any monetary penalty or any other kind of penalty is imposed upon the Complainant because of absence from office during Covid lockdown period, then such penalty shall be revoked.

10. Case is disposed off.



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 02.03.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12496/1023/2020

Complainant: Shri Hemant Chauhan, Postal Assistant  
Head Post Office Kotdwar, Uttarkhand – 246149  
e-mail: <chauhanhrishiraj@gmail.com>

Respondent: The Superintendent of Post  
O/o of Superintendent of Post Offices  
Department of Posts, Pauri Division, Pauri 246001  
e-mail: <spospauri@gmail.com>

Complainant: 75% Locomotor disability

### GIST of the Complaint:

शिकायतकर्ता का कहना है कि उनके साथ अमानवीय, अभद्रता पूर्ण व्यवहार एवं अपशब्दों का प्रयोग डाक पाल, कोटद्वार द्वारा किया जा रहा है तथा कार्यालय में रैम्प रैलिंग की कोई व्यवस्था नहीं है। प्रार्थी का आगे कहना है कि अधीक्षक डाकघर, पौड़ी ने प्रार्थी पर विभाग को गुमराह करने एवं 26.08.2020 से 07.09.2020 तक 13 दिनों का अकार्य घोषित करते हुए, नियम 16 के तहत एक वर्ष के लिए वेतन वृद्धि रोक दी गयी है प्रार्थी ने अनुरोध किया है कि उन पर लगाये गये निराधार आरोपों से उन्हें मुक्त करवाएं एवं उचित सुविधायें प्रदान करें।

2. The matter was taken up with the Respondent vide letter dated **24.12.2020** under Section 75 of the RPwD Act, 2016.

3. Supdt. of Post Offices, Pauri Division, Pauri vide letter dated **25.01.2021** submitted that there is no evidence regarding use of abusive language by the Postmaster, Kotdwara HO, Postmaster, Kotdwara and no complaint of the alleged misconduct of the Postmaster has ever been received. The proposal for construction of RAMP under Sugamya Bharat Abhiyan for the year 2021 – 22 has been proposed at Circle level. They further submitted that complainant has been proceeded under disciplinary action for his acts of misconduct and misbehaviour and awarded the punishment for good and sufficient reasons by the competent disciplinary authority following the provisions of CCS (CCA) Rules, 1965.

4. After considering the respondent's reply dated **25.01.2021** and the complainant's rejoinder dated **31.01.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **19.02.2021**.

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**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 19.02.2021. The following were present:

- Shri Hemant Chauhan – complainant
- Respondent - Absent

**Observation/Recommendations:**

5. Complainant has forwarded harassment charges against one Mr. Satish Chandra Verma. Complainant submits that he uses abusive language while talking to the Complainant. Further, complainant has alleged that there is no Ramp facility for Divyangjans suffering from locomotor disability. He has also alleged that his 13 days sanctioned leaves were converted into unauthorised leaves. Penalty was also upon him without any fair and reasonable basis.

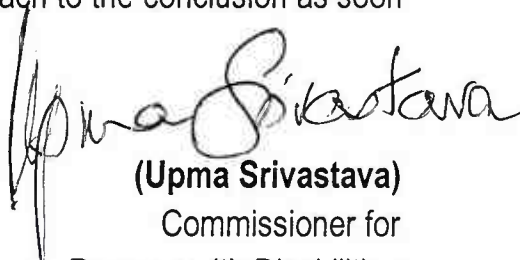
6. Respondent has submitted in its written reply that the Ramp is under construction. Further, it was submitted that penalty of stopping increment was imposed in consequence of disciplinary proceedings.

7. Proceedings were conducted ex-parte, since the respondent did not join the proceedings. This court takes the serious cognizance of absence of respondent during online hearing. It is utmost duty of the respondent to attend the hearing through a representative well versed with the facts of the case. Respondent's absence during online hearing reflects casual attitude and discourtesy of the towards this court. The respondent is strongly advised to submit its written reply on time and to attend hearing conducted on such date and time as specified by this court.

8. This court is inclined not to interfere in the issue of disciplinary proceedings. With respect to issue of ramp, this court expresses satisfaction that the Respondent establishment is making efforts towards making infrastructure accessible for Divyangjans. This court recommends that the Respondent shall construct the ramp as soon as possible.

9. This court also recommends that the respondent shall conduct counselling of the Superintendent, Shri Satish Chandra Verma and the complainant and if situation does not improve then necessary action may be initiated against all who are found to be harassing and abusing the complainant. Further, if the 13 days leaves were converted into unauthorised leave without any reason and cause, with sole objective to harass the Complainant then the respondent shall conduct enquiry and reach to the conclusion as soon as possible.

10. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 02.03.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

**Case No: 12371/1021/2020**

Complainant: Shri Manoj Kumar, H.No. 6/4 DEAL Colony  
Raipur Road, Dehradun  
E-mail: <manojrajdevan@gmail.com>

Respondent: The Director, Defence Electronics Applications Laboratory  
Adhoiwala, Dehradune, Uttarkhand – 248001  
e-mail: <director@ceptam.drdo.in>

Complainant 40% locomotor disability

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 08.10.2020 में कहना है कि वह तकनीशियन 'बी' के पद पर प्रयोगशाला डील, रायपुर में कार्यरत है तथा अगस्त 2020 में प्रयोगशाला स्तर पर आयोजित पदोन्नति हेतु मूल्यांकन प्रक्रिया में उनकी पदोन्नति तकनीशियन 'सी' के पद पर होनी थी पदोन्नति हेतु पूर्णतः योग्यता व पात्रता धारित होने पर भी उन्हें पदोन्नति से वंचित कर दिया गया। प्रार्थी का आगे कहना है कि पूर्व में अगस्त 2014 एवं अगस्त 2013 में भी उन्हें पदोन्नति से वंचित कर दिया गया था।

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

3. Sr. Admin Officer-I, DRDO vide letter dated 02.12.2020 inter-alia submitted that Shri Manoj Kumar belongs to DRTC (Defence Research Technical Cadre) cadre and is currently holding the post of Technician –B. Further, promotion in DRTC are made under merit based limited flexible complementing scheme which is different from the conventional vacancy based promotion system. Shri Manoj Kumar didn't perform well in the Assessments held in the years 2013, 2014 & 2020 and allegations levelled by him on the fairness of the Board are an afterthought to cover his own underperformance. They further submitted that when he did perform well in 2008 and 2015, the board recommended his promotion. The Assessment Board functions in a very fair and just manner without favour or discrimination towards any candidate strictly follow the guidelines issued by the Govt./DRDO.



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4. After considering the respondent's reply dated **02.12.2020** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **02.02.2021**.

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

- Shri Manoj Kumar, the complainant.
- Shri Ajay Malik, Scientist on behalf of the respondent.

**Observation/Recommendations:**

5. Both the parties were heard.

6. Complainant alleged that he was denied promotion and officers junior to him in seniority were promoted. Further it is alleged that reservation in promotion to PwBD candidates was not extended.

7. Respondent submitted that promotion in Respondent establishment are governed by merit based Limited Flexible complementing scheme which is different from the conventional vacancy based promotion system.

8. Following rules/guidelines of Limited Flexible Complementing Scheme are relevant for the present case –

- a) Rule 7 read with Rule 5 of Defence Research & Technical Cadre (DRTC) Rules, 2000 – as per Rule 7 read with Rule 5, when promotion is done from one grade to the next higher grade, the post which becomes vacant in the lower grade because of promotion stands upgraded automatically, which means that on promotion of an officer on higher grade, it is deemed that no vacancy shall arise in lower grade.
- b) Rule 6 read with Schedule III of DRTC Rules, 2000 – as per these rules, only fixed percentage of eligible employees are promoted from one grade to another. It implies that if there are total 10 employees who are eligible for promotion, but the percentage fixed for promotion is 70% then only 7 out of 10 eligible will be promoted.



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- c) Schedule III – it fixes the percentage of employees who can be promoted from lower grade to higher. As per the schedule, from Technician A to Technician B prescribed percentage for promotion is 70%. From Technician B to Technician C prescribed percentage for promotion is 60%.
- d) Rule 6(4) of DRTC Rules, 2000 – Criteria of promotion from Technician A to B and from Technician B to C includes Trade Test/Skill Test, Assessment through Interaction and APAR. It is implied that seniority does not find place in list of criteria prescribed for promotion, hence, employee junior in terms of years of service may be promoted before an employee who is senior in terms of years of service.

9. In the present case the Complainant was found eligible for promotion to Technician – B from Technician - A in year 2014 along with other 6 employees (including the Complainant). However prescribed percentage was 70% hence only 4 employees were to be promoted and the Complainant's name did not appear in top 4 list hence he was denied promotion. However, in year 2015 he was promoted to Technician B post since his name appeared in merit list. Similarly, in year 2020 8 employees (including the Complainant) were found eligible for promotion to Technician C post from Technician B post. Percentage prescribed for promotion to Technician C post is 60% hence out of 8 only 5 could be promoted. Name of the Complainant did not find place in merit list of top 5 employees hence he was denied promotion.

10. Till this point Respondent has not violated any law/rule/guideline with respect to promotion. However, issue of extending promotion in reservation is not resolved by the above mentioned rules.

11. What attracts the attention of this court is O.M. No. 810/Policy/DRTC/RD SCT CELL/03/D (R&D) issued by Ministry of Defence, dated 03.01.2001. This OM extends reservation in promotion for SC/ST/OBCs. Para 3 of the OM extends reservation for SC/ST/OBCs under Limited Flexible Complementing Scheme of DRTC. Hence it is certain that reservation in promotion is not barred in Limited Complementing Flexible Scheme. Hence, the question arises that can promotion in reservation be extended to PwBD candidates under Limited Complementing Flexible Scheme?

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12. Three judges bench of hon'ble Supreme Court in ARYAN RAJ vs. CHANDIGARH ADMINISTRATION, decided on 08.07.2020 held that people suffering from disabilities are also socially backward and are thus entitled to the same benefits as given to the Scheduled Castes/ Scheduled Tribes candidates. While considering an appeal against a Punjab and Haryana High Court order, the bench headed by Justice Rohinton Fali Nariman said that it is 'following' the principle laid down in the Delhi High Court's judgment in ANAMOL BHANDARI (MINOR) THROUGH HIS FATHER/NATURAL GUARDIAN V. DELHI TECHNOLOGICAL UNIVERSITY 2012 (131) DRJ 583.

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

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

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

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



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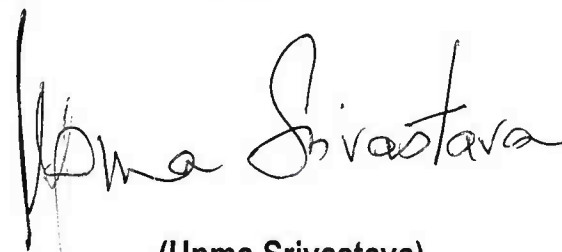
16. The above judgments were delivered while interpreting Sections 32 and 33 of PwD Act of 1995. Therefore, issue arises whether the law laid down in these judgments shall be applicable for implementation and execution of rights under The Rights of Persons with Disabilities Act, 2016 (hereinafter mentioned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

17. In the judgment of Hon'ble High Court of Uttarakhand delivered in UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLineUtt 865. Hon'ble High Court held that law as laid down in Rajeev Kumar Gupta Case by the hon'ble Supreme Court were rendered under the light of provisions of PwD Act of 1996 and still hold good under RPwD Act of 2016. Relevant Para of the judgment is reproduced below -:

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

18. Hence, this court recommends that the Respondent shall extend the benefits of reservation in promotion for PwBD employees of the Respondent establishment. Respondent shall prepare separate merit list for PwBD candidates in order of merit on the basis of DRTC Rules, 2000, amended from time to time and GUIDELINES ISSUED FOR LOCAL AND CENTRAL ASSESSMENT FOR PROMOTION FROM ONE GRADE TO ANOTHER GRADE WITHIN DRTC – 2019. Further this court recommends that if the Complainant would find place in merit list prepared separately for PwBD employees then he shall be given promotion to the higher grade.

19. The case is disposed off.



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 02.03.2021



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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12511/1023/2020

Complainant: Shri Abdul Azim  
E-mail: <azeem6129@gmail.com>

Respondent: The Commissioner, Kendriya Vidyalaya Sangathan  
18, Institutional Area, Shaheed Jeet Singh Marg  
New Delhi – 110016  
e-mail: <kvse2section@gmail.com>

Complainant 100% locomotor disability

### GIST of the Complaint:

Complainant vide letter dated **22.12.2020** submitted that he is working in Kendriya Vidyalaya Sangathan, Uttarkashi, Uttarakhand as a Teacher and Kendriya Vidyalaya Sangathan, Regional Office Dehradun had deducted his entire salary for the month of October as he had started work from home according to the guideline of the DoP&T and training and Ministry of social Justice and empowerment during COVID – 19 period. Officials were also forcing me to take leave.

2. The matter was taken up with the Respondent vide letter dated **24.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated 27.01.2021, respondent has not submitted reply.

### Observation/Recommendations:

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

**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 19<sup>th</sup> May, 2020 – entitled "Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19) Attendance regarding", states..... "In continuation of this Ministry's**



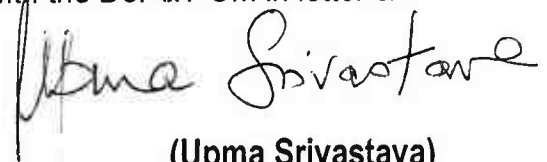
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O.M. of even number dated the 18<sup>th</sup> May, 2020, it has been decided that the Government servants who have underlying conditions (co-morbidities) and were undergoing treatment for these ailments before lockdown, may, as far as possible, be exempted from roster duty upon production of medical prescription from treating physician under CGHS/CS(MA) Rules, as applicable. **Similarly, Persons with Disabilities and Pregnant Women may also not be included in the roster to be prepared."**

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

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

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



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

Dated: 02.03.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12522/1023/2020

Complainant: Shri Joginder Singh  
R-26611 e-mail: <jsjhbsnl@gmail.com>

Respondent: The Chief Managing Director  
R-26610 Bharat Sanchar Nigam Ltd  
H.C. Mathur Lane, Janpath, New Delhi

Complainant 70% locomotor disability

### GIST of the Complaint:

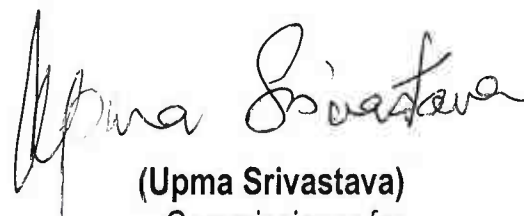
Complainant vide complaint dated 24.12.2020 inter-alia submitted that he was engaged as Casual Labourer in the year 1997 as a Astd. Telecom Technician and terminated from services on 12.07.2002 which was challenged before the Labour Court, Delhi. The directions were passed to the Management to reinstate the applicant w.e.f. 12.02.2002 along with 25% back wages within two months from the date of publication of Award. Thereafter, the applicant filed a OA No. 25/2015 against the re-engagement order dated 29.08.2013 effected from 09.01.2013 instead of 12.07.2002. The case was disposed off by the Hon'ble CAT with the directions to consider the request of the applicant for regularizations in terms of para 53 of the Hon'ble Supreme Court's Judgment in case of State of Karnataka Vs Umadevi & others (2006) 4 SCC 1. He further submitted that consequential orders were issued reinstating the applicant as daily wager from 12.07.2002 but declining the request of the applicant for regularization vide its order dated 27.03.2017 against which the applicant again approached Hon'ble CAT, PB New Delhi by filing OA No. 1999/2017 that was subjudice in the meanwhile the respondents issued one month termination notice/order 23.01.2020. He has requested to direct the respondent to re-engage the applicant in services after quash and setting aside the impugned termination

2. The matter was taken up with the Respondent vide letter dated 29.12.2020 under Section 75 of the RPwD Act, 2016. But despite reminder dated 01.02.2021, respondent did not submit any reply.

**Observation/Recommendations:**

4. After perusal of documents available on record, Court is in view that matter of regularization was adjudicated before various Court of law and also sub-judice before Hon'ble CAT, New Delhi. Therefore, no intervention of this Court is warranted at this stage.

5. Accordingly, the Case is disposed off.



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

Dated: 02.03.2021

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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. 12521/1011/2020

### Complainant :

R-26616

Shri Pardeep Kumar Arora,  
C-12/511, Yamuna Vihar,  
Delhi - 110053.

### Versus

### Respondent :

R-26617

National Highways & Infrastructure Development Corporation Limited,  
(Through the Dy. General Manager (HR),  
3rd Floor, PTI Building,  
4, Sansad Marg,  
New Delhi - 110 001

**Disability :** 59% Hearing Impairment

### Gist of Complaint:

Shri Pardeep Kumar Arora vide his email dated 11.10.2020 has pointed to the Advertisement No. NHIDCL/2(7)/Rec't Tech & Fin/2020/HR dated 05.10.2020 issued by the National Highways & Infrastructure Development Corporation Limited where the Corporation has not given reservation and age relaxation to the candidates with disabilities.

2. The Deputy General Manager (HR), National Highways & Infrastructure Development Corporation Limited vide letter dated 11.01.2021 submitted that DoP&T's Guidelines vide their O.M. dated 15.01.2018 referred to in the instant Notice is applicable only to the regular Cadre posts which have element of Direct Recruitment. The NHIDCL does not have a regular Cadre of manpower and vacancies in various posts are filled up either through transfer on deputation of serving Govt. employees or through Direct Contract of retired Govt. Officials for a certain tenure. Since NHIDCL does not fill up vacancies on Direct Recruitment basis, the company has not prepared any kind of rosters for making provisions of reservations for SC/ST/OBC/Divyangjan. The Respondent submitted that this is the reason that they have not made any provision for reservations for any category of persons like SC/ST/OBC including Divyangjan in the various advertisements of NHIDCL including the one dated 05.10.2020 referred in the complaint. However, no candidate is debarred for consideration just because they belong to any class or categories, including Divyangjan, for whom reservation orders apply.

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3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 19.02.2021.

4. The following persons were present during the hearing ;

1. Shri Pardeep Kumar Arora, the Complainant.
2. Shri Anil Kumar Jha for Respondent.

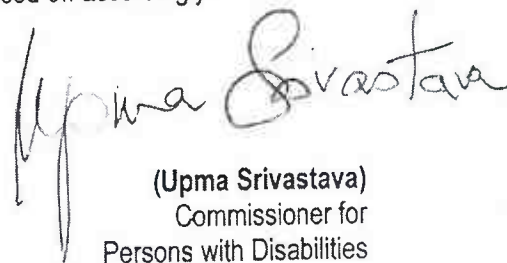
Both parties were heard.

#### **OBSERVATIONS & RECOMMENDATIONS**

5. The Respondent reiterated that they had not issued Advertisement for regular Cadre posts under Direct Recruitment. They do not have a regular Cadre of manpower and vacancies in various posts are filled up either through transfer on deputation of serving Govt. employees or through Direct Contract of retired Govt. Officials for a certain tenure. Since they do not fill up vacancies on Direct Recruitment basis, the company has not prepared any kind of rosters for making provisions of reservations for SC/ST/OBC/Divyangjan. The Respondent submitted that this is the reason that they have not made any provision for reservations for any category of persons like SC/ST/OBC including Divyangajn in the various advertisements of NHIDCL including the one dated 05.10.2020

6. After hearing both the parties, the Court observed that there is no violation of any provision of Rights of Persons with Disabilities Act, 2016 and the case is disposed off accordingly.

Dated: 02.03.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12415/1011/2020

### Complainant :

Shri Sudesh Kumar,  
Vill: Kharbani,  
Thana & Post : Sahiyara,  
Dist. : Sithamarhi,  
Bihar - 843332

### Versus

### Respondent :

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

Disability : 50% locomotor

### Gist of Complaint :

The complainant vide his complaint dated 09.11.2020 he is person with disability of both legs. He passed Railway Recruitment Board, Chandigarh's two Examinations against its Advertisement no. CEN-01/2018 for the post of Technician Grade III EMU. He got his document verification done and cleared the medical examination on 17.06.2019. In spite of clearing all the formalities, he was kept out of the panel. The complainant submitted that in the advertisement of RRC-Chandigarh, there was no option to apply under both legs category and hence he had to apply under one leg category. In his Disability Certificate there is a mention of 'Bilateral' but no mention of both legs. The complainant submitted that during document verification his medical examination too he had submitted the same Disability Certificate and he cleared both without any objection from the Respondent. He submitted that he has passed Certificate of I.T.I. Electrical. The contention of the complainant is that if he has passed I.T.I. Electrical with his disability then why he has been denied government jobs under BL category. He is competent enough to do the job for which he had applied. He walks just like a person with one leg disability then why he has been denied the job

2. The Member Secretary, Railway Recruitment Board vide letter No. RRB/CDG/CEN-01/2018 dated 23.11.2020 submitted that Shri Sudesh Kumar was a candidate for the post of Technicians posts against CEN-01/2018 and based on his performance in written examination, he was provisionally shortlisted for candidature and Document Verification and was called on 02.07.2019 for the same at Chandigarh. On scrutiny of his documents, it was found that he has

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

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

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

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

opted posts against CEN-01/2018 Category No.57, 54, 47, 126, 33, 49, 52, 134, 136, 31, 44, 48, 50, 53, 128, 129 & 137 respectively. He has been shortlisted for 'Technician Grade III EMU Cat. No.57' as he has mentioned his qualification as ITI/Electrician and PwD having One Leg disability in his online application. During the candidature and Document Verification process, he had produced his Disability Certificate as Locomotor Disability of B/L (Both Leg) C.T.E.V. whereas the prescribed Disability of above said post is notified as PwBD/OL (One Leg). The Respondent submitted that the complainant had in the past had also raised the same issue on various occasions on different platforms and reply has already been given to him by their office. The candidate has applied to all the posts of Technicians wherein the required disability of post is O/L (One Leg) whereas he is having disability of B/L (Both Leg). Being not having the minimum required disability, the candidature of the complainant could not be considered.

3. The complainant reiterated the submissions made by him in his original complaint dated 09.11.2020 in his rejoinder also.

4. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 09.02.2021.

5. The following persons were present during the hearing ;

1. Shri Sudesh Kumar, complainant on phone.
2. Shri Sandeep Kumar, RRB, Chandigarh, for Respondent.

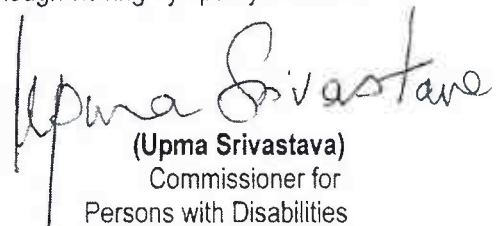
**Observation/Recommendations:**

6. During the hearing, the Respondent submitted that during Document Verification the Complainant produced his Disability Certificate as Locomotor Disability of B/L (Both Leg) whereas the prescribed Disability for the said post is notified as PwBD/OL (One Leg). He had applied to all the posts of Technicians wherein the required disability of post is O/L (One Leg) whereas he is having disability of B/L (Both Leg). Being not having the minimum required disability, the candidature of the complainant could not be considered.

7. After hearing both the parties, the Court is of the view that the matter is related to identification of post suitable for persons with disabilities. Since the post is identified for One Leg disability only, therefore the respondent's submission for not considering the candidature of the complainant cannot be faulted as such. However, though the complainant has the requisite qualification and ability to perform his duties like a one leg person, yet his case has to be considered technically as per relevant rules. Hence, this Court though having sympathy with the complainant cannot make any intervention in this matter.

8. The case is accordingly disposed off.

Dated : 02.03.2021

  
(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. 9327/1013/2018

#### Complainant:

Shri Jitender,  
Quarter No.182,  
Badi Chaupal,  
Badarpur,  
New Delhi -110044

versus

#### Respondent :

Chief Postmaster General,  
O/o Chief Postmaster General,  
Delhi Circle,  
New Delhi – 110 001

Disability : 40% locomotor

#### Gist of Complaint:

The complainant vide his complaint submitted that he appeared in the online examination held for Mailguard, Postman . He scored 36 marks and students who scored 33 marks who belonged to SC category were declared passed but he was declared failed.

2. The Assistant Director (Recruitment), O/o Chief Postmaster General, New Delhi vide letter dated 06.07.2018 submitted that an online examination for the post of Postman/Mailguard was held between 17.05.2017 to 21.05.2017. The Respondent gave the marks obtained by the Shri Jitender as mentioned below:-

Name : Shri Jitender	Marks obtained				Total Marks
Regd No.1493274	A	B	C I	C II	38
Roll No.4111167041					
OBC – OH	10	08	07	13	

Minimum qualifying marks for the above said post category-wise has been mentioned in the advertised notification:-

...2/-



- O.C – 10 marks in each part or 40% in total.  
 O.B.C – 09 marks in each part or 37% in total.  
 S.C/S.T – 08 marks in each part or 33% in total.

Further, it has been mentioned that minimum qualifying marks for O.B.C category in each section is 09 marks or total 37 marks. However, complainant has scored 08 marks and 07 marks in part B and C I due to which he could not succeed in the examination.

**Observation/Recommendations:**

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

4. The respondent is advised to intimate the number of posts of Mailguard and Postman advertised by them and how many persons with disabilities out of these posts were appointed to the post of Mailguard and Postman.

5. As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

*Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.*



(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

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

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

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

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

9. Accordingly the case is disposed off.

Dated: 02.03.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

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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. 12451/1014/2020

### Complainant :

Shri Moman Singh,  
Plot No.196, Hanuwant Nagar,  
Golulpura, Jhotwara,  
Jaipur,  
Rajasthan - 302012.

### Versus

### Respondent :

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

Disability : 60% locomotor + 20% Hearing Impairment

### Gist of Complaint:

Shri Moman Singh, the complainant vide his complaint dated 17.11.2020 submitted that the Railway Recruitment Board had advertised for the post of Group-D employees on 16.06.2018 vide Advt. No.RRC CEN 02/2018 dated 10.02.2018. He applied for the post online. The result of the test was declared on 04.03.2019 and he was selected in Railway Recruitment Board, Chandigarh. He was called for document verification & medical on 17.03.2020 at DRM Office New Delhi Railway Station but due to COVID-19 the verification and medical was cancelled on 16.03.2020. He submitted that it is more than 8 months now, but he has not received any intimation regarding the medical and verification of documents from the Northern Railway yet.

2. The Railway Recruitment Cell(RRG), Northern Railway, New Delhi vide their letter dated 19.01.2021 submitted that the Railway Recruitment Board published a notification for the recruitment for the post of Level-1(CEN-02/2018). The complainant Shri Moman Singh appeared in the examination and was shortlisted for Document Verification and Medical Examination at DRM Office, New Delhi on 17.03.2020, but it was postponed due to the spread of Corona Virus (Covid-19 Pandemic) till further orders. The date of Document Verification and Medical Examination of Shri Moman Singh and other candidates who were called for DV and ME on 17.03.2020 and 18.03.2020 will be fixed / scheduled as earlier as possible and the same will be noticed / updated to all the candidates by uploading the same at the official website of RRC.

...2/-

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3. **Hearings** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 19.02.2021.

4. The following persons were present during the hearing ;

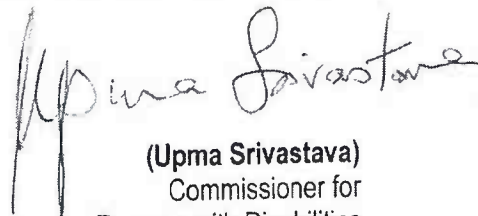
1. Shri Moman Singh, Complainant.
2. None appeared for Respondent.

#### **OBSERVATIONS & RECOMMENDATIONS**

5. After going through the documents submitted by the parties and hearing the complainant, the Court observed that the Document Verification and Medical Examination of Shri Moman Singh and other candidates who were called on 17.03.2020 and 18.03.2020 respectively could not be held due to Corona Virus (Covid-19 Pandemic) lockdown.

6. The Court recommends the Respondent to get the Document Verification and Medical Examination of Shri Moman Singh and other candidates with disabilities done within three months from the date of issuance of this recommendation and also issue the appointment letters to the candidates as per the extant rules.

Dated: 02.03.2021

  
(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. 12413/1014/2020

### Complainant :

Shri Prashant Pandey,  
B-1/204, Cheryl Apartment Downtown,  
Kharadi,  
Pune - 411 014.

### Versus

### Respondent :

All India Institute of Medical Sciences,  
(Through the Director),  
Ansari Road,  
New Delhi - 110 029

Disability : 50% Autism Spectrum Disorder

### Gist of Complaint:

Shri D.C. Pandey, the complainant submitted that his son Shri Prashant Pandey is a person with 50% Autism. His son had given Stenography test for the post of Stenographer with Roll No.8923606 against Advertisement No. AIIMS/Exam.Sec/34-38/20/Stenographer of AIIMS, New Delhi. He cleared the first round of the Stenography examination. In the second round (which is qualifying nature) AIIMS have fixed 80 words per minute for shorthand typing. He submitted that how an autistic child clear this examination. He further submitted that no person from this category can qualify the stenography typing test under the present norms and these posts will be kept vacant as they have done with other posts. Stage -I was also tough for persons with such type disabilities. In Stage-I, the qualifying mark for general category students was 50%, for SC & ST it was 40% and for PwDs it was 45%. He submitted that in all other exams (like SSC, Banks or even IITs), the qualifying marks for PwD candidates are kept very low. He further submitted that he has been continuously following the results of AIIMS for different posts and it is seen that they have kept most of the posts vacant stating that no candidate could qualify for that post. Despite his son qualified the first round.

...2/-

2. The Sr. Admn. Officer, AIIMS, New Delhi vide letter dated 22.01.2021 submitted that they have been giving four percent reservation/one percent for person with benchmark disabilities as specified in four groups under Rights for Persons with Disabilities Act, 2016 in direct recruitment and three percent in Group C promotion posts. AIIMS, New Delhi has started process to till up the posts of Stenographer under direct recruitment mode. There are 03 posts earmarked for PwD candidates (02-for ASD, MI, MD and 01 for LV). Computer Based Test has been conducted and 14 candidates under PwD category have qualified the CBT. They are now to qualify the skill (Stenography/typing) test. The Stenography/typing test is the basic requirement for performing the job of Stenographer. The Respondent submitted that Staff Selection Commission has also been conducting required skill/stenography test for PwD candidates by giving compensatory time for transcription to the PwD candidates. The Respondent submitted that the matter has been looked into by the competent authority of the institute and it has been considered that ;-

- a) will get skill test as per standard in the given recruitment rule of the post.
- b) If out of all PwD candidates who have been shortlisted, none/only one is able to qualify, then they will give all those candidates who could not qualify this test, another chance by giving compensatory time as per scheme of Staff Selection Commission.

The Respondent further submitted that as per direction of the Commission, the AIIMS, New Delhi has decided to appoint one Grievance Redressal Officer for PwDs.

3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 19.02.2021.

4. The following persons were present during the hearing ;
  1. Shri Deep Chandra Pandey, Father of the Complainant
  2. Non one represented the Respondent

#### **OBSERVATIONS & RECOMMENDATIONS**

5. Respondent advertised vacancies on the post of Stenographer. Vacancies were reserved separately for PwBD suffering from Autism, Visual Impairment etc. Complainant raised following objections –

- a) Eligibility criterion for qualifying the skill test (which is second stage of the recruitment process) was typing speed of 80 words per minute. Complainant alleges that the speed eligibility is strenuous task for person suffering from Autism disorder.
- b) Recruitment process comprised of two stages. After first stage, 14 candidates in PwBD were shortlisted and called for participating in second stage. Complainant has alleged that these 14 candidates were not shortlisted in separate subcategories of disabilities, i.e. Autism, Visual Impairment etc.



### ELIGIBILITY CRITERIA

6. On this issue Respondent submitted that this issue was considered by the Respondent and it was decided that skill test is sine qua non, hence the test has to be conducted as per Recruitment Rules which prescribe minimum speed limit of 80 words per minute. Respondent further submitted that in case one or no candidate in PwBD category is selected, relaxation in minimum speed eligibility will be given to all candidates.

### SEPARATE SHORTLISTING FOR SUB CATEGORIES

7. Vacancies for the post were reserved separately for subcategories of Autism, Visual Impairment etc. Respondent can not fill vacancies of one sub category with PwBD candidate belonging to another sub category. For eg, vacancies reserved for PwBD candidate suffering from Autism cannot be filled by PwBD candidate suffering from Visual Impairment. To fill vacancy reserved for one subcategory (for eg, Autism) with candidate belonging to other subcategory (for eg, Low Vision) amounts to 'Inter-se exchange' of reservation. Process of 'Inter-se exchange' is laid down in DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. Respondent cannot inter-se exchange the vacancies on its own in contravention of the DoPT O.M. As per the instructions mentioned in the OM, following steps have to be followed by government establishment –

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

8. Furthermore, as per Section 3(5) it is mandatory for the Appropriate Government to provide reasonable accommodation to Persons belonging to PwD category. Term 'reasonable accommodation' is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modifications and adjustments to ensure that Person with Disabilities can enjoy and exercise rights equally with others. Reasonable Accommodation is 'modification' or 'adjustment' to make resources equally accessible for Divyangjans who are naturally placed at disadvantageous position in the society.

9. Hence, considering the DoPT OM cited above, this court recommends that the Respondent shall not inter-se exchange the vacancies reserved for PwBD candidates suffering from 'Autism'. 2 seats which were reserved for PwBD candidates suffering from 'Autism' shall not be filled by the Respondent with PwBD candidate suffering from any other disability.



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

11. Aims and Objective of Rights of Persons with Disabilities Act, 2016 is rehabilitation and assimilation of Divyangs in main stream society. Autism disorder, as above mentioned, is a kind of disorder which makes it challenging for the person suffering from the disorder to assimilate with the society. Therefore, considering Section 3(5) read with Section 2(y) of RPwD Act, 2016 this court recommends :-

- (i) to fill the vacancy reserved for Autism sub category from amongst the candidates shortlisted in this category by providing reasonable relaxation in typing speed through the current process only.
- (ii) No fruitful purpose will be served by keeping the post vacant and carrying it forward only on account of stringent criteria and without reasonable relaxation.
- (iii) Already scarce opportunities of employment should not be denied to PwD who really require it to lead an independent and dignified life which is so crucial for him.
- (iv) Even if one candidate is available who can be appointed with relaxed standard the same shall be done. Later on gradually with handholding training and support the candidate will fulfil the criteria also.

12. The case is disposed off.

Dated: 02.03.2021



(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. 12442/1014/2020**

**Complainant :**

Shri Bharat Kumar,  
House No.B-105,  
Gali No.02,  
Pradhan Enclave,  
Burari,  
Delhi – 110084.

**Versus**

**Respondent :**

Mahanagar Telephone Nigam Limited,  
(Through the General Manager (Admn.))  
Room No.315, 3<sup>rd</sup> Floor,  
Khurshid Lal Bhawan,  
New Delhi – 110 001.

**Disability :** 75% locomotor

**Gist of Complaint :**

The complainant vide his complaint dated 17.11.2020 submitted he is a person with 75% locomotor disability and his wife has 40% locomotor disability. His father Shri Siya Saran who was working as WA(BCR) died on 21.01.2018, before 2-3 years of his retirement. His mother Smt. Kaushalya Devi had given a representation during September 2018 for compassionate appointment of her son in MTNL. The complainant has requested to help him get compassionate appointment in place of his late father.

2. The DGM (Admin) HQ, MTNL vide letter no. STR/CGA Cases/2018/26/11 dated 06.01.2021 submitted that they have received an application from the wife of deceased on 17.09.2018 for appointment of her son Shri Bharat Kumar on compassionate ground in place of her late husband. The MTNL has informed the complainant on 09.10.2018 that they have imposed ban on all type of recruitment except in the key professionally qualified areas where posts have to be manned by professionally qualified personnel. The claim of the applicant that no reply was given on his application dated 17.09.2018 is not true. The Respondent submitted that no reply/information has been received from the complainant till date. The Respondent further submitted that MTNL is following Govt. of India rules as regards to the reservation in recruitment of persons with disabilities is concerned. The recruitment of professionally qualified personal for specialized stream is done with the approval of Board of Directors.

**OBSERVATIONS & RECOMMENDATIONS**

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

- a) It has been observed from the Respondent's reply that MTNL has imposed a ban on all type of recruitment except in the key professionally qualified area where posts have to be manned by professionally qualified personnel.
- b) However, the respondent is recommended to consider appointing Shri Bharat Kumar being a person with disability in any contractual job on compassionate ground suitable to him.
- c) The case is accordingly disposed off.

Dated : 05.03.2021

  
(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. 12549/1031/2021

#### Complainant:

Shri Ranveer Singh Chauhan,  
Flat No.2, Residential Complex,  
Shri Dadadev Hospital, Dabri,  
New Delhi-110045  
Email: ranveerchauhan84@gmail.com  
Mobile: 8447827840

R-26650

#### Respondent:

Principal,  
Rajkumari Amrit Kaur College of Nursing,  
Lajpat Nagar IV, Near Moolchand Metro Station,  
New Delhi-110024  
Email: principal@rakcon.com

R-26651

#### 1. Gist of Complaint

1.1 Shri Ranveer Singh Chauhan, a person with 40% Locomotor Disability filed this complaint regarding denial of admission to M.Sc. Nursing; and non-implementation of the provision of 5% reservation of seats for persons with Benchmark Disabilities in admission by Rajkumari Amrit Kaur College of Nursing, University of Delhi.

1.2 The complainant submitted that according to the Notification issued by the respondent 01 seat had been reserved for Person with Disability whereas according to the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] at least 02 seats should have been reserved for candidates with Benchmark Disability out of the total 25 seats. The complainant further submitted that his name had not been shown in the Merit List.

#### 2. Section 32 of the RPwD Act, 2016 provides as under:

“32.(1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.”

(Page 1 of 2)

**3. Submissions made by the Respondent:**

2.1 On taking up the matter, the respondent filed their reply on 08.02.2021 in affidavit and submitted that in the light of Section 32 of the RPwD Act, 2016, this issue was discussed with the Admission Committee who are also members of the respondent Nursing College; and it was decided to adhere to the instructions given in the said section for 5% reservation for the candidates with disabilities in M.Sc. Nursing course. The respondent also submitted that during academic session 2020-2021, 5% quota of persons with benchmark disabilities has been filled.

**4. Submission made in Rejoinder:**

The complainant filed his rejoinder dated 17.02.2021 to the reply filed by the respondent and submitted that the respondent filled up only 01 seat instead of 02 seats out of total 25 seats which is in violation of Section 32 of RPwD Act, 2016.

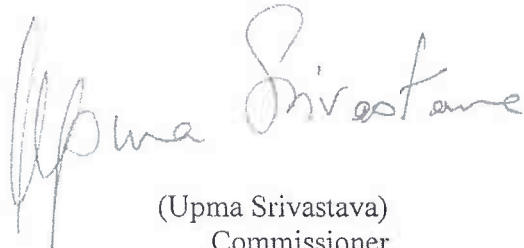
5. The Nodal Officer-PwD, University of Delhi endorsed to this Court a copy of their email dated 18.02.2021 addressed to the Principal respondent Nursing College and informed that as per Delhi University policy and practice, the first seat of a block of every 20 seats is to be reserved for persons with benchmark disabilities; and that the program of study i.e. M.Sc. Nursing for which the complainant had applied, has 25 seats. Therefore, 02 seats, which are supernumerary in nature, are to be reserved for Persons with Benchmark Disabilities in such a situation.

**6. Observations/Recommendations:**

6.1 From the submission made by the parties in this case, it is quite clear that the total intake for the M.Sc. Nursing program of study is 25; and accordingly, respondent Nursing College should have reserved 02 seats in terms of Section 32 of RPwD Act, 2016. It is, therefore, respondent Nursing College is recommended to fill one more seat as per procedure from amongst the merit list of the candidates with disabilities available with them (panel) or re-advertise and fill.

6.2 The case is disposed off.

Dated: 10.03.2021

  
(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. 11932/1011/2020

### Complainant :

Shri Abhinav Kumar,  
Near Office of Central Water Commission,  
Vill: Kotni, Post: Nagpura,  
Dist. : Durg,  
Chhattisgarh – 491 010.

### Respondent :

National Institute of Technology  
(Through the Registrar),  
Sector A-7,  
Institutional Area, Narela,  
Delhi – 110040.

Disability : 40% locomotor disability

### Gist of Complaint:

Shri Abhinav Kumar vide his complaint dated 05.03.2020 submitted that he applied for the post of Technical Assistant (Mechanical Engineering) against Advertisement of National Institute of Technology. There were total of 65 posts. His Roll No. is 6010012 and Application ID No. is 181114204. He appeared in the examination at NIT Kurukshetra on 30.03.2019. He applied to the post under PwD-UR quota. In the final result the reservation was not given for PwDs. The complainant has requested this Court to direct the Respondent to publish the final list of PwDs. The Respondent wants the examination conducted on 30.03.2019 to be cancelled.

2. The Respondent vide letter dated 16.12.2020 submitted that complaint does not pertain to NIT, Delhi and by going through with the complaint the deponent found that the complainant has filed the complaint before the Hon'ble Court against NIT Kurukshetra, Haryana. The NIT, Delhi had given the advertisement in the year 2015 for the post of Assistant Professor (on contract) or on regular basis in the different disciplines of the institute vide advertisement no. 13/2015. Special Recruitment drive for SC/ST/OBC/PwDs. The NIT Delhi also published another advertisement in the year 2015 for the post of Non-Teaching Technical Assistant (PwD-OH) IN Library and Information Science on regular basis of the Institute and the vacancies in different categories had also been clarified in the advertisement. The Institute after going through all formalities had found that none of the candidates found suitable for the post of Assistant Professor under PwD-OH and Technical Assistant under PwD-OH and the same facts had also been elaborated/described in letter dated 13.11.2020 of the Respondent.

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

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

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

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

4. The following persons were present during the hearing :

1. Shri Abhinav Kumar, the Complainant.

The complainant was heard.

### **OBSERVATIONS & RECOMMENDATIONS**

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

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

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

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

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

### **IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES**

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



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

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

10. Addition of any post from this list –

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

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

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

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

**RESERVATION FOR PERSONS WITH DISABILITIES**

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

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

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

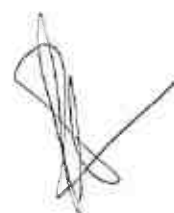
13. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

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

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

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

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





- g) Such unfilled vacancy shall be carried forwarding the subsiding recruitment year.
- h) 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.
- i) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.

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

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

#### ISSUING OF NOTIFICATION

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

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

#### EXAMINATION FEES

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

#### EXAMINATION PROCESS

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

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

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

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

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

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

#### **RELAXED MINIMUM CRITERIA**

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

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



### SELECTION ON MERITS

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

### DETAILED PROCEDURE FOR MAINTAINING ROSTER

31. Situation – 1 - As on 01.01.2018 or 15.01.2018, if a new cycle begins, the roster points for PwD shall be 1, 26, 51 and 76. The categories are (1% reservation for each)

- (a) Blind and Low Vision;
- (b) Deaf and hard of hearing;
- (c) Locomotor disability including Cerebral Palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) (i) autism, intellectual disability, specific learning disability and mental illness.  
(ii) multiple disabilities from amongst persons under Clauses (a) to (d) including deaf-blindness;

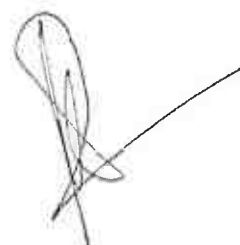
32. Situation 2 - As on 15.01.2018, the cycle has already started and only 1<sup>st</sup> point is filled in under 3% reservation. Then the roster may be modified for the remaining points i.e. 26, 51 and 76.

33. Situation 3 - As on 15.01.2018, the cycle has already started and two points are filled in i.e. 1 and 26 (under 3% reservation) still the roster can be modified to accommodate the another two points say 51 and 76. The Appointing authority should ensure how best the 4% reservation be implemented from 15.01.2018. The flexibility of filling the reserved points within the blocks i.e. 1-25, 26-50, 51-75 and 76-100 has been provided. The earliest vacancy in the block should be filled in by the PwD applicants, as per the prescribed reservation.

34. To understand more practically, the following examples may help:

a. The new cycle started on 01.01.2018 and there are 27 vacancies in a group. The points reserved for PwD are 1 & 26. The first vacancy goes to Blind and Low vision i.e. (a) category. The 26<sup>th</sup> vacancy goes to Deaf and hard of hearing i.e. (b) category. As and when 51 vacancies arise it goes to (c) category and 76<sup>th</sup> vacancy goes to (d) category.

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



c. If the cycle already started as on 15.01.2018 and the first vacancy was filled in by Hearing Handicapped (HH) category then the remaining vacancies i.e. 26, 51 and 76 as and when arises shall be filled in by (a), (c) and (d) category candidates. The aim of the Appointing Authority should be to fill up the vacancies by the categories for which the points are meant. For whatever reason, the points are filled in by other categories than the one for which they are meant for, by the end of the cycle, all the 4% (points 1, 26, 51 and 76) should be filled in the (a), (b), (c) and (d) categories.

d. If there are backlog vacancies, they are to be filled in by the categories for which they have been carried forward.

e. For inter-change of the vacancies, the procedure is laid down in the O.M. dated 15.01.2018.

f. The 4% is to be calculated on the number of vacancies in a particular group i.e. A/B/C.

g. The roster is to be maintained group wise i.e. A/B/C.

h. In Group B and C, it is 4% of total vacancies (not posts). In Group A, it is 4% of vacancies in identified posts.

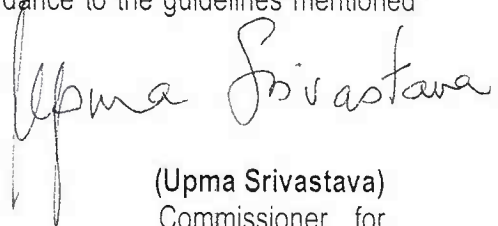
i. This is a vacancy based roster and not post based roster.

j. This is a horizontal roster i.e. the point reserved under 1/26/51/76 may also be a point reserved for SC/ST/OBC/EWS.

35. In the present Complaint it is submitted by the Complainant that NIT Kurukshetra issued Advertisement No. 41/2018 for filling vacancies of non-teaching posts. Complainant alleges that NIT Kurukshetra did not reserve vacancies for the Persons with Benchmark Disabilities.

36. This Court recommends that NIT Delhi shall comply with necessary guidelines prescribed by various ministries and government departments from time to time, as mentioned above. Further, this court recommends NIT Kurukshetra to revisit the result declared and provide reservation in accordance with the guidelines mentioned above and further to conduct the whole recruitment process afresh if reservation to Divyangjans is not given in accordance to the guidelines mentioned above.

Dated: 11.03.2021



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

**Copy to :**

The Registrar,  
National Institute of Technology,  
Kurukshetra,  
Haryana – 136119.

-

along with the complaint for necessary  
action.



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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: 12551/1022/2021

Complainant: Shri Indrajeet N. Jani,  
2- Punit Nagar,  
Opposite Bajrangwadi  
Jamnagar Road, Rajkot-360006  
Email: janiindrajit2@gmail.com

Respondent: The DRM  
Office of Sr. Divisional Mechanical Engineer  
Divisional Railway Manager Office  
Western Railway, Rajkot -360001

Complainant 40% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated 04.01.2021 inter-alia submitted that he is working in the O/o the Divisional Railway Manager's Office Rajkot, and the Railway Administration transferred him from Rajkot to Hapa which is 76 kms distance from his residence. He further submitted that he met Sr. Mechanical Engineer, Western Railway, Rajkot to post him near to his native place but he has been asked either to accept the promotion and join the duty or to decline the promotion and give it in a writing to his seniors. Railway Authorities tried to force the people to accept their orders.

2. The matter was taken up with the Respondent vide letter dated 14.01.2021 under Section 75 of the RPwD Act, 2016. Despite reminder dated 15.02.2021, no response has been received from the respondent.

### OBSERVATIONS & RECOMMENDATIONS

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


a) In view of the difficulties faced by the complainant to reach his office at Hapa from his home in Rajkot, it is recommended that posting and transfer of employees with disabilities needs to be done sensibly so as to ensure that they participate in the governing process with desired level of efficiency in an equitable platform as enshrined under the Rights of Persons with Disabilities Act, 2016. The request of the complainant for posting near his place of residence may be considered at the earliest. Due to the difficulties he is facing due to his disability he cannot be forced to forego his promotion. On the contrary, the respondent should proactively make efforts to accommodate him at his station of choice and promote him as well. Section 2(y) RPwD Acts also denotes as under:

"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"

The compliance report is to be sent to this Court within 90 days of date of issuance of this Order.

b) The case is accordingly disposed off.

Date: 12.03.2021

  
(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. 12458/1011/2020

### Complainant:

Shri D. Radha Krishna,  
1-45-5/7, Sita Mansion,  
Sector I, MVP Colony,  
Visakhapatnam,  
Andhra Pradesh – 530 017.

### Respondent :

The National Institute of Pharmaceutical Education and Research(NIPER)-Hyderabad,  
(Through the Director),  
Balanagar,  
Hyderabad – 500 037.

**Disability** : 60% locomotor

### Gist of Complaint:

The complainant vide his complaint dated 18.11.2020 submitted that the National Institute of Pharmaceutical Education and Research (NIPER), Hyderabad has issued an Employment Notification No. NIPER-HYD/02/2020-21 for direct recruitment of the Non-faculty posts on regular basis through open completion on all India basis. The complainant submitted that NIPER has clearly deviated and violated the GOI instruction by denying relaxation of 5% marks (i.e. from 55% to 50%) at Master's level for recruitment of all posts of Registrar, Deputy Registrar, Assistant Registrar, Librarian etc. On par with SC/ST candidates to PwDs. NIPER has also not given any age relaxation for pwd candidates and thus not only deprived the rights of the pwds but also made the eligible pwd candidates forgo their benefit of applying for the post of Registrar.

2. The Respondent vide letter dated 07.01.2021 submitted that the notification in response to which the complainant has made the application clearly mentions at column 10 of the notification as follows:

" The reservations / relaxations policy for SC/ST/OBC/Persons with Benchmark Disabilities (PwBD)/EWS applicants will be as per the existing Govt. of India policy. Applicants applying for the reserved posts should clearly state to which category they belong. No age relaxation will be applicable to SC/ST/OBC candidate applying for Unreserved (US) posts."

The Respondent submitted that the relaxations applicable under the Act will be implemented and all the applications including that of the applicant are under the process of scrutiny and they have not yet completed the said process. They submitted that the complainant has approached this

....2/-

Court under apprehension that relaxations applicable under the Act, will not be extended to him which is baseless. The 'Equal Opportunity Policy' as required under Section 21 is under preparation and the same will be submitted shortly. They further submitted that the Grievance Redressal Officer under Section 23 of the Act, has been appointed by them.

3. The Complainant vide his rejoinder dated 09.02.2021 submitted that some aspects in the said notification has been deviated from the Government of India Rules and regulations laid down and prescribed by

- a) Department of Personnel & Training
- b) University Grants Commission
- c) Persons with Disabilities Act.

NIPER is trying to conceal their errors identified in the Notification by misleading this Court with their imprecise replies. He submitted that there should not be any ambiguity in eligibility conditions/relaxations in any recruitment notifications and particularly for senior level of Group 'A' posts they should exercise utmost attention. He submitted that it should be specifically mentioned to ensure that the aspirants who may fall slightly short (borderline) of the requisite eligibility conditions may know about the possibility of relaxed conditions. The eligibility conditions should be clear, explicit and unambiguous and it should not be in the latent, hidden or implied forms. The complainant has requested for the follow relief;

- a) Insert 5% relaxation in marks at PG level for the post of Registrar and applicable age relaxation for candidates with disabilities in the notification.
- b) To issue fresh notification or with corrigendum by inserting above relaxed conditions in view of larger public interest, as there might be so many disabled candidates who might have missed the opportunity.

**Observation/Recommendations:**

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

5. As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e),namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;





- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

*Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.*

- (2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

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

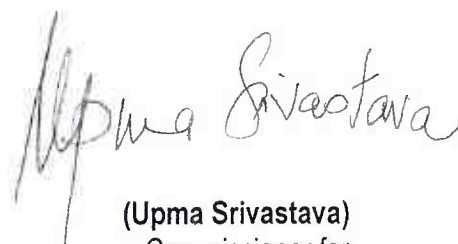
6. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any person with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

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

8. Accordingly respondent is recommended to adhere with the provisions of RPwD Act, 2016 and circular issued by Govt. of India for appointment of Persons with Disabilities. It is further recommended to take appropriate action to issue clear and unambiguous advertisement in future and ensure that the rights of persons with disabilities is not infringed.

9. Accordingly the case is disposed off.

Dated: 12.03.2021

  
(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. 12523/1011/2021

### Complainant :

Shri Giridhar Mondal,  
Vill : Ronpur,  
P.O.: Barabagan,  
Ranpur,  
P.S. : Suri,  
Birbhum –  
West Bengal - 731103

### Versus

### Respondent :

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

Disability : 80% Cerebral Palsy

### Gist of Complaint:

The complainant vide his complaint dated 28.12.2020 submitted that he has been selected for the post of GDS ABPM against the Recruitment Advertisement No. RECTT/R-100/Online/GDS/Cycle-II/Vol-I dated 18.02.2020 West Bengal Postal Circle. After getting the letter of intimation, he went to the Office of A.S.P of Suri Sub Division for Document Verification on 08.09.2020. After verification, he was given attestation form, form of Character Certificate and Medical Fitness. The complainant reached their office on 14.09.2020 with proper and filled documents but he was informed that he is not suitable for the post of GDS being a person with disability.

2. The Assistant Director of Postal Services (Recruitment), West Bengal Circle vide letter no. Rectt./R-100/GDS/Cycle-I/PH/2020part-I dated 04.02.2021 submitted that a notification for GDS online selection cycle-II for filling up of 2021 posts of GDS ABPM, BPM & Dak Sevak was issued under Advt No. Rectt./R-100/Online/GDS/Cycle-II/Vol-I dated 18.02.2020. Out of 2021 posts, 64 posts were reserved for PH candidates. In para-'XVI' of the notification the categories of disability suitable for the post of GDS-ABPM were mentioned as ;

....2/-

- a) Low vision (LV)
- b) D (Deaf), HH (Hard of Hearing),
- c) One Arm-OA, One Leg (OL), Leprosy Cured, Dwarfism, Acid Attack victim
- d) Specific Learning Disability and Multiple disabilities from amongst disabilities mentioned at (a) to (d) above except Deaf and Blindness.

The criteria for online selection in the post of GDS was only the marks obtained in 10<sup>th</sup> standard of approved Boards aggregated to percentage to the accuracy of 4 decimals and the selection was made as per automatic system generated merit list based on the online application submitted by the candidates in accordance with the selection criteria as mentioned in para-XX(ii) of their office notification dated 18.02.2020. The candidates who secured highest percentage of marks in 10<sup>th</sup> standard automatically received an SMS for his provisional selection on the prescribed date followed by system generated intimation letter.

The complainant Shri Giridhar Mondal had submitted online application for the post of GDS-ABPM Raiganj, Karidhya SO, Suri HO, Birbhum Division which was reserved for Deaf and Hard of Hearing (HH), though he is a person with 80% Cerebral Palsey and is not eligible for the post. However, as he secured highest percentage of marks in 10<sup>th</sup> standard amongst the 'PH' applications who applied online for the same post, the system considered Shri Mondal as 'selected' for the post being more meritorious and simultaneously online 'sms' was generated and forwarded subsequently to the selected candidate from the software. The Respondent further submitted that Gramin Dak Sevaks are not the Government Employee and not getting salary like a Govt. Servant. They are appointed as extra departmental agents and they are getting allowances for 3 hours or 5 hours of service in a day as decided by the competent authority. It was clearly mentioned in the advertisement that mere getting SMS or any other communication on selection will not entitle the candidate to claim for regular selection/appointment. The final selection appointment will be based on satisfactory completion of verification and genuineness of all required documents produced by the candidates in support of his/her eligibility for the post in accordance with the notification by the Recruitment Authority.

#### **OBSERVATION AND RECOMMENDATION:**

3. In the light of the documents available on record, the Court observed that the Complainant had applied to the post of GDS-ABPM which is not an identified post for persons with Cerebral Palsy.

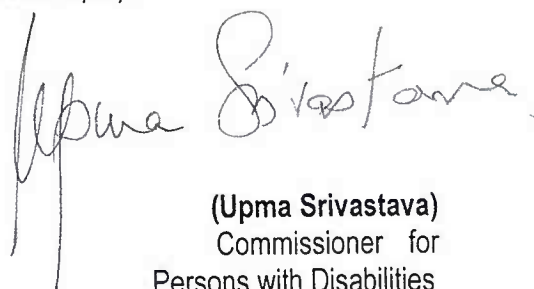


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4. There are number of posts which are identified for candidates with Cerebral Palsy. The Complainant is advised to apply against the posts which are identified suitable for his category of disability. List of posts identified suitable for Persons with Benchmark Disabilities notified as on 04.01.2021 is available at the website of Department of Empowerment of Persons with Disabilities ([http://disabilityaffairs.gov.in/ content/upload/uploadfiles/files/224370.pdf](http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf)).

5. The case is disposed off accordingly.

Dated: 12.03.2021



**(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. 12465/1011/2020

### Complainant :

Shri Akshat Khare,  
RB III 178 A, GF Khajanchi Bagh,  
East Railway Colony,  
Bhopal,  
Madhya Pradesh – 462 010.

R.26686

Versus

### Respondent :

Food Corporation of India  
(Through the Chairman & Managing Director),  
16-20, Barakhamba Lane,  
New Delhi – 110 001.

R.26687

Disability : 40% locomotor disability

### Gist of Complaint :

The complainant vide his email dated 08.12.2020 submitted that he had applied for the post of Assistant Grade-III (Depot) under Disability quota against a Recruitment Advertisement No. 01/2019-FCI category-III in West Zone, Mumbai. He secured 2<sup>nd</sup> rank in PwD-C category under Roll No.1921015440 and Regd. No.43277201. His Document Verification has been completed on 20.02.2020 but he was not issued the Regional Allotment letter till date, i.e. even after more than 9 months of successful verification of DV.

2. The case was taken up with the Chairman & Managing Director, Food Corporation of India vide letter dated 14.12.2020.

3. The Dy. Gen. Manager (CLO), Food Corporation of India vide letter no. 43(2)/CCPD-17/LC/2020 dated 06.01.2021 submitted that Shri Akshat Khare (Roll No.1921015440) has applied for the post of Assistant Grade-III (Depot) under PwBD-C (OL) category. On examination submitted by Shri Akshat Khare, it was found that the Disability Certificate submitted by him is for Post-Polio Residual Paralysis of both Limbs/Legs whereas he had applied for Assistant Grade-III (Depot) post under PwBD-C (OL), i.e. One Limb/Leg. The Assistant Grade-III (Depot) post has been identified for special abilities like, OL, CP, LC, D, AAV & MD and the said post is not identified for Both Limbs/Legs (BL) category. The physical disability mentioned in the disability certificate of the candidate does not match with the applied category and accordingly the candidature of Shri Akshat Khare against the post applied was not accepted.

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

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

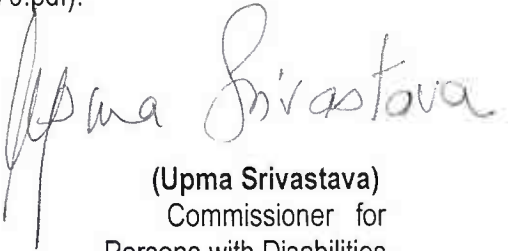
**Observation/Recommendations:**

4. In the light of the documents available on record, the Court observed that there is no violation of any provision of Rights of Persons with Disabilities Act, 2016 or Government Rules by the Respondent.

5. There are number of posts which are identified for Both Legs candidates. The Complainant is advised to apply against the posts which are identified suitable for his category of disability. List of posts identified suitable for Persons with Benchmark Disabilities notified as on 04.01.2021 is available at the website of Department of Empowerment of Persons with Disabilities (<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>).

6. The case is disposed off accordingly.

Dated : 12.03.2021

  
(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. 12489/1014/2020

### Complainant :

Shri Jitesh Patle,  
Ward No.2,  
Bhatera Chowki,  
In front of Aaara Mill,  
Balaghat,  
Madhya Pradesh-481 001.

Versus

### Respondent No. 1:

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

### Respondent No.2 :

Ministry of Corporate Affairs,  
(Through the Secretary)  
'A' Wing, Shastri Bhawan,  
Rajendra Prasad Road,  
New Delh – 110 001

Disability : 50% Hearing Impairment

### Gist of Complaint:

Shri Jitesh Patle vide his complaint dated 29.11.2020 submitted that he has passed the Phase-VII/2019 Selection Post Examination (Graduation & above level posts) conducted by Staff Selection Commission between 15.10.2019 and 16.10.2019. He has sent his documents for verification, but his name was found missing in the final list of successful candidates. He sent number of emails to SCC regarding his non selection, but received no reply from them.

2. The Under Secretary, SSC vide letter dated 21.01.2021 submitted that the matter has been referred by them to the Regional Office of their Commission, i.e. SSC(NR) for providing comments in the said matter as the scrutiny of relevant documents is being done by SSC(NR) for the post of Senior Technical Assistant advertised vide Post Category No. NR 11119 under Notice of Phase VII/2019/Selection Posts. The Respondent No. 1 submitted that the matter is still pending with the User Department, i.e. Ministry of Corporate Affairs regarding clarification on the Essential Qualification of the said post. They have informed the complainant over telephone and through e-mails a number of times regarding his representation status.

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3. The Respondent no. 2 vide letter dated 07.01.2021 addressed to the Regional Director, SSC (Northern Region) submitted that this is the first time SSC has requested them to depute one officer of their Ministry to be present during document verification and to advice on the equitability of documents with respect to educational qualification and experience as per RRs of the STA. However, 11 representations were received against their rejection on the basis of the qualification which was sent to them for its view/comments. Their Ministry has examined the representation in the light of RRs of STA and keeping in view the past selections made by the SSC in the grade of STA and JTA, as the educational qualification of STA and JTA are same as per the RRs, and the views/comments of the Ministry was conveyed to the SSC vide their Ministry's letter of even number dated 23.09.2020. The Respondent has also drawn the attention to the criteria adopted for selection of non Honours Degree (Economics) candidates for the post of Junior Technical Assistant (JTA) by SSC in the earlier selection/examination wherein the candidates having one subject as Economics were selected for the post. The Respondent No.2 suggested SSC to adopt the same criteria as adopted by them in earlier selection of the post in future selection also.

4. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 09.03.2021.

5. The following persons were present during the hearing ;

- 1) Shri Jitsh Patle, the complainant.
- 2) Shri Kaloo Ram, Under Secretary, on behalf of Respondent 2.

Parties were heard.

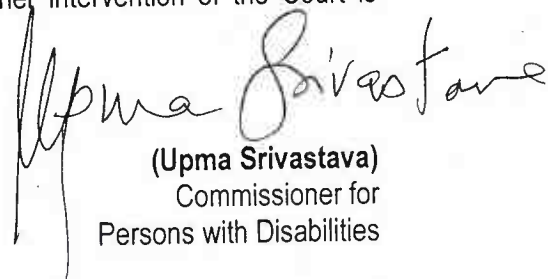
**Observation/Recommendations:**

6. During the hearing the representative of Respondent submitted that the scrutiny of documents of all the candidates including Shri Jitesh Patle would be done again.

7. The Respondent 1 vide their letter dated 04.03.2021 to the Complainant endorsing a copy to this Court has stated therein that 'As per clarification received from the user department, re-scrutiny has been performed by their office along with the representative of the user department on 19.02.2021 and accordingly revised OK and Rejection lists have been placed on the SSCNR website on 20.02.2021 in which his candidature has been put in OK list. The candidates have been requested to submit their representation, if any.'

8. Considering the response of the Respondent, no further intervention of the Court is required. The case is disposed off accordingly.

Dated : 15.03.2021

  
(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: 12525/1024/2021

Complainant: Shri Dipak Singharay  
E-mail: <sdipak.0110@gov.in>

Respondent: The General Manager, Western Railway  
Head Quarters, Churchgate, Mumbai – 400020  
e-mail: <gm@wr.railnet.gov.in>

Complainant: 82% hearing impairment

### GIST of the Complaint:

Complainant vide complaint dated **28.12.2020** submitted that he had applied for Group 'C' post under PwD quota against Notification dated 14.06.2000 published by respondent and after written examination and interview, he was selected but Medical Board of Railway declared him unfit. He further submitted that after the intervention of CCPD Court, he was appointed on 31.12.2003 and presently he is working as a Sr. Clerk at Establishment Traffic Department of DRM office BCT. He alleged that he was included under New Pension Scheme whereas the candidate of his panel were appointed and covered under CCS (Pension) Rules, 1972.

2. The matter was taken up with the Respondent vide letter dated **05.01.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **05.02.2021**, no reply has been received. Therefore, hearing scheduled on **09.03.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- Shri Dipak Singharay – complainant
- Respondent – absent

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**Observation/Recommendations:**

3. The main issue before this court is whether an employee can be considered appointed from retrospective date? Hon'ble Supreme court in number of cases has held that for the purpose of determining seniority and salary, an employee cannot be considered appointed from retrospective effect.

4. Similar issue came up before Hon'ble High Court of Patna, whereby the petitioner claimed that since he was appointed in year 2007 against the vacancy which was advertised in year 2003, hence, he must be allowed to opt for Old Pension Scheme. Hon'ble High Court rejected the contention and reiterated the rule position that an employee is considered to be borne in the service on the date of his appointment and not before it, ARUN KUMAR VERMA v. STATE OF BIHAR; [Civil Writ Jurisdiction Case No. 4125 of 2018], dated 07.12.2018.

5. Hence, this court concludes that taking into consideration the settled principle of law, the Complainant cannot be considered appointed from retrospective effect.

6. Moreover, the Memorandum relied upon by the Complainant is not applicable on the facts before this court because the Memorandum deals with employees who got appointed before 01.01.2004 and joined after 01.01.2004. Complainant was appointed in year 2007 hence the Memorandum is not applicable on the present set of facts.

7. Hence, the intervention of this court is not warranted.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.03.2021



## 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: 12421/1024/2020**

Complainant: Shri Madhav Prasad Karn, SSA

Annex – 9, DGAQA, 'H' Block

New Delhi – 110011

E-mail: <madhavprasadkaran.011@gmail.com>

Respondent: The JS & CAO, Ministry of Defence

AO, CAO/A-3 (A), Ministry of Defence

'E' Block, Room No. 76, New Delhi – 110011

Complainant 40% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **04.11.2020** submitted that he had submitted disability certificate issued by VMMC & Safdarjung Hospital, New Delhi to the respondent for grant of double rate of transport allowance but respondent did not accept the disability certificate issued by Hospital. He further submitted that respondent had written a letter to RML Hospital, New Delhi for obtaining their recommendations but no reply has been received.

2. The matter was taken up with the Respondent vide letter dated **19.11.2020** under Section 75 of the RPwD Act, 2016.

3. In response, Sr. Administrative Officer, O/o the JS & CAO vide letter dated **15.12.2020** inter-alia submitted that disability certificate submitted by Shri Madav Prasad Karn, SSA has been forwarded to VMMC to offer their recommendation with regard to grant of transport allowance at double the normal rates as per the procedure. On receipt of recommendation from VMMC and Safdarjung Hospital his case will be processed as per existing rules on the subject.

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4. After considering the respondent's reply dated **15.12.2020** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **02.02.2021**.

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

- Shri Madhav Prasad Karn, the complainant.
- Shri Birendra Singh, Assistant – JS & CO on behalf of the respondent.

**Observation/Recommendations:**

5. Both the parties were heard.

6. In the present complaint, it is alleged by the complainant that his application for Double Transport Allowance has been rejected by the Respondent in violation of relevant rules related to Divyang employees.

7. Respondent submitted that the application is being processed as per relevant rules framed by the Government. Respondent submitted that in accordance with O.M. No. 19029/1/78-B1V(B), Government of India, Ministry of Finance, (Department of Expenditure) dated 31.08.1978, application of double TA is allowed by the Head of the Department when such obligation is applied for and recommendation of the medical authorities is received by such Head of the Department.

8. Rule laid down in this O.M. need to be updated by the competent authority. In most of the establishments if disability certificate is genuine then opinion of the medical authority is not required for granting double TA. However, since as per the relevant O.M., it is mandatory for the respondent establishment to obtain opinion from medical authorities, hence respondent's Act of forwarding the application and medical certificate to the medical authorities is in compliance of the O.M.

9. Hence, this court concludes that the respondent establishment is abiding by the relevant rules and has not violated the law.



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10. However, the fact that inordinate delay in taking decision shall augment the hardship of divyang complainant. Hence, this court recommends that the respondent establishment shall expedite its pursuing with the concerned medical authority and take final decision on the complainant's application of double TA within 30 days from the date of this order and shall file the compliance report before this court.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.03.2021

Copy to:

The Secretary  
Department of Expenditure  
Ministry of Finance, North Block : for modifying this OM of 1978.  
New Delhi – 110001

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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: 12510/1022/2020

Complainant: Shri Pankaj Tiwari  
E-mail: <tiwaripankaj950@gmail.com>

Respondent: The General Manager (Region)  
Food Corporation of India, Regional Office  
4 – Nehru Place, Tonk Road, Jaipur - 302015  
e-mail: <srmrj.fci@nic.in>

Complainant 75% hearing impairment

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 21.12.2020 में कहना है कि वह भारतीय खाद निगम, पंजाब में सहायक श्रेणी तृतीय लेखा पद पर कार्यरत थे तथा उनके अनुरोध पर उनका स्थानांतरण पंजाब से जयपुर में हुआ और दिनांक 12.10.2020 को उन्होंने क्षेत्रीय कार्यालय, जयपुर में कार्यभार ग्रहण किया परन्तु दिनांक 02.11.2020 को उन्हें बीकानेर पदस्थापित किया गया जो कि उनके गृह नगर से 250 किमी दूर है। प्रार्थी का आगे कहना है कि उनके बाद 03 लेखा कर्मचारियों को समान पद पर जयपुर स्थानांतरित किया गया।

2. The matter was taken up with the Respondent vide letter dated 24.12.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Asstt. Genl. Manager (Pers), Food Corporation of India, Jaipur vide letter dated 21.01.2021 inter-alia submitted that Shri Pankaj Tiwari was working as AG.III (Accounts) in the FCI in Regional Office, Punjab and as per his request, he transferred to Regional Office, Jaipur on 12.10.2020. He was further posted to the District Office, Bikaner due to administrative requirement as no AG-III (Accounts) staff was available at Bikaner against the sanctioned strength of 03. The further submitted that on joining Regional Office, Jaipur, he has sought posting at Jaipur or Bikaner, out of which, he was posted at Bikaner.

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4. प्रार्थी का अपने प्रति उत्तर दिनांक 07.02.2021 में कहना है कि उपरोक्त तथ्य सरासर गलत है तथा अनुरोध किया है कि उनको क्षेत्रीय कार्यालय जयपुर/मण्डल कार्यालय जयपुर पदस्थापित किया जाए।

5. After considering the respondent's reply dated 21.01.2021 and the complainant's rejoinder dated 07.02.2021, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 09.03.2021.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 09.03.2021. The following were present:

- Pankaj Tiwari - complainant.
- Shri I.K. Chaudhary, AGM on behalf of the respondent.

**Observation/Recommendations:**

6. Both the parties were heard.

7. Complainant is employed as Accounts Officer in Respondent establishment. He was transferred to Rajasthan from Punjab on his request. Complainant chose Jaipur as his first preference of posting and chose Bikaner as second preference. Further, the Complainant submits that reason for giving Jaipur as first preference was that his wife is suffering from a disease the treatment of which is possible in effective Jaipur only.

8. Respondent submits that the Complainant was posted at Bikaner which was his second preference because in Jaipur no post of Accounts Officer was vacant. However, after few days of Complainant's transfer to Bikaner, post of Accounts Officer fell vacant in Jaipur office which was filled by an enabled employee.

9. Fact that a divyang employee was denied his first choice of posting, i.e. Jaipur, because no post of Account Officer was vacant and immediately thereafter, finding and filling vacancy of Account Officer in Jaipur reflects discrimination with a divyang employee.

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Section 3(2) of Rights of Persons with Disabilities Act, 2016 provides that in order to utilise the capacity of divyang employee, appropriate government shall provide appropriate environment. Respondent in the present complaint failed to comply with this provision and on the contrary discriminated with the Complainant by creating unfavourable environment instead of conducive environment. Section 3(2) is reproduced below –

*Section 3(2) - The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.*

10. This court concludes that there are no merits in denying the Complainant posting of his first preference. Hence, this court recommends that the Complainant shall be posted at Jaipur office of the Respondent establishment which was his first preference at the earliest.

11. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.03.2021



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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: 12531/1024/2021

Complainant: Shri Karthikeyan, M. Pharm  
Lecturer in Pharmacy, Department of Pharmacy  
Thanjavur Medical College, Thanjavur – 4

Respondent: The Registrar-cum-Secretary, Pharmacy Council of India  
III Floor, MBCC Centre, Flat No. 02, Community Centre  
Maa Anandamal Marg, Okhla Phase – I, New Delhi – 110020  
e-mail: <registrar@pci.nic.in>

Complainant: 60% Locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated 26.12.2020 submitted that he has working as Lecturer at Department of Pharmacy in Thanjavur Medical College, Tamil Nadu since 16.10.2015 and as per the Pharmacy Council of India (PCI) notification, "Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014" dated 11.11.2014, Lecturer will be Re-Designated as Assistant Professor after 02 years of Teaching experience in PCI approved or recognized pharmacy colleges but this has not been implemented.

2. The matter was taken up with the Respondent vide letter dated 05.01.2021 under Section 75 of the RPwD Act, 2016.

3. Registrar-cum-Secretary, Pharmacy Council of India vide e-mail dated 22.01.2021 inter-alia submitted that the condition that "a lecturer will be re-designated as Assistant Professor after 02 years of teaching experience in PCI approved/recognized Pharmacy College" prescribed under Minimum Qualification for teachers in Pharmacy Institutions Regulations, 2014 is applicable to institutions approved by the PCI for B.Pharm/Pharm.D/Post graduate course in Pharmacy and as per the record of PCI, Department of Pharmacy, Thanjavur Medical College, Thanjavur is approved for D.Pharm and it does not run B.Pharm Course. Hence, the above prescribed requirement is not applicable to him.

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4. After considering the respondent's reply dated **22.01.2021** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.03.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- Shri Karthikeyan – complainant
- None appeared on behalf of respondent

**Observation/Recommendations:**

5. Complainant is a lecturer in educational institution recognised by Respondent establishment. Complainant prays that his post must be re-designated to Assistant Professor on the ground of completion of 2 years of service as lecturer.

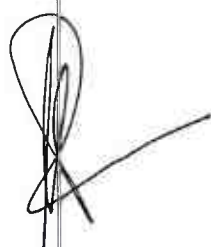
6. Complainant has alleged that the Respondent establishment re-designated post of 2 other lecturers, namely Smt. Saraswati B and Sri Sampat on completion of 2 years of service, who were serving in similar colleges.

7. Section 3(3), 20(1) and 20(3) of Rights of Persons with Disabilities Act, 2016 protect employment rights of Persons with Disabilities. As per the provisions, government establishment can not discriminate with Persons with Disabilities in matter of employment and promotions. Statute provides that Divyangjans must be treated at par with enabled person. Section 3 and 20 are reproduced below -

*Section 3(3) - No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.*

*Section 20(1) - No Government establishment shall discriminate against any person with disability in any matter relating to employment.*

*Section 20(3) - No promotion shall be denied to a person merely on the ground of disability.*

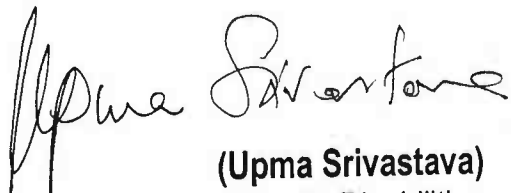


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8. Hence, this court concludes that Respondent has violated equality rights of the complainant by denying re-designation of the post of Lecturer to the post of Assistant Professor. Therefore, this court recommends that the Respondent establishment shall redesignate the post of the Complainant on similar lines in the case of two enabled employees namely Smt. Saraswati B and Sri Sampat who were re-designated.

9. Case is disposed off.



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

Dated: 15.03.2021



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12541/1021/2021

वादी:

श्री अशोक कुमार गुप्ता, मकान नं: 01/954

रुचि खण्ड - II ए शारदा नगर योजना

रायबरेली रोड़, लखनऊ - 208012

e-mail: <samratashok1965@gmail.com>

प्रतिवादी:

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दूरदर्शन परिसर, दूरदर्शन भवन

टॉवर-सी, कॉपरनिक्स मार्ग, मण्डी हाऊस

नई दिल्ली - 110001

e-mail: <ceo@prasarbharati.gov.in>

महानिदेशक, दूरदर्शन महानिदेशालय

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महानिदेशक, आकाशवाणी महानिदेशालय, संसद मार्ग

नई दिल्ली - 110001

e-mail: <dgair@air.org.in>

केन्द्र निदेशक/केन्द्राध्यक्ष, उत्तर प्रदेश एवं उत्तराखण्ड जोन

आकाशवाणी, 18, विधानसभा मार्ग, लखनऊ।

e-mail: <lucknow@air.gov.in>

Complainant: 50% person with disability

### GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक 16.12.2020 में कहना है कि उन्होंने कर्मचारी चयन आयोग द्वारा आयोजित परीक्षा सन् 1986 उत्तीर्ण कर, दिव्यांगता कोटे के तहत दूरदर्शन, लखनऊ में सितम्बर, 1989 में एलडीसी (LDC) के पद पर कार्यभार ग्रहण किया तथा सामान्य विभागीय सीनियारिटी लिस्ट के तहत वह वर्तमान में यूडीसी (UDC) के पद पर कार्यरत है। शिकायतकर्ता का आगे कहना है कि उन्हें आज तक कोई भी पदोन्नति में दिव्यांगता आरक्षण का लाभ नहीं प्राप्त हुआ और न ही प्रतिवादियों द्वारा दिव्यांगजनों के लिए कोई रोस्टर तैयार किया गया है। शिकायतकर्ता ने आरोप लगाया है कि उचित दावा मांगने पर मानसिक प्रताड़ना देते हुए उनका स्थानान्तरण कर दिया गया है।



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2. The matter was taken up with the Respondent vide letter dated **12.01.2021** under Section 75 of the RPwD Act, 2016.

3. Director (Engg.)/Head of Office, Prasar Bharat, All India Radio, Lucknow vide e-mail dated **12.02.2021** inter alia submitted that with enactment of the RPwD Act, 2016 and as per DoP&T OM's, there is no provision for reservation in promotion for PwDs. So far as the request for giving the benefit of reservation in promotion on account of disabilities notionally with retrospective effect is concerned, being policy matter advise of the Directorate General All India Radio is being obtained.

4. After considering the respondent's reply dated **12.02.2021** and the complainant's rejoinder dated **17.02.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.03.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- Shri Ashok Kumar Gupta – complainant
- Shri K.M. Rastogi, Sr. Admin Officer on behalf of respondent

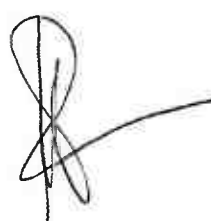
**Observation/Recommendations:**

5. Both the parties were heard.

6. Complainant submits that the Respondent establishment has not extended reservation in promotion for employees belonging to Persons with Benchmark Disabilities category. As per the Complainant's submissions, reservation in promotion for PwBD employees is denied since year 1996.

7. Respondent submits that the matter is already in consideration and decision will be taken within 2 months.

8. This Court dealt with similar Complaints in the past where Government establishment denied reservation in promotion for PwBD employees. Reasoned



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Recommendation – Order were passed by this court citing various judgments of Hon'ble Supreme Court and Hon'ble High Courts and also DoPT OM's. This court feels compelled to pass similar Recommendation in the present Complaint. After perusal of various such Complaints this court has identified following two issues which need to be addressed in such matter:

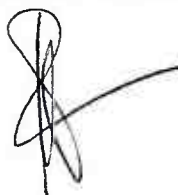
- i) Whether reservation in promotion to Group A and B is applicable for Persons with Benchmark disabilities (hereinafter mentioned as 'PwBD') and can be implemented being a horizontal reservation as against vertical reservation for other categories;
- ii) Whether Government instructions are mandatory to be issued before implementation of reservation for PwBD in promotion to Group A and B.

#### **Issue No. 1**

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

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

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



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

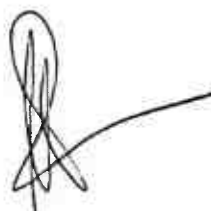
11. Court also addressed the anomaly which arises when reservation in promotion is not extended to identified posts in Group A and Group B. Para 13 of the judgment is reproduced below –

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

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

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

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



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

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

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

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

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





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

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

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

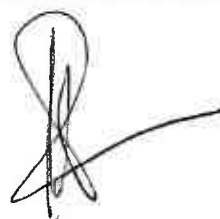
19. Hence, this court concludes that replacement of the PwD Act of 1995 does not in any way change the interpretation of the Supreme Court's directions in this matter

### **Issue No. 2**

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

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

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



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

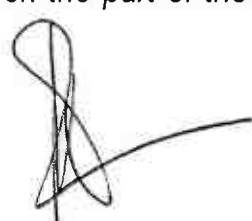
23. In this regard it is imperative to mention the judgment of Hon'ble Supreme Court in matter of GOVERNMENT OF INDIA v. RAVI PRAKASH GUPTA; (2010) 7 SCC 626. One of the issues in the case was whether reservation to PwDs under s.33 of 1996 Act can be denied till executive identifies posts for reservation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

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

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

*"17. First proviso to Section 34 of the new Act provides that reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. We have been informed that such instructions are yet to be issued by the State Government.*

*18. Rights of Persons with Disabilities Act, 2016 is a beneficial legislation and Section 34 thereof confers statutory right of reservation in public employment to persons with benchmark disabilities. This valuable right cannot be denied to persons with disabilities due to inaction on the part of the State Government in issuing instructions."*




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

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

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

28. This court appreciates the fact that the Respondent is considering the issue of reservation in promotion in Respondent establishment and expects that swift decision shall be taken by the Respondent establishment. Hence this court recommends that the Respondent establishment shall take into consideration the rule position in preceding paragraphs while reaching to the conclusion on the issue of reservation in promotion and shall file Compliance Report within 90 days of date of this Order.

29. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for Persons with Disabilities

Dated: 15.03.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12517/1024/2020

Complainant: Shri Ravindra Kumar Gupta, 16/2D, Type – 3  
BSNL Quarter, Kali Badi, Gole Market, New Delhi – 110001  
E-mail: <ravindergupta.2008@gmail.com>

Respondent: The Director (HR), Bharat Sanchar Nigam Ltd  
Corporate Office, Harish Chandra Mathur Lane  
Janpath, New Delhi – 110001  
e-mail: <agmbldgbsnlco@gmail.com>

Complainant 50% Locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated 21.12.2020 submitted that he is working in BSNL, New Delhi as a JTO and living in BSNL TYPE – III quarter at first floor in Kali Bari, New Delhi where he is facing lots of difficulties. He further submitted that he has been entitled of Type – IV quarter since 2012 and he is continuously applying from last four years for Type-IV ground floor quarter. He alleged that in the last year, BSNL implemented VRS scheme due to this, around 100-150 quarter have been vacated but they allotted to SC, ST and OBC except PwDs. He also alleged the BSNL administration neither providing reservation to PwDs in promotion and nor in allotment of quarter.

2. The matter was taken up with the Respondent vide letter dated 29.12.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Asst. General Manager (Bldg.), BSNL vide letter dated 29.01.2021 inter-alia submitted that Shri Ravindra Kumar Gupta is seeking priority for allotment of Type-IV, Ground Floor accommodation at Kali Bari locality but his name is at Sr. Nol. 24 in Type-IV waiting list in the month of January 2021 and at present there is no Type-III quarter vacant at Ground floor in Kalibari. They further submitted that BSNL is providing reservation to PwDs in promotion as per guidelines of Govt. of India.



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4. Complainant vide rejoinder dated **12.02.2021** inter-alia requested that 21/1D, Type-IV, Ground Floor Quarter in Kali Bari Marg allotted to Shri Rajesh Gupta whose son is also 80% disabled is going to vacate in near future which is suitable for him as per his requirement.

5. After considering the respondent's reply dated **21.01.2021** and the complainant's rejoinder dated **07.02.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.03.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- Shri Ravindra Kumar Gupta - complainant.
- Shri Sunil Kumar Gupta, AGM on behalf of the respondent.

**Observation/Recommendations:**

6. Both the parties were heard.

7. Complainant who suffers from 50% locomotor disability is employee of Respondent establishment and is currently living in Type-III residential accommodation provided by the Respondent establishment. Complainant alleges that the residential accommodation he is living in is on the first floor. He submits that he is entitled for Type-IV residence, which he has applied for. His name is at Sr. No. 24 in waiting list of Type – IV residential accommodation. He further submits that he is also eligible for Out-of-turn allotment, however, Respondent is denying him out of turn allotment.

8. Respondent submits that the Complainant shall be allotted Type – IV accommodation when his number will be due. His name can be considered for out of turn allotment on medical grounds in accordance with the rules which provide that out of turn allotment can only be considered in the next below type of the entitlement of the official concerned. Hence, as soon as Type - III residence on Ground Floor will be vacant, Complainant shall be allotted the same as per out of turn allotment rules.

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9. Fact that despite of suffering from 50% locomotor disability, Complainant was never provided residence on the ground floor despite the clear cut provision of out of turn allotment indicates discrimination with the Complainant. This act is also a violation of 'accessibility rights' of the Complainant.

United Nations defines concept of 'Accessibility' in following terms –

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

10. Respondent allotting residence to the Complainant on the first floor, despite of his disability reflects that the Respondent never cared to allot residence to the Complainant on the ground floor. When the Complainant approached this court, Respondent tried to take shelter behind guidelines issued by Directorate of Estate relating to 'out of turn' allotment. These guidelines should have been followed earlier and Complainant should have been allotted residence on the ground floor. However, no such attempt was made by the Respondent. This inaction of the Respondent reflects harassment of the Complainant and denial of accessibility rights.

11. Hence, this court recommends that the Respondent shall immediately allot Type III residence on ground floor as soon as any such residential facility becomes vacant automatically or by Respondent's efforts of exchanging quarters. Further, this court recommends that as soon as any Type IV residence on ground floor become available, the Complainant shall be allotted the residence on first priority.

12. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.03.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

**Case No: 12520/1022/2020**

Complainant: Kumari Atisha Singh  
D/o Shri Radha Charan  
E 133 – F, First Floor, Mittal Chowk  
Pul Prahladpur, New Delhi – 110044  
e-mail: <atishasingh96@gmail.com>

R-26752

Respondent: The Commissioner, Kendriya Vidyalaya Sangathan  
18, Institutional Area, Shaheed Jeet Singh Marg  
New Delhi – 110016  
e-mail: <kvse2section@gmail.com>

R-26753

Complainant: Shri Radha Charan 80% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **28.12.2020** submitted that her father Shri Radha Charan, 80% locomotor disability and widower has been serving at Kendriya Vidyalaya, NEPA, Barapani, Meghalaya which is situated about 2000 km from his native place i.e. New Delhi since 24.09.2016 and she with her brother living alone at New Delhi without any elder member. She further submitted that the post of Principal in Kendriya Vidyalaya, NTPC Badarpur which is near to their residence in New Delhi is vacant, therefore, she has requested to transfer her father from KV NEPA, Meghalaya to KV NTPC, Badarpur, New Delhi.

2. The matter was taken up with the Respondent vide letter dated **28.12.2020** under Section 75 of the RPwD Act, 2016.

3. सहायक आयुक्त (स्था-1), केन्द्रीय विद्यालय संगठन, नई दिल्ली का अपने पत्र दिनांक **27.01.2021** में कहना है कि कोविड-19 के संक्रमण के दृष्टिगत वर्तमान सत्र 2020-21 की केन्द्रीय विद्यालय संगठन की स्थानांतरण प्रक्रिया अभी शुरू नहीं हुई है। स्थानांतरण प्रक्रिया

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शुरू होने पर कुमारी अतिशा सिंह के प्रतिवेदन पर उनके पिता की सहमति लेकर, रिक्तियों की उपलब्धता के तहत नियमानुसार कार्यवाही की जायेगी। विपक्षी का आगे कहना है कि पूर्व में मुख्य आयुक्त दिव्यांगजन के हस्तक्षेप से श्री राधाचरण का स्थानांतरण, उस समय उपलब्ध रिक्तियों में से सबसे नजदीक केंद्रीय विद्यालय में दो बार किया गया था परन्तु दोनों बार श्री राधाचरण ने स्थानांतरण से इंकार कर दिया।

**Observation/Recommendations:**

4. The Court noted that the complainant is seeking transfer nearby his hometown Kendriya Vidyalaya, NTPC Badarpur, New Delhi where post is vacate and available.

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

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

*Further, as per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.*

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

7. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.03.2021





सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12381/1023/2020

Complainant: Shri P.G. Baiju, Make-up Artist (Rtd)  
C - 8, Staff Quarters, Doordarshan Kendra  
Thiruvananthapuram - 695043  
e-mail: <sasikalabaiju@gmail.com>

Respondent: The Director General, Doordarshan Kendra  
Copernicus Marg, New Delhi  
e-mail: <dgdd@doordarshan.gov.in>

Complainant: 50% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **15.10.2020** inter-alia submitted that he was appointed as casual Make-up Assistant at Doordarshan Kendra, Thiruvananthapuram w.e.f. 24.03.1987 and he submitted a representation for regularization under liberalized regularization scheme of casual artists formulated in 1994 and in 2005, he was appointed on ad-hoc basis and retired on 31.05.2020 without regularization. He has requested to change service from Ad-hoc to regular, service to get full pension and immediate disbursal of provisional retirement benefits.

2. The matter was taken up with the Respondent vide letter dated **27.10.2020** under Section 75 of the RPwD Act, 2016.

3. Dy. Director (Admn), Doordarshan, New Delhi vide letter dated **21.12.2020** submitted that one disciplinary proceedings case is pending against Shri P.G. Baiju, which is yet to be finalized. Besides, one Court Case No. OA 562/2019 filed by Shri Baiju before the CAT, Ernakulam Bench for his claim for regularization is also pending in the CAT at the final stage, therefore, respondent had sought one month additional time for filing the para wise comments however, no response received within stipulated time period. Hence, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.02.2021**.

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4. Respondent vide e-mail dated **04.02.2021** submitted para wise reply and stated that Shri P.G. Baiju was appointed as casual Make-up Assistant at Doordarshan Kendra, Thiruvananthapuram w.e.f. 24.03.1987 and he was not considered for regularization in the liberalized regularization scheme, therefore, he approached the Court. Hon'ble CAT, Ernakulam. Hon'ble Court directed the respondent to consider the adhoc appointment of the applicant as Make-up Assistant and when a vacancy would arise and consider him for appointment on regular vacancy as and when a regular vacancy would become available. They further submitted that arrears pertaining to Transport Allowance amounting to Rs. 40144- and leave encashment 1,32,397/- was already paid to him. They further submitted that Shri Baiju has also filed a Court case bearing OA No. 562/2019 before the Ernakulam Bench of CAT regarding his regularization and pension status whether he is governed by old pension Scheme prior to 2004 or New Pension Scheme. The case is pending for hearing before the Hon'ble CAT, Ernakulam.

5. After considering the respondent's reply dated **04.02.2021** and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.02.2021**.

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

- None appeared for complainant, however, advocate Shri V.A. Shaji contacted on phone after hearing and informed that due to technical network problem, he could not be connected
- Shri S. Sanjeev, DDG on behalf of respondent

**Observation/Recommendations:**

6. After hearing the respondent and perusal of documents available including the written submission made by the Ld. Advocate of the complainant on 15.02.2021, Court is *in of* view that matter of regularization and pension status of complainant is sub-judice before CAT, Ernakulam. Therefore, no intervention of this Court is warranted.

7. Accordingly, the Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.03.2021



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

**Case No: 11430/1011/2019**

Complainant: Smt. Priyanka D. Sonawane  
e-mail: <kajalsonawane75@gmail.com>

R-26756  
S.V.National Institute of Technology  
Through the Director  
E-mail: <registraroffice@svnit.ac.in>  
Tel: 0261-2201517

..... RESPONDENT

R-26757  
Indian Institute of Technology , Goa  
Through the Director  
E-mail: <pstodirector@iitgoa.ac.in>  
Tel: 0832-2490-896

..... RESPONDENT

R-26758  
Indian Institute of Technology, Dharwad  
Through the Director  
E-mail: <pro@iitdh.ac.in>  
Tel: 0836 - 2212839

..... RESPONDENT

R-26759  
Indian Institute of Science, Bangalore  
Through the Director  
E-mail: <registrar@iiss.ac.in>  
Tel: 080 - 22932444

..... RESPONDENT

R-26760  
Goa University, Goa  
Through the Registrar  
E-mail: <registrar@unigoa.ac.in>  
Tel: 0832-2451184

..... RESPONDENT

R-26761  
Department of School Education & Literacy  
Through the Secretary  
E-mail: <maneesh.garg@nic.in>  
Tel: 011 - 23386232

..... RESPONDENT

### GIST of the Complaint:

Complainant vide letter dated **09.08.2019** inter-alia submitted that respondents are not providing reservation to PwDs candidates while in the recruitment of Group 'A' posts.

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

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

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

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

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

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2. The matter was taken up with the Respondent vide letter dated **09.10.2020** under Section 75 of the RPwD Act, 2016.
3. In response, S.V.National Institute of Technology, Surat vide letter dated **12.11.2020** inter-alia submitted that the recruitment was conducted during the year 2020 for Single Cadre post of Registrar, two posts of Dy. Registrar and three posts of Assistant Registrar in Group 'A' wherein 4% horizontal reservation for PwDs was notified by the Institute. Due to non-availability of suitable person with benchmark disability, vacancy has been carried forward to the subsequent Recruitment Cycle.
4. Complainant vide e-mail dated **25.01.2021** inter-alia submitted that she is not able to attend the hearing since she is in the family way and asked to have full bed rest. She has submitted following submissions for hearing purpose: 1. All the Institutes are not following the RPwD Act, 2016 and various orders of Supreme Court regarding fulfilling the backlog since no Institute is providing any evidence in support of their arguments like a copy of roster for PwDs. 2. No Institute has disclosed the PwD roster book on their website, which is mandatory as per the RTI Act. 3. None of the Institutes has a PwD Officer in Group 'A' & 'B' (Non-teaching). 4. Most of the Institute is claiming that they have PwD in Teaching, which comes under Group A, but the Ministry of Education or DoP&T has not issued any guideline for grouping of the Teaching and Non-Teaching Roster for Group 'A' & 'B' position etc.
5. After considering the respondent's reply dated **12.11.2020** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.01.2021**.

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

- Shri Subhash Pandey – IIT Goa; SR Gandhi – NIT Surat; Agni Ashwini – Goa University; Sandeep Parikh on behalf of respondent

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**Observation/Recommendations:**

6. Plethora of Complaints are filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.
7. Whole recruitment cycle can be divided into following parts –
- a) Identification of Posts suitable for PwD candidates.
  - b) Reservation given to Persons with Disabilities
  - c) Issuance of Notification
  - d) Examination Fees
  - 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 <sup>to list the</sup> ~~to list the~~ objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination.
9. For the present complaint whole summary of the statute is unwarranted, hence, relevant provisions for relevant portions are hereafter identified and mentioned.



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**IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES**

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. 16-15/2010-DD.III dated 29.07.2013 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

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

11. Addition of any post from this list –

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

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

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

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



**RESERVATION FOR PERSONS WITH DISABILITIES**

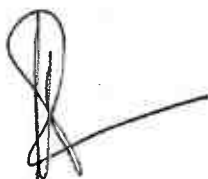
12. This category can be divided into following 6 sub categories –

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

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

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

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



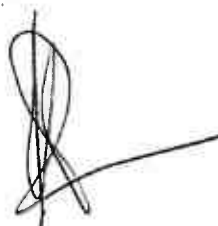
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16. How Vacancies can be Computed—The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under 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 100 points vacancy based Reservation Roster Register. Detailed method of maintaining and ear marking vacancies is laid down in Para 7.1 to 7.8 of the OM. Detailed methodology of maintaining the Roster is discussed.

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 -

- b) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.
- c) 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.
- d) 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.



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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. DoP&T 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.



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## 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.

- I. 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.
- II. 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.
- III. 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**

26. 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.

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

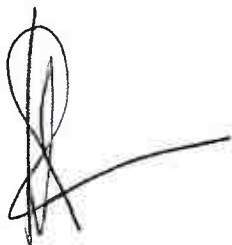
**SELECTION ON MERITS**

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

**DETAILED PROCEDURE FOR MAINTAINING ROSTER**

29. Situation – 1 - As on 01.01.2018 or 15.01.2018, if a new cycle begins, the roster points for PwD shall be 1, 26, 51 and 76. The categories are (1% reservation for each)

- (a) Blind and Low Vision;
- (b) Deaf and hard of hearing;
- (c) Locomotor disability including Cerebral Palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) (i) autism, intellectual disability, specific learning disability and mental illness.  
(ii) multiple disabilities from amongst persons under Clauses (a) to (d) including deaf-blindness;

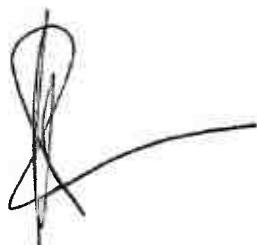


30. Situation 2 - As on 15.01.2018, the cycle has already started and only 1<sup>st</sup> point is filled in under 3% reservation. Then the roster may be modified for the remaining points i.e. 26, 51 and 76.

31. Situation 3 - As on 15.01.2018, the cycle has already started and two points are filled in i.e. 1 and 34 (under 3% reservation) still the roster can be modified to accommodate the another two points say 51 and 76. The Appointing authority should ensure how best the 4% reservation be implemented from 15.01.2018. The flexibility of filling the reserved points within the blocks i.e. 1-25, 26-50, 51-75 and 76-100 has been provided. The earliest vacancy in the block should be filled in by the PwD applicants, as per the prescribed reservation.

32. To understand more practically, the following examples may help:

- a. The new cycle started on 01.01.2018 and there are 27 vacancies in a group. The points reserved for PwD are 1 & 26. The first vacancy goes to Blind and Low vision i.e. (a) category. The 26<sup>th</sup> vacancy goes to Deaf and hard of hearing i.e. (b) category. As and when 51 vacancies arise it goes to (c) category and 76<sup>th</sup> vacancy goes to (d) category.
- b. If the cycle as on 15.01.2018 started already and the first vacancy is filled by VI category, then 26<sup>th</sup>, 51<sup>st</sup> and 76<sup>th</sup> vacancies shall be filled in by the applicants belonging to (b), (c) and (d) category.
- c. If the cycle already started as on 15.01.2018 and the first vacancy was filled in by Hearing Handicapped (HH) category then the remaining vacancies i.e. 26, 51 and 76 as and when arises shall be filled in by (a), (c) and (d) category candidates. The aim of the Appointing Authority should be to fill up the vacancies by the categories for which the points are meant. For whatever reason, the points are filled in by other categories than the one for which they are meant for, by the end of the cycle, all the 4% (points 1, 26, 51 and 76) should be filled in the (a), (b), (c) and (d) categories.
- d. If there are backlog vacancies, they are to be filled in by the categories for which they have been carried forward.





- e. For inter-change of the vacancies, the procedure is laid down in the O.M. dated 15.01.2018.
- f. The 4% is to be calculated on the number of vacancies in a particular group i.e. A/B/C.
- g. The roster is to be maintained group wise i.e. A/B/C.
- h. In Group B and C, it is 4% of total vacancies (not posts). In Group A, it is 4% of vacancies in identified posts.
- i. This is a vacancy based roster and not post based roster.
- j. This is a horizontal roster i.e. the point reserved under 1/26/51/76 may also be a point reserved for SC/ST/OBC/EWS.

33. Hence, this Court recommends that all the Respondent establishments shall comply with necessary guidelines prescribed by various government departments from time to time and mentioned above. Further this court recommends that all the Respondents shall file the compliance report within 90 days from the date of this Order.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.03.2021

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Extra 115

## 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. 12481/1102/2020

### Complainant:

Shri Fakhruddin

S/o Shri Rasiduddin

R/o Vill. – Raksa Kala, Post–Danokuiyan,

District-Sant Kabeer Nagar-272126 (UP)

Email: [ha0786@gmail.com](mailto:ha0786@gmail.com)

R-26717

### Respondent:

The Branch Manager,

State Bank of India, Semiriyawan Branch,

Vill Post – Semiriyawan, Tehsil – Khalilabad,

District- Sant Kabir Nagar-272126 (UP)

Email: [sbi.15532@sbi.co.in](mailto:sbi.15532@sbi.co.in) ;

R-26718

### 1. Complaint made by the Complainant

1.1 Shri Fakhruddin, M-40, a person with 100% Visual Impairment, filed this complaint regarding harassment and misbehaviour in providing banking facilities by the State Bank of India, Semiriyawan Branch, District-Sant Kabir Nagar (UP).

1.2 The complainant submitted that in June, 2020 he went to the respondent branch of the State Bank of India for opening a bank account. He alleged that the Branch Manager of the said bank denied opening a bank account on the ground of being a person with visual impairment. The complainant submitted that he told the branch manager about the RBI Guidelines with regard to provide banking facility to persons with disabilities and furnished a copy of the same, but he denied opening a bank account. After interference of a Social Worker, Shri Ahmad Sahab, a bank account was opened. Now, the bank is not providing him ATM/Debit Card despite his several requests and personal visits in the branch. The complainant further submitted that he has been facing difficulties to withdraw money from the bank without ATM/Debit Card.

Page 1 of 2

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

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

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

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

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

**2. Submission made by the Respondent:**

The matter was taken up with the respondent on 18.12.2020 followed by Reminders dated 04.01.2021 and 19.01.2021 for submission of comments, but despite lapse of statutory period, no reply was received from the respondent bank.

**3. Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**, but none of the parties appeared during the hearing.

**4. Observation/Recommendations:**

4.1 It was observed that Regional Manager, State Bank of India, Administrative Office Gorakhpur submitted a copy of their letter vide email on the date of hearing informing the respondent branch of the bank that RBI Circular No.200-08/138 dated 04.06.2008 with regard to issue of ATM Card to the persons with visual impairment had already been issued to the respondent branch. In the said circular, RBI has clearly instructed the banks that ATM Card can be issued to the persons with visual impairment. The Regional Manager has advised the respondent branch of the bank, in case ATM card has not been issued to the complainant, urgent arrangement be made to issue ATM Card to the complainant Shri Fakhruddin.

4.2. It is viewed seriously that the respondent branch of SBI is not sensitive to the rights of persons with disabilities as despite having acknowledged the specific direction of RBI to issue ATM Card to persons with visual impairment, the complainant had to face discrimination to get the ATM card issued by the branch.

4.3 Respondent is advised to take expeditious action to issue ATM Card to the complainant Shri Fakhruddin at the earliest; and the Officers and Staff of the Branch be made sensitive so that the legitimate right of person with disabilities to get ATM Card may not be infringed.

4.4 The case is disposed off.

Dated: 16.03.2021

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities

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Extra 117

## 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. 12537/1032/2021

### Complainant:

Mr. Zaheer Jan, Founder Chairman (STDF),  
Child & Disability Rights Activist  
Email: [infostdfjk2013@gmail.com](mailto:infostdfjk2013@gmail.com);  
[zaheerjan2019@gmail.com](mailto:zaheerjan2019@gmail.com)

R-26721

### Affected Person:

Mr. Ghulam Jeelani Mir, M-29,  
a person with 45% Locomotor Disability,  
Senior Research Scholar, Department of Biochemistry,  
University of Kashmir, Hazratbal,  
Srinagar-190006 (J&K); Email: [jeelani710@gmail.com](mailto:jeelani710@gmail.com)

R-26719

### Respondent:

Registrar,  
University of Kashmir,  
Main Administrative Building,  
Hazratbal, Srinagar-190006 (J&K)  
Email: [registrar@kashmiruniversity.ac.in](mailto:registrar@kashmiruniversity.ac.in)

R-26722

### 1. Gist of Complaint

1.1 The complainant filed a complaint on 05.01.2021 regarding Eviction Notice issued by the Hostel Warden, University of Kashmir to Mr. Ghulam Jeelani Mir, a Research Scholar with 45% Locomotor Disability to vacate the hostel; and having no Hostel Reservation Policy for Persons with Disabilities in University of Kashmir in accordance with the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016].

1.2 The complainant submitted that he had met two scholars with disabilities who informed that they have been residing in the University Hostel since may 2017 and now the Warden have told them to vacate the hostel because they have completed 3 years. The complainant alleged to have used abusive language and threat by the University authorities. The complainant pleaded that students need

Page 1 of 3



full accessible environment and accommodation to move easily. Living within the premises has helped them a lot. It would not be possible for them to find good accessible accommodation near Kashmir University especially in this Covid-19 pandemic situation.

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

2.1 The respondent filed their reply dated 12.01.2021 and submitted that Mr. Gh. Jeelani Mir, was accommodated as Guest Scholar on 06.06.2017 in IKS Hostel. As per the policy, the accommodation in IKS Hostel is granted on temporary basis for a maximum period of six month; and the whole time scholars of the University have to apply for regular accommodation in GKRS INN. Since Mr. Jeelani was accommodated on temporary basis he was required to apply for regular accommodation but he did not apply. Giving advantage of his special ability, his temporary accommodation was continuously extended till 31.03.2020. He was served a memo to vacate the hostel by or before 31.03.2020 but he did not comply with the orders of the University and kept his room locked amidst Covid-19 pandemic closure. On opening of the hostel in October, 2020, on his request his accommodation was extended till 30.11.2020, but he did not vacate the hostel. He has been staying in the IKS Hostel for there and half years.

2.2 The respondent further alleged that Mr. Jeelani has violated the hostel rules and created problems for hostel administration; he illegally managed to keep two students of CCPC in his room for which he was served notice. He is still reluctant to leave the hostel room rendering the hostel administration unable to accommodate the deserving special abled scholars.

## **3. Submissions made in Rejoinder:**

3.1 Complainant filed rejoinder on 20.01.2021 and submitted that it was painful for him to come from Baramulla to attend the lab. He had to approach VC for hostel accommodation as in the University of Kashmir there is no policy for reservation of hostel accommodation for students with disabilities.

3.2 The complainant had been directed to submit hostel accommodation fee for one year and the hostel authorities have wrongly considered him as a Guest Scholar. The Warden and GKRS INN Office had assured him full accommodation and also directed him not to apply for any other hostels. In September 2018 both the Warden and the Office staff got transferred in post Article 370 'abrogation', the Provost also got transferred. The newly appointed Warden and Provost shifted their offices into this IKS hostel building, misused their position and occupied the rooms, which otherwise could have accommodated by stranded Ph.D students outside. The two officials



manipulated the hostel rules and accommodated their 16 relatives in the IKS hostel building.

3.3 The complainant objected the modus operandi of the officials charging him as campus 'pollutant' having Scotty to travel from department to hostel, despite knowing that he cannot walk half a kilometre in one go due to his disability. He has been made accused of inviting scholars in his room which is baseless. He has got appointed as Assistant Professor in Higher Education and has also got provisionally selected for Food Technical Officer and has qualified ICMR Scientist B written exam, but he needs to continue his Ph.D to contribute. He stated to be badly affected by the unprofessional behaviour of Provost and Warden. He requested to reinstate his hostel accommodation.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- (1) Mr. Ghulam Jeelani Mir, the complainant; and Ms. Roma Bhagat, Advocate for the complainant
- (2) Prof. Aijaz Sheikh; and Mr. Altaf Hussain, Advocate for the respondent

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5. **Observation/Recommendations:**

5.1 Both the parties were heard.

5.2 From the submissions made by both the parties, it was confirmed that the candidate is admissible for hostel allotment as a regular student. Therefore, the Court recommends to allot the hostel accommodation immediately and on first priority till his term of Ph.D completes, with reference to Section 2(y) of the RPwD Act, 2016 which reads as under:

"2. In this Act, unless the context otherwise requires,—

(y) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;"

5.3 Accordingly the case is disposed off.

Dated: 16.03.2021

  
(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. 12491/1093/2020

### Complainant:

Viklang Sahara Samiti Delhi  
G-Block, Basti Vikas Kendra,  
Mangol Puri, New Delhi-110083  
Email: [yssd1994@gmail.com](mailto:yssd1994@gmail.com)  
Mobile: 9899615733

### Affected Person:

Shri Ashu Chadha, M-36, a person with 70% Mental Retardation,  
S/o Shri Harvinder Chadha,  
R/o 7, Tarun Enclave, Pitamapura, Delhi-110034,  
Mobile: 8368762945

### Respondent:

Raksha TPA – Oriental Insurance  
Through: Chief Executive Officer,  
C/o Escorts Corporate Centre,  
15/5, Mathura Road, Faridabad, Haryana-121003  
Email: [ashish.trivedi@rakshatpa.com](mailto:ashish.trivedi@rakshatpa.com);  
[Ashok.narvat@rakshatpa.com](mailto:Ashok.narvat@rakshatpa.com)

### 1. Gist of Complaint:

1.1 The complainant filed complaint regarding less payment made as against the claimed amount under Niramaya Scheme by Raksha TPA – Oriental Insurance in respect of medical treatment of Shri Ashu Chadha, a person with 70% Mental Retardation.

1.2 The complainant submitted that he had filed an application to Raksha TPA for claiming the amount of Rs.54,398/-, but only Rs.15,000/- was paid stating that Shri Ashu Chadha's disability comes under congenital disability and there is provision to pay Rs.15,000/- only. Complainant's contention is that under Niramaya Scheme there is no such provision.

(Page 1 of 4)

2. **Submission made by the Respondent:**

The matter was taken up with the respondent on 21.12.2020 following by reminders dated 05.01.2021 and 20.01.2021. Despite lapse of statutory time, no reply was filed from the respondent.

3. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- (1) Smt. Anita Chadha, mother the affected person
- (2) Dr. Sheena, for the respondent

4. **Observation/Recommendations:**

4.1 Complaint is filed on behalf of a child (hereinafter referred to as 'beneficiary') affected by intellectual disability. It is claimed that the beneficiary, who is subscriber of Niramaya Health Insurance Scheme, suffered from Perianal abscess disease, and was operated upon. Total cost which was claimed by the beneficiary under Niramaya scheme was Rs. 54,398, whereas the Respondent establishment settled the claim for Rs.15,000 only.

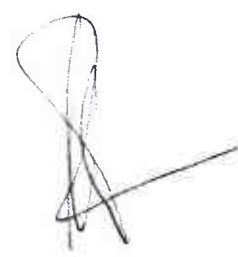
4.2 Complainant submitted that the Respondent establishment must have considered the claim under Sub Section A of Section I of Niramaya' Health Insurance Scheme Revised Benefit Chart. As per Sub Section A of Section I of the scheme subscriber of the policy is entitled for payment of Rs. 40,000.

4.3 Respondent submitted that the case of the beneficiary was considered under Sub Section B of Section I, under which the subscriber is entitled for Rs, 15,000 only and hence he was paid Rs. 15,000 against the claim of Rs. 54,398.

4.4 It is important to consider the two sub heads of Niramaya' Health Insurance Scheme Revised Benefit Chart. Sub-Section A of Section I limits reimbursement to Rs. 40,000 in cases of – **'Corrective Surgeries for existing Disability including congenital disability'**. Sub Section B of Section I limits reimbursement to Rs. 15,000 in cases of – 'Surgery/Hospitalisation'.

4.5 Complainant submits that Niramaya Health Insurance Scheme is a social benefit scheme and hence its terms and conditions must be interpreted liberally.

4.6 This court concludes that the case of the Complainant cannot be covered under Sub Section A of Section I of Niramaya Health Insurance Scheme Revised Benefit Chart. This court agrees that beneficial legislations/rules/policies must





be interpreted liberally, however such exercise of interpretation cannot be carried out by taking into consideration some words of the sentence while leaving other words out of consideration. Beneficiary in the present complaint was operated for Perianal abscess disease, nature of his disability is intellectual disability. The Complainant failed to prove that the surgery for Perianal abscess disease was done to correct the intellectual disability of the Beneficiary. Sentence 'Corrective Surgeries for existing Disability including congenital disability' cannot be interpreted as to mean any surgery whether or not connected with existing disability of the person. Interpretation of word 'surgery' to mean any surgery and leaving words 'corrective' and 'existing disability' would amount to picking and choosing words to give some specific meaning to the phrase or rule of the policy.

4.7 Hence, this court concludes that even by adopting rule of liberal interpretation, facts of the Complaint do not fall under Sub Section A of Section I of Niramaya Health Insurance Scheme.

4.8 During online hearing it was submitted that there is no other insurance scheme for Divyangjan other than Nirmaya Health Insurance Scheme.

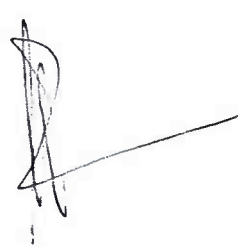
4.9 Section 24 Rights of Persons with Disabilities Act, 2016 mandates that the appropriate government shall formulate schemes related to social security and health of Divyangjan. Section 24 is reproduced below –

**24. Social security** - (1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the Community ...

(3) The schemes under sub-section (1) shall provide for –

(j) comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Schemes, or any other statutory or Government-sponsored insurance schemes.

4.10 Section 14 of IRDAI Act, 1999 lays down duties, powers and functions of IRDAI. As per the provision it is the duty of IRDAI to promote and regulate professional organisations connected with the insurance and re-insurance business.



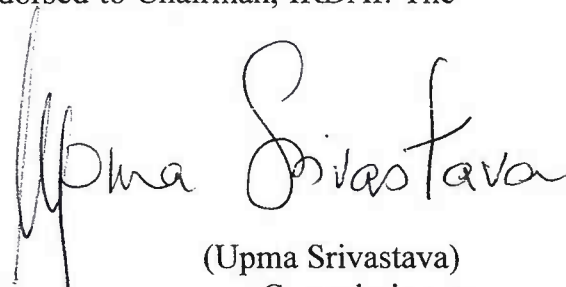
4.11 Considering Section 24 of RPwD Act, 2016 read with Section 14 of IRDAI Act, 1999, it is certain that IRDAI is under statutory mandate to ensure that comprehensive insurance policy is made for Divyangjan.

4.12 Therefore, this court recommends that IRDAI shall issue necessary guidelines to all the insurance companies, private as well as public, to form separate pools for higher risk people and design insurance products which can give comprehensive health cover to Divyangjan.

4.13 Interference of this court is not warranted.

4.14 A copy of these Recommendations is endorsed to Chairman, IRDAI. The case is disposed off.

Dated: 16.03.2021

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities

Copy to:

The Chairman,  
Insurance Regulatory and Development Authority of India,  
115/1, Financial District, Nanakramguda,  
Hyderabad-500032  
Email: [irda@irdai.gov.in](mailto:irda@irdai.gov.in)

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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. 12545/1011/2021

### Complainant:

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

versus

### Respondent :

Cantonment Board,  
(Through the Chief Executive Officer),  
Dehuroad.  
Pune – 412101.

**Disability** : 65% locomotor

### Gist of Complaint:

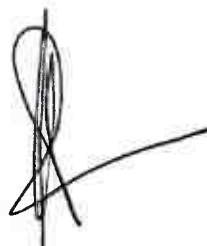
The complainant vide his complaint dated 05.01.2021 submitted that the Cantonment Board, Pune had advertisement for recruitment of Medical Professionals vide their Advertisement No. CBDR/ADMIN/AMO Recruitment / 2020-21 on 24.12.2020. The Complainant submitted that not a single vacancy has been reserved for persons with disabilities as per binding provisions under Sec 34 of Rights of Persons with Disabilities Act, 2016 in the posts of Assistant Medical Officer. He submitted that 100 point reservation roster must be maintained and vacancy position number 1, 26, 51 and 76 must be reserved for PwD candidates as per RPwD Act, 2016. All the benefits such as age relaxation, exemption from payment of application fee, single window services for PwDs and accessible examination / interview venue must be provided to the applications with disabilities as per the spirit of Disability Act.

...2/-

2. The Respondent vide their reply dated 10.02.2021 denied the non implementation of Section 34 of RPwD Act, 2016 by them. The Respondent submitted that as per the sanction given by the Central Government, at present there are 4 posts of AMO (Assistant Medical Officer) and one post of RMO (Resident Medical Officer) which include one post of woman in AMO. According to the said sanction 2 AMO are working, thus out of aforesaid 4 sanctioned posts, 2 AMO are already working. The Cantonment has already prepared the roster prior to Rights of Persons with Disabilities Act, 2016 and according to the said roster four posts are being filled up by Cantonment Board Dehuroad. Since the services of AMO falls in the category of essential services and on account of sudden outbreak of Corona Virus, the Cantonment Board has given public notice in 3 local newspapers for filling up the said posts and accordingly applications were received which are under scrutiny. Equal opportunity will be given to all the interested persons to submit their applications which will be taken into consideration by the Cantonment Board while filling up the post. The Respondent submitted that before coming into operation of RPwD Act, 2016, their office has appointed 05 persons with disabilities so as to promote the disabled persons and to give them opportunity in the services of Cantonment Board Dehuroad. The Respondent submitted that the Complainant has not submitted any documents in support of which contention about disability along with certified copies of relevant documents showing their qualification, age and experience. If the same are submitted, the case will be considered along with merit of eligible candidates.

**Observation/Recommendations:**

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



....3/-



4. As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

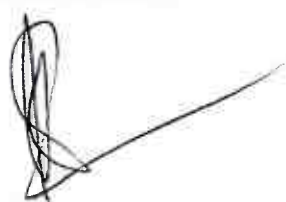
- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

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*Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.*

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.



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

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

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

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

8. Accordingly the case is disposed off.

Dated: 16.3.2021

  
(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. 12514/1011/2020

### Complainant:

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

### Respondent :

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

Disability : 65% locomotor

### Gist of Complaint:

The complainant vide his complaint dated 17.12.2020 submitted that Steel Authority of India Ltd (SAIL) had published an Advertisement no.BSP-20 (Rectt.)/20-21 dated 23.11.2020 for recruitment of Medical Professionals. He submitted that not a single vacancy has been reserved for persons with disabilities as per binding provisions under Sec 34 of RPwD Act, 2016 in the posts for Medical Specialists and Medical Officers. He submitted that 100 point reservation roster must be maintained and vacancy position number 1,26,51 and 76 must be reserved for PwD candidates. All the benefits such as age relaxation, exemption from payment of application fee, single window services for PwDs and accessible examination / interview venue must be provided to the applications with disabilities as per the spirit of Disability Act.

2. The General Manager I/c (Personnel) vide letter no.GM I/c (Pers)/BSP/2021/106017 dated 19.02.2021 submitted that Bhilai Steel Plant has issued an advertisement for recruitment of 30 posts of Medical Professionals (19 Medical Specialists, 1 Medical Officer (OHS) & 10 Medical Officers) vide advt no. BSP-20(Rectt)/20-21 dated 23.11.2020. In this advertisement, the categories of PwDs suitable for the job was clearly mentioned. Bhilai Steel Plant has been following the rules with regard to reservation for PwD candidates and points 1, 26, 51 and 76 of the roster has been earmarked for persons with benchmark disabilities. Since the issue of notification of RPwD Act, 2016, i.e. 15.06.2017 to 23.11.2020, they have filled only 09 posts in Group 'A'. Further combining the 30 posts of Medical Officers notified by them, the total comes to 39. The locomotor disability has been earmarked for point 51. The Respondent submitted that Bhilai Steel Plant maintains reservation roster for persons with disabilities as per DoP&T's instruction. No application fee is payable by PwD candidates. Further benefits such as age relaxation,

....2/-

qualification relaxation, reimbursement of to & from travel expenses who are shortlisted for the interview and attend the same are extended to PwD candidates. As regards providing high support as defined under section 38 & 41 of RPwD Act, 2016, Bhilai Steel Plant will ensure adherence of the same, as defined under the RPwD Act, 2016. For looking in the matters relating to representation to PwDs, Bhilai Steel Plant has a Liaison Officer for this purpose. The Bhilai Steel Plant have assured that in the future recruitment notification, the revised provisions notified vide gazette notification dated 07.01.2021 with regard to suitability of PwD candidates will be followed. The Respondent further submitted that the selection process for the post of Medical Specialists against their Advt. No. BSP-20(Rectt)/20-21 dated 23.11.2020 have been completed by them with the declaration of results on 16.02.2021. As regards for the post of Medical Officers, it is under process. He submitted that Dr. Nitesh Tripathi on earlier occasions also have registered complaints in this Court. The Respondent further submitted that Bhilai Steel Plant is committed to follow applicable rules / guidelines for PwDs and provides very conducive environment to them not only during selection process but in employment also.

#### **Observation/Recommendations:**

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

4. As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

*Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.*





(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

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

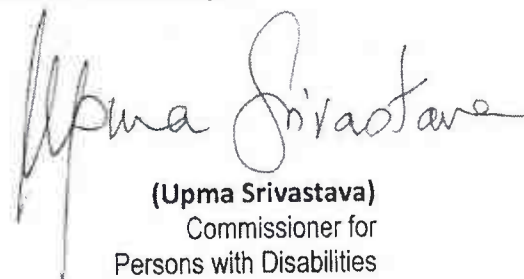
5. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any person with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

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

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

8. Accordingly the case is disposed off.

Dated: 18.03.2021

  
(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. 12574/1011/2021

#### Complainant:

Shri Gugulothu Nagaraju,  
B 12, CMPDI Complex,  
Kasthurabha Nagar,  
Jaripatka,  
Nagpur,  
Maharashtra - 440014.

Versus

#### Respondent :

Indian Oil Corporation Limited,  
(Through the Chairman),  
Corporate Office,  
Plot No.3079/3,  
Sadiq Nagar,  
J.B. Tito Marg,  
New Delhi - 110 049.

Disability : 53% Locomotor

#### Gist of Complaint:

Shri Gugulothu Nagaraju, the Complainant vide his complaint dated 29.01.2021 submitted that he is presently working as Accountant Gr.A in CMPD, which is a subsidiary of Coal India Limited. He is a person with 53% locomotor disability and belongs to ST category. He had applied for the post of Assistant Finance Officer in Indian Oil Corporation Limited against their Recruitment Advertisement. On the basis of his CA Inter marks, he was shortlisted for interview. He answered correctly all the questions put up before him during the interview. He was sure of his selection as he had all the requisite qualification, experience and skills required for the post interviewed. The complainant submitted that IOL did not declare the results so far and hence he is not aware of how many total number vacancies were advertised, how many persons were appointed and how many candidates belonging to persons with

I | Page

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

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

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

-2-

disabilities were appointed by the Respondent. The Complainant submitted that this denial of equal opportunity to candidates with disabilities and also caste discrimination to reserved category.

2. The matter was taken with the Chairman, Indian Oil Corporation Limited vide letter dated 03.02.2021.

3. The Executive Director I/c (HR), Indian Oil Corporation Ltd vide letter no. DP/5/5 (Campus) dated 16.02.2021 submitted that Indian Oil Corporation Ltd being a Public Sector Undertaking adheres to all Government Guidelines issued from time to time and is committed to open, fair and transparent recruitment process. The Respondent submitted that there were total 31 vacancies for recruitment of Assistant Finance Officer and vacancies for EWS, OBC (NCL), SC and ST were reserved as per Government guidelines and Presidential directives. In addition 4(Four) vacancies were also reserved for PwD candidates – one each from VH, HH, OH and other categories. In context to present case, the following relaxations were given to candidates from ST and PwD categories.

Sr.No	Category	Minimum %age of marks in qualifying Exam	Upper Age Limit
1	General	55%	30 years
2	ST	50%	35 years
3	PwBD	50%	40 years

The complainant had availed relaxation in age to be eligible to apply for the said recruitment. The interview panel comprised of Subject Expert, HR Expert and OBC, SC/ST, Minority and Lady representatives. All the members involved in recruitment process carried out their responsibilities with due diligence and utmost fairness and based upon final



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assessment, among others, one candidate from OH category was also empanelled for recruitment. The Respondent submitted that the claim of the complainant alleging caste discrimination and not providing equal opportunity to persons with disabilities in the selection process is untenable and wrong.

**Observation/Recommendations:**

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

5. As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

*Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.*





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(2) Where in any recruitment year any vacancy cannot be filled up due to non availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

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

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

7. The case is disposed off.

Dated: 18.03.2021

  
(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. 12499/1011/2020

### Complainant :

Dr. Anil Sahebrao Kuwar,  
Plot No.41, Nagai Colony,  
Sakri Tal Sakri,  
Dist : Dhule,  
Dhule - 424204.

R-26777

### Versus

### Respondent :

National Institute of Science Education and Research Bhubaneswar (NISER),  
P.O. Jatini,  
Khurda,  
Odisha - 752 050.

R-26777

**Disability :** 50% locomotor

### Gist of Complaint:

The complainant vide his complaint dated 12.12.2020 submitted that he had applied for the post of Assistant Professor in Chemistry subject with Level 12 of the Institute as per the Advertisement notification no. NISER/FA/RCT\_A/2019/01 dated 01.02.2019 under PwD quota in National Institute of Science Education and Research Bhubaneswar (NISER). He fulfilled all the eligibility requirements for the said post. His name has been selected for presentation/interaction/interview. He was the only candidate for presentation in Chemistry subject as per the list of eligible candidates. He was asked for his presentation / interview on 10.08.2020 and he attended the presentation/interview via online. It took an hour and 15 minutes. On 04.09.2020 he received a mail from NISER informing him about his non selection to the post of Assistant Professor in their Institute. Till date NISER Institute has not filled up any post of Assistant Professor under PwD category which the complainant feels is gross violation of Rights of Persons with Disabilities Act, 2016.

2. The Registrar, NISER vide letter dated 12.01.2021 submitted that NISER issued advertisement for special recruitment drive for PwD for appointment in faculty positions in various discipline such as Biological Science, Chemical Sciences, Mathematical Sciences, Physical

....2/-

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

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

Sciences, Earth & Planetary Sciences, Computer Sciences, Economics, English, Sociology & Psychology. The Respondent submitted that mere fulfilling the minimum eligibility criteria may not entitle a candidate to be called for interview. Institute reserves the right to fix higher criteria for short-listing of applications for recruitment. The scrutiny of faculty applications has been done by a School level committee chaired by the Chairperson of respective School. The Committee does the screening of applications based upon various parameters i.e., publications in peer reviewed journals, area of research, teaching credentials etc and forward the shortlisted applications to the selection committee for final selection. This is done as per the mandate of NISER to recruit most suitable, brilliant and efficient persons with outstanding Educational background and record as faculty members in NISER. During the process of selection the screening committee after verifying the details of documents and credentials did not find Dr. Anil Sahebrao Kuwar suitable for faculty position in NISER. On analysing the overall performance of the complainant, the committee arrived at a definite conclusion that the complainant may not give justice to the Integrated M.Sc and Ph.D teaching programme of NISER.

3. The Court vide letter dated 02.03.2021 requested the Registrar, National Institute of Science Education and Research, Bhubaneswar to inform the Court the outcome of the Special Recruitment Drive (SRD). The Registrar of the Institute vide letter no. NISER/RO/2020-21/4235 dated 05.03.2021 submitted that " from the total applications received, two candidates have been recommended by the Screening Committee for final selection. The final selection has not yet been completed and process will be resumed after normalisation of the ongoing pandemic situation. The following are the details about the applications against the SRD advertisement.

Total applications received	Applicants shortlisted for the next round based upon the research and academic credentials mentioned in the CV.	Applications recommended for final selection process based upon their performance in the seminar and academic interaction.
75	10	02
		(In addition to this, 03 applicants are under consideration for this round, based on their performance in the seminar and academic interaction after the same is conducted).

**Observation/Recommendations:**

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



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- a) to provide reservation to persons with disabilities strictly as per provisions under Section 34 of Rights of Persons with Disabilities Act, 2016.
- b) This Court within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules, advises the respondent to be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.

5. The case is accordingly disposed off.

Date : 18.03.2021



**(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: 12513/1023/2020

Complainant: Smt. Rita Kumari, W/o Jangbahadur  
e-mail: <jangbahadur12@yahoo.in>

Respondent: The Commissioner  
Kendriya Vidyalaya Sangathan, 18  
Institutional Area, Shaheed Jeet Singh Marg  
New Delhi – 110016  
e-mail: <kvs.estt.1@gmail.com>

Complainant: Shri Jang Bahadur, 50% Locomotor disability

### GIST of the Complaint:

शिकायतकर्ता का कहना है कि उनके पति श्री जंगबहादुर, केन्द्रीय विद्यालय नं: 02, गाजियाबाद में पी.जी.टी. (गणित) के पद पर कार्यरत हैं तथा उनका सेवाकालीन प्रशिक्षण 2018 – 19 में ड्यू था परन्तु श्री जंगबहादुर को दिनांक 02.01.2020 से वरिष्ठ वेतनमान दिया गया।

2. The matter was taken up with the Respondent vide letter dated **29.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder no response has been received, therefore, hearing scheduled on 19.02.2021.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.02.2021**. The following were present:

- Shri Jang Bahadur – complainant
- Dr. M.L. Mishra, Assistant Commissioner on behalf of respondent

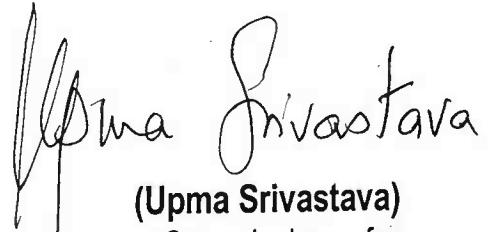
### Observation/Recommendations:

3. Both the parties were heard.

....2....

4. The Court is of the view that candidate did not err in for sending recommendations timely for inservice training. It was delayed by the School authority. Therefore, Court recommends that respondent without further delay provide order of sanction for Senior Scale to complainant with effect from 01.08.2019 within a week and submit the compliance report.

5. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 18.03.2021



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12494/1022/2020

Complainant: Shri Sudheer A.K.  
E-mail: <sudeerkunnath@gmail.com>

Respondent: The Divisional Railway Manager  
Divisional Office, Southern Railway, Personnel Branch  
Salem, Tamilnadu  
e-mail: <drm@sa.railnet.gov.in>

Complainant 50% visual impairment

## GIST of the Complaint:

Complainant vide complaint dated 09.12.2020 submitted that his wife Smt. Bhavya. V, Track Maintainer IV has been working in Sankiri Durg Station of Southern Railway, Salem Division since 21.09.2016 and she had submitted an application for transfer to Palakkad Division under Spouse category on 26.10.2016 but till date no action has been taken by the concerned Department.

2. The matter was taken up with the Respondent vide letter dated **21.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **27.01.2021**, no response has been received from the respondent. Therefore, the case was listed for personal hearing on **09.03.2021**.

3. Meanwhile, respondent vide letter dated 18.02.2021 inter-alia submitted that Division is having an acute shortage of manpower, Smt. V. Bhavya, Track Maintainer/SSE/P.Way/O/ED will be relieved shortly to PGT Division on her Inter Divisional One Way request transfer subject to the receipt of fresh recruitments from time to time.

4. During the online hearing via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021** both parties were absent.

**Observation/Recommendations:**

5. As per Rights of Persons with Disabilities Act, 2016, Rule position in respect of transfer of persons with disabilities is quoted as under:

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

6. As per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.

7. This Court recommends that the respondent shall take final decision on the relieving of complainant within 90 days from the date of this order and shall file the compliance report before this court.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 19.03.2021





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: 12368/1023/2020

Dated: 19.03.2021

ORDER

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

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

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

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

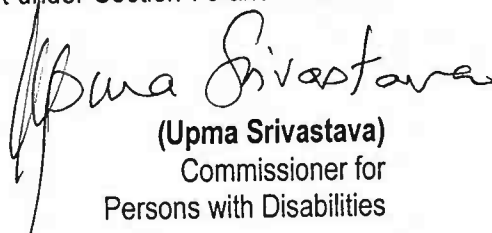
5. Whereas during the online hearing complainant alleged that her services were terminated arbitrarily. Respondent in its reply submitted that as per contract between the Complainant and Respondent, her services could be terminated by serving 3 months' notice. Complainant's service was terminated in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

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

7. Whereas after hearing both the parties and going through the available documents on record, this Court concluded that Respondent establishment has failed to abide by statutory duties in letter and spirit. Therefore, this court recommended that the Respondent establishment shall abate its decision of terminating the Complainant and shall continue her services in Respondent establishment.

8. Whereas the respondent has filed an application dated 22.02.2021, prayed to review/recall/modify/clarify orders dated 25.01.2021.

9. Now, after consideration of all facts and figures in the matter, this Court reiterate its earlier recommendations and <sup>does</sup> not accept the submission made by the respondent under Section 76 and 81 of the RPwD Act, 2016. L

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

To,

- R-26811
1. The Chief People's Officer, PNB Housing Finance Ltd, 9<sup>th</sup> Floor Antriksh Bhawan, K.G. Marg, New Delhi – 110085  
E-mail: <pnbhfl@pnbhfl.com>
  2. Smt. Sneha Lata, E – 38, Prashant Vihar, Delhi – 110085  
E-mail: <ajmani.1963@gmail.com>
- R-26812



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: 12453/1023/2020

Complainant: Shri Chitranjan, Assistant ESIC Hospital  
Joka, Kolkata

Respondent: The Director General  
Employees' State Insurance Corporation  
Panchdeep Bhawan, Comrade Inderjeet Gupta  
(CIG) Marg, New Delhi – 110002  
e-mail: <jd-admin2a@esic.in>

Complainant: 50% locomotor disability

### GIST of the Complaint:

प्रार्थी का कहना है कि वह ई.एस.आई.सी. अस्पताल, जोका, कोलकाता में सहायक पद पर कार्यरत है तथा श्री समीरन दास, सहायक निदेशक उन्हें लगातार प्रताड़ित एवं अपमानित करते हुए अभद्र भाषा का प्रयोग करते हैं। जिसका विवरण उन्होंने मौखिक रूप से अपने विभाग के प्रभारी तथा चिकित्सा अधीक्षक को दिया था परन्तु फिर भी प्रताड़ना नहीं रुकी। प्रार्थी का आगे कहना है कि कोविड-19 के दौरान उन्हें कार्यालय में व्यक्तिगत रूप से उपस्थित होने के लिए बाध्य किया गया तथा हाज़िरी रजिस्टर भी श्री समीरन दास, सहायक निदेशक के कक्ष प्रथम तल पर है उपस्थिति हस्ताक्षर के लिए उन्हें दिन में दो बार भु-तल से प्रथम तल पर जाना पड़ता है।

2. The matter was taken up with the Respondent vide letter dated **04.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **11.01.2021**, respondent has not submitted reply, therefore, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.02.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.03.2021**. The following were present:

- Shri Chitranjan Poddar – complainant
- None appeared on behalf of respondent


उपमा दीव्यारत्न

**Observation/Recommendations:**

3. Complaint of abuse was filed against Office Superintendent and Assistant Director. It is alleged by the complainant that abusive verbal language is used to harass the complainant. No evidence or details of any particular instance are provided by the complainant. Respondent submits that after receiving the Complaint, it conducted investigation in its office and received written notes from other employees of the office who all claim that no such instance was witnessed by any of them.

4. This court recommends that harassment of PwD is a serious issue. Section 7 of Rights of Persons with Disabilities Act, 2016 lays down that the appropriate government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation. Even though no evidence was presented by the complaint to support its claim, this court recommends that respondent shall conduct counselling of the complainant and Office Superintendent and Assistant Director, against whom the Complaint is filed. If, such counselling will not positively impact the relationship of complainant and the two employees against whom the complaints are made then the respondent shall transfer the complainant to head office, away from Office Superintendent and Assistant Director.

5. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 19.03.2021





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: 12469/1022/2020

Complainant: Shri Syed Amzad Ali  
e-mail: <amjadnhpc@rediffmail.com>

Respondent: The Chairman cum Managing Director  
NHPC Ltd, NHPC Office Complex, Sector – 33  
Faridabad, Haryana – 121003  
e-mail: <webmaster@nhpc.nic.in>

Complainant: 45% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **28.11.2020** submitted that he has been working in NHPC, Teesta Low Dam-III, Power Station as a Assistant Manager since 2001 which is mountainous terrain. He further submitted that now he has been transferred to another tough mountainous terrain of Sikkim. In this regard, he had given representation to the respondent through proper channel but it was not considered.

2. The matter was taken up with the Respondent vide letter dated **15.12.2020** under Section 75 of the RPwD Act, 2016.

3. Dy. General Manager (HR), NHPC Ltd vide letter dated **20.01.2021** submitted that most of the Projects/Power Station of NHPC are located in the far flung hilly terrains with projects classified in Hard and Difficult locations therefore, Shri Syed Amzad Ali was transferred from his present location Teesta Low Dam-III, Power Station to Rangit Power Station which is also a soft location.

4. Complainant vide rejoinder dated **28.01.2021** inter-alia requested to change hilly terrain with plain area office.

*Ma Sivan*

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5. After considering the respondent's reply dated **20.01.2021** and the complainant's rejoinder dated **28.01.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.02.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on <sup>12.03</sup>~~16.02.2021~~. The following were present:

- Shri Syed Amzad Ali – complainant
- None appeared on behalf of respondent

**Observation/Recommendations:**

6. Complainant has submitted that despite of locomotor disability he has been given posting in station situated in a hill terrain. Hence, he seeks relief of transfer to some other station situated in flat terrain. Respondent submits that all the projects of the respondent establishment are situated in hill terrain and therefore, it is not possible for the respondent to concede to the demands of the complainant.

7. Complainant further submits that he was employed in Darjeeling Station. Situated in hill terrain for 8 years and then was transferred to Rangit Station, again hill terrain, and is posted there since last 4 months.

8. Rights of Persons with Disabilities Act, 2016 lays down provision that the employer is duty bound to take steps to utilise the capacities of divyang employees by providing appropriate environment. Further Section 20 of the Act lays down the provision for providing conducive environment and Reasonable Accommodation to divyang employees. Reasonable Accommodation is defined in Section 2 (y) of the Act. 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.

9. Sections 2(y), 3 and 20 are hereafter reproduced –

**Section 2(y)-** "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others

*Alpina Sinastaw*

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**Section 3 (2)** - The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

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

10. Recently Hon'ble Supreme Court explained the importance of concept of Reasonable Accommodation in the judgment of VIKASH KUMAR v. UNION PUBLIC SERVICES COMMISSION; (Civil Appeal No 273 of 2021; judgment dated 12.02.2021) in the following words –

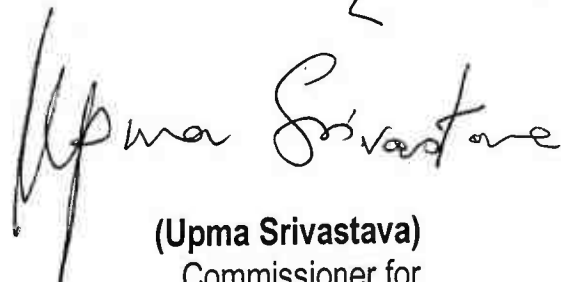
"At the heart of this case lies the principle of reasonable accommodation. Individual dignity undergirds the RPwD Act, 2016. Intrinsic to its realization is recognizing the worth of every person as an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the RPwD Act, 2016 travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realization of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event in providing a legal foundation for equality of opportunity to the disabled."

"In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence – whether as students, members of the workplace, participants in governance or, on a personal plane, in realizing the fulfilling privacies of family life. The accommodation which the law mandates is 'reasonable' because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence."

*M. K. Srinivasan* ....4...

11. It is disappointing that in last 10 years Complainant was always been given posting in station situated in hilly terrain without any consideration about the provisions of RPwD Act, 2016. Hence, based upon the legal position adduced above, this court recommends that the respondent shall abide by the principles of 'Reasonable Accommodation' and shall transfer the complainant to any office situated in Faridabad or Lucknow which is not hilly terrain.

12. Case is disposed off.



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

Dated: 22.03.2020





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: 12468/1024/2020

Complainant: Dr. Sumit Anand

e-mail: <drsumit05@gmail.com>

Respondent: The Commissioner, North Delhi Municipal Corporation

Dr. S.P.M. Civic Centre, Minto Road

New Delhi – 110002

e-mail: <commr-northdmc@mcd.nic.in>

Complainant: 41% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **07.12.2020** submitted that he has been working as a Doctor in North Delhi Municipal Corporation since 2016 in Urban Health Centre, WEA, Karol Bagh, New Delhi via UPSC. He alleged that neither received any increment since joining i.e. 2016 years nor received 06 months' salary since June 2020 inspite of several verbal and written request to the Department.

2. The matter was taken up with the Respondent vide letter dated **15.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **18.01.2021**, respondent has not submitted reply, therefore, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.02.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.03** **16.02.2021**. The following were present:

- Shri Vaibhav Mishra, Advocate on behalf of complainant
- Shri Rajeev Roy Advocate and Shri Paramjeet Chada, Under Secretary on behalf of respondent

### Observation/Recommendations:

3. Both the parties were heard.

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4. Two issues raised in the Complaint relates to non-payment of salary and forcing the Complainant to attend office during Covid lockdown.

**NON-PAYMENT OF SALARY**

5. Respondent has submitted that the salary has now been paid to the Complainant at par with non divyang employees holding the same post and rank. Since the issue is resolved, intervention of this court on this issue is not warranted.

**ATTENDANCE DURING COVID LOCKDOWN**

6. Complainant has submitted various documents substantiating his claim that he attended office during Covid lockdown period. It is an unfortunate incident that the government establishment flouted norms and directives issued by Ministry of Social Justice, DoPT and Ministry of Health & Family Welfare, GOI with respect to Covid lockdown. M/oSJE issued OM No 34-06/2020-DD-III dated 14.09.2020 exempting employees with Disabilities from roster duty due to COVID 19 situation. Prior to this, Ministry of Health & Family Welfare on 04.06.2020 issued Standard Operating Procedure on preventing measures to contain spread of COVID-19 in workplaces exempting divyang employees from frontline duties. On similar lines, DoPT issued OM No 11013/9/2014-Estt.A.III dated 05.06.2020.

7. OM's and SoP issued clearly lay down that divyang employees were exempted from attending office. Hence, this court recommends that the Respondent shall take into consideration the various guidelines and SoP and shall adhere to the same. If any such guidelines will be issued in future than the Complainant and other Divyang employees of the government establishment shall be exempted from attending the office.

8. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 22.03.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

Case No. 12566/1011/2021

#### Complainant :

Shri Kanai Malgope,  
Jamdoba Teliberia,  
Onda,  
Bankura  
West Bengal – 722 144.

R-26915

#### Versus

#### Respondent :

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

R-26916

**Disability : 100% visual impairment**

#### Gist of Complaint:

The complainant vide his complaint dated 20.01.2021 submitted that he was selected for the post of GDS Packer under West Bengal Postal Circle on the basis of the secondary marks . He was called for document verification on 28.10.2020. He went to verify his documents. He was told by the Inspector that he is not eligible for the post of GDS Packer as he is a person with visual impairment. He submitted that as per RPwD Act, 2016, he has been denied the appointment to the post of GDS Packer. The complainant has requested this Court to look into the matter and take necessary step so that he may be appointed to the post of GDS Packer. s

2. The matter has been taken with the Chief Postmaster General, West Bengal Circle vide letter dated 25.01.2021.

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3. No comments have been received from the Respondent.

**OBSERVATION AND RECOMMENDATION:**

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

Dated: 22.03.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disability



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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

Case No: 12532/1022/2021 भारत सरकार/Government of India

Complainant: Shri Mahendra Kumar  
Tax Assistant  
Income Tax Colony,  
G-33, Wazir Hassan Road,  
Lucknow-22001  
E-mail: [mahendra1983mishra@gmail.com](mailto:mahendra1983mishra@gmail.com)

Respondent: Principal Chief Commissioner,  
Central Goods & Service Tax (CGST),  
Lucknow Zone

#### GIST of Complaint:

The complainant Mahendra Kumar, S/o Shri Swami Dayal, Suffering from Post-Polio Residual Paralysis in Right leg with 40% Orthopedically Disability. The complainant was selected as a Tax Assistant group C post in CBIC (erstwhile CBEC) under GEN (OH) category through Staff Selection Commission in the year 2013. He joined the department on 22.12.2015 at Custom Mumbai, New Custom House, Estate Ballard Mumbai. The complainant has filed a complaint dated 1.1.2021 under the RPwD Act, 2016 regarding his Inter Commissionerate Transfer from Mumbai Zone to Lucknow Zone which is near to his native place i.e. Lucknow, Uttar Pradesh.

2. The matter was taken up with the Respondent vide letter dated 5.1.2021 under Section 75 of the RPwD Act, 2016

3. In response, Joint Commissioner, O/o Chief Commissioner, Central Goods and Services Tax & Central Excise (CGST & C. Excise) Zone Lucknow vide E-mail/dated 2.2.2021 inter-alia submitted that Shri Mahendra Kumar, Tax Assistant could not be considered for ICT Transfer to CCA Lucknow due to non-availability of vacancies in his category. Order dated 14.05.2019 was issued in respect of 19 candidates with break up UR-07 & OBC-12 as there was no vacancy in respect of any other category including Horizontal Reservation for Persons with Disabilities (PwD) candidates ICT order dated 28.02.2020. They further submitted that said order was issued in respect of those candidates who were selected on the basis of available vacancies and on the basis of various attributes based on 100 points (i.e. marks based upon candidates APAR, FIFO based receipt of application, Experience & ground of transfer on Compassionate Ground).

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4. Further, ICT transfers in the cadre of Tax Assistant from other CCAs are considered against Direct vacancies, wherein vertical (as per post based Roaster) and horizontal (as per PwD roaster/Ex-serviceman) both reservation vacancies are calculated. They informed that there was no vacancy in PH (OH) category (under horizontal reservation) in vacancy year 2019, against which ICT was considered by issuing ICT order dated 28.02.2020 of the CCA Lucknow Zone/Region and in the said ICT, Shri Mahendra Kumar, TA of PH (OH) could not be considered due to want of vacancies in his category.

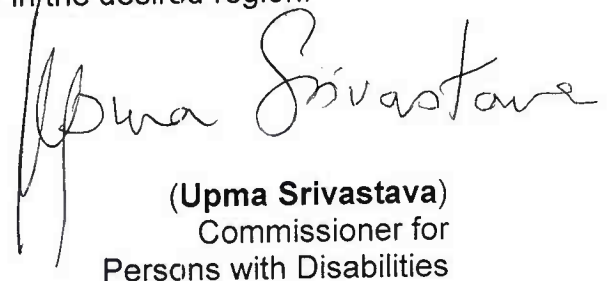
5. The said ICT order dated 28.02.2020 does not contradict the "equality of opportunities of principle of empowerment of persons with disabilities. If there would have been any persons with disabilities. If there would have been any vacancy in his category, his case would have been definitely considered for ICT transfer. There is no such matter of negligence or unsympathetic view towards him or other similar PwD persons.

**Observation / Recommendations:**

6. In present case this court notes that there is no mandatory requirement of vacancies in that particular category i.e. in PwD Category. The aggrieved person can be adjusted against any vacancy available in that Region/Commissionerate as per his rights under RPwD Act 2016.

7. Hence, this court concludes that by denying ICT, Respondent establishment has violated employment rights of the Complainant. Therefore, this court recommends that Complainant shall be given Inter Commissionerate Transfer at the earliest within a period of 90 days against any available Vacancy position in the desired region.

8. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 31.3.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

Case No: 12563/1022/2021

Complainant: Shri Manoj Kumar, SSA  
Kendriya Vidyalaya,  
Central Railway Manmad  
Maharashtra-423104  
Email:manojpgdca2008@gmail.com

Respondent: The Commissioner  
Kendriya Vidyalaya Sangathan (KVS)  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-110016  
Email:kvs.commissioner@gmail.com

Complainant 40% Orthopedic Handicapped Disability

### GIST of the Complaint:

Complainant vide complaint dated 18.01.2021 inter-alia submitted that he was selected in August 2019 for Sr. Secretarial Assistant by Direct Recruitment of Kendriya Vidyalaya, Sangathan, Headquarter New Delhi, Advertisement no 13 and he was allotted in Central School, Central Railway, Nasik in the West Zone. While in the Kendriya Vidyalaya, Sangathan. He was working as a Junior Secretariat Assistant in Kendriya Vidyalaya Gwalior located in the Central Zone. He belongs to Disable Category. But the Kendriya Vidyalaya Sangathan gave him 1000 km away posting. His rank is 15<sup>th</sup> in the selection list released by the Kendriya Vidyalaya Sangathan in July 2019. But he has not been received as the first option in the Central Zone. He has been living apart from his family for the last 1.5 years and he is a very low salary employee. Due to this, he cannot come home too soon.

2. The matter was taken up with the Respondent vide letter dated 27.01.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Commissioner (Estt.II/III) Kendriya Vidyalaya Sangathan vide letter dated 15.02.2021 inter- alia submitted that Employee transfers are effected as per transfer guidelines which are defined and transparent. However, due to COVID 19 Pandemic and review of transfer guidelines the Annual Transfer of employees has not been effected in the year 2020. The request of Sh. Manoj Kumar, SSA for transfer from KV Manmad to KV, Agra/Gwalior/Nayagaon CRPF/BSF Tekanpur /Mathura/ Dabra/ Hazaratpur OEF was considered sympathetically by this office but could not be

acceded to in view of above. If he applies for the same as and when Annual request transfers of the year 2021 are effected.

**Observation / Recommendations:**

4. This Court observes that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the rule position in respect of transfer of persons with disabilities.

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

As per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.

5. On many occasions this Court has noted that the Kendriya Vidyalaya Sangathan does not have the Equal Opportunity Policy which is required and submitted to this Court in terms of Section 21 of the RPwD Act 2016 which reproduced below:

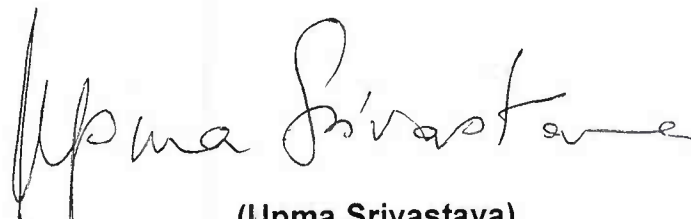
*"Section 21. (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.*

*(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be."*

6. As per the above rule position, the case of the complainant could have been considered appropriately and posted at the place closest to enable to live with his family.

7. This Court recommends that the Equal Opportunity Policy may be prepared expeditiously taking into account all the persons with disabilities in Kendriya Vidyalaya Sangathan. The respondent is also recommended to post at the place closest to his home to enable to live with his family.

8- This case is disposed off



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

Dated: 31.03.2021



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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

**Case No: 12557/1022/2021**

Complainant : Shri Pavan Kumar  
Senior Secretariat Assistant (SSA)  
82/2, Central School Border Security Force Dantiwada,  
Banaskatha, Gujrat-385505  
Mob : 09523057975  
E-mail : [pavankmr40@gmail.com](mailto:pavankmr40@gmail.com)

Respondent: : Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg, New Delhi-110016  
Phone No : 011-26858570, 26857036  
E-mail : [kvs.commissioner@gmail.com](mailto:kvs.commissioner@gmail.com)

#### Gist of Complaint:

The complainant Pavan Kumar, SSA, vide complaint dated 11-01-2021 suffering from Leprosy Cured (Post Trauma B/L Claw Hand) 52% Disability. The complainant submitted that he is currently serving as Senior Secretariat Secretary (SSA) in Central School Border Security Force, Dantiwada District: Banaskantha Gujarat. The complainant submitted that by direct recruitment advertisement no. 13 of the Central School Organization, New Delhi, in 2019, he was selected for the post of Senior Assistant (SSA) in the Central School, for which the complainant's preference in the maximum selection list was 29. At the time of examining the papers, he was asked by the Central School Organization to fill the order of the zone on the basis of choice for posting.

The complainant further submitted that despite his elevation in the priority list, in the proposal for appointment by the Central School Organization for the above post, he was posted 1800 km from the home district.

The complainant further submitted that by letter dated 17.10.2020 and 29.02.2020 of the Central School, New Delhi, applications were sought for rectification in the place of posting of PwD in which he also applied for rectification in the place of posting in which On his first preference, his place of choice was Patna, even there, the post of Senior Secretariat Assistant is vacant, which is just 100 kilometers away from his permanent residence/native place.

Therefore, the complainant has requested that on the basis of the facts given above and considering the circumstances, Pawan Kumar transfer from Gujarat to Patna KVS should be passed and ordered to be benefited and protected.

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2. The matter was taken up with the Respondent vide letter dated 14.01.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Commissioner, Kendriya Vidyalaya Sangathan (KVS) dated 15-02-2021 submitted that Employee transfers are effected as per transfer guidelines which are well defined and transparent. Appropriate weightage is given to each ground viz-spouse/PH/LTR/DFP/MDG etc. being adduced by the employees for transfer as per transfer guidelines. However, due to COVID-19 pandemic and review of transfer guidelines the Annual Transfer of employees has not been effected in the year 2020.

4. The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 19.03.2021. The following were present:

- |     |  |               |
|-----|--|---------------|
| i)  | Shri Pawan Kumar                         | – Complainant |
| ii) | Dharmendra Patle, Associate Commissioner | – Respondent  |

**Observation / Recommendations:**

5. Complainant submits that he is posted on the post of Senior Secretariat Assistant in the Respondent establishment. Presently he is posted in Banaskantha, Gujrat, whereas he is native of Gaya, Bihar. Further, he submits that at the time of appointment he gave his preference of posting in Bihar. He has prayed before this court to post him in Patna, Bihar office where post of Senior Secretariat Assistant is vacant.

6. Respondent submits that transfer policy of the Respondent establishment is being reviewed. Further, Respondent submits that as soon as the policy would be finalised, Respondent shall be transferred accordingly.

7. DoPT OM No A-B 14017/41/90-Estt. (RR) dated 10 May 1990 and 3.DoPT OM No A-B 14017/16/2002-Estt. (RR) dated 13 March 2002 lays down that employees with disabilities may be posted near their native place. Objective behind the same is to provide divyang employee familiar and conducive environment. The same is mandate of Section 20 of Rights of Persons with Disabilities Act, 2016. The same is reproduced below –

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

8. As far as reply of the Respondent is concerned, many similar Complaints have been filed against the Respondent establishment relating to transfer. Respondent files the same reply; however, no policy has been formed by the Respondent till date.



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9. The review exercise of transfer policy and the transfer policy itself are secondary to the statute passed by the legislature, i.e. Rights of Persons with Disabilities Act, 2016. Mandate passed by the legislature cannot be bypassed by the Respondent establishment by opting for the never-ending review process of transfer policy. Hence, this court recommends that in harmony with the provisions of RPwD Act, 2016 and DoPT OM cited above, the Complainant shall be transferred to Patna, Bihar, close to his native place. Notwithstanding the review process of guidelines getting completed.

10. The Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 31.3.2021



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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

Case No: 12587/1022/2021

Complainant: Shri Vikas, PRT  
Kendriya Vidyalaya,  
Gali No. 3, Indian Colony, Sonipat  
Haryana  
Email: teenugaur84@gmail.com

Respondent: The Commissioner  
Kendriya Vidyalaya Sangathan (KVS)  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-110016  
Email: kvse2section@gmail.com  
kvs.commissioner@gmail.com

Complainant : 100% Physical Handicapped

### GIST of the Complaint:

Complainant vide complaint dated 14.10.2020, 100% Physical Disability inter-alia submitted that he was selected in August 2019 for Primary Teacher in KVS.

The complainant further submitted that when he filled the form, they said that you can fill your preferred zone, he had filled the north zone, but when the list came up Kendriya Vidhyalaya Sanghathan (KVS) changed his zone while the post in his zone was vacant.

The complainant is 100 percent Physical handicapped and his appointment is in Naxalite area (Datewada) district, Kirandul Chhattisgarh which is 2000 km from Haryana. The parents of the complainant are aged and no one has come with them. The complainant said that there is still a vacant position in his north zone. He has to face a lot of problems day to day life.

Therefore, the complainant has requested that on the basis of the facts given above and considering the circumstances, Vikas Kumar transfer from Kirandul Chhattisgarh to KVS Nahra Sonipat Haryana should be passed and ordered to be benefited and protected.

2. The matter was taken up with the Respondent vide letter dated 1.2.2021 under Section 75 of the RPwD Act 2016.

3 In response, Assistant Commissioner (Estt.II/III) Kendriya Vidyalaya Sangathan vide letter dated 10.03.2021 inter- alia submitted that transfer of teachers are effected as per transfer guidelines, which are well defined and transparent.



...2...

Appropriate weightage is given to each ground viz-Spouse/PH/LTR/DFP/MDG etc. being adduced by the teacher for transfer as per transfer guidelines. Due to COVID-19 Pandemic and review of transfer guidelines the annual transfer of employees has not been effected in the academic year 2020-21. They further submitted that the representation of Shri Vikas, PRT, his request for transfer will be given due highest consideration as per KVS transfer guidelines along with all other similar cases as per the transfer guidelines as and when annual request transfers for the year 2021 are effected.

**Observation / Recommendations:**

4. This Court observes that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the rule position in respect of transfer of persons with disabilities.

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

As per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.

5. On many occasions this Court has noted that the Kendriya Vidyalaya Sangathan does not have the Equal Opportunity Policy which is required and submitted to this Court in terms of Section 21 of the RPwD Act 2016 which reproduced below:

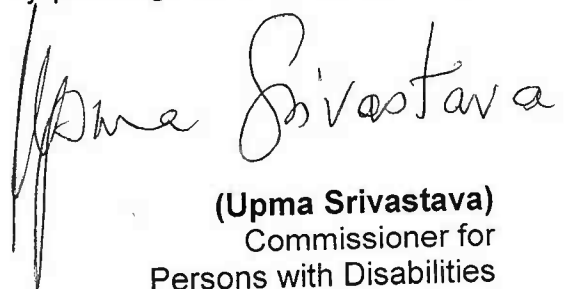
*"Section 21. (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.*

*(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be."*

6. As per the above rule position, the case of the complainant could have been considered appropriately and posted at the place closest to enable to live with his family.

7. This Court recommends that the Equal Opportunity Policy may be prepared expeditiously taking into account all the persons with disabilities in Kendriya Vidyalaya Sangathan. The respondent is also recommended to post the complainant at the place closest to his home to enable him to live with his family pending its revision of transfer guidelines.

8. This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 31.3.2021

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12549/1031/2021

### Complainant:

Shri Ranveer Singh Chauhan,  
Flat No.2, Residential Complex,  
Shri Dadadev Hospital, Dabri,  
New Delhi-110045  
Email: [ranveerchauhan84@gmail.com](mailto:ranveerchauhan84@gmail.com)  
Mobile: 8447827840

R-26950

### Respondent:

Principal,  
Rajkumari Amrit Kaur College of Nursing,  
Lajpat Nagar IV, Near Moolchand Metro Station,  
New Delhi-110024  
Email: [principal@rakcon.com](mailto:principal@rakcon.com)

R-26951

### CORRIGENDUM

Please refer to the Observations/Recommendations issued by the Court of Chief Commissioner for Persons with Disabilities (Divyangjan) in Case No.12549/1031/2021. Para 5 of the said Observations/Recommendations has been partially modified and the same be read as under:-

“5. In addition to this the Complainant has also furnished a copy of the email dated 04.12.2020 endorsed to him by the Nodal Officer-PwD, University of Delhi which is addressed to the respondent Nursing College. It has been informed that as per Delhi University policy and practice, the first seat of a block of every 20 seats is to be reserved for persons with benchmark disabilities; and that the program of study i.e. M.Sc. Nursing for which the complainant had applied, has 25 seats. Therefore, 02 seats, which are supernumerary in nature, are to be reserved for Persons with Benchmark Disabilities in such a situation.”

Dated: 31.03.2021

(Upma Srivastava)  
Commissioner  
for Persons with Disabilities

(Page 1 of 1)

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)



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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: 12462/1024/2020**

Complainant: Shri Satyendra Nath Dutta, Section Officer  
Department of Empowerment of PwDs  
5<sup>th</sup> Floor, Pt. Deendayal Antyodaya Bhawan  
CGO Complex, Lodhi Road, New Delhi – 110003  
e-mail: <sn.dutt@gov.in>

Respondent: The Additional Director  
O/o the Addl. Director, CGHS (HQ)  
M/o Health & Family Welfare, CGHS Dispensary Building  
Sector 12, R.K. Puram, New Delhi – 110022  
e-mail: <adadminhq.dl@cghs.nic.in>

Complainant: 50% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **02.12.2020** submitted he is a CGHS beneficiary and for renewal of CGHS card, he had to suffer a lot of problem, therefore, he approached CIC for refund of CGHS contribution from the months of December 2014, January, & February, 2015 and suitable compensation but Commission delivered decision on 13.02.2019 without any relief. He further submitted that again he applied RTI application dated 27.03.2019 to CGHS about refund but they have informed that CGHS does not have such provision.

2. The matter was taken up with the Respondent vide letter dated **11.12.2020** under Section 75 of the RPwD Act, 2016.

3. Assistant Director (Admn), CGHS vide letter dated **20.01.2021** inter-alia submitted that he had applied for renewal of his CGHS card in December 2014 and the CGHS services to Shri Satyendra Nath Dutta during the period of December 2014 to February 2015 for which refund of CGHS subscription is being demanded were not discontinued. He had consulted Dr. CP Gupta on 14.02.2015 and 28.02.2015 and was prescribed medicines were issued to him.

4. Complainant vide rejoinder dated **29.01.2021** inter-alia submitted that he does not remember to have visited Dr. CP Gupta and he was never prescribed COBADEX FORTE by Dr. C.P. Gupta.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.03.2021**. The following were present:

- Shri Satyendra Nath Dutta – complainant
- Dr. V.K. Dhiman, Additional Director (Admn) on behalf of respondent

**Observation/Recommendations:**

5. Both the parties were heard.

6. In light of the facts and material available on record, the reply of the respondent was found satisfactory. There appears no discrimination on account of disability being an administrative issue as a whole.

7. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 31.03.2021





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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12592/1021/2021

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

R-26956 AIIMS Campus, New Delhi – 110029

Respondent: The Director, All India Medical Sciences

Ansari Nagar, New Delhi – 110029

R-26957 e-mail: <director.aiims@gmail.com> <director@aiims.edu>

Complainant: 45% locomotor disability

### GIST of the Complaint:

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

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

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

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

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

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

7. Case is disposed off.



(Upma Srivastava)  
Commissioner for Persons with Disabilities

Dated: 31.03.2021