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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: 11749/1022/2020

R-24378

Complainant: श्री गोविन्द सिंह, नायब सूबेदार, 129, सेना वायु रक्षा रेजिमेंट, पिन - 925129 मार्फत 56 सेना डाकघर

Respondent: महानिदेशक, सेना वायु रक्षा महानिदेशालय, एकीकृत मुख्यालय रक्षा मंत्रालय - सेना, कमरा नं: 601, डी - 1 विंग, सेना भवन, नई दिल्ली - 110011

R-24378

GIST of the Complaint:

शिकायतकर्ता का कहना है कि उनकी 13 वर्षीय पुत्री Deaf Blind तथा बहु-विकलांगता से ग्रस्त है इसलिए उन्होंने बच्ची के इलाज एवं शिक्षा के लिए मुंबई से दिल्ली में स्थानांतरण हेतु निवेदन किया है।

2. The matter was taken up with the Respondent vide letter dated 04.03.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Lt Col, Sena Vayu Raksha Abhilekh vide letter dated 31.07.2020 inter-alia submitted that JCO had filed W.P. (C) 2208/2018 before Hon'ble High Court, New Delhi and as per the Order dated 09.03.2018, he was posted on Compassionate Ground posting at Mumbai, considering availability of Medical facilities for treatment of his daughter. Further, JCO has been asked vide 12.12.2019 to submit his application as per revised policy two months prior to completion of his present tenure i.e. Oct. 2020 and his case has been taken up with competent authority i.e. IHQ of MoD (Army) for consideration of CG posting.

Observation/Recommendations:



Hema Srivastava

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4. In light of the facts and material available on record, the reply of the respondent was found satisfactory, no further intervention is required after orders of Hon'ble High Court of Delhi.

5. The case is accordingly disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 09.11.2020



O/C



सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12389/1141/2020

Complainant:

R-24420
Shri Lokendra Singh,
S/o Shri Jalim Singh,
R/o Village+Post Sirsa Tippu,
District-Etah-207125
Mobile: 9719872146, 8279816748

Respondent:

R-24421
Sahara India,
Sahara Q Shop Unique Product Range Ltd.,
through its Chief Executive Officer,
Sahara India Bhawan, 1, Kapoorthala Complex,
Aliganj, Lucknow-226024;
Email: info@saharaindiapariwar.org; info@saharacorpcomm.in;

Gist of Complaint

The complainant, a person with 80% locomotor disability, submitted that on 28.01.2014 he had deposited Rs.50,000/- (Rupees Fifty Thousand Only) with the Etah (UP) Branch of Sahara India for Six years, vide Receipt No.513 000508731 and Certificate No. 643 000499715. It was assured by the Branch Manager that an amount of Rs.1,06,500/- (Rupees One Lakh Six Thousand and Five Hundred Only) would be paid after maturity of Six Years. The complainant alleged that Sahara Q Shop Central is not paying the amount of maturity after Six years.

Observation/Recommendations:

In view of the above, this Court recommends that the respondent may release with immediate effect the payment of Fixed Deposit that matured on 27.01.2020 in the name of the complainant.

4. The case is disposed off.

Dated: 09.11.2020

(Upma Srivastava)
Commissioner
for Persons with Disabilities

TRUE COPY



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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: 11509/1022/2019

Complainant: Shri Narendra, Plot No. 264-265, Dhanesh Colony, Saran Nagar, Ajmer
Road, Jodhpur – 342015
E-mail: <nrajbs02@gmail.com>

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

Complainant 40% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 27.09.2019 submitted that recently he has been appointed as PRT in KVS and allotted KV New Majri, Mumbai Region which is far away from his home town i.e. Jodhpur, Rajasthan; therefore, he has requested for transfer from Mumbai to Jodhpur.

2. The matter was taken up with the Respondent vide letter dated 15.09.2020 under Section 75 of the RPwD Act, 2016. But respondent did not submit any reply; therefore hearing fixed on 27.10.2020. However, respondent submitted the reply vide letter dated 14.10.2020 wherein it is stated that "Shri Narendra Singh PRT has applied for modification in his place of posting on appointment to the post of PRT from Kendriya Vidyalaya, New Majri to Jodhpur and Tinwari on PH ground but due to the prevailing situation of COVID-19 all types of transfers/modifications are on hold. However, his request for transfer/change in place of posting on PH ground will be given due consideration along with all other similar cases as per the transfer guidelines, when the annual request transfers are effected."



Signature

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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **27.10.2020**. The following were present:

- Complainant was present.
- None appeared on behalf of respondent.

Observation/Recommendations:

3. After hearing the complainant and perusal of the reply of respondent dated 14.10.2020, the Court observes that the KVS (HQ) vide letter of even number dated 17.10.2019 and 29.10.2020 has written to all Dy. Commissioners, KVS Regional Offices to ensure that all such candidates recruited and joined under zonal policy in 2017, 2018 and 2019 and who intend to get their place of posting modified on spouse ground or being physically challenged employee should apply in prescribed proforma alongwith supporting documents through proper channel.
4. Further, "**Section 20.(5) of the Rights of Persons with Disabilities Act, 2016** - 'Non discrimination in Employment' of the Rights of Persons with Disabilities Act, 2016 provides that the appropriate Government may frame policies for posting and transfer of employees with disabilities."
5. Keeping in view above circular of KVS and Sec. 20 (5) of Rights of Persons with Disabilities Act, 2016 this Court recommends that KVS may consider the request of complainant for modification in place of posting without unnecessary delays and post him nearby his hometown.
6. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 10.11.2020



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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. 11609/1021/2019

R-24422

Complainant: Shri Rajeev Kumar Singh, AT & Post ; Gulabbagh, Bageshwari Asthan,
Gulabbagh Dist, Purnia, Bihar – 854 326

Respondent: The Aviation Research Centre, (Thru the Special Secretary), DG (S),
Cabinet Secretariat, Block-V (East), R.K. Puram, New Delhi – 110 066

Disability : 45% Locomotor

GIST OF COMPLAINT

Shri Rajeev Kumar Singh vide his complaint dated 25.09.2019 submitted that he has been working as a Field Officer in Aviation Research Centre. He was eligible for promotion from the post of Field Officer to Senior Field Officer on 31.12.2016 as per Recruitment Rule. He made request to his establishment to consider him for promotion but the reply from Dy. Director was that "his request was considered but couldn't be acceded to". On 30.08.2019, 27 employees were promoted in which reservation benefits to SC/STs were provided but not to persons with disabilities and thus he had been denied the promotion.

2. The Respondent vide letter dated 08.01.2020 submitted that Shri Rajeev Kumar Singh had joined the post of Deputy Field Officer (Tech) [DFO(T)], Group 'B' Non-Gazetted post on 15.04.2010 against the un-reserved (UR) category on direct recruitment basis. The individual was adjudged by the Selection Board at par with the other candidates for vacancies earmarked for UR category. Subsequently, after having been found eligible/fit for promotion by the Departmental Promotion Committee (DPC), the individual was promoted to next higher grade in the Cadre, i.e. Field Officer (Tech) [FO(T)], Group 'B' Non-Gazetted post on 31.12.2014 against vacancy earmarked for UR category. The post of DFO(T) and FO(T) are not mentioned among posts identified suitable for persons with disabilities in the list issued by Ministry of Social Justice and Empowerment (MoSJ&E) vide Notification no. 16-15/2010-DD.III dated 29.07.2013. The next higher grade in the Cadre, i.e. Senior Field Officer (Tech) [SFO(T)], Group 'A' Gazetted post, is an operational post and is not mentioned among the posts identified suitable for persons with disabilities in the list issued by MoSJ&E vide Notification No.

....2/-



16-15/2010-DD.III dated 29.07.2013. The department is in the process of seeking exemption in respect of certain posts (including SFO(T) from reservation for persons with disabilities owing to their unconventional nature of duties and difficult postings on the basis of suggestion made by an Expert Committee under Chairmanship of Joint Secretary, MoSJ&E. Shri Rajeev Kumar Singh had represented vide his application dated 17.04.2017 for reservation in promotion to post of SFO(T). Same was not acceded to and reply was conveyed to the individual vide O.M. No. ARC/Pers VI/4/2010(01)-1044 dated 14.06.2017. The Respondent submitted that post of SFO(T) is a Group 'A' post and thus reservation is not applicable for promotion of persons with disabilities. At no stage the complainant has been discriminated against and he has not provided any evidence on those lines.

3. The complainant vide his rejoinder dated 30.01.2020 submitted that as per the circular of Ministry of Social Justice and Empowerment, the list suitable for persons with disabilities is indicative only and not exhaustive and can be further added to. In fact it is obligatory on the departments and organizations to add to the list by identifying suitable post in the department for PwDS. He submitted that in his case despite the fact that he has worked successfully on the post of DFO(T), now FO(T) and earned very good remarks/grading so far as APAR is concerned and not even once he being a PwD earned him anything adverse. Besides these posts [(DFO(T) and FO(T)], the post of SFO(T) which is declared to be unsuitable for persons with disabilities by the respondent, is being manned by Shri S.B Thapa who too incidentally happen to be a person with disability with his kind of disability (one leg locomotor disability). He has not only earned appreciation in work and APAR as higher as outstanding but is also a recipient of one of the highest awards given in department for excellent work performance. He submitted that it is submitted that neither work nor place is prohibitive for a person with disability as stated by the respondent in para 2(iii) of their reply. The complainant submitted that it seems that the respondent has not gone through the notification of the Ministry thoroughly in letter and spirit which he claims does not include the post of DFO/FO/SFO in the list of posts found suitable for PwDs since in the same letter (Note-3, Note-4 and in annexure B also), it is mentioned that 'once a post is occupied by a PwD, it shall be deemed to have been identified for PwDs.

4. **Hearings** : 29.09.2020 & 27.10.2020.



3/-

5. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 29.09.2020.

6. The following persons were present during the hearing ;

- 1) Mr. Rajeev Kumar Singh, the complainant.
- 2) None for the respondent.

7. The complainant was heard. This Court observed that vide letter dated 28th September, 2020, the respondent have requested for four weeks time. The next hearing was fixed on 27.10.2020.

8. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 27.10.2020.

9. The following persons were present during the hearing ;

- 1) Shri Rajeev Kumar Singh, the complainant.
- 2) Shri Munish Kumar, Advocate for Respondent.

10. OBSERVATIONS & RECOMMENDATIONS

Complainant in this case, is employed in the post of Field Officer. Though, he belongs to Persons with Disabilities category, he was appointed against unreserved category on merits. This is an admitted fact that the complainant is Orthopaedic Handicapped (45%). Complainant in his complaint has alleged that no employee belonging to PwD category has been given promotion from post of Field Officer, which is Group B post to the post of senior field officer, which is Group A post.

Two nuclei of the respondent submissions are :-

- a) Non identification of Senior Field Officer (Tech) as suitable for Persons with Disabilities category.
- b) No reservation for PwD in Group A post to be filled by promotion.



Non Identification of Post

It is an admitted fact that the complainant was appointed on the post of Dy. Field Officer (DFO-T). Subsequently, in 2014, he was promoted to the post of Field Officer (Tech) (FO-T). Further, respondent has himself admitted in the reply that the post of DFO(T) and FO(T) are not identified as posts suitable for PwD. However, the complainant was appointed on the post of DFO(T) and was subsequently promoted to the post of FO(D).

Therefore, this court concludes that submission forwarded by the respondent regarding non identification of the post is baseless. Since, the complainant has already been working on the post of FO(T) and was initially appointed on the post of DFO(T), the argument of the respondent that the post of SFO(T) is not suitable for PwD cannot be agreed with. If a person belonging to PwD category is appointed on any post and has been working on the same and also got promoted then it is immaterial that such posts were not recognised suitable for PwD on paper. The fact that person belonging to PwD category has successfully discharged his duties while holding a post, is evidence in itself that the post is suitable for such PwD candidate.

Respondent also submitted that it has sought exemption from the concerned ministry to exempt post of SFO(T). To buttress the claim no such letter was presented before this court. However, this submission is an admission in itself that post of SFO(T) is not an exempted post.

No Reservation in Group A Post

Attention of the respondent is attracted to the settled position of law. Hon'ble Supreme Court in the judgement of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153, directed government to extend reservation to PwDs 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."

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.

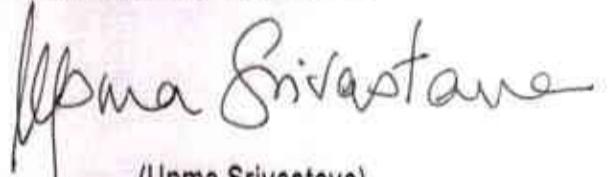


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12. Hence, this court concludes that argument of the Respondent that reservation for PwD is not available in Group A posts is contrary to judgment of Hon'ble Supreme Court in Rajeev Kumar Gupta Case.

Therefore, this court recommends that Respondent may give promotion to the Complainant on the post of SFO(T). Further this court recommends that such promotion shall be granted notionally since year 2016, when the Complainant became eligible for the promotion.

Dated : 10.11.2020



(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: 11632/1014/2019

Complainant: R-24572 Shri Dhavale Ahshay, AP Karjunedhor, Taluka - Nagar, District - Ahmednagar - 494999

Respondent: R-24513 The Chairman, Railway Recruitment Board, W.Rly Divisional Office Compound, Mumbai Central - 400008
E-mail: <gopal21chandra@gmail.com>

Complainant 55% locomotor disability + Hemophilic Arthritis

GIST of the Complaint:

Complainant vide complaint dated **14.10.2019** submitted that he had qualified a written test for the post of Staff Nurse conducted by RRB, Mumbai and he was called for document verification but he was declared medically unfit due to Hemophilic Arthritis.

2. The matter was taken up with the Respondent vide letter dated **03.01.2020** under Section 75 of the RPwD Act, 2016.

3. Chairman, RRB, Mumbai vide e-mail dated **31.08.2020** inter-alia submitted that Shri Dhavale Akshay had applied for the post of Staff Nurse against the post reserved for locomotor disability (One Leg) and obtained 54.53% normalized marks. Twice, he was declared unfit by Medical Board due to Hemophilic Arthritis which is a progressive disease. They further submitted that Principal Chief Medical Board (PCMB) is of the opinion that there should be re-examination of the case of appeal, he may nominate a Medical Board to re-examine the candidate. The recommendation of the Medical Board duly approved by PCMD will be communicated to the candidate through RRB, Mumbai.

4. Complainant vide rejoinder dated **22.09.2020** submitted that if he can work in Civil Hospital Ahmednagar as a Staff Nurse on contract basis then why cannot work in Railway Hospital. He further submitted that Hemophila is also included in the Rights of Persons with Disabilities Act, 2016.



Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 27.10.2020. The following were present:

- Shri Dhavale Ahshay, Complainant & Shri Pankaj Sinha, Advocate
- Shri Yatri Mitekar, Chairman on behalf of respondent.

OBSERVATION:

5. Respondent advertised the post of Staff Nurse under Advertisement - CEN No. 02-2019. Complainant applied for the post reserved for Locomotor Disability (One Leg). As per admissions made by the respondent, the Complainant was declared qualified in computer-based test and was called for document verification and medical examination. Subsequently, his candidature was rejected as he was declared unfit because of suffering from Haemophilic Arthritis.

6. Respondent in its submission relied upon various clauses of Rule 511 of Indian Railway Medical Manual. Rule 511 of the manual lays down general standards of medical physical examination. Clause 3 of Rule 511 lays down the general standards which are to be followed during medical examination of the candidate who is Orthopedically Handicapped. As per the rule, such medical officer has to ensure that disability condition of the candidate does not cause any hindrance in discharging of duties or enhance the occupational risk of the worker himself. However, as per Clause 9 of the Rule, candidature of any candidate shall be rejected, who is suffering from disorder which is commonly being progressive and chronic and which is liable of recurrent exacerbation of a disabling kind. This Clause suggests that there are 3 conditions under which candidature can be rejected as per Rule 511(9)(d). These 3 conditions are :-

- A) Disorder must be progressive
- B) Disorder must be Chronic
- C) Disorder must be exacerbating of a disabling kind.



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7. Perusal of the certificate issued by the Respondent, which declared the complainant unfit for the services, does not certify that the Complainant is suffering from any disability which is of exacerbating nature. Exacerbation means to make a situation worse. Therefore, applicability of Para 511 (9) (d) is out of question.
8. Further, complainant claimed that he is already working as a staff nurse in Civil Hospital Ahmad Nagar, Maharashtra. This fact has not been disputed by the respondent. Therefore, it is an evidence that disability of Haemophilic Arthritis from which the complainant is suffering, is not of exacerbating nature which can cause any hindrance in the functioning of a staff nurse.
9. Moreover, it is also to be noted that complainant applied against the post reserved for locomotor disability. Whereas, his candidature was rejected on the ground that his disability is because of Haemophilic Arthritis. In the present case Haemophilic Arthritis is only the cause of locomotor disability, it is not the disability against which the complainant applied for the post. Hence, while conducting fitness test, considering the cause of disability is unjust.
10. Further, it is also to be stated that Indian Railway Medical manual is an old manual and is subordinate to Rights of Persons with Disabilities Act 2016, which was passed by legislature of this country. As per definition of disability in RPwD Act, Haemophilia is also a kind of disability. Therefore, rejection of the candidature on the grounds of condition of Haemophilia is also violation of RPwD Act 2016.

RECOMMENDATIONS

11. Based upon the observations and reasons mentioned above, this court concludes that rejection of candidature of complainant violates equality rights of the complainant. Hence, this court recommends that letter dated 27.01.2020 rejecting the candidature of the complainant may not be taken in purview and candidature of the complainant may be accepted and he may be appointed as a staff nurse.
12. The case is disposed off.



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 10.11.2020



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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

extra

Case No. 11677/1032/2020

Complainant:

Shri Zuhaib Ahamad Khan

Email – zkhan5919994@gmail.com

Respondent:

The Registrar,

Jamia Millia Islamia

Maulana Mohammad Ali Jauhar Marg,

Jamia Nagar, New Delhi – 110025

Email: registrar@jmi.ac.in

1. Gist of the Complaint:

1.1 The Complainant is a person with 100% blindness. He is a student of B.A. (Hons.) Mass Media in Respondent institute. He has alleged that all the study material was not in accessible format and many of the practical work including assignment and project was not in accessible format. He has requested for allotment of hostel/dormitory for his scribe who also happens to be his classmate, for supporting his study as he is a visually impaired student.

1.2 The matter was taken up with the respondent on 20.01.2020. Despite reminder dated 18.09.2020, no reply was received from the respondent.

2. HEARING:

The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 27.10.2020. The following were present:

- (1) Shri Zuhaib Ahamad Khan, complainant
- (2) Prof. Nishant Manzar for respondent

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

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

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

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

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

R-24429



3. OBSERVATIONS:

3.1 This court feels compelled to invite the kind attention of the Respondent, which is a premier educational institution to different aspects relating to education and disability.

"Education is the passport to the future, for tomorrow belongs to those who prepare for it today" – Malcom X

3.2 There are plethora of judgments of Hon'ble Supreme Court which lay down that people belonging to PwD category do not need sympathy, all they need is appropriate infrastructure so that they can be brought at par with rest of the society.

3.2 It is impossible to imagine how these objectives can be achieved when Respondent cannot even provide study material to the Complainant in an accessible format.

3.3 This court also feels compelled to inform the Respondent about Rights of Persons with Disabilities Act, 2016. Following are the relevant provisions of the act which are applicable in the present case –

Section 16 - The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

(ii) make building, campus and various facilities accessible;

(iii) provide reasonable accommodation according to the individual's requirements;

(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;



Section 17 - The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, **facility of scribe or amanuensis**, exemption from second and third language courses;

(k) any other measures, as may be required.

3.5 As per Section 16 of the Act, it is positive obligation of the Respondent to provide inclusive education to the students and in order to achieve this aim, respondent has to make various facilities accessible for all students who belong to PwD category. Section even lays down that Respondent has to provide reasonable accommodation according to **individual's needs**. Hence, it is the duty of the Respondent to go down to microscopic level and understand individual's needs and provide such individual basic infrastructure modified according to such individual's requirements.

3.6 Complainant has alleged that even the study material is not provided to him in the language which he can understand. This is denial of the most fundamental right of the Complainant. This act of Respondent is also violation of Section 16(v) of RPwD Act, 2016 which makes it obligatory for the Appropriate Government to ensure that education to blind is imparted in the most appropriate language and modes of communication.

3.7 Further, this court would bring Section 17 of RPwD Act, 2016 to the kind notice of the Respondent. This provision empowers Respondent to provide facility of amanuensis.

3.8 Therefore, this court concludes that Respondent has failed to perform its duties as envisaged under Section 16.



4. RECOMMENDATIONS:

4.1 Hence, this court recommends that the Respondent shall provide hostel/dormitory facility to amanuensis of the Complainant who is also classmate of the Complainant.

4.2 The court also recommends that the Respondent may ensure that all teaching learning material is provided to the complainant in an accessible format which enables him to come at par with all other students.

4.3 The case is disposed off.

Dated: 10.11.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11722/1111/2020

R-24432

Suo-motu

In the matter of sexual abuse with a woman with disability in
Ashok Vihar, Delhi

Respondent:

Dy. Commissioner of Police (North West District),
Office of DCP, North West District, Delhi,
Police Station Ashok Vihar,
Delhi – 110052; Email: dcp-northwest-dl@nic.in

Gist of Complaint

A news article was published on 13.01.2020 in 'The Navbharat Times' with the contents as under:

रोड क्रॉस कराने के बहाने दिव्यांग से रेप की कोशिश

प्रेस, अशोक विहार : अशोक विहार इलाके में एक दिव्यांग युवती से रेप की कोशिश की गई। आरोपी युवती को एक सुनसान जगह पर ले गया और सेक्सुअल असॉल्ट के बाद किसी को ना बताने की धमकी दी। पीड़िता ने तुरंत सूचना पुलिस को दी। पुलिस ने रेप व अन्य धाराओं में केस दर्ज कर लिया। अब तक आरोपी की गिरफ्तारी नहीं हो पाई है। पुलिस के मुताबिक, युवती परिवार के साथ यमुना विहार में रहती है। उनके पैरों में दिक्कत है। शाम को खरीदारी करने अशोक विहार मार्केट आई थीं। अंधेरे में रास्ता भटक गईं। रोड क्रॉस कर रही थीं। इसी बीच आरोपी मदद के बहाने वहाँ आया और युवती को दबोच लिया। ट्रक के पीछे युवती के साथ छेड़छाड़ की।

2. The matter was taken up with the Dy. Commissioner of Police, North West District, Delhi for inquiry and submission of comment. Despite reminder, no response was received from the respondent.

Page 1 of 2

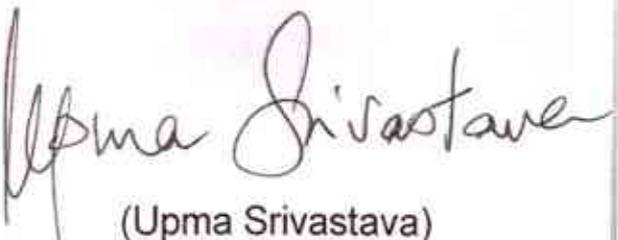
Hearing: The case was listed for hearing on 27.10.2020. But none appeared on behalf of the respondent.

Observation/Recommendations:

Keeping in view the seriousness of the incident, this Court recommends the Delhi Police to deal such matters with sensitivity and take strict action against the culprit to provide justice to the victim. They should also sensitize their field staff towards the special needs of persons with disabilities in general and women with disabilities in particular to protect them from abuse, assault and harassment.

2. Accordingly the case is disposed off.

Dated: 10.11.2020


(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. 11723/1111/2020

Suo-motu

In the matter of attack on blind students of Jawaharlal Nehru University
on 06th January, 2020

Respondent:

Commissioner of Police,
Govt. of NCT of Delhi,
Delhi Police Headquarters,
Jai Singh Road, New Delhi-110001;
Email: cp.snsrivastava@delhipolice.gov.in;
Email: dcp-southwest-dl@nic.in

Gist of Complaint

This Court took up a suo-motu cognizance on the news clippings from 'Live Mint' and 'News Hook' regarding attack on blind students of Jawaharlal Nehru University on 06.01.2020. As per the news – "Many students were injured in the violence that broke out at the Jawaharlal Nehru University on Sunday evening. One of those hurt was Surya Prakash, a blind research student (from Deoria, Uttar Pradesh) at the university. Surya says that despite his disability masked goons attacked him severely. Disability rights activists across India are gearing up to protest against this injustice. They have expressed concerns about the safety of disabled students. The incident has sparked outrage amongst the disability community across India. This is not an isolated incident. In November, 2019, another blind student Shashi Bhushan Samad, a student union councillor, was beaten up by police during protests. Shashi's condition was critical."



Page 1 of 2.

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

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

2. The matter was taken up with the respondent for inquiry and submission of comment. Despite reminder, no response was found received from the respondent.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **27.10.2020**. The following were present on behalf of respondent:

- (1) Shri Abhinendra Jain, ACP
- (2) Shri P.C. Khanduri, Inspector

Observation/Recommendations:

The representative appearing on behalf of the respondent filed a copy of reply dated 21.07.2020 and submitted that a case vide FIR No.06/2020 u/s 145/147/148/151 IPC & 3 PDPP Act had been registered at PS Vasant Kunj, North, Delhi. During investigation, Shri Surya Prakash was also examined. He stated that on 05.01.2020 at about 6.30 pm, while he was studying in his room, some unidentified persons forcibly entered his room and attacked him with iron rods. He went to AIIMS Hospital but his MLC was not prepared. The respondent further submitted that investigation in this case is in progress and sincere efforts are being made to identify all the persons involved in the crime.

2. This Court observed that Shri Surya Prakash was one of the victims of the incident amongst others. The reply submitted by the respondent (Delhi Police) with action taken seems satisfactory. Since the investigation in the case is still in progress, no further intervention of this Court is needed.

3. The case is disposed off.

Dated: 10.11.2020



Upma Srivastava
(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11822/1083/2020

Complainant:

Dr. Prabhat Garg,
R/o P-38/04, Defence Colony,
Gandhi Nagar, Gwalior-474002
Email – garg.prabhat@drde.drdo.in
Mobile No.9977308220

R-24430

Respondent:

The Secretary & Chairman DRDO,
Department of Defence Research & Development,
Ministry of Defence,
Rajaji Marg, Vijay Chowk Area, Central Secretariat,
New Delhi - 110004

R-24431

1. Gist of Complaint

1.1 The petitioner works as a Scientist D (Level 12 in Pay Index) with Defence Research & Development Organization, Gwalior, Ministry of Defence. His sister Km. Priti Garg, aged 50 years and a person with 50% locomotor disability is fully dependent on him as per his service record. His parents are no more. He and his family take care of Km. Priti Garg. Due to her disability, his sister needs separate room with attached toilet. These facilities are not available in type IV accommodation in which they are residing. He applied to the concerned authority for consideration of allotment of Type-V accommodation under medical pool. His application was not considered as per the "Allotment of Government Residence (R&D) Common Pool Rules, 2014. According to the said rules, "Govt may consider out of turn/discretionary allotment in relaxation of rules on medical grounds only if the Government servants, their spouses, dependent children & dependent parents are suffering from any of the disease listed there".

Page 1 of 4



1.2 The petitioner submitted that disabled dependent sisters and brothers have not been included for the purposes of consideration of allotment of accommodation under medical pool. Therefore, he requested for change in the rules/guidelines to 'disable government servants or his/her disable dependents'.

1.3 The matter was taken up with the respondent on 11.03.2020. Despite reminder dated 26.09.2020 in terms of Section 77 of RPwD Act, 2016, no comment has been found received from the respondent.

2. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **27.10.2020**. The following were present:

3. **Observation/Recommendations:**

3.1 Present complainant has been filed by the aggrieved employee who works as Scientist (D) with Defence Research and Development Organisation, Gwalior. Complainant has a mentally and physically disabled sister aged 50 years who is completely dependent upon the Complainant. He claims to be the only guardian of the disabled sister. Complainant has alleged that residential facility, i.e. 'Type IV residence', provided by the respondent to the complainant does not have any room with attached lavatory facilities. Hence, the complainant seeks relief that he may be allotted 'Type V' residential accommodation, which have room with lavatory facility.

3.2 Respondent relied upon allotment of Government Residence (R&D) Common Pool Rules - 2014. As per the rule, out-of-turn allotment can only be considered if the government servant himself or his spouse, dependent children or dependent parents are suffering from any disease. Since, dependent sister is not included in the rule relied upon, hence, respondent rejected the request of out of turn allotment of 'Type V' accommodation facility.



3.3 Before moving further, it is pertinent to discuss the legal position regarding rights of Persons with Disabilities.

3.4 The object of Rights of Persons with Disabilities Act 2016 is to give effect to United Nations Convention which lays down certain principles for empowerment of persons with disabilities. Some of these principles are as follows:-

- (1) Respect for inherent dignity, individual autonomy including the freedom to make one's own choice and independence of persons;
- (2) Full and effective participation and inclusion in society.
- (3) Respect for difference and acceptance of persons with disability as part of diversity and humanity.
- (4) Accessibility

3.5 Section 4 of Rights of Persons with Disabilities Act 2016, lays down that the appropriate government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

3.6 Further Section 3 of Rights of Persons with Disabilities Act mandates that the appropriate government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

3.7 Hon'ble Supreme Court in VIRENDER GAUR v. STATE OF HARYANA, (1995) 2 SCC 577, held that "Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit...sanitation without which life cannot be enjoyed."

3.8 In the present Complaint, the person who is suffering most is the 50 years old woman who is mentally as well as physically disabled and who is completely dependent upon the Complainant. Basic objective behind filing this



complaint before this court is to ensure Sanitation rights of the disabled dependent person. Sanitation is undoubtedly a factor that contributes to a decent standard of living. It is beyond the scope of debate that Persons with Disabilities have equal rights of decent standards of living. Therefore, considering the legal position as mentioned above, this court concludes that rejection of 'out of turn' request for allotment of Type-V residential facility just because the relevant Rule does not include sister, is unjust. Rules are made to ensure the proper execution of rights guaranteed under various statutes.

3.9 Therefore, based upon the legal position and reasoning mentioned above this court recommends that Respondent shall make necessary amendments in the rule so as to include disabled sister of the employee as well for out of turn allotment. Further, this court recommends that Complainant shall be provided out of turn allotment of Type-V residential facility. Moreover, until such residential facility is provided, necessary renovation of infrastructure of Type-IV residential facility in which the Complainant is residing shall be made by the Respondent and reasonable cost of such renovation may be remunerated from the Complainant. If Respondent is not the appropriate authority to implement any of the above recommendation, then the Respondent may intimate such appropriate authority about the recommendations passed here before within time limit of 5 days of receiving the copy of this Order.

4. The case is disposed off.

Dated: 10.11.2020


(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. 9527/1023/2018

Complainant : Shri Yogesh Marutrao Bhosale, C-1706, Shubhkalyan Nanded City, Sinhagad Road, Pune, Maharashtra - 411 041.

Respondent : Directorate of Forensic Science Laboratory (Through the Director), Hans Bhugra Marg, Vidya Nagri, Kalina, Santacruz (E), Mumbai - 400 098.

Gist of Complaint:

Shri Yogesh Marutrao bhosale submitted that he has been working as Assistant Chemical Analyzer, Group -B Officer in Regional Forensic Science Laboratory, Pune, Maharashtra under PwD category since 26.12.2011. The State Home Department published a Government Resolution on 9.03.2011 (GR No. HDO/Chapter No. 4/Asatha 1), according to which they removed reservation for PwD/disabled persons in various technical posts in Forensic Science Laboratories. The advertisement by Maharashtra Public Service Commission on 08.01.2014 for Group-A, Advt. No. 20/2014 to 24/2014 and Directorate of Forensic Science Laboratories 01/2013-14, in which they clearly mentioned that PwD category candidates are not eligible for the various posts viz. Deputy Director, Assistant Director, Assistant Chemical Analyzer, Scientific Assistant, Junior Laboratory Assistant, Senior Laboratory Assistant. He further approached Hon'ble Bombay High Court under Case No. WP/982/2014 and the Hon'ble Court issued an order to State Government to review the GR No. HDO/Chapter No.4/Aasatha 1 on 19.08.2015. The Special Committee of State Government in the Social Justice and Special Assistance Department reviewed the GR on 01.09.2015 and passed a verdict that the Directorate of Forensic Science Laboratories can appoint one leg affected candidates to various posts as mentioned above. On 02.09.2015, the Honorable Bombay High Court, passed an order to Maharashtra Public Service Commission and Directorate of Forensic Science Laboratories to advertise for filling up the posts reserved for persons with one leg disabilities within next 2 months. On



Handwritten signature

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16.02.2018 Maharashtra Public Service commission advertised for the post of Deputy Director for Forensic Science Laboratories vide Advt. no. 11/18 and 12/18 in which they specifically mentioned that as per GR published by Home department GR no. FSL-0417/ Chapter no. 119/ Poll 4 PwD candidates are not eligible for these posts. However, they are not following the order given by Honorable Bombay High Court. He has been facing harassment at his workplace as he took matter to the Honorable Bombay High Court. He has been working on the first floor and without accessibility he is facing issues to use the stairs. He submitted that if he is not suitable for a particular post then he may be transferred to some other suitable department.

2. The Director, Directorate of Forensic Laboratories, M.S. vide letter No.M/S/1601-1602/2020 dated 10.11.2020 submitted that GR dated 09.03.2011 is pertaining to the persons with disabilities (Equal Opportunities, Protection of Rights and full participation) Act 1995. The GR has been revised by the Home Department, Maharashtra State as per order passed by the Hon'ble High Court considering Central Government regulations in PIL No.225/2009 for reservations of persons with disabilities in cadre of Group A, B, C and D in different Government Offices. The Maharashtra Public Service Commission has published an advertisement for filling up the post of Deputy Director, Group-A posts in the Directorate of Forensic Science Laboratories in which the condition was mentioned that persons with disabilities are not eligible to apply for the post with reference to above GR of Home Department dated 09.03.2011. But afterwards Maharashtra Public Service Commission made amendment in the advertisement and issued the corrigendum on their website on 31.01.2014 stating that only persons with disabilities can apply to the said post in the stipulated time. Shri Y.M. Bhosale has not maintained the proper protocol while submitting his letter to respective authorities. The complainant had challenged the said advertisement and filed a Writ Petition No.982 of 2014 on 29.01.2014 in the Hon'ble High Court of Bombay. The Hon'ble High Court Bombay passed the order on 02.09.2015 to Maharashtra Public Service Commission directing their Directorate to issue necessary advertisement for filling up the post/s available as reserved for disability of one leg. As per Government Resolution dated 07.09.2017 and Government Corrigendum dated 01.09.2015 has been issued against the Advertisement Nos. 11/2018, 12/2018, 42/2018 making all the posts of Deputy Director, Assistant Director, Assistant Chemical Analyst,



Scientific Assistant, Junior Scientific Assistant, Senior Scientific Assistant in the Directorate of Forensic Scientific Laboratories eligible for appointment for persons with One Leg (OL) affected. As regards the accessibility of the office building is concerned, the Respondent submitted that most of the Laboratories of DFSL are situated on ground floor and first floor and are of old construction. The laboratories in Mumbai and Amravati are having lift facilities. But in future the proposed new buildings at Nanded and Kolhapur, the elevator facilities will be provided. Regarding transfer of the complainant, the Respondent submitted that Shri Y.M. Bhosale has been given privilege in transfer as per his choice. As regards the request of the complainant to switch over his job with any other equivalent department, the Respondent submitted that action over this matter will be taken as per rules at the Government level. The Respondent further submitted that the attitude of their Department and its laboratories towards employees with disabilities always remains positive. Their Directorate is making continuous efforts as per the Government Rules to ensure due respect to the Government Officials/employees in the category of persons with disabilities.

Observation/Recommendations:

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

- a) 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.
- b) The Respondent is recommended give posting to the complainant near to his native place.

"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.

- c) The House Rent Allowance shall be given to the Complainant at par with other officers of the same rank.



d) The DoP&T vide its O.M. No.36035/3/2013-Estt.(Res.) dated 31.03.2014 at serial 'D' has stated that " In addition to the guidelines for modification in all public buildings including Government offices to provide easy accessibility and barrier free environment for person with disabilities as per the provisions of the Rights of Persons with Disabilities Act, all Government offices should take special steps to provide barrier free and accessible work stations to employees with disabilities, access from main building entrance to their work stations and access to common utility areas such as toilets, canteens etc. Lifts/elevators would be made accessible by providing Braille signage and audio outputs. Wherever required, suitable colour contrast may also be made available in buildings, utilities, staircases, etc for the benefit of low vision employees."

4. The case is disposed off.

Date : 11.11.2020



(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: 11754/1021/2020

Complainant: Shri Sanjay Ram, D - 732, Nathupura, Burari, Delhi - 110084

Respondent: The General Manager, Northern Railway, Baroda House, New Delhi
110001

E-mail: <cpro@nr.railnet.gov.in>

GIST of the Complaint:

Complainant vide complaint dated 31.12.2019 submitted that he is working as a Clerk in Northern Railway and he was selected under "Best Amongst the failure scheme" for the post of Sr. Clerk on 25.06.2019 after written test and DPC but till date he has not got promotion.

2. The matter was taken up with the Respondent vide letter dated 19.02.2020 under Section 75 of the RPwD Act, 2016. But respondent did not submit any reply, therefore hearing fixed on 24.09.2020.

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

- Shri Sanjay Ram, the complainant.
- Shri Abhishek Thakur, Divisional Personal Officer, on behalf of the respondent

Observation/Recommendations:

3. Both the parties were heard.

4. During the hearing complainant informed that he had submitted all documents for DPC and his name was included in the final list. He alleged that all those who passed the examination on 18.07.2019 with him were appointed in the month August and he was appointed after 06 months i.e. in Dec. 2019.



मरोजिनी 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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5. Representative of the respondent accepted his fault and stated that Shri Sanjay Ram was placed on the panel of Sr. Clerk and allotted operating department. His posting orders were delayed due to administrative reasons and moreover, date of panel had no correlation with the date of posting. Therefore, the employee cannot be given the benefit of promotion from the date of panel as deciding posting is the prerogative of Administration and promotion can take effect only on joining the allotted place of posting.

6. After hearing both the parties, Court is of the view that this is a serious case of administrative lapse on the part of the respondent for which complainant has to suffer. Therefore, it is recommended that the respondent shall provide notional promotion to the complainant with effect from August 2019 at par with his peers who were appointed at that time.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 16.11.2020



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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: 12094/1023/2020

R.24591

Complainant: Shri Vikas Sharma
e-mail: <sharmaptvikas@gmail.com>

Respondent: The Director, AIIMS, Rishikesh, Virbhadra Road, Shivaji Nagar, Near
Barrage, Sturida Colony, Rishikesh, Uttarakhand – 249203

R.24590

GIST of the Complaint:

Complainant vide e-mail dated **04.05.2020** inter-alia submitted that respondent had issued an order dated 09.04.2020 which stated that "Any employee (including faculty), if unable to perform duties, due to physical or mental disability, which interferes with efficient discharge of duties, will be compulsory retired as per CCS rules. He alleged that above order was discriminatory and totally insensitive towards the persons with disabilities. He further submitted that another order of issued on 02.05.2020 which states that "physically handicapped category (PH) (Divyangjan) are not included in the above, as they are governed by a different rule of Govt. of India" He alleged that latest order clearly states that the order of 09.04.2020 stands.

2. The matter was taken up with the Respondent vide letter dated **03.09.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **16.10.2020**, respondent has not submitted their comments/reply.

3. Administrative Officer, AIIMS, Rishikesh vide letter dated **10.11.2020** has submitted that Office orders issued by AIIMS Rishikesh dated 09.04.2020 and 02.05.2020 were withdrawn with a superseding order dated **05.05.2020**.

Observation/Recommendations:



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4. After visiting the reply of the respondent, it is seen that the impugned orders have been withdrawn. Accordingly, no further intervention is deemed necessary.

5. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 16.11.2020



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extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11911/1143/2020

Complainants:

R-24616

(1) Shri Sourabh Kala,
A person with 65% Locomotor Disability,
511, Dal Mill Colony Shamgarh,
District-Mandsaur-458883 (MP)
Email: p17sourabhk@iimidr.ac.in

R-24617

(2) Shri Shyam Subhash Dhanuka,
A person with 40% visual impairment
Bhairav Chowk, Near Om Guest,
Shegaon-444203 (Maharashtra)
Email: p17shyamd@iimidr.ac.in

Respondent:

R-24612

National Handicapped Finance and Development
Corporation,
Through: Chairman & Managing Director,
Unit No. 11 & 12, Ground Floor,
DLF Prime Tower, Okhla Phase - I,
Near Tehkhand Village, New Delhi - 110020
Email: [nhfdc97@gmail.com](mailto:nfhdc97@gmail.com)

1. Gist of Complaint

1.1 The complainants jointly filed their grievance and submitted that they graduated from the Indian Institute of Management (IIM), Indore in March 2019. They had applied for National Handicapped Finance and Development Corporation (NFHDC) for Renewal of Scholarship Scheme-II and had submitted the documents from their IIM, Indore. The complainants alleged that they have yet to receive the scholarship amount. Further, the amount is pending from long and they were not getting a satisfactory response from the respondent. Their respective Application/Registration Numbers are as under;

(a) Shri Shyam Subhash Dhanuka.
Application/Registration No.- TF/17/01246

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(b) Shri Sourabh Kala,
Application/Registration No.- TF/17/01311

1.2 The complainants submitted that they are entitled to get the scholarship amount Rs.14.60 Lakh which is pending for long. They had to start EMIs of their Education Loan which with interest amounts to almost Rs.18 Lakh. As on 21.08.2019, Shri Sourabh Kal had received only Rs.71,700/- and as on 23.08.2019, Shri Shyam Dhanuka had received Rs.40,000/-.

1.3 The matter was taken up with the respondent on 13.05.2020.

1.4 The respondent filed their reply dated 24.08.2020 and submitted that the complainants/students had already been paid the following amount of scholarship so far:

Sl. No.	Registration No.	Name	2017-18 (Amount in Rs.)	2018-19 (Amount in Rs.)
1.	TF/17/01311	Sourabh Kala	71,700	2,00,000
2.	TF/17/01246	Shyam Dhanuka	40,000	2,00,000

1.5 The respondent further submitted that the requests of the two students/complainants were being placed before the next Scholarship Screening Committee (SSC) to be held on 24.08.2020 to consider/approval of additional scholarship amount as requested by them.

1.6 The complainants filed their rejoinder dated 19.10.2020 and submitted that they are entitled to get the total scholarship amount Rs.15,20,000/- as detailed hereunder:

Total Scholarship Amount	1 st Year	2 nd Year	Total (in Rs.)
Tuition Fee	6,25,000	6,25,000	12,50,000
Hostel Fee	75,000	75,000	1,50,000
Maintenance Allowance	30,000	30,000	60,000
Book/Stationary Allowance	10,000	10,000	20,000
Laptop	40,000	-	40,000
Total	7,80,000	7,40,000	15,20,000

The total remaining amount of scholarship for Shri Sourabh Kala is Rs.10,08,300/- and Shri Shyam Dhanuka is Rs.10,40,000/- respectively. The complainants also furnished a copy of the letter dated 09.07.2020 of IIM Indore wherein IIM Indore has clarified and requested respondent NHFDC to accord sanction of scholarship to the complainants/students.

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1.7 The respondent vide their letter dated 22.10.2020 intimated to this Court that as per the last SSC meeting held on 24.08.2020, Rs.2 Lakh each has been transferred to the respective bank accounts of the complainants/students.

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

1. Complainants in Person
2. Vineet Rana, DGM, NHFDC

3. OBSERVATIONS & RECOMMENDATIONS

3.1 Centre of the Complaint is non payment of scholarship dues to the Complainant. Complainant submitted that in previous years non-refundable fees was fully awarded through scholarship. Respondent admitted that in previous years non-refundable fees was fully awarded, however with an objective of reaching out to as many numbers of Persons with Disabilities as possible, Respondent decided to restrict the scholarship amount to Rs. 2 Lakh per beneficiary. Further, Respondent apprised this court that on special grounds, Respondent has referred the request of the Complainants to Scholarship Screening Committee.

3.2 From the submissions made by both the parties and perusal of the facts, it seems that some communication gap lies between the Complainants and the Respondent with respect to actual amount sanctioned by the Respondent and what is understood by the Complainants.

3.3 Hence, this Court recommends that the Respondent shall organise a meeting in Respondent Office, of the complainants with the DGM, Sri Vineet Rana and other concerned officers within 1-week time from the date of this Recommendation. This meeting shall lead to redressal of the grievance regarding confusion between actual admissibility & sanction of the scholarship.

3.4 Accordingly, the case is disposed off.

Dated: 17.11.2020


(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. 11700/1014/2020

Complainant : Shri Shrikant, G-53, Staff Quarter, Motilal Nehru National Institute of Technology, Allahabad, Teliarganj, Prayagraj, Uttar Pradesh – 211 004.

Respondent : Oil and Natural Gas Corporation Ltd (Through the General Manager (IE), Recruitment, Green Hills, Ground Floor 'B' Wing, Tel Bhawan, Dehradun-248003.

Disability : 40% visually impaired.

Gist of Complaint:

Shri Shrikant vide his complaint dated nil submitted that Oil and Natural Gas Corporation Limited (ONGC) had advertised for the post of HR Executives vide its Advt. No. 4/2019 through UGC-NET June 2019 Examination. There were total of 20 vacant posts. He scored 162 in subject code 55. The cut off marks for the examination was 152. ONGC declared the results of the said examination. As per the advertisement 12 seats were reserved for visually impaired candidates out of which 7 seats of visually impaired candidates pertained to 2018 back log vacancies. However, ONGC filled only 5 seats of visually impaired candidates and rest 7 seats were filled from amongst general candidates which were supposed to be filled up from among visually impaired candidates.

2. The DGM(HR)-I/c, Corp. Rectt., ONGC vide letter No. DDN/Corp. R&P/Rectt./PWD-11700/1014/2019 dated 25.08.2020 submitted that ONGC had issued Advertisement No. 4/2019 for recruitment of HR Executives at E1 level through UGC-NET June-2019 Examination. There were total 12 posts reserved for PwD-VH which included 7 backlog posts reserved for PwD(VH) of 2018 recruitment drive. Shri Shrikant had applied for the reserved post (PwD (VH) of HR Executive against the Advertisement No.4/2019(R&P). Only UGC-NET qualified candidates were eligible for further selection process. The final selection of the candidates was to be done on the weightage assigned to the following parameters ;

S.No	Particulars	Marks
1.	Weightage of UGC-NET examination of June 2019 score.	60 Marks
2.	Interview	15 Marks
3.	Qualification	25 Marks (20 Marks for essential qualification & 05 marks for in line PhD*)

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To qualify in the interview, General, EWS and OBC candidates were required to score a minimum 60% marks, i.e. 9 marks out of 15 & SC/ST/PwD candidates are required to score a minimum of 40% marks, i.e. 6 marks out of 15 marks in Interview (under clause 3.05 of the Advertisement No.4/2019). Hence a relaxation of 20% was extended to PwD candidates. Total 11 Nos. of candidates appeared in the personal interview in PwD-VH category and out of which 5 candidates qualified for selection. Total 9 nos. of PwD candidates other than VH category also appeared and out of which 2 qualified for selection as inter-change of reserved category among PwDs. Shri Shrikant was given due and fair consideration as a reserved category candidate of PwD (VH) category. Policy of qualifying in the interview as pre-determined and duly notified in the Advertisement, i.e. 60% for Gen, OBC and 40% for PwD, SC, ST was applied in selection. Shri Shrikant had secured 5 marks in the personal interview, thus could not qualify for the post. ONGC has made an honest attempt to fill up PwD reserved vacancies and has been successful in filling up 7 vacancies out of 12. Adquate relaxation had been provided in the form of qualifying criteria in interview (20%). The cutoff marks (UGC-NET June 2019 Score) for PwD (VH) was 152 as compared to 204 for General category candidates of the same post (HR Executive). The further submitted that the above matter is subjudice as WP No.12632/2019 preferred by Shri Shrikant before the Hon'ble High Court of Delhi.

3. The complainant vide his rejoinder dated submitted that he scored 162 points as against 152 points, which was the cut off marks fixed in the UGE NET June 2019 Examination. ONGC had called him on 12.09.2019 for verification of the certificates/documents and only after verifying these documents satisfactorily, he was taken for the interview

Category	Selected Candidates
VH-PwDs	5
PwDs-Other	2
Unreserved	4
OBC	5
SC	2
ST	1
EWS	1
Total	20

He submitted that only 7 posts were filled up against the 12 reserved seats of visually impaired candidates.



Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 10.11.2020.

4. The following persons were present during the hearing ;

- 1) Shri Lokesh Kumar Chaudhary. Advocate on behalf of the complainant.
- 2) Shri Ajay Chauhan for Respondent..

Both parties were heard.

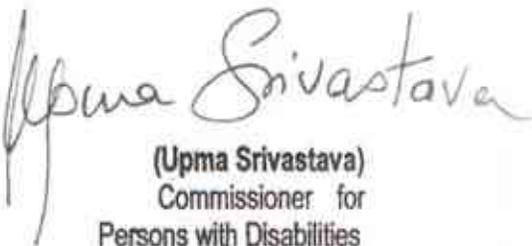
5. The Respondent reiterated that the above matter is subjudice as WP No.12632/2019 preferred by Shri Shrikant before the Hon'ble High Court of Delhi. The Repondent vide email dated 11.11.2020 submitted a copy of the Writ Petition (Civil) No.12632 of 2019.

6. The submission of the Respondent was also endorsed by the Learned Counsel of the complainant.

Observation/Recommendations:

7. As the case is sub judice, no further intervention is required in the matter and the case is disposed off.

Dated: 23.11.2020


(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. 11704/1014/2020

Complainant : Shri Madhusudan Munda, Door No.12/21, 2nd Floor, Chetan Behari Mandir Gali, Satyam Complex, 41 Ft Road, Kamalpur, Burari, Delhi – 110084.

Respondent : State Bank of India (Through General Manager), Central Recruitment & Promotion Department, Tulsiani Chambers, 1st Floor, West Wing, 212 Free Press Journal Marg, Nariman Point, Mumbai – 400 021.

Disability : 100 visually impaired.

Gist of Complaint:

Shri Madhusudan Munda vide his complaint dated 05.11.2019 submitted that he appeared in the Probationary Officer's Examination conducted by SBI vide Advertisement No. CRPD/PO/2019-20/01 dated 02.04.2019. He cleared the preliminary main examination and attended the interview. He submitted that as per notification there were 08 posts reserved for ST candidates with visual impairment. He is a person with 100% visual impairment and belong to ST category. The final results came but he was not selected.

2. The General Manager, State Bank of India vide letter No. CRPD/PO/2020-21/183 dated 14.08.2020 submitted that as per Bank's policy relaxation in the minimum passing marks is extended to all the PwD candidates including visually impaired candidates. Additionally, a visually impaired candidates may also avail the under noted relaxation / benefit for examination .

- i) Extra time of 20 minutes for every 1:00 hour of test
- ii) Facility of Scribe.

All the reserved positions for the visually impaired candidates in the recruitment of Probationary Officers were completely duly filled on merit basis through the recruitment process. As Shri Madhusudan Munda has not provided the details of his application (Registration/Roll No.), they were not able to examine the details of his performance in the recruitment exercise and the reasons of non-selection.

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3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 10.11.2020.

4. The following persons were present during the hearing ;

Present:

- 1) Mr. Madhu Sudan Munda, the complainant.
- 2) Mr. Saurav Kumar Srivastava, DGM, Central Recruitment Promotion Department (CRPD), SBI on behalf of the respondent.

Both the parties were heard.

5. The respondent informed the Court that all 08 posts reserved for persons with visually impaired were filled by eligible candidates in the said recruitment exercise and the complainant was not selected because of being on lower merit than the selected candidates.

6. The complainant then raised the issue of his non-selection on the ground of being a schedule tribe (ST) candidate, which does not fall within the jurisdiction of this Court.

Observation/Recommendations:

7. This Court noted that all the 08 positions filled through the recruitment exercise were solely reserved for candidates with visual impairment and were filled as well with persons of that disability. The reply of the respondent is satisfactory.

8. The case is disposed off.

Dated: 23.11.2020

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No. 11734/1014/2020

Complainant : Shri Kundan Kumar, Office of the Chief General Manager, BSNL Bihar Telecom Circle, 2nd Floor, IT-Section, Sanchar Sadan, Near GPO, Budha Marg, Patna-800001.

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

Disability : 60% Hearing Impaired

Gist of Complaint:

Shri Kundan Kumar vide his complaint dated 08.11.2019 submitted that Union Public Service Commission had invited application for Engineering Services Examination 2020 vide Advt. No. 01/2020-Engg. dated 25.09.2019. He submitted that there was no information mentioned in the advertisement regarding any vacancy for people with hearing impairment and therefore he could not fill the form. In the Engineering Services Examination 2020 no information was given about Branch wise vacancies which created problem in applying.

2. The Under Secretary, Union Public Service Commission vide letter No. 22/15/2020 EIB dated 04.09.2020 submitted that Union Public Service Commission published its Notice for the NSE-2020 on its website on 25.09.2019 inviting applications from the aspirants. The last date of receipt of application was 15.10.2019. As per the existing practice, at the Notification stage of Examination, the vacancies reported by the various Cadre Controlling Authorities (CCAs), participating in the Examination is tentative in nature and subject to further changes/notification. Hence, only total number of tentative vacancies (including PwD vacancies) without stream-wise and community-wise break-ups is reflected in the Examination Notice published on the Commission's website. Accordingly, as per information furnished by the concerned CCAs a total of 595 vacancies including 3 vacancies for low vision, 11 vacancies for locomotor disability including leprosy cures, etc, 7 vacancies for hard of hearing were indicated in the Notice of the ESE, 2020. The complainant had earlier approached the Commission with a request to allow him to change the discipline from Electronics & Telecom Engineering to Electrical Engineering in respect of ESE,2020. The Commission's decision of not acceding to his request was conveyed to the complainant vide email dated 11.11.2019. The complainant's name was not there in the list of qualified candidates in the discipline of Electronic and Telecom Engineering.

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The complainant himself had opted for the Electronics and Telecom Engineering and as per Rules of the Examination, the same cannot be changed at a later date.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 10.11.2020.

4. The following persons were present during the hearing ;

- 1) Shri Kundan Kumar, the complainant.
- 2) Shri Ravinder Aggarwal, Advocate for Respondent.

5. The complainant appeared but could not talk.

6. The Learned Counsel for the Respondent submitted that in para 11 of the aforesaid Notice, the list of services identified for different categories of persons with Benchmark Disabilities were indicated to enable the applicants to make an informed choice. Following was indicated, inter-alia, in Note-1 below para 5 of the Notice:

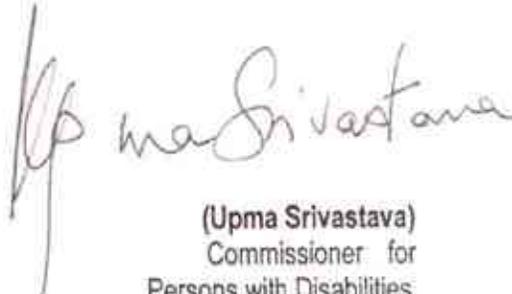
** Note 1: While filling in his/her application form, the candidature should carefully decide about his/her choice for the centre and Engineering discipline for the examination* The Respondent further submitted that as a matter of policy, the Commission does not entertain any individual request for any substantive change of entries in an application for an examination after the final submission of the same by a candidate. The complainant had earlier also approached the Commission with a request to allow him to change the discipline from Electronics & Telecom Engineering to Electrical Engineering in respect of ESE, 2020 and was turned down as per existing policy.

Observation/Recommendations:

7. After hearing the respondent and scrutiny of the available documents this Court does not find any merit in the complaint.

8. The case is disposed off.

Dated: 23.11.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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भारत सरकार/Government of India

Case No. 11746/1012/2020

Complainant : Shri Dharmender Singh Rathore, PGT (Hindi), National Institute for the Empowerment of Persons with Disabilities (NIEPVD), C-33, NIVH Campus, 116, Rajpur Road, Dehradun, Uttarakhand.

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

Disability : 100% visually impaired.

Gist of Complaint:

Shri Dharmender Singh Rathore vide his complaint dated 07.01.2020 submitted that Union Public Service Commission vide their Advt. No. 17/2019 invited online application for recruitment to the permanent post of Principal in Government Senior Secondary School for Blind Boys in the Department of Social Welfare, Government of NCT of Delhi from persons with blindness and low vision. The post is reserved for general candidates and application has also been invited from blind and visually impaired candidates but the age relaxation upto 40 years for the visually impaired persons has not been given to them which is against the rights of persons with disabilities. The complainant applied online on 19.12.2019 to the above said post under Registration GR 78 DD 74 but as there was no age relaxation for him, his application was not admitted by the UPSC. The complainant is presently working as PGT (Hindi) in National Institute for the Empowerment of Persons with Disabilities, Dehradun.

2. The Respondent vide letter No.1/127(03)/2019-R.III dated 30.07.2020 submitted that one (UR) post of Principal in Government Senior Secondary School for Blind Boys, Department of Social Welfare, Govt. of NCT of Delhi was advertised on the basis of requisition submitted by the Department of Social Welfare, Govt. of NCT of Delhi. The post was advertised vide Advt. No.17/2019. The closing date of the advertisement was 02.01.2020. As per the requisition, the vacancy is 'unreserved' and it has also been identified as 'suitable' to be filled up for persons with Benchmark Disabilities, i.e, for Blindness or Low Vision with 40 years as upper age limit. Online applications are received through Online Registration Application (ORA) Cell of Recruitment Branch and receiving of online applications system gives 10 years age relaxation to PH suitable candidates, if claimed. It seems the candidate had not claimed age relaxation in ORA. The

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Respondent submitted that as none of the applicants for the said post fulfilled the requirements, the recruitment action to fill up the post become 'infructuous' at Preliminary Stage and the same has been conveyed to Department of Social Welfare, Govt. of NCT of Delh vide letter dated 27.02.2020. The Department has also been requested to examine the matter and make another attempt to till up the post. Thereforre, on receipt of a fresh requisition for the said post, the recruitment process to fill up the post will again be processed.

3. The complainant vide his email dated 04.09.2020 submitted that he spoke to atleast 15 officials of UPSC and also with the officials in ORA Deptt.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 10.11.2020.

4. The following persons were present during the hearing ;

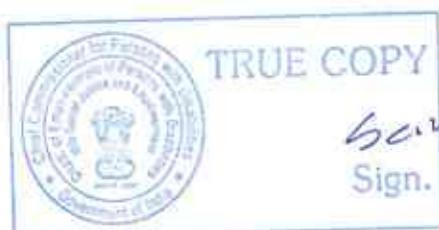
- 1) Shri Dharmender Singh Rathore, the complainant.
- 2) Shri Devender Kumar, Under Secretary, on behalf of the respondent.

Observation/Recommendations:

5. Complainant's application form was rejected by the Respondent. Respondent admitted that despite of the fact of disability, age relaxation was not given to the Complainant hence the application form was rejected because the Complainant could not fulfill the age eligibility.

To strengthen the defence, two different claims were made by the Respondent organisation –

- a. During online hearing it was submitted that Complainant himself failed to opt for age relaxation option while filling Online Application Form.
- b. In its Reply dated 07.01.2020, filed before this court, Respondent submitted that said vacancy is advertised as unreserved, hence, waiver of age relaxation for PH candidate for the above post cannot be considered, though the post is suitable for physically challenged person (viz. blindness and low vision).



6. During hearing Respondent admitted that the submission is *contra legem*.

Respondent Organisation is a constitutional body with impeccable record. Functioning of the Respondent organisation is looked up to and is considered as the epitome of administration in this country. However, reply dated 07.01.2020 filed by the Respondent anguishes this court as it is contrary to law and is in complete violation of intention and objectives sought to be achieved by Rights of Persons with Disabilities Act, 2016 and various OMs issued by appropriate government from time to time.

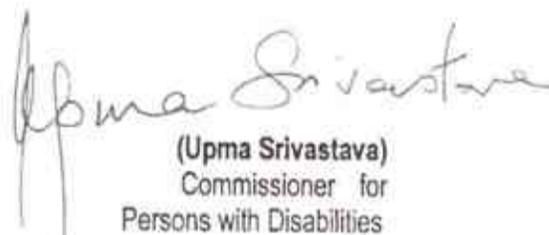
7. This is undisputed and settled position of law that Person with Disability has every right to compete for unreserved post. While such person is competing for an unreserved post, fact of his disability cannot be swept aside and relaxations conferred upon such person because of disability cannot be denied. However, the submission made by the concerned officer of the Respondent Organisation is unfortunate example of indecorous and sloppy behaviour.

8. With respect to first submission that the Complainant himself opted out of age relaxation is concerned, it is difficult to rely upon this submission as well. This submission was made for the first-time during hearing that too without presentation of related documents. Complainant on number of occasions filed application with Respondent Organisation for claiming age relaxation, therefore such unsubstantiated claims are hard to believe.

9. In the present complaint, since the recruitment became in fructuous at the stage of Preliminary Scrutiny as no candidate was found suitable for the post, therefore intervention of this court is unwarranted. However, this court recommends that whenever in future, advertisement for the same post will be issued, Respondent organisation shall give all the relaxations, including that of age relaxation, conferred upon Persons with Disabilities.

10. This Court further recommends that UPSC may again scrutinise their internal procedures of applications processing so as to prevent such lapses, which deprive a PWD from his legitimate rights.

Dated: 23.11.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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सत्यमेव जयते

Extm (15)

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No: 11780/1021/2020

Complainant: Shri Dharmapal, S/o Sudhakar Gawai, Qtr. No. 05/24/02,
Ordnance Factory Estate, Ambazari, Nagpur – 440021
E-mail: <dharmpalgawai7@gmail.com>

Respondent: The Chief Engineer, Southern Command, Headquarters
(E1R/DPC), Pune – 01
E-mail: <ceengrpl-mes@nic.in>

Complainant: 51% locomotor disability

GIST of the Complaint:

Complainant in this case claimed that he was appointed on the post of Lower Division Clerk in 2011 and he has not been given promotion since then. He has claimed promotion on the post of Upper Division Clerk on the basis of reservation in promotion for Person with Disabilities.

2. The matter was taken up with the Respondent vide letter dated 12.06.2020 under Section 75 of the RPwD Act, 2016.

3. Respondent in its reply submitted that the complainant was given compassionate transfer on request in 2015. As per policy of the respondent organisation seniority of the employee is reckoned from the date of joining on the post allotted after such compassionate transfer. Therefore, it is submitted, that the complainant was not given promotion as his service period before such compassionate transfer was not included while considering name of the Complainant, hence, he was found ineligible for promotion.

4. After considering the respondent's reply dated 29.07.2020 and the complainant's rejoinder dated 08.10.2020, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 10.11.2020



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)

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

- Shri Dharampal, complainant and Shri Rahul Wasnik, Advocate on behalf of complainant
- None appeared on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Supreme Court settled law on this issue in UNION OF INDIA v. C.N. PONNAPPAN; Civil Appeal No 1221 of 1987, SCIENTIFIC ADVISOR TO RAKSHA MANTRI v. V.M. JOSEPH; Civil Appeal No. 3749 of 1992 and PRATIBHA RANI v. UNION OF INDIA; Civil Appeal No. 3792 of 2019. Hon'ble court in all these cases distinguished between 'seniority' and 'service period'. Court held that transfer on compassionate grounds does not wipe out service rendered by employee at the place from where he was transferred. Further, court held that service of such employee in the transfer unit has to be counted toward length of service for all purpose and eligibility for promotion in the transferred unit as UDC. Court has also laid down that eligibility for promotion cannot be confused with seniority. If an employee is transferred at his own request from one place to another on the same post the period of service rendered by him at earlier office cannot be excluded from consideration for determining his eligibility for promotion.

7. Respondent organisation transferred the complainant on compassionate grounds by letter dated 19.01.2015. Point 9 of the letter intimates the complainant that his seniority will be reckoned from the date of reporting for duty in the new unit. Letter does not mention anywhere that duration of service rendered by the complainant shall not be considered for the purpose of promotion.



8. Therefore, considering the settled position of law on this point, this court concludes that respondent organisation is bound to take into consideration for the purpose of promotion, the service period of the complainant before he was transferred on compassionate grounds. Further, this court recommends that respondent shall take necessary steps for promotion of the candidate to the post of UDC.

9. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.11.2020



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सत्यमेव जयते

Extra.

17

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11783/1023/2020

Complainant: Dr. Gayatri Sankaran, A/G4, Mahaveer Apts, 15A, East Coast Road, Thiruvanmiyur, Chennai, Tamilnadu – 41
e-mail: <gayatrisankar@yahoo.com>

Respondent: The Director General, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi – 110001
e-mail: <dgair@air.org.in> <ddgcomm@air.org.in>

GIST of the Complaint:

Complainant vide complaint dated 20.01.2020 submitted that she had completed Senior Fellowship at CCRT, New Delhi coming under the Ministry of Culture in the year 2013 – 2015. During that period, she was stipend to the tune of Rs. 20,000/- per month by the CCRT to be utilized in connection with the Senior Fellowship and the amount was deducted from his leave salary. She further submitted that earlier same type of issue had come to the CCPD Court. She has requested for refund of amount @ Rs. 20,000/- per month deducted from his leave salary during the period 2013 – 2015 on the same line as extended to Dr. Narmada, Instrumentalist, AIR, Chennai.

2. The matter was taken up with the Respondent vide letter dated 22.06.2020 under Section 75 of the RPwD Act, 2016. But despite reminder dated 20.10.2020, respondent did not submit any reply, therefore hearing fixed on 20.11.2020.

Observation/Recommendations:

3. The hearing was held on 20th November, 2020. However, on the date of hearing an email was received from the respondent dated 17th November, 2020 as per which the respondent has agreed to the request of the complainant Dr. Gayatri Sankaran and the requisite payment has been made to her. The complainant has also informed on phone that her grievance has been duly redressed by the respondent.

4. In view of the above, the case is disposed off.



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.11.2020

Extra.

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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. 11795/1011/2020

Complainant : Dr. Nitin Kalinath Gorwade, Mamadapur, Near Gram Panchayat, Tal: Chikkodi, Belgaum, Kamataka-591 211.

Respondent : All India Institute of Medical Sciences (Through the Director), Ansari Nagar, New Delhi - 110 029.

Disability : 50% locomotor disability

Gist of Complaint:

Dr. Nitin Kalinath Gorwade vide his complaint dated 09.12.2019 submitted that he had applied for the post of Assistant Professor Periodontology under PH quota in AIIMS vide their Advertisement No.03/2018-(FC) in July 2018. The Advertisement clearly mentioned about reservation of 11 seats in different Departments under PwD category but no post was reserved in his speciality, i.e. Periodontics. He appeared for the interview on 23.07.2019 for the post of Assistant Professor in Periodontics under PH category. The results of the interview was declared in September 2019 where only one candidate belonging to PwD category was appointed in the General Surgery. Though he had applied under PwD category, but he has not been considered for the seat as the same was not reserved in his speciality. He submitted that it is a pure violation of RPwD Act, 2016 and discrimination towards the PwDs.

2. The Chief Administrative Officer vide letter No.20-32/2018-Estt.(FC) dated 04.04.2020 submitted that in the Advertisement No. 3/2018, 4% reservation was given to PwD candidates. Total 172 posts were advertised, in which, total 11 posts were reserved for PwDs (including 4 backlog PwD posts) as per the Roster maintained as per Clause 7 of the DoP&T O.M. dated 15.01.2018. Out of total 172 posts, 01-UR post was that of Assistant Professor of Periodontics. This post was for UR category. Dr. Nitin Kalinath Gorwade has applied for the post as UR (PwD) category. Since this post was not reserved for PwD, he was considered as UR candidate and interviewed by the Standing Selection Committee. Dr. Nitin Kalinath Gorwade was not found fit/selected for this post. The Respondent submitted that Dr. Nitin Kalinath Gorwade had earlier represented for filling up PwD posts in floating manner. His representation was placed before the Committee held on 19.07.2018, constituted for finalization of different issues related to 2018 advertisement under the Chairmanship of the Director AIIMS and the Committee decided as under:-

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" Floating reservation is not being followed since last advertisement at this Institute as it is not as per Law as PWBD Roster is post based roster. It was decided that the seats which are not filled in PWBD category should be advertised as backlog vacancy in the next advertisement as per rules".

The complainant was appraised accordingly.

3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 10.11.2020.

4. The following persons were present during the hearing ;

- 1) Dr. Nitin Kalinath Gorwade, the complainant.
- 2) Mr. B. K. Singh, Administrative Officer, AIIMS on behalf of the respondent.

Both the parties were heard.

5. The Complainant expressed his grievance that despite 11 vacancies being reserved for persons with disabilities, he could not be considered for selection as there was no reserved vacancy available for his field of specialization i.e. Department of Periodontics.

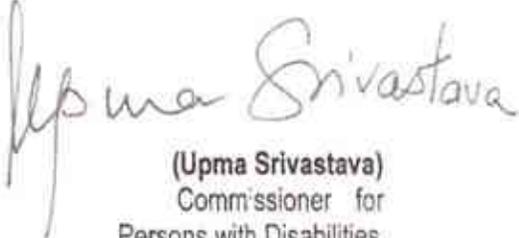
Observation/Recommendations:

6. The stand of the respondent is very clear in this matter as they have stated both in their written submission and in the hearing that they follow 100 Points Roster for earmarking reserved vacancies for persons with disabilities. The respondent further expressed that this grievance of the complainant had been considered at the highest level at AIIMS and it was not been found feasible to adopt floating reservation as against roster reservation for persons with disabilities.

7. As per Para 7 of DOP&T's O. M. No.36035/02/2017-Estt (Res) dated 15/01/2018, "Every Government establishment shall maintain group-wise a separate vacancy based 100 point vacancy based reservation roster register". In view of this rule position, the response of the Respondent is accepted.

8. The case is disposed off.

Dated: 23.11.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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सत्यमेव जयते

E-201

21

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: 11805/1023/2020

Complainant: Shri Rajendra R. Badgujar, 7763, Supervisor Labour Department, Machine Tool Prototype Factory, Ambarnath, Maharashtra
e-mail: <rajubadgujar30@gmail.com>

Respondent: The General Manager, Machine Tool Prototype Factory, Ambarnath, Maharashtra - 421502
e-mail: <mpf.ofb@nic.in>

Complainant 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह सुपरवाइजर श्रमिक विभाग, मशीनी औजार आदिरूप फ़ैक्टरी, में 2008 से कार्यरत है और उनके साथ वहाँ भेदभाव और अन्याय हो रहा है जैसे ए.सी.आर. नहीं भरना, क्वार्टर अनुरक्षण संबंधी शिकायतों का निवारण न होना, श्रमिक विभाग में भेदभाव एवं कठिनाइयाँ, डिस्पेंसरी में सभी सुविधायें न मिलना एवं पदोन्नति न दिये जाने से संबंधित इत्यादि।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 13.08.2020 द्वारा प्रतिवादी के साथ उठाया गया।

3. अपर महाप्रबंधक, मशीनी औजार आदिरूप फ़ैक्टरी, अम्बरनाथ का अपने पत्र दिनांक 25.09.2020 में कहना है कि श्री राजेन्द्र रामदास बडगुजर के कथनों में कोई सच्चाई नहीं पायी गई है उन्हें एम.ए.सी.पी. प्रदान कि गई, दिनांक 18.07.2020 को उन्हें एपीएआर की प्रतिलिपि उपलब्ध करवा दी गई, क्वार्टर अनुरक्षण संबंधी 10 शिकायतों में से 06 शिकायतों का निवारण हो चुका है। उनका आगे कहना है कि फ़ैक्टरी में पहले से ही शिकायत निवारण तंत्र है जो इस तरह की शिकायतों से निपटने के लिए गठित की गयी है जिसमें अपर महाप्रबंधक के रैंक में पदस्थ सबसे वरिष्ठ अधिकारी को व्यथा निवारण अधिकारी के रूप में नामित किया गया है जिस श्री बडगुजर ने दरकिनार कर सी.सी.एस. (आचरण) नियम, 1964 के नियम 20 का उल्लंघन किया है।

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4. प्रतिवादी के पत्र एवं शिकायतकर्ता के टिप्पण के मद्देनजर, सुनवाई दिनांक 20.11.2020 को रखी गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 20.11.2020. The following were present:

- Mr. Rajender R. Badgujar, Complainant
- Mr. Sandeep Salve, Joint General Manager and Mr. Pawan Kumar Singh, Junior Works Manager on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. The complainant reiterated his complaint as per his written submissions dated 22/02/2020. During the hearing his main grievance was that he has a feeling of isolation in his office as he is kept at arm's length by other officers and he is insulted and humiliated from time to time. His other main grievance was regarding the shabby status of his allotted quarter for which he has been complaining for its maintenance since a very long time but to no avail.

7. The point-wise written reply of the respondent dated 25/09/2020 was also perused by the Court. It was noted that the issues like promotion, availability of APAR, telephone disconnection and lack of sitting facilities, etc., have been suitably redressed by the respondent.

8. As regards his perceptions of alienation and humiliation is concerned, the representative of the respondent Mr. Sandeep Salve, Joint General Manager assured the Court that he shall personally look into these issues of the complainant and ensure that such perceptions are eliminated.



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9. The assurance of the respondent is accepted by the Court. The respondent are further recommended to kindly ensure undertaking necessary repairs to the quarter of the complainant and on an urgent basis so that he can live in a safe environment.

10. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.11.2020



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सत्यमेव जयते

EX-100



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: 11807/1023/2020

Complainant: Shri Sudhanshu Kumar Rath
e-mail: <skrplayer92@gmail.com>

Respondent: The General Manager, O/o of the General Manager, Central
Railway, 2nd Floor, Chhatrapati Shivaji Terminus, Mumbai – 400001
e-mail: <drm@bb.railnet.gov.in>

Complainant 100% visual impairment

GIST of the Complaint:

Complainant vide complaint dated 25.04.2020 submitted that he is working in Railway Hospital, Maharashtra as a Hospital Assistant (Attendant) and doing that work which is not suitable for persons with visual impairment like tracks related work etc.

2. The matter was taken up with the Respondent vide letter dated 12.07.2020 under Section 75 of the RPwD Act, 2016. But despite reminder dated 13.10.2020, respondent did not submit any reply, therefore hearing fixed on 20.11.2020.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 20.11.2020. The following were present:

- (i) Shri Sudhanshu Kumar Rath, the complainant
- (ii) Shri N.M. Kamath, Dy. CPO; and Shri Rajendra Pardesh, APO

Observation/Recommendations:

3. Both the parties were heard.

4. The complainant expressed his grievance that despite his 100% visual impairment status, he is made to perform such duties which he cannot perform satisfactorily due to his



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visual impairment. He explained that he is made to pick up heavy oxygen cylinders for patients, made to go for distribution of lunch to individual patients, etc. He expressed that he himself can manage independently with great difficulties and therefore, cannot reach to individual patients for delivery of food, etc. The respondent expressed that they are not aware that such inappropriate duties are being allocated to the complainant and would definitely ensure that he is made to perform duties which he could render despite his visual impairment.

5. The Court noted that the respondent had not chosen to reply to written communications of this Court seeking their reply vide this Court's letters dated 12th July, 2020 and 13th October, 2020. Had the complaint been examined by the respondent, they could have been more aware of the matter at hand and would have suggested redressal at the time of the hearing itself. Instructions regarding giving proper duties to persons with disabilities are quite clear which are reproduced as under:

"the Rights of Persons with Disabilities Act, 2016, Section 2 (y) provides "reasonable accommodation" means necessary and appropriate modification and adjustments without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others"

6. This Court recommends that the respondent has to make doubly sure that on no account such duties are given to the complainant which he cannot perform satisfactorily. Given the visual impairments status, it would be appropriate if a sitting job is given to the complainant.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.11.2020





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: 11808/1021/2020

Complainant: Shri Manoj Sharma, S/o Shri OM Prakash Sharma, C-1/10, Dankuni Housing Estate, Dankuni, Hoogly, West Bengal – 712310
E-mail: <neelman1982@gmail.com>

Respondent: The Directorate General of Quality Assurance, Department of Defence Production, Department of Quality Assurance (Stores), 'G' Block, DHQ, Nirman Bhawan, New Delhi – 110011
E-mail: <stores-dgqa@nic.in>

Complainant: 75% hearing impairment

GIST of the Complaint:

Complainant vide complaint dated 30.01.2020 inter-alia requested for (i) promotion as AE (QA) in Technical Cadre with all consequential benefits (ii) not transferred till his rights are not accrued.

2. The matter was taken up with the Respondent vide letter dated 12.06.2020 under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated 25.08.2020 inter-alia submitted that Shri Manoj Sharma, JTO (S), presently posted with CQA (GS), Kanpur was appointed as SA III/SA at CQA (GS), Kanpur and he was promoted from SA to JTO on 29.05.2020 and posted Kolkata. Thereafter, on 27.03.2017 Shri Manoj Sharma had sought posting to CQA (GS), Kanpur on compassionate ground was considered sympathetically & therefore, posted to CQA (GS), Kanpur. The promotion of DGQA officers are based on seniority list maintained centrally by DGQA. Accordingly, the application was promoted as and when he was due for promotion. They further submitted that promotion of Scientific cadre personnel i.e. SA to technical cadre i.e. AE (QA) is not permitted as per DGQA policy as QR for the both cadres are different at recruitment stage.



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4. After considering the respondent's reply dated **25.08.2020** and the complainant's rejoinder dated **27.10.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **20.11.2020**

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **20.11.2020**. The following were present:

- Ms. Neelam Sharma , on behalf of complainant.
- Mr. Lt. Colonel S.K Jaiswal DGQA , on behalf of the respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Smt. Neelam Sharma Spouse of the complainant expressed that there were two main reliefs being sought by the complainant.

- a) Transfer to Kolkata on the grounds of ill health of his family members,
- b) Change in nature of duties performed by him i.e. from testing in lab to any other appropriate task.

7. The respondent clarified that the complainant was transferred to Kanpur from Kolkata after 5 years of stay in Kolkata only in the month of July 2020. This transfer was made on the request of the complainant only so that he may be posted in an AHSP. Further, he has joined at Kanpur on his promotion as JTO. Transferring the complainant back in less than 6 months of previous transfer would incur costs for the government and it would also have to be ascertained whether an appropriate vacancy at the level of JTO is available in Kolkata for accommodating him. The respondent readily agreed to change the work profile of the complainant and has assured the court that they would take necessary action in this regard immediately.

8. This court recommends that in case, the complainant is extremely keen go back to Kolkata despite changes in his work profile at Kanpur, he may do so at his own cost, as he was brought to Kanpur at his behest only very recently.



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9. This Court recommends that the request of the complainant for transfer back to Kolkata may be considered as per above and if suitable vacancies are available. As assured by the respondent necessary orders for changing the work profile of the complainant may be issued within a period of 3 months from the date of issue of these recommendations/ order.

10. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.11.2020



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सत्यमेव जयते

Extra. (18)

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: 11825/1024/2020

Complainant: Shri Joginder Singh
e-mail: <jsjhbsnl2gmail.com>

Respondent: The Chairman and Managing Director, Bharat Sanchar Nigam Ltd, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi
e-mail: <cp@traigov.in>

Complainant 70% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 17.01.2020 submitted that he has been working in BSNL, Ambala Cantt. as Daily Wages Worker since October 1995. He alleged that he had not received the monthly wages during the period from June 2019 to December 2019.

2. The matter was taken up with the Respondent vide letter dated 06.03.2020 under Section 75 of the RPwD Act, 2016. But despite reminder dated 06.10.2020, respondent did not submit any reply, therefore hearing fixed on 20.11.2020.

Observation/Recommendations:

3. The case was scheduled to be heard on 23rd November, 2020. However, prior to the hearing an email dated November 18, 2020 was received from the complainant who informed that his grievance has been redressed and payment has been received by him of his due daily wages. Accordingly, the complainant requested for closure of his case.

4. In view of the above, the case is disposed off.



Dated: 23.11.2020

Upma Srivastava

(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. 11860/1011/2020

Complainant : Dr. Anil Sahebrao Kuwar, Plot No.41, Nagai Colony Sakri, Tal Sakri, Dist. : Dhule, Maharashtra – 424 304.

Respondent : Maulana Azad National Institute of Technology (Through the Registrar), Bhopal, Madhya Pradesh – 462 003.

Disability : 50% locomotor disability

Gist of Complaint:

Dr. Anil Sahebrao Kuwar vide his complaint dated 07.03.2020 submitted that he has been working as an Assistant Professor at Kaviyatri Bahinabai Chaudhari, North Maharashtra University. He had applied for the post of Assistant Professor in Chemistry subject as per the advertisement notification No.Estt/FR/2019/AP/528 dated 23.07.2019 under PH quota in Maulana Azad National Institute of Technology Bhopal (MANIT), Madhya Pradesh. His name was listed for interview among the eligible candidates. He attended the interview on 14.02.2020 and 15.02.2020, but he was not selected for the post of Assistant Professor in MANIT under PH category. The Institute had reserved 7 posts for PH candidates but they did not fill any person with disabilities.

2. The Registrar, Maulana Azad National Institute of Technology, Bhopal vide letter No.Estt/Legal/2020/135 dated 14.08.2020 submitted that the assertion of the complainant no PwD candidates were selected on the post of Assistant Professor against vacancies for PwD candidate is a matter of record as no PwD candidate was recommended by the Selection Committee for appointment on the post of Assistant Professor. However, it is submitted that in the same recruitment drive, out of two posts of Associate Professor reserved for PwD, one candidate was recommended for selection and was given appointment.

3. The complainant vide his rejoinder dated 15.10.2020 submitted that his total credit point is 131. His credit score is higher than normal candidates. Minimum credit points required for any appointment as Assistant Professor in NIT is 20 while his credit point is 131 which is more than normal candidates. His interview lasted for 55 minutes which is more than the time taken to



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interview normal candidates. The Selection Committee did not mention any reason for rejection of his appointment in the Institute as per received comments by NIT Bhopal. As per Central Government Rules and Rights of Persons with Disabilities Act, 2016, Section 34 clearly states that 4% reservation should be maintained in every Institute.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 10.11.2020.

4. The following persons were present during the hearing ;
- 1) Dr. Anil Sahebrao Kuwar, the complainant.
 - 2) Dr. Harish Vaidya, Assistant Registrar and Prof. Namita Shrivastava, Dean (Faculty Welfare).

Observation/Recommendations:

5. As per the admissions made by the respondent organisation all 7 posts reserved for PwDs went vacant as the selection committee did not find anyone suitable for the post. To substantiate the claim, respondent organisation failed to present the relative distribution marks.

6. As claimed and accepted during hearing, complainant's credited point were 131 which were higher than credit points of general candidates. Still to the surprises of this court candidature of the complainant was rejected.

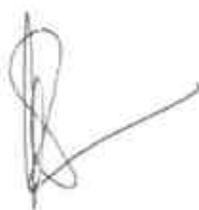
7. Another fact was discovered from the submissions of the respondent organisation is that 10 vacancies for PwDs are lying vacant in respondent organisation.

8. In this country employment for PwDs is a big issue. Intent of Rights of Persons with Disabilities Act, 2016 is to make persons with disabilities self-dependent. For this purpose, employment rights are conferred upon the Persons with Disabilities. Hence, empathetic and proactive attitude is necessary to be adopted.

9. Section 34 of Rights of Persons with Disabilities Act, 2016 makes it obligatory for government establishments to provide minimum 4% reservation. Respondent organisation which has faculty strength of 236 clearly fails to implement the statutory mandate of giving 4% reservation. Even when there are vacant positions still not even 1 candidate was appointed against the posts reserved for Persons with Disabilities. This shows callous behaviour of the respondent towards fulfilling its statutory obligations.



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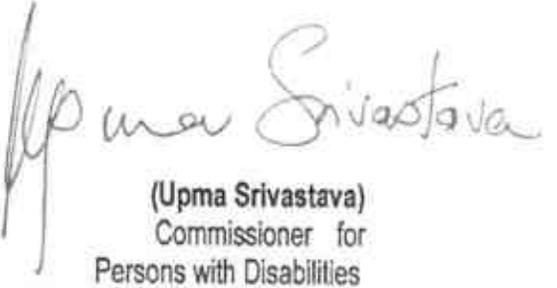


This position also indicates that various discrepancies exist on the part of reply offered by the respondent organisation.

10. This court recommends that in future whenever recruitment process would be carried out by the respondent organisation it shall give pre employment training to the candidates short listed for interview process. Further, this court recommends that respondent organisation shall include a person with disability in selection committee who can be more understanding towards challenges faced by the PwD applicants. Further, this court recommends that respondent organisation shall also reconsider the minimum criteria for selecting the candidates and shall also consider giving relaxation in prescribed criteria in future recruitment process for PwDs.

11. The case is disposed off.

Dated: 23.11.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11914/1111/2020

Complainant:

Ms. Manjula Rath,
Chair: Women Matters,
All India Confederation of the Blind,
Braille Bhawan
(Behind Rajiv Gandhi Cancer Hospital),
Sector-5, Rohini, Delhi-110085,
Email: manjularathedu@gmail.com

Respondent:

Dy. Commissioner of Police,
South West District, Delhi
Police Station Vasant Vihar,
New Delhi – 110067
Email: dcp-southwest-dl@nic.in

1. Gist of Complaint

1.1. The complainant vide email dated 07.05.2020 informed to this Court that a 7 year visually impaired girl was brutally raped and then murdered on the night of 06.05.2020 in Nazafgarh. The concerned Police Station was Baba Haridass Police Station, Nazafgarh, Delhi.

1.2 The matter was taken up with the Dy. Commissioner of Police South-West District, Delhi to inquire into the matter and submit the inquiry report. But no response has been found received from the respondent despite lapse of sufficient time and reminder dated 30.09.2020.

Page 1 of 2

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

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

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

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

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

2. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **20.11.2020**. The following were present:

- (i) Smt. Manjula Rath, the complainant, on phone
- (ii) None from the respondent

3. **Observation/Recommendations:**

3.1 The complainant expressed her anguish over non-redressal of her grievance pertaining to rape and murder of a minor blind girl. She expressed that the culprits should have been caught and brought to book by now.

3.2 This Court noted that the respondent had not given any reply to this Court's communication dated 30th September, 2020. This Court's intervention is limited to requesting the Delhi Police for expediting the matter so that the guilty can be punished and fear in the minds of persons with disabilities can be reduced.

3.3 Accordingly, this Court recommends that a letter may be written to the Commissioner of Delhi Police citing this matter and requesting him to expedite the investigations. A copy of the letter written to the Commissioner of Police may be sent to the complainant along with this order.

Dated: 23.11.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

वाद संख्या - 11915/1040/2020

परिवादी -

श्री वैभव भण्डारी,
स्वावलम्बन फाउण्डेशन,
67, आदर्श नगर, पाली-306401 (राजस्थान)
ईमेल - sarkarpali@gmail.com

प्रतिवादी -

सचिव,
विश्वविद्यालय अनुदान आयोग,
बहादुर शाह ज़फ़र मार्ग, नई दिल्ली - 110002
ईमेल - secy.ugc@nic.in

1. परिवाद का सार -

1.1 कोविड-19 महामारी के कारण विश्वविद्यालयों द्वारा आगामी समय में परीक्षा आयोजित करवाने के सम्बन्ध में विश्वविद्यालय अनुदान आयोग द्वारा दिनांक 29.04.2020 को दिशा निर्देश जारी किए गए जिसमें विभिन्न प्रकार के परीक्षा के विकल्प बताए गए। परिवादी ने कहा कि कुछ प्रमुख दिव्यांगता वाले छात्रों को परीक्षा में लेखक चाहिए होती है वहीं अन्य व्यक्ति पर निर्भर दिव्यांग छात्रों को आने जाने हेतु परिचित को सहयोग हेतु साथ लाने होते हैं। परिवादी ने निवेदन किया कि महामारी से संक्रमण के खतरे को ध्यान में रखते हुए और उससे बचने के उद्देश्य से सामाजिक दूरियाँ बनाने के लिए विगत वर्ष की परीक्षा के आधार पर दिव्यांग छात्रों के वर्तमान सत्र का परीक्षा परिणाम विश्वविद्यालयों द्वारा जारी करने के आदेश दिए जा सकते हैं; और तदनुसार विश्वविद्यालय अनुदान आयोग द्वारा वर्ष 2019-20 की परीक्षा आयोजित कराने के सम्बन्ध में जारी दिशा-निर्देशों में महामारी से बचने के उद्देश्य से दिव्यांगजन अधिकार अधिनियम, 2016 में सूचीबद्ध सभी दिव्यांग छात्रों के अनुरूप परिवर्तन करने के निर्देश दिए जाएँ।

1.2 दिनांक 20.05.2020 को प्रतिवादी से इस प्रकरण में टिप्पणी माँगी गई थी परन्तु स्मरण-पत्र दिनांक 30.09.2020 भेजे जाने के उपरान्त भी प्रतिवादी द्वारा उत्तर प्रस्तुत नहीं किया गया।

(Page 1 of 2)

उपमा श्रीवर्मा

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

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

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

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

2. **सुनवाई** - इस परिवाद में विडियो कॉन्फ्रेंसिंग के माध्यम से आयुक्त दिव्यांगजन द्वारा दिनांक 17.11.2020 को सुनवाई की गई। सुनवाई में निम्नलिखित व्यक्ति उपस्थित हुए -

- (1) श्री वैभव भण्डारी, परिवादी
- (2) डॉ. जी. एस. चौहान, संयुक्त सचिव, प्रतिवादी पक्ष से

3. **अवलोकन/अनुशंसाएँ** -

3.1 दोनों पक्षों को सुना गया।

3.2 कोविड-19 महामारी के कारण उत्पन्न बन्दी की कठिन स्थिति से निपटने के लिए एवं छात्रों, शिक्षकों और कर्मचारियों के स्वास्थ्य, महामारी से बचाव व सुरक्षा को ध्यान में रखते हुए पठन-पाठन, परीक्षा का आयोजन, परीक्षा परिणामों की घोषणा, आगामि सत्र में छात्रों का नामांकन, आदि की व्यवस्था करने सम्बन्धित विश्वविद्यालय अनुदान आयोग द्वारा दिनांक 29.04.2020 को दिशा निर्देश जारी किए गए थे। इस दिशा निर्देश में दिव्यांग छात्रों के बारे में कोई विशिष्ट उल्लेख नहीं किया गया था। परन्तु ऐसा प्रतीत नहीं होता है कि यह दिशा निर्देश दिव्यांग छात्रों पर लागू नहीं होता है। बन्दी के उपरान्त विश्वविद्यालयों और महाविद्यालयों को पुनः खोले जाने से सम्बन्धित दिनांक 05.11.2020 को प्रतिवादी द्वारा निर्गत दिशानिर्देश में सभी विश्वविद्यालयों और महाविद्यालय को बिन्दु संख्या 4.2.7 x पर यह निर्देश दिए गए हैं कि दिव्यांग छात्रों को सभी प्रकार के सहयोग और सुविधाएँ प्रदान की जाएँ।

3.3 प्रतिवादी को यह सलाह दी जाती है कि विश्वविद्यालयों और महाविद्यालयों को निर्गत की जाने वाली छात्रों से सम्बन्धित दिशा निर्देशों में दिव्यांगज छात्रों को प्रदान की जाने वाली सहायता और/अथवा सुविधाओं के बारे में विशेष रूप से उल्लेख किए जाएँ ताकि सम्बन्धित विश्वविद्यालय और महाविद्यालय द्वारा संज्ञान लिया जा सके।

3.4 परिवाद में परिवादी द्वारा ऐसे किसी दिव्यांग छात्र का विशिष्ट उल्लेख नहीं किया गया है जिसे परीक्षा देने के लिए लेखक या अन्य दी जाने वाली सहयोग और सुविधाओं की आवश्यकता है। परिवादी को सलाह दी जाती है कि कोविड-19 महामारी से बचने के उद्देश्य से सहयोग और सुविधाएँ प्राप्त करने हेतु सम्बन्धित विश्वविद्यालय और/अथवा महाविद्यालय में विधिवत आवेदन करें।

4. इस वाद का निपटारा किया जाता है।

दिनांक - 23.11.2020

न्या.मु.आ.दि - असेस - 11915/1040/2020



उपमा श्रीवास्तव

(उपमा श्रीवास्तव)
आयुक्त दिव्यांगजन

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Extra 19

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: 12122/1022/2020

Complainant: Shri Ankit Sharma, MIG A 20/60, Central Excise & Customs Staff Quarters, 249 Scheme, 5th Yelahanka New Town, Landmark Opp. 4th Phase Yelahanka New Town Bus Stand, Bangalore – 560064
e-mail: <ankit14@gmail.com>

Respondent: The Principal Chief Commissioner of Central Tax, 7A, Ashok Marg, Block E, Hazratganj, Lucknow, Uttar Pradesh – 226001
e-mail: <ccu-cexlko@nic.in> <vvk.jain@gov.in>

Complainant 45% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **06.07.2020** submitted that he has been working in Central Tax Office, Bangalore as a Tax Assistant since 23.05.2016 and he had requested for Inter Commissionerate Transfer (ICT) to Lucknow Zone from Bangalore Zone but he was denied on the grounds of unavailability of vacancy in PH quota.

2. The matter was taken up with the Respondent vide letter dated **03.09.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **21.10.2020**, respondent did not submit any reply, therefore hearing fixed on **17.11.2020**.

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

- Complainant – Shri Ankit Sharma
- Respondent – Shri Ajay Kumar Mishra, Joint Commissioner



Observation/Recommendations:

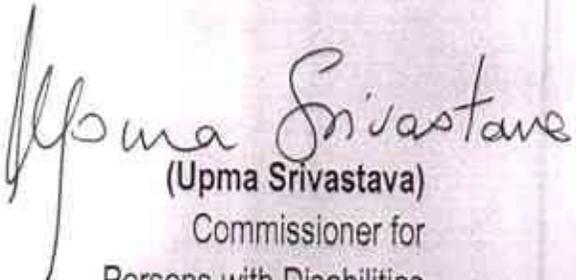
3. After hearing both the parties and perusal of the available documents, Court observed that the complainant wants Inter Commissionerate Transfer (ICT) from Bangalore Zone to Lucknow Zone because of the proximity to his home town and NOC from Bangalore Zone has also been issued and sent to Lucknow Zone. However, due to non-availability of vacancy in PH quota his transfer was denied by the Lucknow Zone, though many vacancies were available in general quota.

...2....

4. However, Court is of the view that complainant being a person with 54% of disabilities needs to get transferred as requested with reasonable accommodation so that he can perform with utmost efficiency. In this matter, the Rights of Persons with Disabilities Act, 2016, Section 2 (y) provides "*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. Keeping in view, the Court recommends that the respondent shall transfer Shri Ankit Sharma to Lucknow Zone against suitable vacancy of any category within 03 months of issue of this order.

6. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.11.2020



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सत्यमेव जयते

extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12326/1101/2020

Suo-motu

In the matter of inaccessible examination centre for Civil Services Examination held on 04.10.2020

Respondent:

Union Public Service Commission,
Through: Secretary,
UPSC Bhavan, Shahjahan Road,
New Delhi-110069, Email: secyoffice-upsc@gov.in;

1. Gist of Complaint

1.1 This Court had taken a suo-motu cognizance on the tweet of Ms. Alokita Gupta, a person with disability and a candidate who appeared in the Civil Service Examination (CSE) conducted on 04.10.2020 by the Union Public Service Commission (UPSC). She had tweeted as under:

"If a person with disability can't even get an accessible sitting arrangement in an exam like UPSC CSE, WHY DO WE HAVE TO SUBMIT OUT Disability Certificate? What was the need of mentioning my locomotor disability on the admit card?"

1.2 Clause XVII of the 'Guidelines for conducting written examination for Persons with Benchmark Disabilities' issued by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment vide Office Memorandum No.34-02/2015-DD-III dated 29.08.2018 provides that "As far as possible the examination for persons with disabilities should be held at the ground

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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)

floor. The examination centres should be accessible for persons with disabilities.”

1.3 The matter was taken up with the respondent for submission of their comments.

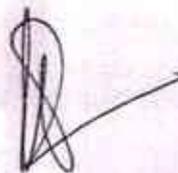
2. The respondent filed their reply dated 19.10.2020 and inter-alia intimated that there were 576 candidates allotted at sub centre (Venue) – Government Girl's Senior Secondary School, Bailey Road, Patna including Ms. Alokita Gupta, a person with Benchmark Disability candidate. Hear seating arrangement was at ground floor and there were 4 steps outside the Examination Room. One of the examination functionaries had helped her in moving up the stairs. She was escorted by her companion to her allotted room with the help of walker. In the meanwhile, a video was recorded by her companion and the same was shared on the social media. Facility of wheel chair and Ramp was available in 3 buildings of the school. Had the candidate requested for any assistance at the venue itself, the same would have been provided to her. But, no such request was made by her either in writing or orally.

3. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 20.11.2020. The following were present on behalf of the respondent:

(1) Shri Deepchand, Under Secretary, UPSC; and Shri Girish Pandey, Advocate

4. **Observation/Recommendations:**

4.1 The Respondent submitted that they have a well prescribed procedure for taking care of difficulties which may be faced by persons with disability candidates while appearing for various competitive



examinations conducted by UPSC. They further explained that they have earmarked one particular centre for persons with greater disabilities and Incharge of the examination centre at all other centres are duly instructed to support and render all help/assistance to candidates with disabilities.

4.2 The Court informed the respondent that in addition to this particular matter there are several more grievances received by this Court from time to time. On several occasions, as brought out by the media, highly inaccessible examination centres are declared by the UPSC. Though all the candidates experiencing accessibility issues may not be able to come to this Court, yet it is clear that many candidates faced huge problems in reaching the centres and also face issues inside the examination hall.

4.3 For the reference of the respondent a copy of the Accessibility and Examination Guidelines issued by Department of Empowerment of Persons with Disabilities are enclosed for ready reference. The respondent is again requested to review their entire procedure in this respect and plug loopholes if any, in identification of accessible and encumbrances free Examination Centres.

4.4 Accordingly the case is disposed off.

Dated: 23.11.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12081/1141/2020

Complainant:

Smt. Suvarna Raj,

Email: suvarnapradeepraj@gmail.com

Mobile: 08800226202

Respondent:

M/s Air India Limited

[Through: Chief Managing Director]

113, Rakabganj Gurudwara Road,

New Delhi – 110001

Email: cmd@airindia.in;

1. Gist of Complaint

1.1. The complaint is an International Para athlete (Javelin, Shot put and Discus throw) with 90% locomotor disability (wheelchair user). She filed the complaint regarding non-refund of the three Air Tickets by Air India.

1.2 The complainant submitted that she had to go to Dubai by Air India flight to participate in Fazza World Para Athletics Grand Prix Championships from 11 to 17 March 2020 to qualify in Tokyo Paralympic 2020 with my Escort (Husband) and my Son. But due to Corona Virus all the International Para Sports events were cancelled.

1.3 Out of the three tickets two were booked from Air India and one from the agent Goibibo. She applied for cancellation and refund of the booked tickets. Air India approved the refund and informed her that shortly she would get the refund. But no refund was received by her, hence this complaint. The details of ticket booked were as under:



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Sign.

Page 1 of 2

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

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

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

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

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

Sl.No.	Name of the Passenger	Flight	PNR	Date of Journey
1.	MRS. Suvarna Raj	AI 916	HMYZ1	18.03.2020
2.	MSTR. Prasun Raj	AI 916	HMYZ1	18.03.2020
3.	MR. Pradeep Raj	AI 916	Z4MR5	18.03.2020

2. On taking up the matter, the respondent filed their reply dated 06.10.2020 and submitted that the tickets for Mrs. Suvarna Raj and Master Prasun Raj under PNR HMYZ1 were booked through Call Centre of Air India bearing Ticket No.0982133108133 and 0982133`08132. The refund of Rs.18,069/- for the said two tickets had been made on 30.09.2020. The ticket under PNR Z4MR5 for Mr. Pradeep Raj booked through the agent Gobibo had also been cancelled and refund processed by Air India on 18.03.2020 to the agent Goibibo. As per the procedures, any ticket(s) booked through an agent, upon cancellation are refunded to the agent.

3. A copy of the aforesaid reply of the respondent was emailed to the complainant on 26.10.2020 for submission of rejoinder/comment within 15 days, but no response was found received from the complainant.

4. Observation/Recommendations:

4.1 From the perusal of the documents and facts of the case, the reply filed by the respondent appeared to be satisfactory as the refunds of the Air tickets cancelled have been made to the respective agent i.e. Goibibo by the respondent as per the procedure.

4.2 Accordingly the case is disposed off.

Dated: 24.11.2020



(Upma Srivastava)
Commissioner
for Persons with Disabilities



458



सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12271/1141/2020

Complainant:

Smt. Sunita,
R/o A-96, Block-A,
Near Shiv Mandir,
Punjabi Basti, Baljeet Nagar,
West Delhi, Delhi-110008
Email: sunita130477@gmail.com

Respondent:

Dy. Commissioner of Police (South-East District)
Office of DCP, South-East District
Govt. of NCT of Delhi,
Pocket-C, Sarita Vihar,
South-East Delhi, Delhi-110076

1. Gist of Complaint

1.1 The complainant, a person with 40% locomotor disability and a widow filed a complaint alleging inter-alia that one of her relatives, namely, Ms Pushpanjali (Priya); is harassing and misbehaving with her by using abusive language. She further submitted that her children are being induced and allured by Ms Pushpanjali to not to obey of their mother. She also alleged to have been misbehaved by a Police Constable of Pul Prahladpur Police Station, South East District, Delhi.

1.2. On taking up the matter, the respondent filed their reply dated 05.10.2020 and submitted that during the course of enquiry, both the children of the complainant were examined, they did not want to go with their mother as their mother is a handicapped lady. Accordingly, the medical examination of children namely Lucky age 16 years and Natasha age 15 years was also

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

conducted from AIIMS Hospital and they were produced before Child Welfare Committee (CWC) for their restoration. The complainant as well as the alleged Pushpanjali (Priya) was also appeared before the CWC. During the proceedings, both the children vehemently denied to go with their mother (complainant) despite their counseling. Thereafter, CWC sent the boy Lucky in Children Home, whereas the girl Natasha was sent to Nirmal Chhaya in their interest. Both the children did not make any allegation against the alleged lady Pushpanjali.

2. The reply dated 05.10.2020 of the respondent was sent to the complainant for submission of her rejoinder within 15 days, but no rejoinder has been found received from the complainant so far.

3. Observation/Recommendations:

3.1 Sub Sections (1), (2) and (3) of Section 7 of the Rights of Persons with Disabilities Act, 2016 provides as under:

"(1) The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall—

(a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;

(b) take steps for avoiding such incidents and prescribe the procedure for its reporting;

(c) take steps to rescue, protect and rehabilitate victims of such incidents; and

(d) create awareness and make available information among the public."

"(2) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur."

"(3) The Executive Magistrate on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability including an order—



(a) to rescue the victim of such act, authorising the police or any organization working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be;

(b) for providing protective custody to the person with disability, if such person so desires;

(c) to provide maintenance to such person with disability."

3.2 In the light of the Inquiry Report submitted by the Office of DCP, South-East District, Delhi and the provisions contained in Sub Sections (1), (2) and (3) of Section 7 of the Rights of Persons with Disabilities Act, 2016, the complainant is advised to submit her complaint before the concerned Executive Magistrate.

3.3. The case is disposed off.

Dated: 24.10.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities





सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

Case No. 10030/1024/2018

Complainant:

Shri Maloy Kumar Banerjee,
S/o Late R.N. Banerjee,
H.No.738, Adarsh Nagar,
Charoda, District – Durg - 490025 (Chhattisgarh);
Email – banerjeemaloykumar@gmail.com

R-24941

Respondent:

South East Central Railway
[Through: The General Manager],
Divisional Office, South East Central Railway,
Raipur-492008 (Chhattisgarh);
Email: gm@secr.railnet.gov.in

R-24942

....Respondent No.1

Department of Pension & Pensioners Welfare
[Through: The Secretary],
Ministry of Personnel, P.G. & Pensions,
Lok Nayak Bhawan, Khan Market,
New Delhi – 110003; Email: secy-arpg@nic.in;

R-24943

....Respondent No.2

TRUE COPY
Secy. R-24943
Sign.

1. Gist of Complaint

1.1 The complaint, Shri Maloy Kumar Banerjee, is a person with 75% visual impairment. His father was a retired employee of South East Central Railway [SECR]. The complainant submitted that he is unable to earn his livelihood due to visual disability and wants to include his name in the family pension of his father. He alleged that despite providing all the documents, SECR is not including his name in family pension.

1.2 The matter was taken up with SECR and Department of Pension & Pensioners' Welfare, Ministry of Personnel, Public Grievances and Pensions.

Page 1 of 9

1.3 SECR filed their reply dated 28.11.2018 and submitted that in terms Rule No.198/2013 of the Railway Services (Pension) Amendment Rules, 2013, if the son or daughter of a railway servant is suffering from any disorder or disability of mind including the mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years, the family pension shall be payable to such son or daughter for life subject to the condition that before allowing the family pension for life to any such son or daughter. The appointing authority shall satisfy that the disability is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising of a Medical Director or a Chief Medical Superintendent or incharge of a Zonal Hospital or Division or his nominee as Chairperson and two other members, out of which at least one shall be a specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child. Accordingly, the case of the complainant was referred to the Chief Medical Superintendent, SECR, Raipur for certification regarding earning capacity of the complainant. CMS/Raipur confirmed that the complainant was able to earn his livelihood even though he is having visual disability. Therefore, the committee did not recommend family pension to the complainant.

1.4 The complainant in his rejoinder dated 24.04.2018 submitted that in the three doctors' committee none of them are eye specialist; and he was never medically examined by the three doctors' committee as replied by SECR. The complainant further submitted that SECR failed to produce any such relevant document or receipt which could prove the presence of applicant during his medical examination by the three doctors' committee.

1.5 The case was heard on 08.01.2020. After hearing both the parties, this Court recommended that the respondent No.1, SECR might arrange for medical examination of the complainant in Raipur Government Medical College by a three doctors' committee comprising at least one eye specialist as per the statute; and submit their report.

1.6 SECR filed their compliance report vide letter dated 20.05.2020 and inter-alia submitted that the complainant's eye was examined [Best corrected visual acuity (BCVA) & Perimetry (Eye Field)] by the three



Doctors comprising one ophthalmologist who declared the complainant with 80% visual impairment.

1.7 The last hearing was scheduled in this case on 21.08.2020, but no one was present. The complainant was given another chance of hearing.

2. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.09.2020. The following were present:

- (1) Mr. Maloy Kumar Banerjee, the complainant
- (2) Dr. B. Jamkiar, Additional CMS, SECR and Mr. Krishan Kumar, S.O., DOP&T on behalf of the Respondents

3. Observation/Recommendations:

3.1 Both the parties were heard.

3.2 The issues under contention in this case are:

- (a) Eligibility of inclusion of name of the complainant in family pension.
- (b) Assessment of capability of the complainant to earn his living due to disability.

3.3 Legal position with respect to first issue is covered by Rule 54 of CCS (Pension) Rules, 1972. As per the provision Pension can be allowed for life, in favour of Disabled son or daughter even after they have attained the age of 25 years. Before allowing such family pension, APPOINTING AUTHORITY HAS TO SATISFY itself that –

- (i) PwD certificate is produced
- (ii) Disability is of such a nature that he/she is prevented from earning his livelihood
- (iii) Condition (ii) is to be evidenced by certificate obtained from Medical Board, which shall comprise 3 members. Eligibility of these 3 members is also laid down in the rule.

3.4 Rule 54 is reproduced below-

"RULE 54 - Family Pension, 1964 –



(6) The period for which family pension is payable shall be as follows:-

(ii) subject to second proviso, in the case of an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest

(iii) subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier

Provided further that if the son or daughter of a Government servant is suffering from any disorder or disability of mind including the mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-five years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:-

before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child;

the person receiving the family pension as guardian of such son or daughter or such son or daughter not receiving the family pension through a guardian shall produce a certificate, from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation, once, if the disability is permanent



and if the disability is temporary, once in every five years to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

3.5 Rule 75 of Railways Estt Rule 198/2013 is similar to Rule 54 of CCS (Pension) Rules, 1954. It is pertinent to note here that, as per the Rule, such certificate is necessary before allowing Family Pension. The same was held by CAT, Bombay Bench in matter of Sri Shamson Robinson Khandagle v. Union Of India; 2013 SCC OnLine CAT 436. Tribunal held that Disability Certificate alone is not requisite certificate to make the applicant eligible for Family Pension. Applicant in this case produced certificate of 60% disability and pleaded that certification of 60% disability alone proves his inability to earn livelihood. Tribunal rejected this contention.

3.6 Another point which arises out of the rule is who will issue such certificate OR who will decide issue of inability to earn livelihood? With respect to Appointing Authority, word used in the rule is SATISFY. Rule DOES NOT SAY that Appointing Authority can decide whether the applicant can earn his livelihood or not. Further, the rule says that such satisfaction has to be evidenced by the Certificate issued by the Medical Board.

3.7 This position was made clear by Gujarat High Court in the matter of Naresh Bansilal Soni v. Union of India; 2016 SCC OnLine Guj 654. In this case Appointing Authority stopped Family Pension on the ground that the beneficiary did not produce 'living certificate'. Later he was denied the benefit on the ground that he was present in person before the Appointing Authority and he looked physically able to earn his livelihood. Court held that decision of Appointing Authority that beneficiary can earn his livelihood, is arbitrary. Court held that in order to preclude Appointing Authority from taking arbitrary decisions, Rule lays down that such satisfaction has to be evidenced by the Certificate of Medical Board. Hence, subjective decision of authority is illegal and arbitrary.

3.8 It was held in a case reported as Narsi Sambunath Suval v. G.M. Western Railways; 2015 SCC OnLine CAT 1584 by CAT, Ahmedabad that such certificate cannot be issued even by the private hospital. CAT decided that such certificate would be valid ONLY if it is issued by the



prescribing authority, which is medical board. In this case, applicant produced 2 medical certificates, first one issued by Medical Board of Medical and Health Department of State of Rajasthan, another one issued by Private Hospital. Tribunal refused to rely on either one as none was issued by the prescribed authority under the Rules.

3.9 In the present complaint, the final medical examination was conducted by SECR on 25.03.2020 as per which the complainant was found to be 80% visually impaired. The respondents have argued that nearly having 80% visual impairment does not ipso facto give the complainant a right to be given family pension. It has to be assessed whether he can actually earn his living or not. The respondent further goes on to say that a totally blind person can also earn his livelihood.

3.10 Theoretically as argued by the respondent, a completely blind person may also find a mode of living though it may not be practically possible in most of the cases. As despite sincere efforts of such people those may not fructify. The latest medical certificate issued by SECR does not say anything about his capability to earn his living. In today's time when employment is a major issue for even the most fit and qualified persons, it becomes almost an improbability that such person with disabilities would find gainful and sufficient means of livelihood. Though such PwD may make sincere efforts, same may not always result in any success. As a consequence, such persons languish in poverty and distress, remain dependent on some kind of support including begging as an option for livelihood.

3.11 Similar argument was struck down by Hon'ble Madhya Pradesh High Court in Union Of India V. Baba Singh; 2012 SCC OnLine MP 10479. Court held that pedantic approach must be avoided and the rule must be given a wider interpretation. Relevant extracts of the judgment are quoted below –

“The conclusion derived by respondent that “he is capable of earning his livelihood if he takes normal initiative” is based on hypothesis, mere surmises and conjectures. Whether respondent examined applicant's educational qualification, physical strength, age and other relevant factors to conclude that he had earning capacity “if he takes normal initiative”. Apart from conveying that he is capable of earning livelihood, what were the basis and factors



which led to this decision has not been slightly indicated and revealed. If he was able to walk without support few yards, for a short duration, could it be construed that he is physically able to bear the strain and stress of a regular job even of mean nature. As far as capacity to earn livelihood is concerned, does it mean he should adopt means of begging in streets? The family pension being a welfare scheme has to be construed liberally and not in pedantic manner. The welfare State is required to adopt an approach which advances the welfare of the people and not otherwise, which is ex facie retrograde. It is admitted fact the applicant, by a competent medical board under the aforesaid Act has been declared physically disabled to the extent of 40%. **Therefore, respondent being a functionary of the welfare State was expected to act in furtherance of the object of the Act and not to create a situation where he could have been abused and exploited because of disability. Respondent was expected to deal the applicant with sympathy and humane consideration but it acted in otherwise in complete derogation and negation of the mandate of aforesaid Act. Rule 54 of 1972 Rules since deals with Family Pension, it aims to achieve the benefit to the categories of person mentioned therein. The exception carved out by virtue of proviso aims at expanding the applicability of Rule 54. In other words, subject to conditions being fulfilled, the proviso brings, within the ambit of Family Pension even the sons and daughters having crossed 25 years of age. The provision being beneficial in nature its operation cannot be curtailed by construing it narrowly. If narrowly construed the purpose for which it is introduced will reduce to futility. The expression "the handicap is of such a nature so as to prevent him or her from earning his or her livelihood", is therefore not to be construed strictly to mean that since any one can earn his livelihood and therefore even a handicap person can also earn his livelihood. But it is to be seen from the angle of such handicapped person who has been dependant as his capacity to earn by himself has depleted because of being handicapped."**



3.12 Court in its judgment indicated three important factors which must be considered while evaluating ability to earn livelihood, namely, applicant's educational qualification, physical strength and age.

3.13 Similar approach was adopted by Hon'ble Gujrat High Court in Natwarlal Bhalabhai v. Divisional Manager, Western Railways; 2006 SCC OnLine Guj 270. In the case Complainant/Applicant studied up to 8th standard and has also took some training, but the fact remained that because of his total blindness he was not able to get the job anywhere and, therefore, he was maintained by his father till 2003 up to age of 43 years. The Medical Certificate issued by the Medical Officer clearly said that he was unable to earn. What was stated in the certificate was that if he is provided employment in handicapped quota then he can earn and maintain himself. The petitioner was ready and willing to maintain himself by doing any job in Railways. But, when he applied, the Authority turned down his request on the ground that he was over aged. Court noted that though the petitioner may be in a position to earn his livelihood by doing job in Railways, the fact remains that he is unable to earn because of his blindness and because of his age. Under the circumstances, it was decided that the respondents have wrongly denied the pension to the petitioner and that the petitioner is entitled for the family pension from the date of the death of his father.

3.14 Further, Hon'ble Madhya Pradesh High Court in Praveen Saxena v. M.D. Life Insurance Corporation; 2012 SCC OnLine MP 1022 laid down parameters to decide ability to earn were laid down and unreasoned order of denial was set aside. In this case Respondent organisation contended that the Complainant/Applicant completed his education up to M.Com. but the height of the petitioner was less than 3 feet. He was handicapped by his both the legs. He was living in the immovable property which was left by his late father. It was further stated that the petitioner was a mentally fit with robust physic and good health and was able to earn his livelihood. However, Court noted that certificate of the Medical Board was not taken into consideration while denying the Family Pension to the Complainant/Applicant. Hence Court held that Order of denial was not speaking Order. Most importantly Court laid down following parameters for considering ability to earn livelihood, namely full facts to the effect how the petitioner is handicapped, academic qualification, family status, the property (movable and immovable) received by the petitioner from his parents.



3.15 Therefore, this court concludes that medical certificate issued by the medical board, i.e. SECR dated 25.03.2020 is silent on the issue of ability of the Complainant to earn the living. This is clear violation of duty as prescribed by the relevant rules i.e. Rule 54 of CCS (Pension) Rules, 1972 and Rule 75 of Railway Esst. Rule 198/2013.

3.16 Hence, this court recommends that the Complainant shall be re-examined by the medical board and such medical board shall evaluate the ability of the Complainant to earn his livelihood on the basis of parameters laid down by the Hon'ble High Courts in Union Of India v. Baba Singh and Praveen Saxena v. M.D. Life Insurance Corporation. Further this court recommends that Appointing Authority shall satisfy itself on the basis of such evaluation conducted by the medical board and only thereafter decide on the inclusion of the complainant's name in the family pension of his father.

4. A compliance report in this matter may be sent to this Court within 90 days of issue of these orders.

5. The case is disposed off.

Dated: 27.11.2020


(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. 11639/1023/2019

Complainant : Shri Rishish Mishra, 2/38, Ruchi Khand-2, Sharda Nagar, Lucknow-226002

Respondent : Central Institute of Plastics Engineering & Technology (Through the Director General), Department of Chemicals & Petrochemicals, T.V.K. Industrial Estate, Guindy, Chennai - 600 032.

Disability : 90% locomotor disability

Gist of Complaint:

Shri Rishish Mishra vide his complaints dated 21.11.2019 & 14.01.2020 submitted that he was selected and appointed in Central Institute of Plastics Engineering & Technology (CIPET) under Special Recruitment Drive (SRD) Scheme for persons with disabilities to the post of Accounts Assistant Gr. III in May 2017. Due to the discriminatory and step-motherly behavior of the officials at CIPET Lucknow, he had to resign from the services in July 2019. He left the job and joined a private job. During his service at CIPET and being an employee with disability, he was not being paid the Transport Allowance at double the normal rate as per GOI Rules since his joining CIPET. He was also not paid the EL Encashment as per the Central Civil Services Leave Rules. He wrote several emails to his establishment to know the status of the pending transport allowance and EL Encashment, but did not receive a single reply clarifying his queries. Presently he has joined a private organisation about 200 Kms away from his home for his and family's survival. He submitted that after five months of an unwanted and unnecessary fight with CIPET Lucknow, he received his pending Transport Allowance of Rs.90,640/- on 17.12.2019 after deduction of TDS of Rs.10,071/-. He received an amount of Rs.6,097/- on 07.01.2020 against his EL Encashment which he says is wrongly calculated. The CIPET has mentioned in their reply that he claimed Transport Allowance on 09.12.2019 whereas he had put the request for the same on 10.07.2019. At the time of his resignation, he had 68 Earned Leave (EL) to his credit and 28 days of notice period which needed to be adjusted with his EL. There is a big difference between the Earned Leave Encashment calculated by the CIPET and himself. The total EL Encashment for 20 days calculated by CIPET was Rs.4,728/- whereas as per his calculation it should be Rs.15,760/-.

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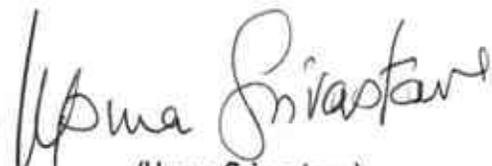
2. The Principal Director, Central Institute of Plastics Engineering & Technolgy, Chennai vide letter No CIPET /HO/PD (Griev.) / Compt / DIVYANGJAN/RM / 2020 dated 14.08.2020 submitted that the issue of the complainant has already been settled at the Institute level.

3. In the light of the documents available on record; the Court does not find any merit to further continue the case.

4. The Respondent is recommended to re-calculate the amount of Double Transport Allowance and EL Encashment for the satisfaction of the complainant.

5. The case is accordingly disposed off.

Date : 27.11.2020


(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: 11789/1023/2020

Complainant: Shri Umashankar Verma, 41/5, N.S. Road, Khatal Gali, 1st Floor,
Beside Canara Bank, Post Rishra, Dist. Hooghly, West Bengal-
712248

e-mail: <usv8rvp@gmail.com>

Respondent: The Postmaster General, West Bengal Circle, Office of the
Postmaster General, Yogayog Bhawan, Kolkata – 700012

e-mail: <cpmg_wb@indiapost.gov.in>

Complainant 84% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **24.06.2020** inter-alia submitted that their Office conducted a Departmental Examination for promotion from Sr. Accountants to AAO in the month of February 2019 and approximately, 300 candidates participated and 1/3rd failed but after 06 months they got promotion as AAO to different locations without passing examination except divyang candidate. He has also claimed that his CCL was not restored.

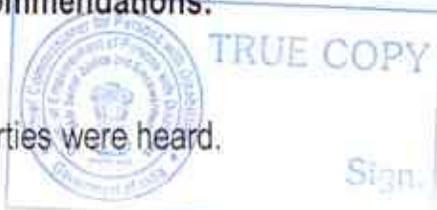
2. The matter was taken up with the Respondent vide letter dated **05.03.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **24.09.2020**, respondent did not submit any reply, therefore hearing fixed on **17.11.2020**.

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

- Shri Umashankar Verma - complainant
- Shri Pulak Sinha, Assistant Chief Account Officer on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.



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4. Complainant has alleged that in spite of his disability, Respondent organisation proposed his name to Election officials for Election duty. It is also alleged that he was not given training at par with employees not belonging to PwD category. It is also alleged that Complainant's one CCL leave was unlawfully deducted.

5. Respondent apprised this court that though Complainant's name was proposed for election duty, however, it was retracted after he informed the Respondent about his disability. Further it was also informed that Complainant was also given training at par with his peers.

6. It is pertinent to mention that Person with Disabilities have to face more challenges as compared to those who don't suffer from any disability. Therefore, training of such persons must be thoughtfully planned.

7. It is also to be mentioned that precious resources of the Respondent Organisation belong to the citizens of this country and hence must be utilised diligently and must not be wasted in unwarranted litigation. Hence, Respondent must be compassionate towards rights of PwDs. Therefore, this court recommends that the name of any employee whose functioning is restricted to desk job because of disability must not be proposed for any kind of duty in which agility and mobility is sine qua non.

8. Further this court recommends that issue of unlawful deduction of one CCL leave shall be resolved by the Respondent according to the relevant rules expeditiously.

9. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.11.2020



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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: 11904/1023/2020

Complainant: Shri Akhilesh Sharma, Viklang Adhikar Manch, Patna, Bihar
e-mail: <akhileshsharmacov@gmail.com>

Respondent: The Chairman, State Bank of India, State Bank Bhawan, Madame Cama
Road, Nariman Point, Mumbai - 400021
e-mail: <chairman@sbi.co.in> <dgm.ir@sbi.co.in>

GIST of the Complaint:

Shri Akhilesh Sharma, Vikalang Adhikar Manch, Patna vide his email dated 25.04.2020 has submitted that SBI is doing unparallel and unwarranted injustice to its Pwd employees during the lockdown in the country due to COVID-19. He submitted that SBI vide its letter no. HR/IR/SKJ/2690 dated 30.03.2020 & HR/IR/SKJ/40 dated 20.04.2020 took a humane approach and has exempted Pwd and pregnant employees from attending offices during the current lockdown period. On 24.04.2020, SBI came up with an impugned Circular (CDO/P&HRD-IR/9/2020-21 where it has treated the absence of Pwd employees as sick leave. Unfortunately, the Bank has further directed to deduct the salaries of the employees for their absence during the lockdown period if the concerned employees do not have enough leaves to his/her credit.

2. The matter was taken up with the Respondent vide letter dated 30.04.2020 under Section 75 of the RPwD Act, 2016. But despite reminder dated 13.10.2020, respondent did not submit any reply, therefore hearing fixed on 17.11.2020.

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

- Shri Sanjay Prakash, DGM (HR) on behalf of respondent
- Complainant - absent



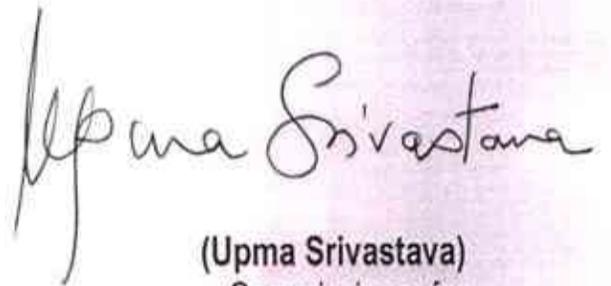
Observation/Recommendations:

3. Bedrock of the present complaint is e-circular number CDO/P&HRD –IR/ 9/2020-21 dated 24.04.2020 issued by respondent, SBI. Point 5 of the circular lays down that absence of PwD employees during Covid-19 lockdown will be considered as 'Sick leave'. Further, the Respondent instructed to deduct the salary of all such forced absence, if the concerned employee does not have enough leaves to his/her credit.

4. Respondent admitted the contents on the above-mentioned e-circular during online hearing conducted by video conferencing. Further, officer appearing on behalf of the respondent, Sanjay, DGM (HR) apprised the court that above-mentioned e-circular was amended by another e-circular number CDO/P&HRD- IR/13/2020-21 dated 06.05.2020. E-circular dated 06.05.2020 revised the instruction issued by the previous circular with respect to Pwd employees, amending circular laid down that the absence of PwD employees during Covid-19 lockdown will be considered as 'Special Leave' instead of 'Sick Leave'.

5. Further, it was informed by the respondent during online hearing that no salary was deducted by the respondent of any employee who remained absent during Covid-19 lock down. This court recommends that valuable resources of the respondent organisation and of this court must not be wasted upon unnecessary litigation. Hence, respondent must be considerate while issuing any circular at the very first instance itself. Further, intervention of this court in this complaint is unwarranted.

6. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.11.2020





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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. 11939/1101/2020

Complainant:

Shri Shameer Rishad,
Convenor - Javed Abidi Foundation,
F-311, Royal Residency Sushant Lok,
Phase-2, Sector-56, Gurgram-122011
Email: shameer@jaf.org.in; Mobile: 7624955900

Respondent:

The Joint Secretary
(Adult Education and Co-ordination),
Department of School Education & Literacy,
Ministry of Human Resource Development,
215-C, Shastri Bhawan, New Delhi-110001
Email: sinhas3@nic.in

1. Gist of Complaint

1.1 The complainant is a Convenor of an NGO – Javed Abidi Foundation – involved in empowerment of persons with disabilities across the country. He filed this complaint regarding accessibility of 12 Direct-To-Home (DTH) television channels for students/people with disabilities.

1.2 The complainant submitted that Ministry of Human Resource Development (MHRD) had planned to start 12 direct-to-home (DTH) television channels each catering to students from one academic year to another to serve as virtual classrooms aiming to bridge the digital divide for students from Class 1 to 12 during the period of the Lockdown caused due to COVID-19 outbreak. Agencies such as National Council of Educational Research and Training (NCERT) and Central Board of Secondary Education (CBSE) may be used to develop content and run these channels. These channels would be free of cost

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

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

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

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

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

and in different vernacular languages as well. Further, Swayam Prabha Channels which is a group of 32 channels would be repackaged to serve this purpose. Higher Education may also be launched this way in consultation with All India Council for Technical Education (AICTE). MHRD has several digital platforms like Epatshala, Swayam, Swayam Prabha, Diksha and several others. Usages of these platforms have seen increased in the recent Lockdown.

1.3 Complainant's concern is that the digital divide will only further increase if these platforms are not accessible for people with disabilities. Some of these platforms were tested using Web Accessibility Evaluation tool and the findings are as under:

- (a) swayamprabha.gov.in had 69 major accessibility errors, 1273 contrasting errors, and several other errors;
- (b) epathshala.nic.in had 42 major accessibility errors, 13 contrasting errors and other errors;
- (c) Swayam.gov.in had 39 major accessibility errors, 6 contrasting errors and other errors; and
- (d) the text contents of epathshala website were found to be inaccessible and not readable by those with print disabilities; there was no sign language interpretation; no captioning was available; and there was no audio description.

1.4 The complainant requested that all content developed by them must be made accessible as per the standards of the Guidelines for Indian Government Websites (GIGW).

2. On taking up the matter, the respondent filed their reply dated 01.09.2020 and inter-alia submitted that –

2.1 MHRD has announced the launch of 12 DTH TV Channels and the services of radio stations to deliver digital education to nearly 260 million school



students and 8.5 million teachers across the country on 24x7 basis in a mission mode. The existing contents developed by various agencies including willing private players for the 12 DTH Channels are being collected, collated and vetted by subject committees at NCERT level. Apart from NCERT faculty, faculty members from CBSE, KVS, NVS, UT Chandigarh are being co-opted including involvement of practicing teachers. The e-contents development guidelines brought out by NCERT is being used for creation and vetting by subject matter committees. A working group, headed by Chairperson CBSE with other members of the group from various departments as NCERT, CBSE, NIOS, Ministry of Social Justice and Empowerment, Experts/Professionals in the field etc., has been approved to provide effective e-content for Children with Special Needs (CWSN).

2.2 Under inclusive education policy, the Department has initiated a Samagra Shiksha Scheme which covers students with disabilities from primary to senior secondary level across the country. This scheme provides identification & assessment camps, provision of aids, appliances, assistive devices, teaching learning materials as well as transportation, escort and scribe allowances etc.

2.3 An advisory dated 01.07.2019 has been issued to all autonomous institutions of the Department of School Education & Literacy to make websites accessible as per GIGW 2.0 standards. Booklets and guidelines on cyber safety and security have also been developed for teachers and schools.

2.4. E-Pathshala platform also offers read aloud textbooks which can be accessed through Google assistant using voice command. 11 videos based on NCERT's textbook content, across classes and curricular areas are available in sign language and can be accessed. NCERT's Tactile map books contain 25 maps and diagrams in tactile format along with text in English and Hindi Braille. Audio books for classes 1 to 12 are also available on the NCERT website.

2.5 Recording of audio teaching sessions has also been developed by NCERT in English medium for classes 1 to 8. 96 recorded lessons are



uploaded on diksha.gov.in, nroer.gov.in and NCERT's official You Tube Channel.

2.6 An Expert Committee chaired by Joint Secretary, D/o SE&L has been constituted to ensure effective implementation of various interventions for students with disabilities.

2.7 With regard to training of teachers, an Integrated Teacher Training Programme called NISHTHA [National Initiative for School Heads' and Teachers' Holistic Advancement, stated to have been launched, aiming to build competencies among all the teachers and school principals at the elementary stage. The functionaries shall be trained at the state, district, block and cluster level.

3. The complainant in his rejoinder dated 16.10.2020 reiterated his complaint and added that -

3.1 All and any initiative of the government needs to be accessible to people with disabilities and should include the disabled community in development & implementation of programmes.

3.2 Each subject matter Committees may have experts on a specific subject (i.e. Maths), but the Committees may not be experts in the area of disability. Thus, it is important to include persons with disabilities and experts with disabilities in the process of vetting at the first NCERT level itself as the content may be rejected later on due to inaccessibility.

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

- (1) Shri Shameer Rishad, the complainant
- (2) No one from the respondent

5. Observation/Recommendations:

5.1 Cynosure of the complaint is contention that all and any initiative of the government needs to be accessible to people with disabilities and should



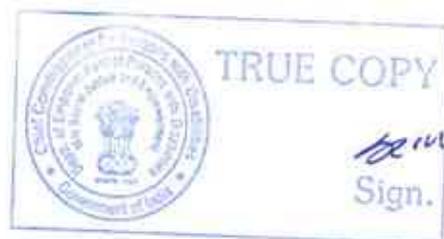
include the disabled community in development and implementation of the programmes.

5.2 This Court was apprised that an expert committee chaired by Joint Secretary, D/o SE&L has been constituted to ensure effective implementation of various interventions for students with disabilities. Further it was informed that the Complainant is himself a member of this committee. Therefore, this Court concludes that when an expert committee is already in place, intervention of this Court would be extraneous intrusion into the working of such committee. Moreover, fact that the Complainant is himself a member of such committee points towards unauthentic intention of the Complainant behind filing this Complaint. Being a member of a committee constituted for proper implementation of schemes for PwD students, not only provides opportunity to the Complainant but also casts a duty upon him to present his ideas and contentions before such committee, which he has put before this forum. Therefore, this Court concludes that in the present Complaint, any kind of intervention of this Court at this stage, into the functioning of the Respondent is unwarranted.

5.3 Accordingly, the case is disposed of.

Dated: 27.11.2020


(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. 12080/1101/2020

Complainant:

Shri Shameer Rishad,
Convenor Javed Abidi Foundation,
a youth advocacy group set up as a tribute
to Late Shri Javed Abidi,
a disability rights activist who worked hard
for the rights of people with disabilities
Email: shameer@jaf.org.in

Respondent:

The Secretary,
University Grants Commission (UGC)
Bahadur Shah Zafar Marg,
New Delhi - 110002.
Email - webmaster.ugc.help@gmail.com

1. Gist of Complaint

1.1 The complainant submitted that to address the grievances/concerns of the students, arising out of the COVID-19 Pandemic situation, UGC set up a helpline and also created an email, so that the students can lodge their specific grievances/concerns on that portal. The petitioner alleged that the web page named 'UGC Help Desk for COVID-19 Related Grievances' is completely inaccessible to students with visual impairment as the images on the page don't have appropriate Alt Text. The process to register ones grievances is also inaccessible to blind students

1.2 The respondent filed their reply dated 05.11.2020 and intimated that the following changes were made in the UGC Website:-

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- (1) A Screen Reader detail page is added at https://www.ugc.ac.in/screen_reader.aspx; a person can download one of the free screen reader tool mentioned on the page for reading any website including UGC website.
- (2) Data on COVID-19 Help Desk Page (https://www.ugc.ac.in/subpage/covid_helpdesk.aspx) has been readable for the screen reader tools for Persons with Disabilities.

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

- (1) Shri Shameer Rishad
- (2) Dr. G.S. Chauhan, Joint Secretary, for the respondent

3. Observation/Recommendations:

3.1 Complainant is convenor of Javed Abidi Foundation, an NGO dedicated towards welfare of Persons with Disabilities. Complainant informed this court about various measures adopted by UGC for redressing complaints of PwD candidates pursuing their education in various education institutions across the country. As per the information UGC created a web page name 'UGC HelpDesk for Covid-19 Grievances'. However, complainant alleges that this web page is completely inaccessible to student with visually impairment. The process to register one's grievance involves registration process which completes with filling of Captcha Code to the detriment of the students with Visual Impairment, such Captcha Code is available on web site only in visual format.

3.2 Respondent filed reply and apprised this court that it has put into place various measures for helping students with visual impairment, example screen reader page is added by the respondent on its website from where a person can download one of the free screen reader tools mentioned on the page for reading website including UGC website. Further, it was also informed that data on 'Covid-19 Help Desk Page' is also readable for screen reader tools for persons with disabilities.

3.3 Respondent is prestigious organization. It's efforts, as apprised, need appreciation. In furtherance of measures already taken, this court recommends to the organization to implement the following:



(a) In addition to visual image, such Captcha Code shall also be available in audio format so that students with visually impairment can register their grievances by themselves without aid of any third party.

(b) A third party accessibility check for all online educational websites which involve student-teacher interaction shall be undertaken under the supervision of respondent organization.

(c) It is pertinent to mention at this stage that it is not possible for any organisation to identify and improve upon all the issues which need improvement, by itself. This fact becomes even more important in the light of technical advancement made almost every day. Registrar interactions of the Respondent with representative organizations of persons with disabilities shall go a long way in making timely improvements.

3.4 Measures already taken by the respondent organisation and recommendations made by this court further the objectives as laid down in Section 42 of Rights of Persons with Disabilities Act, 2016.

3.5 Accordingly the case is disposed off.

Dated: 27.11.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities

