



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 Number No. 10052/1101/2018

R-23534

Complainant:

Dr. Nitesh Kumar Tripathi, R/o House No.241, Gali No.11,
B-Block, Sant Nagar, Burari, Delhi-110084;
Email: niteshtripathi85@gmail.com;

R-23535

Respondent:

The Secretary, Department of Posts, Ministry of Communication, Dak Bhawan,
New Delhi-11001; Email: secretary-posts@indiapost.gov.in

Gist of Complaint

The complainant, a person with 65% locomotor disability (lower limbs - crutch user), had filed a complaint under the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] regarding not providing accessible postal services at public place to persons with disabilities under ambit of RPwD Act, 2016 at 24 hrs Speed Post Booking Centre, Bhai Veer Singh Marg, Gol Market, New Delhi. The complainant alleged to have no proper arrangement of Hand Rails, Braille Enabled Sign Boards, Disabled Friendly Parking, Lift etc. There was no proper arrangement for access to the basic amenities as meant for persons with disabilities especially for women with disabilities.

2. Sections 40, 42, 44, 45 and 46 of the RPwD Act, 2016, provide as under:

“40. The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.”

“42. The appropriate Government shall take measures to ensure that,—

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(i) all contents available in audio, print and electronic media are in accessible format;

(ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;

(iii) electronic goods and equipment which are meant for every day use are available in universal design."

"44. (1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government."

"45. (1) All existing public buildings shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules:

Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters.

(2) The appropriate Government and the local authorities shall formulate and publish an action plan based on prioritisation, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops."

"46. The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules."

3. In view of the above, the matter was taken up with the respondent on 20.09.2018 for submission of comment.

4. Office of the Chief Postmaster General, Delhi Circle filed their reply dated 19.11.2018 and submitted that Civil Wing had been addressed for furnishing estimates for the provision of works mentioned by the complainant and the same would be provided in a time bound manner. Vide letter dated



25.10.2019, it was further intimated with photograph that a ramp at Speed Post Center, Bhai Veer Singh Marge, New Delhi has been made.


5. The complainant in his rejoinder dated 15.09.2020 raised his objection to the reply filed by Chief Postmaster General, Delhi and pointed out that the time limit of 2 years for making the building premises accessible as per Section 40 to Section 46, has been over and there is need of prompt action for compliance of the provisions made under these Sections of RPWD Act, 2016.

Observation/Recommendations:

To achieve accessibility at the Built Environment; Transportation and Information; and Communication Eco-System etc., the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, Government of India has launched a nationwide campaign under 'Accessible India Campaign' – 'Sugamya Bharat Abhiyan' for the persons with disabilities and reduced mobility. Respondent is advised to consider making Speed Post Booking Centre, Bhai Veer Singh Marg, Gol Market, New Delhi accessible in terms of the provisions made under Sections 40 to Section 46 of the RPWD Act, 2016 read with the Rules 15 and 16 of the Rights of Persons with Disabilities Rules, 2017.

2. Accordingly the case is disposed off.

Dated: 05.10.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities





सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 274/1028/11-12

Complainant : Shri P.V.S. Stalin Babu, Plot No.164, NGGO's Colony, Pattabhi Ramireddy Gardens, Visakhapatnam - 530 007.

Respondent No.1 : Ministry of Shipping (Through the Secretary), Transport Bhawan, 1, Sansad Marg, New Delhi- 110001.

Respondent No.2 : Shipping Corporation of India Limited (Through the Chairman and Managing Director), Shipping House, No.245, Madame Cama Road, Mumbai - 400 021.

Respondent No.3 : Dredging Corporation of India Limited (Through the Chairman and Managing Director), 'Dredge House', Port Area, Visakhapatnam - 530 035.

Gist of the matter:

In this case complainant P.V.S. Stalin Babu filed complaint before the office of Chief Commissioner of Persons with Disabilities (hereinafter referred as 'CCPD') whereby it was alleged that his service were terminated contrary to provisions of Persons With Disabilities (Equal Opportunities Protection Of Rights And Full Participation) Act 1995 (hereinafter referred to as 'PwD Act'). Thereafter interim order was passed by the office of CCPD. Respondent in the case i.e. Dredging Corporation of India invoked justification of the High Court against the interim order of the office of CCPD.

2. Subsequently, Hon'ble High Court quashed the interim order passed by the office of CCPD and directed the office of CCPD vide its orders dated 04/01/2018 to dispose of the matter within a period of six months from the date of receipt of a copy of this order after giving due opportunity to the petitioner. These orders were received in this court on 12/03/2020. Meanwhile the complainant passed away and Smt P.Sunita wife of the late complainant represented vide her letter dated 05.03.2020. Respondent organisation by its reply dated 26 August 2020 has put forward contentions related to termination of the Complainant.



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

3. Main contention of the complainant is that he acquired disability during his service in the respondent organisation. Thereafter, he was held unfit for the service and was terminated by the respondent organisation.

4. Respondent organisation claims that it has two service divisions and there is no provision or condition for transfer of employees from one division to another. The division in which the complainant was serving was unfit for the persons with disabilities. Hence, complainant was terminated because he acquired disability which made him unfit for the division in which he was serving and in absence of transfer rules he could not be transferred from one division to another.

5. This court concludes that contention is in direct violation of PwD Act 1995 Rights of Persons with Disabilities Act 2016. Both the legislations are social welfare legislations intended to bestow benefits on the persons with disabilities. Hence, absence of any rule relating to transfer of employees from one division to another is not a legally plausible defence and it is merely a hollow excuse.

6. Section 47 of Pwd Act lays down law relating to non-discrimination in government employment. This section makes it mandatory for the establishments to not terminate or reduce in rank an employee who acquires a disability during his service. This section mandates that if an employee after acquiring disability does not remain suitable for the post he was holding he has to be shifted to some other post with the same pay scale and service benefits. Absence of such rule or condition in the by-laws of the respondent corporation does not make Section 47 of PwD Act in-applicable upon the respondent organisation.

Applicability of Section 14 of Pwd Act

7. Respondent organisation has taken a defence that Section 47 of the PwD Act is not applicable where there is no necessary corollary between the nature of job and the cause because of which disability is suffered. This court concludes that this is merely an academic argument and does not have any practical significance. Phrase used in this section is "acquires a disability during his services." This section does not talk about proximity between nature of job and cause because of which disability is suffered. Provision does not lay down relationship between injury causing disability and nature of job, as a pre-condition for the application of section. Therefore, this court concludes that section 47 is applicable in the present complaint. Further Hon'ble Supreme Court in Justice Sunanda Bhandare foundation v. Union of India (2017) 14 SSC 1, held



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

8. To accept the contention of the Respondent shall amount to step backwards rather than step forward.

9. Further, attention of the Respondent is also attracted to decision of Hon'ble Madras High Court in P. Thangamarimuthu v. T.N. State Transport Corporation; (2006) 108 FLR 1131 (Madras), whereby it was held that benefits under Section 47 of PwD Act can not be taken away by relying upon Section 72 of the Act.

10. Furthermore, Hon'ble Supreme Court in its judgment of Kunal Singh v. Union of India; (2003) 4 SCC 524 held that

"11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pension Rules. The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further, Section 72 of the Act also supports the case of the appellant."

Conclusion/Recommendations

11. This court concludes that the termination of the complainant was in direct violation of Section 47 of Pwd Act. Hence, this court recommends that the complainant shall be paid back wages from the date of illegal termination till the date of death of the complainant.

Dated: 06.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 10931/1021/2019

In the matter of:

Shri Deepak Kumar

E-mail: <deepakgoyal1972@gmail.com>

Complainant

Versus

The Director General, Central Public Works Department
Nirman Bhawan, Maulana Azad Road New Delhi – 110011

E-mail: <ddgcoordnr.cpwd@gov.in> <ce-wtlqa-chd@cpwd.gov.in>

Respondent

1. GIST of the Complaint:

1.1 Complainant is suffering from 50% disability. He was appointed on the post of Lower Division Clerk (LDC) in year 1995 against vacancy for PwDs. Till 2012 he was not promoted to post of Upper Division Clerk (UDC). In year 2012 he was promoted to UDC after he qualified departmental exam.

1.2 During the same period, other employees were promoted to higher posts some of whom even reached up to post of Chief Clerk.

2. CONTENTION RAISED

2.1 Complainant raised the contention that he was denied promotion and this denial was against the rules applicable in this regard.

3. RELIEF SOUGHT

Complainant asked for granting of promotion from back date.



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4. CONTENTIONS OF THE RESPONDENT

Respondent raised following contentions –

4.1 Till 2012 name of the Complainant in the seniority list was on lower position. Hence, he was not considered for promotion.

4.2 After 2012, recommendations of 6th Pay Commission were accepted and post of Chief Clerk, Group C post, was converted to Group B post.

4.3 Benefit of reservation in promotion to PwDs can not be granted for promotion to Group B posts from Group C post.

5. CONTENTIONS RAISED BY COMPLAINANT IN REJOINDER

In seniority list, there was only one name of person belonging to PwD category above him. Hence, denial of promotion to the Complainant is illegal.

6. CONTENTIONS RAISED BY THE RESPONDENT IN THE REPLY TO REJOINDER

Respondent has quoted OM No. 36035/7/95-Estt. (SCT) issued by DoPT dated 18.02.1997, whereby it was laid down that while filling post by promotion against vacancies reserved for the PwD candidates who are falling within 'Normal Zone' and 'Extended Zone' can only be considered. Since, the Complainant did not fall under either Zone therefore, his name was never considered for promotion.

7. OBSERVATIONS

7.1 Two main issues in this Complaint are –

- i. Whether denial of promotion was in accordance with DoPT norms?
- ii. Whether reservation in promotion from Group C to Group B can be denied?



7.2 OM No. 36035/7/95-Estt. (SCT) issued by DoPT dated 18.02.1997 lays down that while filling post by promotion against vacancies reserved for the PwDs candidates who are falling within 'Normal Zone' and 'Extended Zone' can only be considered. It is to be noted that on the date when promotion of the Complainant was due, he neither fell in 'Normal Zone' nor in 'Extended Zone'. Hence, this court concludes that denial of promotion on such date of consideration was in line of DoPT O.M. mentioned above.

7.3 However, contention of the Respondent that no reservation in promotion can be given to Persons with Disabilities is against the judgments of Hon'ble Supreme Court and Hon'ble High Courts. The Hon'ble Supreme Court settled this issue in the judgment of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153, whereby hon'ble court laid down that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment, further Government was directed to extend reservation under The Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act 1995 (hereinafter mentioned as 'PwD Act of 1995') to PwD in all identified posts in Group A and Group B irrespective of mode of filling up of such vacancies. Relevant paras of the judgment are reproduced below –

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

25. In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PwD in all identified posts in Group A and Group B,



irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

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

7.5 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."

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



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

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

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

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

7.10 At this juncture it is vital to mention the judgment of Hon'ble High Court of Uttarakhand delivered in UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLine Utt 865. Hon'ble High Court held that law as laid down in Rajeev Kumar Gupta Case by the hon'ble Supreme Court does not make any distinction between Group A and B posts vis a vis Group C and D posts. Then the hon'ble High Court went on to held that judgments rendered under the



light of provisions of PwD Act of 1996 still hold good under RPwD Act of 2016. Relevant Para of the judgment is reproduced below -:

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

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

7.12 Further, this court concludes that denial of promotion on the ground that promotion from Group C posts to Group B posts can not be given is contrary to the judgments of Hon'ble Supreme Court and Hon'ble High Court, as mentioned above and also contrary to the Order passed by this Court in B. UMA PRASAD v. E.P.F.O. 11183/1021/2019

7.13 Hence this court recommends that the Complainant if falls under either 'Normal Zone' or 'Extended Zone', he may be given promotion in accordance with rules relating to seniority. Fact that after implementation of 6th Pay Commission post of Chief Clerk has been converted from Group C post to Group B post shall have no impact over the promotion of the Complainant.

8. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.10.2020



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सत्यमेव जयते

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. 9905/1021/2018

R-23630

Complainant : Shri S.K. Md. Gyashuddin, C/o. Shri Naaz Khatoon, AT + P.O Kalla (C.H.), Asansol, Dist. Paschim Burdwan, West Bengal-713340.

R-23631

Respondent : South Eastern Railway (Through General Manager), 11, Garden Reach Road, Kolkata – 400043.

Gist of Complaint:

SK. MD Gyashuddin, a person with hearing impairment vide his complaint dated 30.05.2018 submitted that he has been working as a Helper at Wagon Repair Workshop, Adra under South Eastern Railway. He has requested for his transfer to his native place, i.e. Asansol. During the year 2016 while on duty he became injured while lifting Oxygen Cylinder which affected his Spine. He has been suffering from chronic low back pain since then and has been spending lot of money on his treatment. He further submitted that he has also been denied promotion by his establishment. He submitted that he has also not been paid the House Rent Allowance.

2. The Court takes serious view of the fact that no reply has been received from the Respondent.

Observation/Recommendations:

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

- 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.
- The Respondent is recommended to transfer the complainant to his native place, i.e. Asansol in terms of rule position quoted as under:-

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

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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 immediately as per extant rule.
- d) The matter of promotion in respect of Shri S.K. Md. Gyashuddin may be considered as per extant rule as per the reservation of persons with disabilities expeditiously.

4. The case is disposed off.

Date : 08.10.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities





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

भारत सरकार/Government of India

Case No. 10835/1022/2019

Complainant : Shri Rameshwar Meena, I.O.F.S, Joint General Manager, Ordnance Factory, Varangaon, Maharashtra-425308.

Respondent : Ordnance Factory Board (Through Secretary), Ayudh Bhawan, 10-A, S.K. Bose Road, Kolkata – 700 001.

Gist of Complaint:

Shri Rameshwar Meena, Joint General Manager (JAG) of Ordnance Factory Varangaon vide his complaint dated 11.01.2019 has submitted about negligence and lapses in the matter of reservation (SC,ST,OBC & PH) & roster preparation during inspection as per the DOPT OM No. 36012/2/96 dated 02.07.1997. A committee was formed by OGV for scrutiny of the faulty rosters in question and as per the guidelines given by OFB committee the rosters have been prepared and submitted to him for inspection on 04.01.2019. After Scrutiny following observations/facts emerged :-

- i) All the promotion rosters were made based on the "running account" and not as per the "replacement basis". The register/roster register shall be maintained in the form of a running account year after year.
- ii) It was observed by him that rosters were prepared from 2014 year and not from the date 02.07.1997, the reasons of the same has not been mentioned in any of the record. Further due to this it became impossible for him to calculate the backlog vacancies year wise, also it is not possible to ascertain that the benefit of reservation has been provided or not provided to the real incumbent and cannot be verified further. The Re-casted rosters were verified by someone else and also it had been forwarded to ministry/commissions to cover up the negligence.
- iii) During scrutiny of these rosters, it was observed that the sanctioned strength was 93 but promotions were given to 98 incumbents, such accommodation is not permissible. He had requested not to consider his transfer until corrections/resolutions of all these rosters/seniority issues (although varangaon station is a declared hard station

...2/-



(Signature)

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

- iv) Not to transfer OFV Head of Department and all officers concerned, otherwise these discrepancies may not ever be resolved.

2. The Director General, Ordnance Factories vide letter No. 02/LO-OFV/Per/Resv(SCT) dated 26.07.2019 submitted that Ordnance Factory Board, Kolkata (OFB) and OFV are seriously reviewing the representation/complaint/allegation made by Shri Rameshwar Meena/Joint General Manager/OFV in the light of existing latest available rules and regulations. The Respondent has enclosed a copy of the fact and information of the subject matter which has been forwarded to the Liaison Officer/OFV. He submitted that the inspection of the updated / re-casted reservation rosters has been inspected by Liaison Officer/OFV and the requisite inspection certificate has been issued to the complainant.

3. The complainant vide his rejoinder dated 04.12.2019 submitted that the Respondents are trying to divert/eyewash by replicating comments as it was submitted earlier to the Hon'ble Chairman, National Commissioner for Scheduled Caste vide Letter No.1308/Estt/Reservation dated 17.01.2019 and the rejoinder has also been submitted by the applicant vide letter dated 26.07.2019. He submitted that the Respondent transferred the complainant without any reason and with contempt of direction given by Supreme Court of India that every transfer must be reasoned properly and as per the formulated transfer policy. He submitted that he has neither completed the tenure at Varangaon station nor indulge in any administrative underperformance except performing duties as Liaison Officer in holistic way. After his hasty release and envisioned to change Liaison Officer, Ordnance Factory Varangaon Administration assigned duties as Liaison Officer to Shri Rakesh Sharma, Deputy General Manager who refused to vet all these faulty rosters and then the duties were allocated to Shri Amit Kumar Meena, Deputy General Manager who also vetted all these rosters with serious observations as per his letter dated 02.07.2019. Shri Rajeev Gupta, Additional General Manager issued a letter to Secretary/OFB that all the rosters are vetted and can be submitted onward to National Commission for Persons with Disabilities, keeping aside all these observations without taking any cognizance. The complainant submitted that Hon'ble Chief Commissioner for Persons with Disabilities called for records/rosters maintained by respondent after receipt of complaint filed by Shri S.K. Rungta, General Secretary, National Federation of Blinds (NFB). The correspondences

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between all the Ordnance Factories and between Ordnance Factory Board clearly justify his all observations and how cunningly they took certificate from all innocent Liaison Officers without producing rosters. The complainant submitted that if Ordnance Factory Board and Ordnance Factories have properly maintained the rosters in case of Scheduled Caste, Scheduled Tribe, Persons with Disabilities, OBC and for Ex-serviceman then he prayed this Court to direct the respondent to produce the following two documents only along with rosters since 01.01.1996.

- i) DPC Proceedings since 01.01.1996 or date from, these are available.
- ii) Vacancy Breakup Certificates awarded by Liaison Officers since 01.01.1996 or date from these are available.

Observation/Recommendations:

4. 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 shall maintain roster for persons with disabilities and shall not deny promotion to the person with disabilities.

5. The case is disposed off.

Date : 08.10.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities.





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. 11034/1024/2019

Complainant:

Shri Sunil Deepchand Hansrajani,
Pooja Nivas, 151/A, Udhavnagar,
Old Wadej, Ahmedabad-380013
Email: sunildh@prl.res.in; Mobile: 9409250281

Respondent:

The Director, Physical Research Laboratory (An Autonomous Body
under the Department of Space), At: Navrangpura, Ahmedabad-
380009 (Gujarat)

Gist of Complaint

The complainant, a person with 50% locomotor disability, filed a complaint regarding switching over from CPF to GPF/Pension Scheme.

2. The complainant was a permanent employee of Central Institute of Plastics Engineering & Technology [CIPET] for the last 16 years. On selection, he joined Physical Research laboratory [PRL], Department of Space [DOS] on 11.07.2006. He filed a representation and requested PRL for transfer of PF contributions accumulation. PRL vide letter dated 30.08.2006 replied that "PRL is governed by Defined Contributions Pension Scheme (NPS), a request for transfer of PF accumulated during previous employment

Page 1 of 3



at CIPET cannot be conceded". At the time of his leaving, CIPET was governed by CPF rules and no Civil Pension was applicable. Later in 2009, Civil Pension Scheme was implemented in CIPET and became applicable to all those employees who were on permanent roll of CIPET as on 01.04.2009 and those who were joined service in CIPET on or before 31.12.2003.

3. The matter was taken up with the respondent.

4. The respondent file their reply dated 10.08.2020 and submitted that in terms of sub para 2(ii) of Govt. of India, Ministry of Personnel, Public Grievances & Pensions, DOP & PW OM No.28/30/2004-P&PW (B) dated 26.07.2005, the employees who entered into service on or before 31.12.2003 and who were governed by CPF scheme or any pension scheme of Central or State Government, other than the Pension Scheme under Central Civil Services (Pension) Rules, 1972, on submission of technical resignation to take up new appointment on or after 01.01.2004, cannot be allowed to join the Old Pension Scheme under Central Civil Services (Pension) Rules, 1972 because entry to the said scheme ceased w.e.f. 31.12.2003 and no new entry can be allowed in the Pension Scheme under above rules. Since the services of the complainant in CIPET were governed under CPF scheme and he joined PRL on 11.07.2006 i.e. after 31.12.2003, the date implementation of New Pension Scheme, PRL/DOS may not be in a position to extend him GPF with Pension Scheme unless CIPET consider his case to extend Pension at par with those who were on permanent roll of CIPET as on 01.04.2009. As conveyed by DOS,



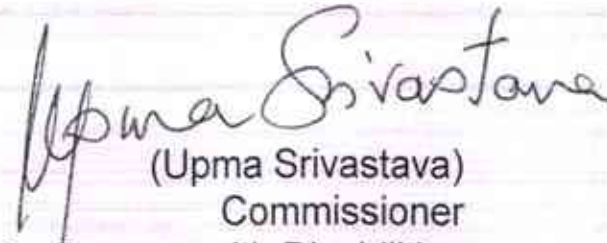
unless CIPET consider his case to extend Pension at par with those who were on permanent roll of CIPET as on 01.04.2009, PRL/DOS may not be in a position to consider his case. Complainant requested for two months' time to file his rejoinder.

Observation/Recommendations:

After perusal of the rival submissions, CIPET implemented old pension scheme w.e.f. 01.04.2009 and on this date the complainant was not on the role of CIPET. Accordingly, there is no violation of Government of India rules and instructions issued thereunder.

2. The matter is accordingly disposed off.

Dated: 08.10.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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1

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. 11827/1023/2020

Complainant : Shri M.S. Upadhyay, 2-1/C, CRPF, 27 Bn, Bawana, New Delhi - 110039.

Respondent : The DGMS (Army), Integrated Hqr. of Mod (Army), Dte. Genl. of Medical Services, Adjutant General Branch, 'L' Block, New Delhi - 110011

Gist of Complaint:

Present Complaint was filed by the Major (MNS) Poonam through her husband, Shri M.S. Upadhyay. Shri M.S. Upadhyay vide his complaint dated 14.02.2020 submitted that his wife Smt. Poonam is suffering from Schizophrenia. She is posted at MH Varanasi Cantt. She has not been drawing her pay and perks for the last four years. Many a time the Commanding Officer MH Varanasi had officially requested the O/o PCDA (O), Golibar Maidan, Pune for restoration of pay and allowances to his wife. She is in the category Shape-II (P) because of psychiatric illness. As per the advice Medical Board and direction of M.H. Varanasi, his wife has started performing light duty and accordingly was taken in the ration strength, but she has not started getting her salary till date. The Nursing Officers two years junior to her are holding the rank of Lt. Col. and she has been made to work under them and posting her to M.H. Varanasi where there are no psychiatric setup/specialists inspite of recommendation of three Medical Board to post her at a station where regular review with psychiatrist can be done. Keeping her in the same mess aggravated her symptoms and she also faced difficult work environment. The M.H. Varanasi has framed two charges on his wife for absenting herself without leave.

Hearing :

2. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 15.09.2020.

3. The following persons were present during the hearing.

- 1) Shri M.S. Upadhyay, the complainant
- 2) Lt. Col. Sandip Singh, OIC Legal Cell for Respondent.

Both the parties were heard



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Observation and recommendations

4. After hearing both the parties this court makes the following undisputable conclusions:
- The Complainant's wife Smt. Poonam, Major (MNS) presently posted at Military Hospital Varanasi Cant. is a person with disability, suffering from mental illness of Schizophrenia since 2009 onwards.
 - She has been posted at this Military Hospital since 2009 and till date i.e. for a period of 11 years, away from her spouse / care givers as well as on a posting which is neither of her choice nor close to her home station.
5. The complainant has sought the following reliefs:
- Setting aside of disciplinary action initiated against Major Poonam for wilful absence;
 - Transfer to Allahabad or Delhi where she has caregivers and appropriate medical hospitals to look into her ailment appropriately.
 - Resumption of payment of salary which has been stopped since last 4 years.

DISCIPLINARY ACTION

6. It is noted that the disciplinary action against Major Poonam has been initiated by the respondent on the grounds that she was on wilful absence/absconding between the following time periods -:
- 25.3.2010 to 08.4.2010
 - 08.4.2010 to 15.7.2014 (date of issue of show cause) and
 - 15.7.2014 to 13.3.2015 (Admission to Base Hospital Delhi Cant.)
7. The court notes that the complainant has given several documentary evidences as noted below -
- Hospital Discharge Slip dated 28.05.2010 of 165 Military Hospital
 - Medical Treatment Certificates of District Hospital, Dimapur, Nagaland dated 10.05.2010, 15.11.2010, 13.01.2011, 12.02.2011, 14.04.2011,
 - Discharge Cards dated of Dayal Nursing Home, Allahabad dated 01.05.2010, 18.01.2012, 19.02.2012, 20.04.2012, 20.06.2012, 15.08.2012, 15.09.2012, 15.11.2012, 15.01.2013, 16.03.2013, 15.05.2013, 15.07.2013, 10.08.2013, 27.1.2013, 28.11.2013.



- d. COPE CODING CERTIFICATE issued by Military Hospital, Varansi, certifying that the Complainant is diagnosed with Schizophrenia.
 - e. Letter dated 16.04.2010, addressed to The Commanding Officer, Military Hospital, Varanasi Cantt. Received by LT. Col proving that story related to MNS Officer Mess was accepted.
8. Above documents show beyond doubt that the complainant kept the respondent informed of her mental condition and that she was undertaking specialised treatment at CIHSP Dimapur and District Hospital Dimapur where her spouse was posted. It is not understood as to why the respondent has failed to take into cognizance these communications from complainant and insisted on issuing an apprehension roll, issuing show cause case notice and initiated disciplinary action on grounds such as the complainant being a perpetual offender etc.
9. Before moving to the next issue it is pertinent to bring relevant provisions of Rights of Persons with Disabilities Act, 2016; Mental Healthcare Act, 2017 and judgments of Hon'ble Supreme Court and High Court.
10. Section 20 of Mental Healthcare Act, 2017 guarantees that every person suffering from mental illness shall have right to live with dignity. Further same section lays down that every such person has to be protected from cruel and degrading treatment. It is reproduced below:-

20. Right to protection from cruel, inhuman and degrading treatment.—(1) Every person with mental illness shall have a right to live with dignity.

(2) Every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights, namely—

- (a) to live in safe and hygienic environment;
- (b) to have adequate sanitary conditions;
- (c) to have reasonable facilities for leisure, recreation, education and religious practices;
- (d) to privacy;
- (e) for proper clothing so as to protect such person from exposure of his body to maintain his dignity;
- (f) to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;



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- (g) to have adequate provision for preparing for living in the community;
- (h) to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;
- (i) to not be subject to compulsory tonsuring (shaving of head hair);
- (j) to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and
- (k) to be protected from all forms of physical, verbal, emotional and sexual abuse.

11. Section 20 of RPwD Act, 2016 guarantees that any person who has acquired any disability during employment shall not be reduced in rank and his services cannot be dispensed with.

20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

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

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

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

12. Hon'ble Supreme Court in ANIL KUMAR MAHAJAN v. UNION OF INDIA (2013) 7 SCC 243, decided to quash the compulsory retirement orders of an IAS officer who acquired mental illness during his service. Judgment was rendered under Section 20 of RPwD Act, 2016. In another judgment delivered by Hon'ble Madras High Court in A. VEERIYA PERUMAL v. SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, CHENNAI, 2006 SCC OnLine Mad 648, Petitioner who acquired mental illness during his employment was proceeded against departmentally and was ultimately retired with a provisional pension. Hon'ble High Court decided that since the petitioner in the case was mentally unsound when he committed the misconduct hence punishments imposed after disciplinary proceedings are liable to be set aside.



13. On the basis of provisions and judgments mentioned above, this court concludes that Disciplinary Proceedings going on against the Complainant violates rights of the Complainant under RPwD Act, 2016 and Mental Healthcare Act, 2017.

TRANSFER

14. Despite the mental health condition of the complainant and her admission in Base Hospital New Delhi in 2015 for treatment it is indeed a mystery as to why the respondent did not transfer her on grounds of disability immediately in 2015 to New Delhi if not prior to that date to ensure that she stays with her spouse/caregivers. This action itself catamounts to deliberate harassment of a Person with Disability. Kind attention of the Respondent is brought to Section 20(5) of RPwD Act 2016. As per the provision appropriate government has to frame policies related to posting and transfers of employees with disabilities. Further O.M. No. A-B 14017/41/90-Estt. (RR) dated 10.05.1990 issued by DoPT lays down that physically handicapped candidates appointed under the Government should preferably be posted in their native places or at least in their native district.
15. On this issue Section 18 of Mental Healthcare Act, 2017 is also ~~is~~ pertinent to mention. This provision confers the right upon every person to have geographical access to mental health service. This section is reproduced below as –

18. Right to access mental healthcare.—(1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.

(2) The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and caregivers.

16. Therefore, on this issue this court concludes that denial of transfer to the Complainant to either Allahabad or Delhi, where caregivers of the complainant reside is violative of rights given under RPwD Act, 2016 and O.M. issued by the DoPT in this regard.



NON PAYMENT OF SALARY

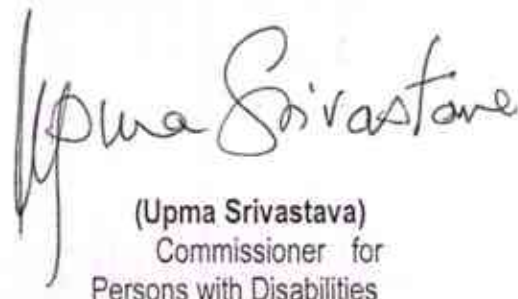
17. On the issue of non-payment of salary, it is to be noted that non-payment of salary, pending disciplinary proceedings, is against Government rules and regulations and she should not be deprived of her due remunerations since last 4 years ever since she was admitted at Delhi Base Hospital. In a similar case decided by Hon'ble Kerela High Court, it was decided that when the employer's post was converted to lower category as per Section 20(4) of RPwD Act, 2016, he was still entitled for protection of salary before category change. SAJIMON KB v. KERALA STATE ROAD TRANSPORT CORPORATION, 2019 SCC OnLine Ker 7139.
18. Attention of the respondent is also brought to the judgement of Hon'ble Supreme Court. Hon'ble Court in SHOBHA RAM RATURI v. HARYANA VIDYUT PRASARAN NIGAM (2016) 16 SCC 663 and CHIEF REGIONAL MANAGER UNITED INDIA INSURANCE COMPANY v. SIRAJ UDDIN KHAN (2019) 7 SCC 564. He relied upon the principle that when an employee is restraint from performing his duties, then principle of no work no pay will not be applicable. In the present case disciplinary proceedings going on against the complainant arose out of instance of disability acquired during employment. Therefore, this court concludes that non-payment of wages during continuation of disciplinary proceedings amounts to restraining by the employer and therefore, non-payment of wages during this period is a contravention of provisions of Rights of Persons with Disability Act, 2016 and Mental Healthcare Act, 2017 and also in contravention with judgements of the Hon'ble Supreme Court as mentioned above.

On the basis of Observations made by this court in preceding paragraphs, this court recommends the Respondent to –

- a) Immediately transfer the Complainant to either Allahabad or Delhi where the complainant can be taken care of by her caregivers.
- b) Examination of the matter of non payment of salary and immediate payment of her due salary alongwith arrears.
- c) Setting aside of the Disciplinary proceedings and regularisation of leave as per admissible rules by taking into cognizance the ramifications of her mental illness and her efforts to keep the respondent informed at all times.

The case is disposed off.

Dated : 08.10.2020


(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. 11985/1023/2020

Complainant : Smt. Marjorie Brito, Brito Bagh, Hoige Bazar, Mangaluru, Karnataka-575001.

Respondent : New Mangalore Port Trust (Through the Chairman), Panambur, D.K. District, Mangalore, Karnataka - 575 010.

Gist of Complaint:

Smt. Marjorie Brito vide her complaint dated 16.03.2020 submitted that she is a family pensioner since 01.03.2017. The New Mangalore Port Trust where her husband was working has its own antique rules which were being interpreted according to their individual whims and fancies thus causing hardship and harassment to its employees and their families they leave behind. The RPwD aCT 2016 Para 7.3(C) clearly states to provide maintenance to persons with disabilities. She submitted that though her children, both his son and daughter are 80% visually impaired, were sanctioned Family Pension on 05.02.2011 by the New Mangalore Port Trust. The latest letter no. RPAR/339/FAE 11/A2 dated 15.02.2020 states that 'the latest Disability Certificate will be examined at the time of sanctioning the Family Pension in accordance with the then prevailing Rules. The approval for granting Family Pension to her children cannot be considered now in anticipation of the future. The rule clearly states that the person with permanent disability requires to furnish the Disability Certificate only once in a lifetime. The Disability Certificate submitted by her has been sanctioned by the Government Hospital.

2. The New Mangalore Port Trust has one more objection that the Disability Certificates of her two children have been issued on two different dates, i.e. one on 23.06.2008 and the other on 26.02.2009. The complainant has enclosed a photocopy of the Family Pension letter sanctioned to her two children by the SBI Mumbai on 15.03.2012. The Disability Certificates submitted by her to the New Mangalore Port Trust are the same which she had tendered to the SBI. She further submitted that she has crossed the age of 79 years and cannot take any uncertainty

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or tension with regards to her children's future. The same New Mangalore Port Trust that sanctioned Family Pension to her two children on 05.02.2011 is contradicting its own orders of 15.02.2020. Para 3 of the New Mangalore Port Trust insists on a Guardianship Certificate, which they will examine, at the time of sanctioning of Family Pension to her children. She submitted that the CCCS rules are very clear regarding guardianship which clearly states that its requirements is only for minor children and persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

3. She further submitted she was earlier getting a paltry sum of Rs.6,180/- as monthly Family Pension which has not been enhanced to Rs.7,200/- since 31.07.2019. When her husband died on 01.03.2017, he had been drawing a pension amounting to Rs.36,000/- per month. As per CCCS Pension Rules, Rule 54, Para 23, Family Pension shall be calculated at a uniform rate of 50% of the current revised pay structures subject to a minimum of Rs.9,000/- per month. The New Mangalore Port Trust has not taken into account the various Pay Commission Reports and their implementation in fixing the Family Pension. Though the restrictions of paying two Dearness Allowances has been done away with over 20 years back, the New Mangalore Port Trust does not pay Dearness Allowances to spouses who are drawing pensions from the Institutions they have earlier worked for. The establishment is not paying her Dearness Allowance though she is neither employed nor re-employed.

4. The Financial Advisor and Chief Accounts Officer, New Mangalore Port Trust vide letter No.RPAR/339/FAE.II/A2 dated 13.08.2020 submitted that the allegations made by Smt. Marjorie Brito are prejudicial and all the interpretations, claims are false and hereby denied. He submitted that no family pension was sanctioned to the children of Smt. Marjorie Brito w.e.f. 05.02.2011 as stated in the complaint. The names of disabled children are entered in pension records who are eligible to draw Family Pension after the demise of their parents under Rule 54(6). The above endorsement does not mean sanction of family pension. It is only an entry of disabled family member details who are eligible for family pension on the death of both the parents. He submitted that Smt. Brito is also a pensioner of State Bank of India. For grant of Family Pension to children, the dependency criteria shall

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be met. Since they are entitled to get Family Pension from State Bank of India also, sanction of Family Pension to children with disabilities can be considered only after the demise of parent, who is presently a family pensioner. He submitted that the State Bank of India in its letter dated 18.04.2012 has clearly stated that 'the appropriate authority has accorded approval to include two handicapped children of Smt. Marjorie Brito, as disabled beneficiary for family pension'. The New Mangalore Port Trust also included the name of her children in pension records of Late Shri Felix F. Brito. EE(Ele) Rtd, i.e. PPO Book No.239/FA&CAO/NMPT. The revision of pension for Officers of NMPT takes place once in 10 years. As per the order of Govt. of India, the Family Pension of Smt. Marjorie Brito was revised to Rs.15,000/- per month and arrears amounting to Rs.3,13,815/- were paid to Smt. Marjorie Brito in the month of April 2020 along with pension. As Smt. Brito has been drawing dearness relief from SBI, she is not entitled for two dearness relief. In this connection, a writ petition filed by the Family Pensioners is pending before the Hon'ble High Court of Karnataka.

5. The complainant vide his rejoinder dated 29.08.2020 submitted that in the reply of NMPT letter dated 13.08.2020 they have stated that no family pension was sanctioned by them to her disabled children w.e.f. 05.02.2011. She would like to know then why the Respondent made an endorsement in her husband's PPO 239 which states 'Passport size photograph of Miss Ameetha Maria Brito, daughter of Shri Felix Brito and Mr Anish Felix Brito, son of Shri Felix Brito, Retd, EE (Ele) who are eligible to draw pension after their parents death under Rule 54 (6) since they are physically handicapped (Progressive vision failure due to Bilateral Optic Atrophy) Rule 54 section 30 para 2 to 5 clearly states that the pensioner/Family Pensioner, may at any time before or after retirement/death of the employee make a request to the appointing authority seeking advance approval for grant of family pension for life to a permanently disabled child in terms of provisions contained in Rule 54 of the CCS (pension) Rule 1972'. On acceptance at such a request the Head of Office will immediately issue sanction order for grant of family pension to such children. No further authorization for grant of family pension to the child with disability would be required. The head of office and Account Officer, will maintain details of such children with disabilities in the service book and pension file of the employee/pensioner to enable prompt processing of such request. On the basis of this approval the child with permanent disability will be authorized to receive Family

....4/-



Pension at the appropriate time, i.e. after the death of the pensioner. No fresh PPO need to be issued in such cases and the family pension will be payable by the pension disbursing authority and family pension would be allowed by PDA for life for permanently children with disabilities. The complainant submitted that the Port should have no problem if she has been drawing pension from State Bank of India. She submitted that it is her legitimate right which will entitle her two children with disabilities to draw Family Pension. She submitted that she would be glad if the Port gives her a copy of the Rule that for a permanently child with disability the dependency criteria has to be met. Whether they draw Family Pension from State Bank of India or not, the Port has to do its duty by sanctioning Family Pension to her children with disabilities as per Rule 54 Section 30, para 2 to 5 of the CCS Pensions. The Rule 54 para 21 clause 3 states that Family Pension admissible to a beneficiary in respect of one deceased employee/pensioner is not to be counted as income for the purpose of determination of eligibility for another Family Pension which is admissible in connection with another deceased employee/pensioner. She submitted that the Respondent is only creating hurdles in all her submissions. The NMPT is trying to find fault with the State Bank of India using the word approval and says that he is interpreting the word for sanction. Rule CCS 55A The State Bank of India is paying her Dearness Allowance on her pension as per rules but NMPT does not pay her any D.A.. Their contention is that since she is a pensioner of the SBI, she is supposed to be employed. They want a certificate saying that she is not employed but who will give her one, since she has no employer. She submitted that whenever it suits the NMPT, they quote CCS Rules and at other times they quote the Ministry of Shipping Rules. Is the pension not governed by the Pay Commissions Reports? The CCS Rule 54(23) states that the Family Pension from 01.01.2016 shall be calculated at a uniform rate of 30% of basic pay in the revised pay structure and shall be subject to a minimum of Rs.9,000/- per month and maximum of 30% of the highest pay in government. Her husband's last salary drawn was Rs.7350/- in June 1997. According to another order it states that it is Rs.12,850/-. It is confusing as it dates 23 years back. On his death on 01.03.2017, he was sanctioned a Family Pension of Rs.6180/- with no DA. She submitted that she wants a clarification from the Port that what they mean by saying that she is re-employed. She is a pensioner of SBI and have not taken a job nor have been re-employed. Does drawing a pension mean that she is re-employed. The restriction on drawing two dearness relief has been abolished over 20 years back by the Government of India.

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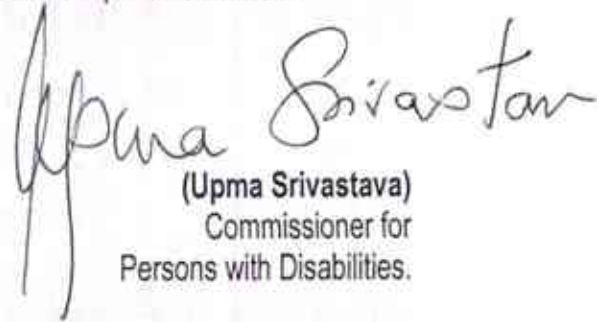
Observation/Recommendations:

6. In the light of the documents available on record and within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules this Court give the following directions to the Respondent :

- a) The Respondent should be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.
- b) The Respondent shall ensure that Rule 54 (30) is strictly followed by them. The New Mangalore Port Trust should have no objection on the dates of issue of the Disability Certificates in the name of two children with disabilities of the complainant on different dates.
- c) The Respondent shall grant family pension to the two children with disabilities of the complainant and ensure that the complainant's children receive family pension for life as per the request made in her late husband's PPO 239 which was sanctioned on 05.02.2011 as per extant rules.

7. The case is disposed off.

Date : 08.10.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities.





न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 9490/1021/2018

Complainant : Shri Manoj Kumar, Junior Judicial Assistance (JJA), Posted at Pool Car Office, Tis Hazari Court, Delhi – 110 054

Respondent : Tis Hazari Courts (Through Office of the District and Sessions Judge), Delhi – 110 054

Gist of Complaint:

Shri Manoj Kumar, a person with 70% locomotor disability vide his complaint has submitted that he has been employed as Junior Judicial Assistance in Central District Court, Tis Hazari Court, Delhi. He joined the service as LDC under PH category on 06.05.2009. His number in the seniority list is 1062. The complainant has been eligible and fit for promotion since 06.05.2014 in the light of order passed in Writ Petition (Civil) 5686 of 1998. The name of the complainant was found missing in the Order bearing No. 5153053333 Admn.II/S&P/(JJA)/2017 of the Office of District and Session Judge (HQ) dated 23.08.2017. Therefore, he made representation to the Office of District and Session Judge (HQ), Tis Hazari Courts, Delhi requesting to review the above mentioned promotion order. He further submitted that he is eligible for promotion even in the General Category without availing the benefit of being of PH category.

Hearings : 08.09.2020 & 06.10.2020.

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 08.09.2020.

5. The following persons were present during the hearing on 08.09.2020;

- 1) Mr. Manoj Kumar, Complainant.
- 2) Mr. Darshan Gosain, Branch Incharge (Litigation) on behalf of the respondent.

Both the parties were heard.

6. The respondent requested that they need one month time to come up with proper reply to the points raised by the complainant. The Court observed that the matter is pending since 2017 and in view of the objections of the complainant for granting one month time for filing reply to the rejoinder of the complainant, the respondent is directed to furnish its written submission by 22nd September, 2020 to this Court with a copy to the complainant.

.....2/-

7. The matter was listed for hearing after receipt of the written submission of the respondent. vide email dated 17.09.2020.

8. An online hearing has been scheduled in the case on 06.10.2020.

9. The following persons were present during the hearing ;

- 1) Mr. Sanjeev Kumar, Advocate for Complainant
- 2) Mr. Mukesh Kumar, Advocate for Respondent.

Both the parties were heard.

Observations and Recommendations:

Respondent raised following contentions

1. Complaint is not related to discrimination on the basis of disability.
2. Post of UDC is a Group D post and no reservation in promotion to PwD candidates can be given while considering promotions from Group C posts to Group B posts.
3. Court of Chief Commissioner for persons with disability and Court of State Commissioner for persons with disability, Delhi only have advisory powers and therefore both the Commissioners lack jurisdiction to adjudicate this complaint.
4. Court of CCPD does not have territorial jurisdiction to adjudicate this complaint.

All these issues are dealt with separately in following paragraphs.

10. ISSUE OF DISCRIMINATION ON THE BASIS OF DISABILITY

1.1 It is a undisputed fact that the complainant is a person with 70% locomotor disability. He joined the service as LDC under PH category, his number in the seniority list is 1062. Further, it is also a proven fact that the respondent promoted certain employees from the post of LDC to UDC by order dated 23.08.2017. Respondent became eligible for promotion to the post of UDC on 06.05.2014. From the perusal of the documents and arguments presented during online proceedings, it is certain that the respondent has failed to provide reservation in promotion to persons belonging to PwD category. Hence, this is a direct violation section 34 of Rights of Persons with Disabilities Act, 2016 which provides that, atleast 4% reservation shall be provided by appropriate government.

1.2 Hence, this court concludes that the present complaint is related to discrimination on the basis of disability.



2. ISSUE OF NO PROMOTION FOR GROUPS C TO B POSTS.

2.1 Respondent raised the contention that LDC is Group C post and UDC is Group B post. Therefore, reservation in promotion from Group C post to Group B post cannot be given. Hon'ble Supreme Court settled this issue in RAJEEV KUMAR GUPTA v. U.O.I.; (2016) 13 SCC 153, where by Hon'ble Court held that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Further, Hon'ble court directed the Government to extend reservation to PwD's in all identified posts in Group A and Group B, irrespective of mode of filling up such vacancies. Recently, Hon'ble Supreme Court in SIDDARAJU v. STATE OF KARNATAKA Civil Appeal – 1567/2017 case upheld the judgement passed in the matter of Rajiv Kumar Gupta case. It is to be noted that above judgements were passed under Persons with Disabilities Act, 1995. Hon'ble Uttarakhand High Court in UMESH KUMAR TRIPATHI v. ST. OF UTTARAKHAND 2018 SCC OnLineUtt 865, extended ratio of Rajiv Kumar Gupta case to RPwD Act 2016.

2.2 Hence, this court concludes that the argument that reservation cannot be provided in promotion from group C to B post lacks legal validity.

3. ISSUE OF ADJUDICATORY POWER OF CCPD AND STATE COMMISSIONER FOR PERSONS WITH DISABILITY

3.1 Respondent has claimed that neither this court nor the Office of State Commissioner Persons with Disabilities, have powers to adjudicate this complaint. Attention of respondent is attracted to section 75(1)(b) of RPwD Act, 2016. As per the provision Chief Commissioner can inquire any matter related to deprivation of rights of PwDs and can take up the matter with appropriate authorities and can make recommendations to the concerned authority. Therefore, this court concludes that this court as well as Office of State Commissioner Persons with Disability (under section 80 of RPwD Act, 2016) have power to enquire this complaint and pass necessary recommendation.



4. ISSUE RELATED TO TERRITORIAL JURISDICTION OF THIS COURT

4.1 Respondent has raised the contention that respondent is governed under Delhi District Courts establishment Rules, 2012. Further, it is contended that the subordinate courts fall under Entry 41 and 65 of a State list of Schedule VII of Constitution of India. Therefore, any issue arising out of administrative decision of the respondent is related to State and not related to Centre, whereas section 75(1)(b) empowers the Chief Commissioner to inquire the issues for which the Central Government is the appropriate government. Further, it is contended that the State Commissioner under section 80(b) would be the appropriate authority to inquire into matters for which the State Governments is the appropriate government. This court concludes that the present complaint is related to the authority for which the State Government is the appropriate government. Hence, State Commissioner is the appropriate authority to enquire into this complaint.

11. Hence, this court refers this complaint to the State Commissioner to take up the matter with the respondent for corrective action and necessary recommendations.

12. It is pertinent to mention that rule 3(3) of Delhi Rights Of Persons With Disability Rules 2018, mandates that complaint file shall be decided within 30 days.

13. The case is disposed off.

Date : 09.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



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. 10793/1081/2019

Complainant:

Shri N. Suresh, R-2, Jauhari Nagar, Type-3, OCF Estate, Avadi,
Chennai-600054 (Tamil Nadu); Email: nsnv2010@gmail.com;

Respondent:

Central Government Employees Welfare Housing Organization, through
its Chief Executive Officer, 6th Floor, 'A' Wingh, Janpath Bhawan, New
Delhi – 110001; Email: cgewho@nic.in;

Gist of Complaint

The complainant is a person with 50% locomotor disability. He was allotted Type-C DU in Central Government Employees Welfare Housing Organisation (CGEWHO), Chennai (Phase-III) Housing Scheme on 06.10.2016. Changeover procedure & status was neither indicated in the CGEWHO Rules, nor intimated in writing to him. He applied for changeover from Type-C DU to Type-B DU on 12.04.2016. Later on, the complainant withdrew his changeover request vide letter dated 11.11.2018. The complainant alleged that the withdrawal letter dated 11.11.2018 which had been delivered on 14.11.2018 was hidden by the respondent and withdrawal request was not processed, but by misusing the delegated power the respondent processed the changeover request and allotted waiting list No.15 against his withdrawal request. Vide letter dated 15.11.2018, the respondent informed the complainant that his category had been changed from Type 'C' to Type 'B' and the registration number is CMB1111 and the respondent requested the complainant to

Page 1 of 3



return original Type 'C' allotment letter enabling them to issue him fresh Type 'B' allotment letter. The complainant has not vacated his Type-C DU and allotment letter for Type-B DU has not been issued to him but respondent's letter dated 14.12.2018 states that his allotment of Type-C DU was allotted to waiting list applicant of Type-C. The complainant has submitted that sufficient information of changeover procedure has not at all been indicated in the Rules Book cum Application Booklet No.136134 which requires 100% transparency. The complainant stated to have made effort to follow the rules and regulations but the respondent remained reluctant to share the basic information of changeover process, procedure, waiting list status and other formalities requested vide his emails dated 03.03.2018, 22.03.2018 and 06.08.2018. He requested to ensure the validity of allotment of Type-C DU allotted to him.

2. On taking up the matter, the respondent vide reply dated 18.03.2019 submitted that the complainant forwarded a request through email dated 23.03.2018 to migrate from Type C(3 BHK) to B(2BHK). As per date of request, in the waiting applicants his seniority was 9. On maturing his turn on 02.11 2018 for allotment, a note was processed through Officer-in-Charge for confirmed allotment in Type B(2BHK) to competent authority and got approved on 05.11.2018 and GST Invoice issue Note processed on 08.11.2018. The complainant's withdrawal request letter dated 11.11.2018 was delivered on 14.11.2018 when the vacancy created by his migration had already been filled up with the due approval note from the competent authority. However, the case with detailed history was put up to the competent authority on 04.12.2018 with option(s). On approval, his name was put in the waiting applicants of type C [at 15] since all the vacancies had already been filled in as on that date. All details have been given in Scheme Brochure. No irregularity



has been found and change of type has been approved by the competent authority.

3. The complainant in his rejoinder dated 03.04.2019 reiterated his complaint.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

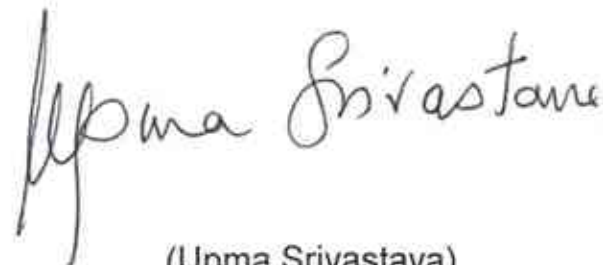
1. Shri N. Suresh, the complainant
2. Shri M.K. Maity, Dy. Director (Administration), on behalf of the respondent

Observation/Recommendations:

Both the parties were heard.

2. The Court observes that in this matter the main contention of the complainant is regarding procedure of change of allotment of a flat by the respondent. There is no discrimination on grounds of disability, the case is disposed off.

Dated: 12.10.2020



(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. 8057/1023//2017

Complainant : Shri K. Madhavan Pillai, Nedumpurath House, Kattachira, Pallickal P.O., Alleppey Dist., Kerala - 690 503.

Respondent : Employees Provident Fund Organisation, (Thru Central Provident Fund Commissioner), Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi - 110 066.

Disability : 50% Locomotor

Gist of Complaint:

Shri K. Madhavan Pillai vide his complaints dated 11.05.2017 and 07.03.2019 submitted that his present pension is not at all sufficient for medicine. Further there are so many benefits declared by the Government from time to time, but are not being given to the beneficiaries. He has requested to restore his full pension and to sanction 2 years weightage at an early date. He submitted that he had completed 20 years in 2015 but was not being given full pension. He had retired under superannuation scheme (23 years). He commuted the 1/3rd pension i.e 433 from 1996 upto 2015. EPF officer already said that there is no provision for restoration of pension and they have already deducted Rs. 40,000/-.

2. The Regional Provident Fund Commissioner-I (Pension), Employees' Provident Fund Organisation vide his letter No. Pension-I/Misc/2020/STC Scheme/464 dated 20.08.2020 submitted that they have not received copies of complaints dated 11.05.2017 and 07.03.2019 which were once again sent to them vide letter dated 15.09.2020.

Hearing :

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

4. The following persons were present during the hearing;

- 1) Mr. K. Madhavan Pillai, the complainant.
- 2) Mr. Andrew Prabhu, Regional P.F. Commissioner, Kochi, on behalf of the respondent.

Both the parties were heard.

.....2/-



5. On inquiry from the Court, the respondent informed that the stand taken by them in this matter in the year 2017 has changed now with issue of revised government notifications issued in February, 2020. In accordance with these notifications, the EPFO has revised the pension of the complainant and restored it as full pension with retrospective effect from 15.11.2013. Arrears arising out of this revision in pension have also been granted to the complainant in May 2020.

Observation/Recommendations:

6. This Court observes that the complaint has been redressed suitably by the respondent.

7. The case is disposed off.

Dated: 12.10.2020


(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. 10797/1024/2019

Complainant:

Shri Kripasindhu Ghosh, Bridge & Roof Co. (India) Limited, 427/1, G.T. Road, Howrah 711101 (West Bengal); Email: amit.pal96@yahoo.com; amitpal981@gmail.com;

Respondent:

Bridge And Roof Co. (India) Ltd.,
Through its General Manager,
427/1, Grand Trunk Road,
Howrah-711101 (West Bengal);
Email: bridge@bridgeroof.co.in;

Gist of Complaint

The complainant, a person with 75% visual impairment, is a Sub-Staff in M/s Bridge and Roof Company India Limited, Kolkata, a Government of India Enterprise under Ministry of Heavy Industries and Public Enterprise, Department of Heavy Industry. He alleged that the Company has no standard rules/regulations governing the reimbursement of medical bills of the employees with disabilities. He further alleged that the Company vide memo dated 03.12.2018 had intimated him that Establishment charge was not reimbursable. On contrary, vide memo dated 18.12.2018 the Company informed him that there was no specific provision in the company regarding the prior intimation.

Page 1 of 4



2. On taking up the matter, the respondent company vide their reply dated 17.04.2019 submitted that the complaint put up two bills. The two bills had two components. One was towards Consultation fee i.e. Rs.350/- x 2 = Rs.700/- and another was towards, Establishment charges aggregating to Rs.150/- x 2 = Rs.300.00. As per the prevailing norms and practice, the bills of Consultation fee were reimbursable. The bills of Establishment Charges were not payable. In this regard he was intimated vide memo dated 03.12.2018 in response to his query dated 23.11.2018. There is no specific norm or rule in the Company, whereby the concerned Department is supposed to contact the employee and intimate him about such partial reimbursement before processing the same. The respondent further submitted that if the complainant would have been informed before denying reimbursement against such establishment charges, he would have taken necessary steps to fabricate the bill and resubmit the same for reimbursement which is not permissible.

4. The complainant, in his rejoinder dated 16.05.2019, urged that he should have been provided a chance/opportunity to rectify/correct his disputed medical bills/cash memo/invoice related documents in the line of company's rules/norms, being an employee with disability. He also alleged that the respondent is threatening him of filing this case against the company.

5. The respondent, in their reply dated 11.07.2019 to the rejoinder dated 16.05.2019, submitted that it is not tenable that the complainant could have been provided a chance to rectify or correct his disputed medical bill/cash memo or invoice since he has 75% visual impairment.



Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

1. Shri Kripasindhu Ghosh, the complainant
2. None for the respondent

Observation/Recommendations:

An e-mail dated 25.09.2020 has been received from the respondent, saying that the concerned officer of the Company is down with COVID-19. The complainant was distressed at the behaviour of his superior while interacting with them and wants to seek some clarification regarding reimbursement of his medical bills. The complainant informed that Shri M.C. Boral, AGM (WS) II harassed the complainant, intimidated him by shouting at him and throwing him out of his office chamber. The complainant further stated that medical reimbursement claims of other employees with disabilities are not being handled properly and he quoted a case of one Mr. Amit Pal, who is hearing impaired person.

2. This Court observes that this is a matter of Rs.300/- only which has not been reimbursed to the complainant as per the norms of the company, yet the complainant has the right to be informed about the reasons of denial of reimbursement and in case any error has been made by him, he should have been given an opportunity to make necessary corrections. A employee with 75% visually impairment status should be treated with respect and dignity like any other employee in terms of Section-3 of the Rights of Persons with Disabilities Act, 2016, which states as under:

"3.(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others."



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

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


(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities."

3. This Court recommends that a written warning may be issued against Shri M.C. Boral by the respondent for his misbehavior with a person with disability. The Company should implement a meaningful sensitization campaign, so that all the employees with the Company are aware of the rights and entitlements of persons with disabilities.

4. The case is disposed off.

Dated: 12.10.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities





न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 10853/1023/2019

Complainant : Shri Nitin Singh, General Secretary, EIL Officer's Association, UG Floor, Engineers India Bhawan, 1, Bhikaji Cama Place, R.K. Puram, New Delhi-110066

Respondent : Engineers India Limited (Thru Chairman & Managing Director), Engineers India Bhawan, 1, Bhikaji Cama Place, R.K. Puram, New Delhi-110066.

Gist of Complaint:

Shri Nitin Singh, General Secretary of EIL Officers' Association vide his complaints dated 21.01.2019 and 24.05.2019 requested for the implementation of revised rates of Transport Allowance (at double rates) according to DoE O.M.No.21/5/2017-E-II(B) dated 07.07.2017 in Engineers India Limited (EIL). As per his communication with EIL management, they said that implementation of the revised rates of double transport allowance is not possible due to the absence of revised O.M from DPE. At present, Physically handicapped employees of EIL who are visually impaired, locomotor disability, deaf & dumb/hearing impaired, and disabled due to spinal deformity were getting Double TA as per rates defined in superseded DOE O.M.No.21_2_2008_E-II_B dated 29th August 2008 and Department of Public Enterprises (DPE) O.M.No.6(7)/2002-DPE(SC/ST Cell)-GL-103 dated 15th November 2011.

2. The Chief General Manager (HR & Legal), Engineers India Limited vide his letter No. 8589-711.027-89-47-LET-0008 dated 14.11.2019 submitted that as per the existing rules of the Company formulated in line with Guidelines issued by Department of Public Enterprises (DPE) from time to time, employees with physical disabilities are eligible for Special Transport Allowance at double the normal rate. The existing rates of Special Transport Allowance are placed below:-

Level	Rate of Special Transport Allowance (Rs.per month)[in cities listed at Annexure-1)	Other places
12 & above	6400 + DA thereon	3200 + DA thereon
8,9 & 10	3200 + DA thereon	1600 + DA thereon
1 to 7	1200 + DA thereon	1000 + DA thereon



TRUE COPY

Sign.

....2/-

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

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

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

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

Subsequent to the implementation of the guidelines of DPE on Pay revision in February 2018 and with the Dearness Allowance neutralized, the rates of Special Transport Allowance were frozen considering the pre-revised rate of 126.9%. The Department of Expenditure (DoE) vide its O.M. No. 21/5/2017-E-II (B) dated 07.07.2017 issued instruction for revision of Transport Allowance w.e.f. 01.07.2017 for the employees of Central Government with the provision that physically challenged employees shall continue to be paid Special Transport Allowance at double the rates plus applicable DA thereon. The instructions issued by DoE do not apply mutatis mutandis to CPSEs unless DPE issues a communication to the same effect. As DPE is yet to issue instructions for implementation of the above DoE OM for the employees of CPSEs the revised rates are yet to be implemented in CPSEs. On the basis of recommendation of 6th Central Pay Commission, DoE vide OM dated 29.08.2008 revised the rates of the Special Transport Allowance. DPE vide OM No. 6(7)/2002-DPE(SC/ST Cell)-GL-103 dated 15.11.2011 extended the revised rates to employees of CPSEs. The revised rates of Special Transport Allowance in EIL were implemented w.e.f. 01.09.2011 in line with the Management approval.

3. The complainant vide his rejoinder dated 18.03.2020 submitted that EIL Officer's Association is not satisfied with the reply of Respondents in which the respondent had submitted that due to non-availability of instructions from Department of Public Enterprises (DPE) regarding the implementation of revision of rates and effective date of revised rates of Double Transport Allowance as per 7th CPC admissible to PH employees of EIL. The complainant referred to this Court's verdict dated 10.11.2017 in Case No. 7237/1024/2016 in the case of EILOA vs EIL in which the Respondent submitted to the Court that they were awaiting instructions / seeking directions from DPE.

Hearing :

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

5. The following persons were present during the hearing;

- 1) Mr. Nitin Singh, the complainant.
- 2) Ms. Smitha Sehgal, AGM (Legal), EIL, on behalf of the respondent.

Both the parties were heard.



6. The complainant stated that the Department of Expenditure has revised the rate of Transport Allowance w.e.f. 07.07.2017 vide its Office Memorandum No.21/5/2017-E.II(B) dated 7th July, 2017. Though PSUs like BSNL, TCIL, MTNL have been granted the benefit of these orders by the Department of Telecom, no such orders have been issued by the Engineers India Limited as yet.

7. The respondent explained that they are awaiting instructions of the Department of Public Enterprises (DPE), who has till now not issued any instructions in pursuance of the aforesaid orders of the Department of Expenditure. The respondent further stated that they had taken this matter with the Ministry of Petroleum & Natural Gas vide their letter dated 10.09.2019, but no response has been received to their communication. Therefore, in absence of DPE instructions or approval of the Ministry of Petroleum & Natural Gas, they have not implemented the revised rate of Transport Allowance.

Observation/Recommendations:

8. This Court observes that the said Department of Expenditure O.M. is applicable for all Central Government employees. In view of the above, the Court recommends to the respondent to implement w.e.f the revised rate of Transport Allowance on the basis of Ministry of Finance, Department of Expenditure O.M. No.21/5/2017-E.II(B) dated 7th July, 2017.

9. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.10.2020





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. 10975/1021/2019

Complainant : Shri Seetharam Bhat, 3/10, New No.156, St. John's Road Cross, Near Lemontree Hotel, Bengaluru - 560 042.

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

Disability : 75% Locomotor

Gist of Complaint:

Shri Seetharam Bhat submitted that he has been working as Officer Grade II of HAL Engine Division, Bangalore. He submitted that inspite of repeated appeals for suitable work allocation in line with his progressive condition, more and more work load has been offloaded to him including the entire profile of a retired Grade V Officer in March 2016. Since the joining of SM-F and DGM-P, additional workload in the form of Medical payments, contractor bills, and all other residual bills processing were also given to him without concern for his appeals. He submitted that in recent days since asking for job rotation an Advisory letter has been issued regarding cheque signature mismatch. Daily mails are triggered regarding the same inspite of making himself abundantly clear on the subject. The timelines for marking his Quarterly Tasks (MAT) which is by 7th of end of the Quarter as per HR Manual were not followed and it has been kept pending. His previous two quarter MAT marks (June & Sept 18) were marked by his manager during Dec. 2018 with back dates. The marks awarded were significantly lower when compared to the previous quarters for the same tasks performed just to deny him promotion due in Jan. 2019. Under HR Manual Job rotation, it is mandatory on completion of 5 years in a sensitive section which had been willfully denied to him.

...2/-



2. The General Manager (HR-ER), Hindustan Aeronautics Limited vide letter No.HAL/HR/31(1)/2019 dated 03.04.2019 submitted that Government directives on reservation for persons with disabilities are being followed in HAL. The Reservation Rosters wherever applicable for persons with disabilities are being maintained in HAL, as per the Government directives. Further HAL takes utmost care to ensure that work environment is conducive and free from any discrimination against the employees with disabilities. Shri Seetharam Bhat was appointed as Finance Officer (Grade-II) (Group-A post) w.e.f. 30.10.2013 at HAL, Engine Division, Bangalore. He was appointed under PwD category. The complainant in his application / Bio-data had indicated that he is a person with disability with locomotor disability. However, the Officer during the Pre-employment Medical Examination was made provisionally unfit due to 'Defective Vision'. The Officer did not indicate in Bio-data that he was suffering from high Myopia. Subsequently, his case was reviewed after corrective surgery for high Myopia and he was found medically fit. However he was still considered for employment even though he suffered from multiple Sclerosis with Right Lower Limb Monoparesis. The Work Assignment has been done considering his limitation to move to other departments located at different locations in the Division. The assignment have been allotted with minimal or nil movements to Departments/Sections. Although, Shri Seetharam possesses 10 years of experience and requisite qualification of CA, he has not been posted in demanding work areas, keeping in view his physical condition. The complainant has been extended environment friendly facilities as differently abled person in the Division such as barrier free and conducive environment to work. He has been extended facilities such as Ramps, Handrails, Accessible Toilet, Water Closet, Wash Basin, Bio-metric

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

3. The following persons were present during the hearing;
- 1) Mr. Seetharam Bhat, the complainant.
 - 2) Mr. Alok Verma, Director (HR), HAL, on behalf of the respondent.

Both the parties were heard.

Observation/Recommendations:

4. After hearing both the parties, this Court makes the following recommendations for implementation by the respondent:

- (a) Shri Prabhat Raju, DGM, HAL may be counseled by the respondent for displaying more sensitivity towards persons with disabilities.



- (b) The complainant may be given only such responsibilities which he can handle efficiently with his level of disability.
- (c) The respondent may strictly follow the provisions of Section 20 of the Rights of Persons with Disabilities Act, 2016 which are reproduced as under:-

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

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

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

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

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

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

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

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

- (d) The respondent may also follow the provisions of Section 2(y) of the Rights of Persons with Disabilities Act, 2016 and provide reasonable accommodation to the complainant, which are reproduced below:

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



(e) The respondent may further implement the provisions of **Section 23(1)** of the Rights of Persons with Disabilities Act, 2016, which states that "*Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer*", and inform this Court as well as to the complainant the contact details of the Grievance Redressal Officer in HAL.

5. The case is disposed off.

Dated: 12.10.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities





न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11020/1024/2019

Complainant:

Shri K. Dasaradhi Gupta,
Retired Superintendent of Central Excise (GST),
Flat No.301, Blue Berry Apartments,
Opposite Road to Andhra Bank ATM,
Road No.3, Sector 3, Lotus Land Mark,
Kedareswarpet, Vijayawada 520003
Email: kotadasaradhigupta@gmail.com;

Respondent:

✓ The Principal Commissioner of Central Tax,
Office of the Principal Commissioner of Central Tax,
Hyderabad GST Commissionerate,
GST Bhavan, LB Stadium Road, Basheerbagh,
Hyderabad – 500005
Email: consec.hydgst@gmail.com;
Phone: 040-2341117/23240725; Fax:040-23299204

Gist of Complaint

The complainant is a person with 50% locomotor disability. He retired on 31.01.2015 from the respondent's office in the cadre of Inspector of Customs with grade pay of Rs.4800/- in Pay Scale of Rs.9300-34800/- in PB-2 under MACP w.e.f. 01.09.2008. Hon'ble Central Administrative Tribunal, Hyderabad, had set aside the decision dated 16.09.2009 of Central Board of Indirect Taxes and Customs (CBIC), New Delhi that the non-functional Grade Pay of Rs.5400/- in PB-2 would not be granted to such of those Group B Officers who have got the grade pay of Rs.4800/- in PB-2 on up-gradation under MACP. The complainant also submitted that this issue had been finally adjudicated by the Hon'ble Supreme Court vide judgment dated 10.10.2017 in Civil Appeal No.8883 of 2011. The complainant filed this complainant for grant of Non-functional Grade Pay of Rs.5400/- in PB-2 with all consequential

Page 1 of 2

benefits including pensionary benefits since he had completed regular service of 4 years in the grade pay of Rs.4800/- in PB-2.

2. On taking up the matter, the respondent in their reply dated 05.04.2019 submitted that CBIC, New Delhi informed to implement Hon'ble CAT's common order in the case of applicants/petitioners only; and since the complainant is not an applicant/petitioner in the said OAs, he could not be granted NFG to Grade Pay of Rs.5400/- in PB-2 and also payment of consequential benefits.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

1. Mr. Kota Dasaradhi Gupta, the complainant
2. Mr. P. Sai Mohan, GST Commissioner, on behalf of the respondent

Observation/Recommendations:

Both the parties were heard.

2. The respondent informed this Court that the complainant had raised this matter in Central Administrative Tribunal (CAT) also and CAT has since given favourable orders for the complainant. The complainant has received the Non-Functional Grade Pay of Rs.5400/-. Revised pension and his arrears etc. are also being processed by the respondent.

3. The case is disposed off.

Dated: 12.10.2020


(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. 11027/1022/2019

R23706

Complainant : Shri Bindeshwari Prasad Singh, Railway Quarter, 652/D, O.T. Para, Katihar Bihar - 854105.

R23707

Respondent : Kendriya Vidyalaya Sangathan, (Through the Commissioner), 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi - 110 016

Disability : 75 % Locomotor

Gist of Complaint:

Shri Bindeshwari Prasad Singh submitted that he has been serving as Trained Graduate Teacher (TGT) in Kendriya Vidyalaya at Katihar in Bihar. He has been selected for the post of PGT (Biology) through Limited Departmental Competitive Examination-2018 of Kendriya Vidyalaya Sangathan (KVS). After his selection, he was given posting at Kendriya Vidyalaya, BSF, Kishanganj, Bihar. On the ground of his disability and as he need constant support of his near relatives for his daily activities, he applied to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi for modification/change of his place of posting from KV, BSF, Kishanganj to KV, NTPC, Deeptinagar, Kahalgaon, which is near to his hometown. His appeal has been rejected and the appeal of about 254 normal applicants have been considered and accepted. He has been deprived of his promotion as he was unable to join at the present place of his promotional posting.

2. The Assistant Commissioner, (Estt-II/III), Kendriya Vidyalaya vide letter No.11029MI/23/2019/Estt-II/1658-59 dated 28.08.2019 submitted that in KVS there are criteria for posting on promotion through LDCE as follows:

1. VH/PH/HH
2. Female employees
3. Others.

Accordingly, the applicant was given posting to the promotional post of PGT (Biology) through LDCE-2018 with posting at KV BSF, Kishanganj (Bihar) from KV Katihar. Now the complainant has been seeking modification in his place of posting but vacancy is not available at his desired place.



...2/-

3. The complainant vide his rejoinder dated 18.10.2019 submitted that in his original complaint he had mentioned that his application for modification in the place of posting was rejected by the Respondent whereas applications of 254 normal applicants were considered and accepted by the Respondent and thus the priority of a person with disability was denied thereby.

Hearing :

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

5. The following persons were present during the hearing;

- 1) Mr. Bindeshwari Prasad Singh, the complainant.
- 2) Mr. Dharmendra Patle, Assistant Commissioner (Estt.II/III), KVS (HQ), on behalf of the respondent.

Both the parties were heard.

6. The complainant explained that though he was promoted as PGT (Biology), his promotion could not take effect because transfer from his present posting was essential to effect the promotion. At present he was posted at Katihar in Bihar and was transferred to Kishanganj on promotion where he could not join because of his 75% locomotor disability. He had asked for a posting at Kendriya Vidyalaya, NTPC, Deeptinagar, Kahalgaon at the time of his promotion which was very close to his present place of posting and from where he could work efficiently and availed of his promotion also. However, the respondent did not consider his request and he had to forego his promotion.

7. The respondent explained that as they had not taken any application from anyone regarding their preference for posting on promotion, they could not consider the complainant for posting at Deeptinagar, Kahalgaon. At present only a posting at Sasaram in Patna region was available and if the applicant wishes to join there, he could be posted at that place.

8. The complainant said that because of his disability, it is not possible for him to go and work at Sasaram which is very far and has reconciled to his lack of promotion.

9. This Court observes that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the rule position in respect of transfer of persons with disabilities is as under:



.....3/-

"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.

10. On many occasions this Court has noted that the Kendriya Vidyalaya Sangathan does not have the Equal Opportunity Policy which is required to be prepared and submitted to this Court in terms of Section 21 of the Rights of Persons with Disabilities Act, 2016 which reproduced below:

"Section 21.(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

Observation/Recommendations:

11. As per the above rule position, the case of the complainant could have been considered appropriately and he could have been posted at the same place or place closest to enable him to avail of his promotion.

12. This Court recommends that the Equal Opportunity Policy may be prepared expeditiously taking into account all the persons with disabilities in Kendriya Vidyalaya Sangathan. The respondent is also recommended to give the complainant proforma promotion at his current place of posting till such time a vacancy arises at Deeptinagar, Kahalgaon or at Katihar.

13. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated : 12.10.2020



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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: 11279/1023/2019

R-23696

वादी

✓ श्री अरुण कुमार, अन्नपूर्णा भवन, लोटा कारखाना के समीप बेलाटांड, झुमरी तिलैया, कोडरमा, झारखण्ड - 825409
ई-मेल <arunjmt81@gmail.com>

प्रतिवादी

आयुक्त, नवोदय विद्यालय समिति, बी - 15, संस्थागत क्षेत्र, सेक्टर - 62, नोएडा, उत्तर प्रदेश - 201307
ई-मेल <nvshqe3@gmail.com> <nlinvsnoida@gmail.com>

वादी

R-23697

80 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उन्होंने नवोदय विद्यालय समिति, पटना संभाग अंतर्गत संचालित जवाहर नवोदय विद्यालय, झारखण्ड एवं बिहार में 01.01.2013 से 30.09.2016 तक प्रवक्ता (रसायनशास्त्र) के पद पर कार्य किया, तत्पश्चात त्यागपत्र देकर वर्तमान में व्याख्याता (रसायनशास्त्र) के पद पर राजकीय पॉलिटेक्निक, बिहार में कार्यरत है प्रार्थी का कहना है कि नवोदय विद्यालय समिति द्वारा उन्हें दुगने दर से मासिक यात्रा भत्ता का लाभ नहीं दिया गया।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 02.07.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. Consultant (Estt.-02), NVS vide letter dated 23.09.2019 inter-alia submitted that as per rule, the important condition for grant of Double transport allowance requires the recommendation of the Head of the Orthopaedics Department of a Govt. Civil Hospital which is essential for sanction of allowance in favour of the Blinds and Orthopedically disabled employees Though, complainant sent his application along with his disability certificate but there was no recommendation of grant of double transport allowance from the Head of the Orthopaedics Department of a Govt. Civil Hospital, therefore, he is not entitled to have such facilities.



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4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 15.09.2019 में कहना है कि उन्होंने उपायुक्त, नवोदय विद्यालय समिति, पटना को 14 आवेदन पत्र तथा एक आवेदन पत्र प्रकोष्ठ, नवोदय विद्यालय समिति, नोएडा को भी उचित माध्यम के द्वारा भेजा था लेकिन कोई जवाब नहीं आया। प्रार्थी का कहना है कि उन्हें कभी इस बात की सूचना नहीं दी गई कि दिव्यांगता प्रमाण पत्र में दुगने यात्रा भत्ता देने के लिए recommendation नहीं किया गया है।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

- Mr. Arun Kumar, the complainant.
- None for the respondent.

Observation/Recommendations:

5. The Court after going through the written submission of the respondent observes that Double Transport Allowance is admissible to all persons with disabilities on the basis of their disability certificate issued by a competent authority. No further recommendation from the Head of the Orthopedics Department of a Government Civil Hospital is required to be obtained. Hence the Navodaya Vidyalaya Samiti is directed to take note of the Department of Expenditure, Ministry of Finance, Government of India instructions issued vide O.M. No.21-1/2011-E.II(B) dated 5th August, 2013 in this matter as quoted below:

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

6. Payment of Double Transport Allowance to the complainant may be made by the respondent w.e.f. 01.01.2013 to 30.09.2016 i.e. the entire period for which the complainant worked in the Navodaya Vidyalaya Samiti.

7. The Case is accordingly disposed off.

Dated: 12.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11437/1021/2019

वादी

R-23686

श्री कमल कुमार

ई-मेल <kamaldeebe@gmail.com>

प्रतिवादी

R-23685

मंडल कार्मिक अधिकारी, उत्तर रेलवे, मंडल कार्यालय, दिल्ली मंडल, नई दिल्ली।

ई-मेल <gm@nr.railnet.gov.in> ई-मेल <cpro@nr.railnet.gov.in>

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 19.08.2020 में कहना है कि उनकी नियुक्ति विशेष दिव्यांग कोटे के अन्तर्गत आगरा मण्डल में सहायक स्टेशन मास्टर, ग्रेड पे 2800 के पद पर दिनांक 03.06.2013 को हुई तथा दिल्ली मण्डल में दिनांक 05.05.2016 को दिव्यांग कोटे के अन्तर्गत ग्रेड पे 2800 से ग्रेड पे 4200 में पदों उन्नत किया गया। प्रार्थी का आगे कहना है कि दिनांक 05.05.2018 को दो वर्ष पूरे हो चुके हैं तथा उन्हें दिव्यांग कोटे के अन्तर्गत 4600 ग्रेड पे मिलना चाहिए जो कि उन्हें अभी तक नहीं मिला। जबकि दिल्ली मण्डल ने 28.12.2018 को 4600 ग्रेड पे की पदोन्नति सूची जारी गई थी जिसमें एससी/एसटी को पदोन्नत किया गया परन्तु दिव्यांगजनों को पदोन्नति नहीं दी गई।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 05.09.2019 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 02.03.2020 के बावजूद प्रतिवादी ने कोई उत्तर/टिप्पण नहीं भेजे, इसलिए सुनवाई दिनांक 25.09.2020 सुनिश्चित की गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

- Mr. Kamal Kumar, the complainant.
- Ms. Bubble, Divisional Personnel Officer, DRM Office, Delhi Division, on behalf of the respondent.

Observation/Recommendations:

3. Both the parties were heard.



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4. The complainant informed that he had not been promoted to the Grade Pay of Rs.4600/- even when he became eligible for the same way back in 2018. In this respect various officers in the organization had assured him of such promotion over the years.

5. No response was received to the written communications of this Court dated 05.09.2019 and 02.03.2020.

6. The respondent informed that in the year 2019, no promotions were given as there was no vacancy. However, the proposal for promotions in the year 2020 is under finalization and the name of the complainant has already been included in that. The final orders are expected to be issued very shortly. The respondent also informed that the complainant was rightly due for promotion in 2018 itself as indicated by him. He might have been overlooked by the respondent. To remedy that, the respondent explained that his case will be being examined for notional promotion w.e.f. 2018 itself which will enable him to be included in the panel for that year. This will address the grievance of the complainant to a large extent.

7. In view of these submissions of the respondent, the Court recommends that necessary orders as per above may be issued within 90 days of receipt of this order and a compliance report may also be sent to this Court.

8. The Case is accordingly disposed off.

Dated: 12.10.2020



Upma Srivastava
(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. 11451/1021/2019

Complainant : Dr. K.V. Harish Prashanth, 107/1, 9th Main, 2nd Cross, Saraswathipuram, Mysuru - 570009

Respondent : CSIR-Central Food Technological Research Institute, (Through the Director), Mysuru, Karnataka - 570020

Disability : 50% Locomotor

Gist of Complaint:

Dr. K.V. Harish Prashanth submitted that he is presently working as a Scientist in the Deptt. of Biochemistry, CSIR-Central Food Technological Research Institute (CFTRI), Mysore. He joined the Institute in 2009 as a 'Junior Scientist' and was promoted to the post of Scientist in December 2012. He was very productive in the research output till the start of discrimination verbally at the place of his work. He approached the institutional higher authorities for the solution but in vain. After requesting for many a time, he got himself transferred to 'Dept. of Biochemistry' in December 2016. He was given very less marks for 2013-14 performance mapping of scientists (PMS) grading/scoring deliberately and for 2014-15, 2015-16. This has affected his career and also the management denied giving any normal promotion for next grade to 'Senior Scientist' due from December 2016. In spite of his two representations in this regard, his establishment did not consider his request for re-evaluation of the APAR (PMS) work report for the year 2013-14. Further he submitted his grievance with the Institute's Liaison Officer who recommended for higher grading of PMS (2013-14) and requested for review and revaluation to the Director, CSIR-CFTRI.

2. The Administrative Officer, CSIR-CFTRI vide letter No. FT/15(167/4)/190/2018/E-II dated 14.11.2019 submitted that the complainant has been promoted within 3 years from Jr. Scientist to Scientist position. Again he has been considered for next promotion during 2017-18, the result of which is awaited. He submitted that it could be seen from the facts of the Case furnished that CSIR-CFTRI has always acted within the framework of the established rules. It has always protected and safeguarded the interests and at no point of time deprived its employees belonging to the persons with disability category including Dr. Harish Prashanth, of their legitimate rights.

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He submitted that Dr. Harish Prashnath was considered for his assessment promotion from 'Junior Scientist' to 'Scientist' on completion of the residency period of 3 years by the Assessment Committee constituted by CSIR-Recruitment and Assessment Board, as per the provisions of CSRAP Rules, 2001. The Assessment Committee reviewed the performance of Dr. Harish Prashnath based on the Work Report submitted by him and considering his output for the period under consideration, recommended him for promotion to the next higher grade on normal grounds without giving any special relevance to his disability. Dr. Harish Prashnath was promoted as 'Scientist' with effect from December 17, 2012. His representation was considered by the Competent Authority to retain the final grading of 0.8/75 awarded to him and the same has been communicated to him vide letter dated 17.06.2016. On completion of the residency period of 4 years, the PMS of Dr. Harish Prashanth was scrutinized by the internal Screening Committee to determine his eligibility for recommending the name of the Complainant to CSIR-RAB to consider his case for assessment promotion to the next higher grade. The Internal Screening Committee found that as against the required threshold of 85.00 marks, Dr. Harish Prashanth had scored only 82.50 marks and hence was not eligible to be considered for his assessment promotion to the next higher grade for the year 2016-17. CSIR-RAB has conducted interviews for the eligible candidates including Dr. Harish Prashanth on 18.09.2019 at CSIR-IHBT, Palampur for considering their eligibility for assessment promotion to the next higher grade, the results of which are awaited. Dr. Harish Prashanth though has been appointed on an unreserved post, considering his disability, he has been extended with all benefits applicable to the category of 'persons with disability'. He has been granted Transport Allowance at double the normal rates. He has been permitted to claim exemption under 80DD as applicable to 'persons with disabilities' and other benefits as applicable. Dr. Harish Prashanth is considered as per the existing 'CSIR Scientists Recruitment & Assessment Promotion Rules, 2001' norms.

3. The complainant vide his letter dated 22.01.2020 submitted that the Respondent has not given any information or justification to the Court in its reply dated 14.11.2019. The management of CSIR-Central Food Technological Research Institute (CFTRI), Mysuru has got no proper justification for the discrimination to the complainant.



Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 25.09.2020.

5. The following persons were present during the hearing:

- 1) Dr. K.V. Hrish Prashanth, the complainant.
- 2) Mr. D.J.N. Prasad, Administrative Officer, CSIR-CFTRI, on behalf of the respondent.

6. Both the parties were heard.

7. The contention of the complainant was that he was not granted promotion to the post of Senior Scientist w.e.f. December, 2016 because of low grading of his performance in the year 2013-14 on account of disability.

8. The respondent did not consider his request for reevaluation of his APAR for the year 2013-14. The respondent did not take any action on the recommendations and the instructions issued by the Liaison Officer who recommended higher grading of his APAR for the year 2013-14.

9. The Court was informed by the respondent that the complainant has been promoted as Senior Scientist w.e.f. 2017. He could not be promoted w.e.f. 2016 because of low final grading on the basis of APAR of last four years.

Observation/Recommendations:

10. This Court observes that the respondent could not give any information on what action was taken by them on the recommendations of the Liaison Officer regarding higher grading of his APAR for the year 2013-14. Had the same been done the complainant would have become eligible for promotion w.e.f. 2016 itself. Noting this position, the Court recommends that this case may be re-examined by the respondent and the complainant may be given promotion w.e.f. December, 2016 if eligible after implementing the recommendations of the Liaison Officer.

11. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.10.2020





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: 11503/1023/2019

वादी श्री प्रफुल्ल कुमार त्रिपाठी, शहीद लेफिट यश आदित्य 'पावन' स्मृति
आवास, डी-09, विज्ञानपुरी, महानगर, लखनऊ - 226006
ई-मेल <darshgrandpa@gmail.com>

- प्रतिवादी
1. केन्द्र निदेशक / केन्द्राध्यक्ष
प्रसार भारती (भारत का लोक सेवा प्रसारक), आकाशवाणी, लखनऊ।
ई-मेल <ang@air.org.in>
 2. निदेशक (प्रशासन), प्रसार भारती, भारत का लोक सेवा प्रसारक,
आकाशवाणी, महानिदेशालय, आकाशवाणी भवन, संसद मार्ग, नई दिल्ली
- 110001
ई-मेल <directoradmn@prasarbharati.gov.in>

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह वर्ष 2013 में कार्यक्रम अधिशाषी पद, प्रसार भारती, आकाशवाणी, लखनऊ से रिटायर हो चुके हैं रिटायरमेंट के समय उन पर किसी प्रकार के धनराशि की देयता कार्यालय ने दिखाई और नो ड्यूज प्रमाणपत्र भी जारी कर दिया। रिटायर होने के 06 साल बाद कार्यालय ने पत्र दिनांक 17.12.2018 के द्वारा प्रार्थी के अब तक रोक रखे गए वर्ष 2007 के एक टी.ए. बिल पर आपत्तियां लगाकर पेंशन से 23,737/- की रिकवरी का आदेश जारी कर दिया तथा पेंशन से कटौती के लिए पी.ए.ओ. को भी लिख दिया गया। प्रार्थी का आगे कहना है कि टी.ए. अग्रिम की मूल धनराशि रु0 7,500/- थी और उस पर चक्र वृद्धि ब्याज लगाया गया, प्रार्थी ने राशि जमा करते हुए महानिदेशालय को वस्तुस्थिति से अवगत करवाया। जिसके तहत आकाशवाणी महानिदेशालय ने इस मामले को गंभीरता से लेते हुए दिनांक 16.12.2018 को तथा पुनः दिनांक 17.05.2019 को जारी आदेश में इस रिकवरी को दोषपूर्ण बताते हुए प्रार्थी के टी.ए. बिल को निस्तारित करने, रिकवरी सम्बन्धी रिपोर्ट को स्खलित करने और इस मामले में हुई देरी का स्पष्टीकरण तुरंत प्रस्तुत करने के लिए निर्देश दिया किन्तु कार्यालय द्वारा अभी तक कोई कार्यवाही नहीं हुई

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।



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

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

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

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

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

3. निदेशक (अभि.) / केन्द्राध्यक्ष, प्रसार भारती, आकाशवाणी, लखनऊ का अपने पत्र दिनांक 17.01.2020 में कहना है कि श्री त्रिपाठी द्वारा लिया गया यात्रा अग्रिम उनके द्वारा पहले ही जमा किया जा चुका है व इस पर देय ब्याज आकाशवाणी महानिदेशालय द्वारा माफ किया जा चुका है तो ऐसी स्थिति में उनकी पेंशन से किसी प्रकार की रिकवरी का प्रश्न ही नहीं उठता। यात्रा के दौरान मुख्यालय से बाहर रहने की अवधि दिनांक 09.04.2007 से 11.05.2007 तक अवकाश प्रार्थना पत्र श्री त्रिपाठी ने अभी तक प्रस्तुत नहीं किया है। जिस दस्तावेज को श्री त्रिपाठी नो ड्यूज प्रमाण पत्र कह रहे हैं वह वास्तव में विभिन्न अनुभागों द्वारा दी गई क्लीयरेंस है

4. प्रार्थी का अपने पत्र दिनांक 25.08.2020 कहना है कि विचाराधीन टी.ए. बिल की धनराशि का चक्रवृद्धि ब्याज सहित तुरंत भुगतान किया जाये

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

- Mr. Praful Kumar Tripathi, the complainant.
- Mr. K.M. Rastogi, AIR, Lucknow & Mr. Rajeev Malhotra, Dy. Director, Prasar Bharti, on behalf of the respondent.

Observation/Recommendations:

5. Both the parties were heard.

6. The Court noted that the recovery of Rs.23,737/- only which was proposed to be made from the pension of the complainant has been waived off by the respondent thereby causing no loss in pension to the complainant. The complainant raised the issue of settlement of his TA Bill in accordance with the CGHS Rules prevailing at that time.

7. This Court recommends that the respondent may examine and dispose off this matter of settlement of TA Bill as per Government rules and regulations.

8. The Case is accordingly disposed off.

Dated: 12.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

368



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: 11503/1023/2019

वादी

श्री प्रफुल्ल कुमार त्रिपाठी, शहीद लेफिट यश आदित्य 'पावन' स्मृति
आवास, डी-09, विज्ञानपुरी, महानगर, लखनऊ - 226006
ई-मेल <darshgrandpa@gmail.com>

प्रतिवादी

1. केन्द्र निदेशक/केन्द्राध्यक्ष
प्रसार भारती (भारत का लोक सेवा प्रसारक), आकाशवाणी, लखनऊ।
ई-मेल <ang@air.org.in>
2. निदेशक (प्रशासन), प्रसार भारती, भारत का लोक सेवा प्रसारक,
आकाशवाणी, महानिदेशालय, आकाशवाणी भवन, संसद मार्ग, नई दिल्ली
- 110001
ई-मेल <directoradmn@prasarbharati.gov.in>

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह वर्ष 2013 में कार्यक्रम अधिशार्थी पद, प्रसार भारती, आकाशवाणी, लखनऊ से रिटायर हो चुके हैं रिटायरमेंट के समय उन पर किसी प्रकार के धनराशि की देयता कार्यालय ने दिखाई और नो ड्यूज प्रमाणपत्र भी जारी कर दिया। रिटायर होने के 06 साल बाद कार्यालय ने पत्र दिनांक 17.12.2018 के द्वारा प्रार्थी के अब तक रोक रखे गए वर्ष 2007 के एक टी.ए. बिल पर आपत्तियां लगाकर पेंशन से 23,737/- की रिकवरी का आदेश जारी कर दिया तथा पेंशन से कटौती के लिए पी.ए.ओ. को भी लिख दिया गया। प्रार्थी का आगे कहना है कि टी.ए. अग्रिम की मूल धनराशि ₹0 7,500/- थी और उस पर चक्र वृद्धि ब्याज लगाया गया, प्रार्थी ने राशि जमा करते हुए महानिदेशालय को वस्तुस्थिति से अवगत करवाया। जिसके तहत आकाशवाणी महानिदेशालय ने इस मामले को गंभीरता से लेते हुए दिनांक 16.12.2018 को तथा पुनः दिनांक 17.05.2019 को जारी आदेश में इस रिकवरी को दोषपूर्ण बताते हुए प्रार्थी के टी.ए. बिल को निस्तारित करने, रिकवरी सम्बन्धी रिपोर्ट को स्खलित करने और इस मामले में हुई देरी का स्पष्टीकरण तुरंत प्रस्तुत करने के लिए निर्देश दिया किन्तु कार्यालय द्वारा अभी तक कोई कार्यवाही नहीं हुई

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।



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

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

3. निदेशक (अभि.) / केन्द्राध्यक्ष, प्रसार भारती, आकाशवाणी, लखनऊ का अपने पत्र दिनांक 17.01.2020 में कहना है कि श्री त्रिपाठी द्वारा लिया गया यात्रा अग्रिम उनके द्वारा पहले ही जमा किया जा चुका है व इस पर देय ब्याज आकाशवाणी महानिदेशालय द्वारा माफ किया जा चुका है तो ऐसी स्थिति में उनकी पेंशन से किसी प्रकार की रिकवरी का प्रश्न ही नहीं उठता। यात्रा के दौरान मुख्यालय से बाहर रहने की अवधि दिनांक 09.04.2007 से 11.05.2007 तक अवकाश प्रार्थना पत्र श्री त्रिपाठी ने अभी तक प्रस्तुत नहीं किया है। जिस दस्तावेज को श्री त्रिपाठी नो ड्यूज प्रमाण पत्र कह रहे हैं वह वास्तव में विभिन्न अनुभागों द्वारा दी गई क्लीयरेंस है

4. प्रार्थी का अपने पत्र दिनांक 25.08.2020 कहना है कि विचाराधीन टी.ए. बिल की घनराशि का चक्रवृद्धि ब्याज सहित तुरंत भुगतान किया जाये

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

- Mr. Praful Kumar Tripathi, the complainant.
- Mr. K.M. Rastogi, AIR, Lucknow & Mr. Rajeev Malhotra, Dy. Director, Prasar Bharti, on behalf of the respondent.

Observation/Recommendations:

5. Both the parties were heard.

6. The Court noted that the recovery of Rs.23,737/- only which was proposed to be made from the pension of the complainant has been waived off by the respondent thereby causing no loss in pension to the complainant. The complainant raised the issue of settlement of his TA Bill in accordance with the CGHS Rules prevailing at that time.

7. This Court recommends that the respondent may examine and dispose off this matter of settlement of TA Bill as per Government rules and regulations.

8. The Case is accordingly disposed off.

Dated: 12.10.2020




(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: 11504/1023/2019

वादी

R-23668

श्री अवधेश विश्वकर्मा, महासचिव, राष्ट्रीय दृष्टि संघ मध्यप्रदेश शाखा,
कार्यालय म.न. 44, जगन्नाथ पुरी कॉलोनी, नीलबड़, भोपाल - 462044
ई-मेल <mayurharda1990@gmail.com>

प्रतिवादी

R-23669

उपायुक्त, केन्द्रीय विद्यालय संगठन, क्षेत्रीय कार्यालय, भोपाल क्षेत्र, मैदा
मील के सामने, भोपाल - 462011
ई-मेल <kvnepanagar@kvsedu.org> <acbhopal@yahoo.co>

GIST of the Complaint:

प्रार्थी का कहना है कि श्री मयूर शर्मा, दृष्टिबाधित संगीत शिक्षक, केन्द्रीय विद्यालय, नेपानगर को प्राचार्य द्वारा प्रताड़ित किया जा रहा है जैसे वेतन पर्ची प्रदान न करना, शाला के परीक्षा विभाग के कक्ष में बैठने से मना करना, उपस्थिति रजिस्टर में हस्ताक्षर करने के लिए दबाव बनाना तथा अनेक बार अपमान जनक शब्दों का प्रयोग कर अपमानित किया जाता है।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. उपायुक्त, केन्द्रीय विद्यालय, भोपाल संभाग का अपने पत्र दिनांक 11.12.2019 में कहना है कि निरीक्षण प्राचार्य की टिप्पणी एवं श्री मयूर शर्मा एवं विद्यालयों के अन्य शिक्षकों से की गई वार्तालाप की सम्यक समीक्षा पर प्रथम दृष्टया पाया गया कि श्री मयूर शर्मा की प्राचार्य के विरुद्ध उत्पीड़न की शिकायत सिद्ध नहीं होती है। श्री शर्मा अपनी दिव्यांगता को ढाल बनाकर अपने उच्चधिकारियों के प्रति अपमानजनक टिप्पणी करते हैं एवं उन पर आरोप लगाते हैं तथा तथ्यों के आधार पर ही श्री मयूर शर्मा को एक सुझावी ज्ञापन दिनांक 05.08.2019 किया गया है।

4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 05.01.2020 में कहना है प्राचार्य द्वारा स्पष्टीकरण दिया गया जोकि पूर्णता असत्य है और एडवाइजरी में यह लिख देना कि विकलांगता को ढाल बना रहा है अवैधानिक है।



...2....

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **29.09.2020**. The following were present:

- Mr. Mayur Sharma, the complainant.
- None for the respondent.

Observation/Recommendations:

5. The complainant Mr. Mayur Sharma was tried to connect but could not be heard due to technical reasons.

6. The Court has gone through the written submissions made by the complainant dated 05.01.2020. The written submissions of the respondent dated 11.12.2019 have also been gone through. The matter is regarding harassment and humiliation of the complainant by the Principal of Kendriya Vidyalaya Nepanagar.

7. The complainant has also raised issues regarding non availability of adequate seating arrangement for a visually impaired person like him as well as false allegations made against him of negligence in paper work.

8. The respondent has stated that they examined the allegations made by the complainant and found that they were baseless and the harassment complaint is not proven. They have also informed that an advisory dated 05.08.2019 was issued to the complainant for maintaining proper behaviour with his superiors. The letter written to the Dy. Commissioner, Kendriya Vidyalaya Sangthan in this respect by the Principal of Kendriya Vidyalaya Nepanagar has also been seen.

9. This Court recommends that both the Principal and the complainant may be counseled by the Kendriya Vidyalaya Sangthan, so as to resolve this issue permanently. The Principal alongwith the entire staff of the Kendriya Vidyalaya Nepanagar may also be sensitized towards the need of greater understanding and empathy for persons with disabilities.

10. The Case is accordingly disposed off.

Dated: 12.10.2020



TRUE COPY

Sign.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11516/1024/2019

वादी

R-23677

श्री चेतन प्रकाश जायसवाल

ई-मेल <chetanjayawal84@gmail.com>

प्रतिवादी

R-23676

Regional Manager, Regional Office, Exide Industries Ltd, 501-506, 5th

Floor, Sunny's Big Junction (SIC), Gopalpura Bypass Mansarovar, Jaipur

Pin code- 302020

ई-मेल <jitandersm@exide.co.in>

वादी

40 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उन्होंने Exide Industries Ltd में तीन साल Computer operator के पद पर कार्य किया तथा overtime करने के कारण उनकी जांघ में द्यूमर हुआ जिसका ऑपरेशन PGI, Chandigarh में हुआ और ऑपरेशन के दौरान complications के कारण पुनः ऑपरेशन की सलाह दी जिसकी सम्पूर्ण जानकारी उन्होंने अपने कार्यालय को दी परन्तु फिर भी प्रार्थी को नौकरी से निकाल दिया गया।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.09.2019 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 02.12.2019 के बावजूद प्रतिवादी ने कोई उत्तर/टिप्पण नहीं भेजे, इसलिए सुनवाई दिनांक 25.09.2020 सुनिश्चित की गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

- Mr. Chetan Prakash Jayaswal, the complainant.
- Ms. Sanjukta Maitra, EIL & Mr. Surender Sharma, Mascot Management, on behalf of the respondent.

Observation/Recommendations:

3. Both the parties were heard.



TRUE COPY

Sign.

...2....

4. After hearing both the parties and detailed submission received from the Placement Agency – Mascot Management vide e-mail dated 25.09.2020, this Court recommends that the complainant may duly sign the appointment letter issued to him by the Placement Agency – Mascot Management for continuation of his service. For other grievances like claims of ESI etc., action may be taken by the complainant as indicated in this e-mail (**a copy of this e-mail is enclosed for information of the complainant**).

5. The Case is accordingly disposed off.

Dated: 12.10.2020




(Upma Srivastava)
Commissioner for
Persons with Disabilities

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Ex 36

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: 11521/1021/2019

वादी

R.23628

श्री राजेन्द्र सिंह, टी.जी.टी., गणित, जवाहर नवोदय विद्यालय पाटन,
जिला - सीकर (राज.) - च332718
ई-मेल <rsyadav0770@gmail.com>

प्रतिवादी

आयुक्त, नवोदय विद्यालय समिति, बी - 15, संस्थागत क्षेत्र, सेक्टर -
62, नोएडा, उत्तर प्रदेश - 201307
ई-मेल <nvshqe3@gmail.com> <nlinvsnoida@gmail.com>

वादी

R.23629

81 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी श्री राजेन्द्र सिंह टी.जी.टी., गणित, जवाहर नवोदय विद्यालय, जिला सीकर, राजस्थान का कहना है कि विद्यालय के परिसर में दिनांक 27.08.2008 को दुर्घटनाग्रस्त होने के कारण वह स्थाई रूप से दिव्यांग हुए। उनका आगे कहना है कि नवोदय विद्यालय समिति ने 24 सितम्बर 2018 को एलडीई 2018 परीक्षा आयोजित की। इस परीक्षा में उन्हें न तो अतिरिक्त समय दिया गया और ना ही मापदंडों में छूट दी गई।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 07.01.2020 द्वारा प्रतिवादी के साथ उठाया गया।

3. Dy. Commissioner (Pers), Navodaya Vidyalaya Samiti vide letter dated 20.02.2020 inter-alia submitted that a notification for conduct of LDE for promotion to the post of PGTs was issued on 12.03.2018 and qualifying standard was clearly indicated in the notice which was 45% for UR candidates and 40% for SC/ST candidates. As regards submission of Shri Rajendra Singh that being a PH candidate, relaxed qualifying standard as in case of SC/ST candidates should have been allowed to him, it is stated that GOI rules and instructions under the Heading "Concession & Reservation" have been extensively gone through and no where such relaxation is found to be extended to PH category candidates in promotion.

4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 11.03.2020 में कहना है कि यदि नियमानुसार अतिरिक्त समय मिला होता तो वह शेष प्रश्न हल कर सकते थे तथा मापदंडों में अन्य की तरह 5 प्रतिशत छूट मिलती तो वह परीक्षा में सफल हो जाते।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **25.09.2020**. The following were present:

- Mr. Rajendra Singh, the complainant.
- Mr. Vikram Joshi, Dy. Commissioner, NVS, on behalf of the respondent.

Observation/Recommendations:

5. Both the parties were heard.

6. The complainant's grievance is that he was not given sufficient time during the LDE-2018 for promotion to the post of PGT. If he had got sufficient time, he would have qualified the exam by getting the required cut off.

7. The respondent explained that even if the complainant would have qualified the written examination, he still would not have been promoted as a PGT on grounds of seniority as all persons promoted through that examination (which was only qualifying in nature) were senior to Shri Singh.

8. Noting the above said submissions, this Court would like to sensitize the respondent to the concessions and relaxations which are admissible to a person with disability during written examinations. ***The O.M. No.34-02/2015-DD-III dated 29th August, 2018 issued by Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment, Government of India, entitled "Guidelines for conducting written examination for Persons with Benchmark Disabilities" is attached with this order for information of the respondent.***

9. This rule position may be kept in mind by the respondent for strict implementation in future, so that persons with disabilities are not deprived of their legitimate rights and get full opportunity to upgrade their position in an organisation.

10. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.10.2020

Encl.: As stated above.

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Ex/2

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. 11532/1022/2019

R-23688 Complainant : Shri Nitin Kumar, H.No. 890, Sector-12, R.K. Puram, New Delhi – 110 022.

R-23699 Respondent : Central Public Works Department, (Thru Director General), A-Wing, Nirman Bhawan, New Delhi – 110 011.

Disability : 90% Locomotor

Gist of Complaint:

The complaint vide his letter dated 13.09.2019 submitted that he has been working as a Section Officer in Horticulture wing of CPWD since 29.08.2018. He has continuously been harassed and humiliated by his DDG (Horticulture) and the Director of Horticulture (NDR). He has been overburdened with the work of three officers by holding of additional charge and also by posting him frequently in opposite divisions of Horticulture division. He has requested to restore his dignity as per the provisions of the Act and transfer him back to his initial posting place i.e. Sub-Divisions-2, Horticulture Division-1.

2. The Dy. Director General (Hort.). CPWD vide letter dated 25.10.2019 submitted that Shri Nitin Kumar, SO (Hort.) has been appointed in CPWD and posted in the Office of Dy. Director (Hort.), Hort. Divn-I. The appointment order issued by the Department clearly states that:

“The appointment carries with it the liability to serve anywhere in India or outside where Central Public Works Department has an organisation or any other government department where he/she is required to serve.”

....2/-



Signature

He submitted that there has been regular demands from other regions, i.e. Southern Region, Eastern Region, Western Region, Northern Region, etc for posting of SO (Hort.) for their areas as they did not have sufficient number of SO (Hort.). He submitted that inspite of the vacancies outside Delhi, Shri Nitin Kumar's request for first posting was considered and he has been accommodated in Delhi in the Office of Dy. Director (Hort.), Hort. Divn.-I vide their Office Order No. DDG(H)/135/EC-I/2018/759-H dated 24.08.2018 and was given the charge of Kushak Road, i.e day-to-day maintenance of residential Bungalows at Kushak Road and adjoining areas. Consequent upon the promotions of Shri K.P. Singh, SO (Hort.) and Shri Avneesh Deshwal, SO (Hort.) to the post of Asstt. Director (Hort.) posted in Hort. Divn-I, both officers were promoted and transferred to Mussoorie & PWD respectively. Since there were no other SO (Hort.) available in Hort. Divn-I and as Shri Nitin Kumar, SO (Hort.) was already working in Hort. Divn-I, he was asked to look after their works temporarily till the SOs (Hort.) are not selected by PMO.

3. The complainant vide his letter dated 23.01.2020 submitted that his Department did not give any weightage in giving him choice of posting considering his disability and provisions of the Rights of Persons with Disabilities Act. He submitted that the Respondent's statement that 'the appointment carries with it the liability to be served anywhere in India or outside' seemed is applicable in case of normal persons without any disability. His posting in Delhi inspite of number of vacancies in other regions seems to be a favour done by the Respondent. He was given the charge of Kushak Road section in his first posting but the Respondent has not explained the reasons for this transfer. He submitted that in order to further harass him his Department issued orders for his transfer on 07.01.2020. On the very next day, he was again posted/transferred back on 08.01.2020.

Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 25.09.2020.

5. The following persons were present during the hearing:

1. Mr. Arun Gaur, Advocate for the complainant.
2. Mr. P.K. Tripathi, DDG (Horticulture) and Mr. Ujjwal Kumar, Advocate, on behalf of the respondent.

....3/-



6. Both the parties were heard.

7. The respondent were informed that as per the DOP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at the post where they can contribute efficiently.

Observation/Recommendations:

8. After hearing both the parties, the Court makes the following recommendations for implementation by the respondent:

- (i) A person with disability who is 90% OH should **not** be given additional charges when other such officers are available.
- (ii) Posting of a person with disability at a station of his choice is not to be construed as a favour given by the respondent.
- (iii) No harassment or abuse should be caused to any person with disability.
- (iv) A suitable warning may be issued to Former DDG (Horticulture) – Dr. B.N. Srivastava and Director (Horticulture-NDR) – Mr. M.K. Tyagi for causing harassment and intimidation of the complainant.
- (v) Transfer of the complainant back to Horticulture Division No.-I, Kushak Road from where he was transferred without obtaining the consent of the competent authority – DG, CPWD.

9. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.10.2020





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: 11549/1014/2019

Complainant: Swaraj Kumar Gayen

R-23688

E-mail : <swarajgayen26@gmail.com>

Respondent: The Chairman Railway Recruitment Cell, Eastern Railway,
56, Chittaranjan Ave, Calcutta Medical College, College
Square Kolkata, West Bengal – 700012

R-23687

E-mail: <rrcerkol@gmail.com> <kolrrb@gmail.com>

Gist of Complaint

1. Railway Recruitment Board issue notification number CEN 02/2018 (level 1 posts as per 7th CPC) revised PwBD vacancies. As per the notification Eastern Railway advertised total 2367 vacancies. Out of which initially only 9 vacancies were reserved for PwBD candidates. Thereafter, on the recommendations of Hon'ble Delhi High Court, reserved vacancies for PwBD were increased from 9 to 10. Complainant filed the present complaint pointing out the discrepancies in computation of vacancies.

A. Contention raised by the respondent

2. Respondent has taken a defence that the posts advertised were safety related. Hence, they were not suitable for PwBD candidates. Further, it was also informed by the respondent that shortage created has been completed subsequently by reserving more than 4 percent of vacancies for PwBD candidates in 2019 notification.

B. Observation and Conclusion

3. It is undisputed fact that total number of vacancies, both suitable and non -suitable for PwBD candidates, as per 2018 notification, were 2367. Out of these 2367 only 10 were reserved for PwBD candidates.



4. At the very beginning itself, kind attention of the respondent is brought to Master Circular Number 13 (Rly.B letter number E(NGS) II/ 90/ RC-R2/14), dated 23/11/1990. This Master Circular issued by the Railway Board itself lays down the method which has to be followed while counting vacancies reserved for persons with PwBD. As per this methodology reservation for physical handicaps for Groups C and D posts, has to be computed on the basis of total number of vacancies occurring in all Groups C and D posts. However, the recruitment has to be made only in the posts suitable for PwBD candidates.
5. Further, Section 34 of RPwD Act, 2016 makes it an obligation for every appropriate government to reserve 4% of the total number of vacancies in the cadre strength.
6. Further, Hon'ble Supreme Court in UNION OF INDIA v. NATIONAL FEDERATION OF THE BLIND (2013) 10 SCC 772, held that Computation of reservation is based upon total number of vacancies in cadre strength and not on basis of vacancies available in identified posts, such computation of posts for reservation is not dependent upon identification of posts.
7. It is evident from the fact that the respondent has failed to implement rules made by the Railway Board itself. Total number of vacancies were 2367. As per the Master Circular mentioned above, read with 2016 Act, 4% of the total vacancies were supposed to be reserved for PwBD candidates. 4% of 2367 is 95, whereas respondent reserved only 10 seats.
8. Hence, this court concludes that reserving 10 seats instead of 95 is violative of direction laid down in Master Circular No. 13, mentioned above and also against the judgment of Hon'ble Supreme Court in UNION OF INDIA v. NATIONAL FEDERATION OF THE BLIND.
9. Furthermore, it is pertinent to mention that effect of judgments delivered by Hon'ble Supreme Court under PwD Act 1995 has been extended to provisions of RPwD Act, 2016 by judgment of Hon'ble Uttarakhand High Court delivered in UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND 2018 SCC OnLine Utt 865 and also explained by this court in B. UMA PRASAD v. EPFO (11183/1021/2019).
10. Another contention raised by the Respondent relates to the fact that posts were safety related and were not suitable for PwBD candidates



is not supported by the relevant documents. It is to be noted that respondent has not presented any document to support its claim that posts advertised in the impugned notification were not suitable for PwBD candidates. During proceedings respondent was subsequently asked if any exemption by the respondent was ever taken in this regard. Respondent failed to answer this question. In this regard O.M. dated 15.01.2018, issued by DoPT is relevant. As per the OM, If any Ministry/Department in the Central Government considers it necessary to exempt any establishment or any cadre or cadres fully or partly from the provisions of reservation for persons with benchmark disabilities, it shall make a reference to the Department of Empowerment of Persons with Disabilities giving full justification for the proposal, who having regard to the type of work carried out in any Government establishment by notification and subject to such condition, if any, as may be specified in the notification, in consultation with the Chief Commissioner for Persons with Disabilities (CCPD) may exempt any Establishment or any cadre(s) fully or partly from the provisions of reservation for persons with benchmark disabilities.

11. Respondent did not present any document confirming claim related to the exemption, in accordance with the OM dated 15.01.2018.
12. Therefore, this court concludes that respondent has failed to prove that nature of the vacancies advertised was not suitable for PwBD candidates. Furthermore, this court concludes even if it is believed that the nature of the vacancies was such that it was not suitable for PwBD candidates, respondent has failed to adopt correct methodology, as prescribed in Railway Board Master Circular quoted above and as laid down in the judgment of Hon'ble Supreme Court.
13. On this issue of fulfilment shortfall of reserved vacancies of PwBD in subsequent 2019 notification, this court concludes that 2018 and 2019 notification are two different notifications. It is unjust to club the two together. There may be cases where the candidates who were eligible to apply under 2018 notification may have become ineligible from applying under 2019 notification, due to factors like age etc.
14. On the basis of Observations made above this court recommends that –
 - a. 4%, of total number of vacancies advertised in 2018 notification (i.e. 95), inclusive of identified suitable as well as non-suitable for PwBD



candidates should be reserved for filling by Persons with Disabilities.

- b. As not reserving vacancies for PwBD candidates is in direct violation of provisions of RPwD Act, 2016, Judgments of Hon'ble Supreme Court, O.M. issued by DoPT and also Master Circular of the Railway Board. Hence, the respondent shall quash the whole process and conduct the whole exercise of recruitment afresh after proper calculation of reserved posts for PwBDs.

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


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.10.2020



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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: 11561/1083/2019

वादी

R-23694

श्री अजयपाल सिंह, बी-44 द्वितीय तल, गली नं: 02, जगतपुरी, दिल्ली
- 110051

ई-मेल <singhajayapal108@gmail.com>

प्रतिवादी

R-23695

आयुक्त (कार्मिक), दिल्ली विकास प्राधिकरण, विकास सदन, आई.एन.ए.
कॉलोनी, नई दिल्ली - 110023

ई-मेल <manish.gupta2017@dda.gov.in> <d.sarkar416@dda.gov.in>

वादी

100 प्रतिशत दृष्टिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि दिल्ली विकास प्राधिकरण द्वारा उन्हें सेक्टर 35, रोहिणी में फ्लैट आवंटित हुआ है जहाँ पर दृष्टिबाधित लोग सुगमता पूर्वक आ - जा भी नहीं सकते हैं प्रार्थी का आगे कहना है कि डी.डी.ए. ने दिव्यांगजनों के लिए फ्लैट बेचने की समय-सीमा 15 साल निर्धारित कि है जबकि सामान्य लोगों के लिए कोई समय सीमा नहीं है।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 23.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. Commissioner (Housing), D.D.A. vide letter dated 26.09.2019 submitted that the Authority has approved Agenda Item No. 93/2019 regarding relaxation in lock-in period in respect of flats allotted to persons with disabilities on 17.09.2019. The changes proposed in the Agenda Item requires approval of the M/o of Housing & Urban Affairs, therefore, matter is being forwarded for approval.

4. प्रार्थी का अपने पत्र दिनांक 13.08.2020 कहना है कि दिल्ली विकास प्राधिकरण द्वारा अभी तक कोई कार्यवाही नहीं कि गई है।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

- Mr. Ajaypal Singh, the complainant.
- No one from the respondent.

Signature



...2...

Observation/Recommendations:

5. The complainant informed that no communication has been received from the Delhi Development Authority regarding his request of relaxation in lock-in period in respect of flats allotted to persons with disabilities. In their last reply dated 26.09.2019, the respondent had stated that they had approved the request on their part and forwarded the matter to the Ministry of Housing & Urban Affairs for necessary approval before they could communicate the same to the complainant.

6. As the respondent was not present in the hearing, the present status of the matter is not known. However, the respondent is recommended to take it up actively with the Ministry of Housing & Urban Affairs for obtaining the necessary approval. **A copy of these orders is being forwarded to Secretary, Ministry of Housing & Urban Affairs for considering the matter on priority and granting necessary approval..**

7. The Case is accordingly disposed off.

Dated: 12.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Copy to:

Secretary
Ministry of Housing & Urban Affairs
Nirman Bhawan, Maulana Azad Road, New Delhi -110011

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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: 11596/1022/2019

वादी *R-23692* श्री राजेश कुमार तिवारी, एम.ई.एस. - 462569, स0 दुर्ग अभि0 (टी),
फैजाबाद
ई-मेल <rktiwari.mes@gmail.com>

प्रतिवादी *R-23693* महानिदेशक (क्रांमिक), प्रमुख अभिन्यता, सैन्य अभि0 सेवा, कश्मीर हाऊस,
राजाजी मार्ग, नई दिल्ली - 110011
ई-मेल <ceengrll-mes@nic.in>

वादी 60 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 07.10.2019 में कहना है कि उनका गृह जनपद बलिया (उत्तर प्रदेश) है और बलिया के निकट का स्टेशन फैजाबाद, गोरखपुर और वाराणसी है उन्होंने अनुरोध किया है कि उन्हें दुर्ग अभियन्ता, फैजाबाद में तैनात किया जाये।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 12.12.2019 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 02.03.2020 के बावजूद प्रतिवादी ने कोई उत्तर/टिप्पण नहीं भेजे, इसलिए सुनवाई दिनांक 29.09.2020 सुनिश्चित की गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

- Mr. Rajesh Kumar Tiwari, the complainant.
- None for the respondent.

Observation/Recommendations:

3. The complainant reiterated his points made in his complaint dated 07.10.2019 regarding several transfers and harassment caused to him because of such transfers by the respondent. The Court observes that the respondent had not given any reply to the communications of this Court vide letters dated 12.12.2019 and 02.03.2020.

[Signature]



4. The complainant explained that ever since he had joined the MES as a Junior Engineer in 2005, he had been first posted at Muradnagar far away from his Home Town Gorakhpur and thereafter transferred in 2008 to Mhow, in 2011 to Gorakhpur, in 2015 to Faizabad, in 2018 to Gorakhpur for less than three months period, March 2019 to Allahabad (for a few months) and from Allahabad to Faizabad in August, 2019. He was again transferred to Ambala on 17.08.2019 but this transfer was cancelled later on by the respondent. He has been kept on the post of AGE 'T' in Faizabad though posts at the level of AGE B/R are available in places like Gorakhpur & Allahabad on which officers in similar situation are posted.

5. This Court observes that this is a clear case of harassment of the complainant by the respondent and is in violation of the following provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, as quoted below

"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.

6. In view of the above, this Court recommends that the respondent shall transfer the complainant immediately as AGE B/R at Faizabad or Gorakhpur.

7. The Case is accordingly disposed off.

Dated: 12.10.2020



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. 11068/1101/2019

Complainant:

Shri Kaushik Kumar Majumdar
Associate Professor,
Computer and Communication Sciences Division,
Indian Statistical Institute, 8th Mile, Mysore Road,
R.V. College Post, Bangalore - 560059
Email - kmajumdar@isibang.ac.in;

Respondent:

Indian Statistical Institute,
Through its Director, 203-B,
T. Road, Kolkata-700108;
Email: [postmaster\(at\)isical.ac.in](mailto:postmaster(at)isical.ac.in)

....Respondent No.1

Indian Statistical Institute,
through its Head/Director, Bangalore Centre,
8th Mile, Mysore Road, Bangalore-560059;
Email: [postmaster\(at\)isibang.ac.in](mailto:postmaster(at)isibang.ac.in)

....Respondent No.2

Gist of Complaint

The complainant, a person with 85% Locomotor Disability (completely dependent on electric wheelchair) works as an Associate Professor in respondent's institute at Bangalore Centre. He filed a complaint dated 28.03.2019 under the Rights of Persons with Disabilities Act, 2016 regarding access to official transport for staff with locomotor disability. He submitted that his institute has five vehicles - Innova, Sumo, Omni, Indigo and a Swaraj Mazda. None of the vehicles is wheelchair accessible. He could never use institutional vehicles even for official works. He has his personal vehicle which has been made wheelchair accessible. But even for attending official events he was never given a driver to drive him in his modified vehicle to attend official

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events. All other faculties of the institute get institute vehicle for official purposes. It happened in the past that he missed official engagements due to non-availability of driver to drive his vehicle, which was the only vehicle he could use. He was assured multiple times that when the institute would procure new vehicles for the Bangalore Centre, efforts would be made to procure a vehicle which could be made wheelchair accessible. The Innova was purchased after he had joined, but it could not be made wheelchair accessible. He uses a non-foldable electric wheelchair. He is single and lives alone inside the campus. Since the Omni and the Indigo have become unusable, a Swift Dezire had been approved for purchase by the institute, but it could not be made wheelchair accessible because it is too small. Within the same budget an Omni or Eeco could be procured, which could be made accessible with some additional cost (approximately Rs. 50000). He mentioned it numerous times to appropriate authority and even wrote to the Director, but it was not paid any heed at all. An accessible vehicle can be used by everyone, whereas a non-accessible vehicle cannot be used by wheelchair users.

2. On taking up the matter, the Head, ISIBC filed their reply and proposed two options –

Option 1: Prof. Majumdar can be permitted to utilize his own (modified) car with his own driver for the travel within Bangalore limits only, for official duties. He can seek reimbursement claim by providing place of visit (from and to), kilometre run with distance and travel details limited to maximum ceiling of Rs.24/- per kilometre as per TA rules of central government (All inclusive). He shall have to necessarily apply to Head, ISI Bangalore Centre in advance application seeking advance approval towards such official travel within Bangalore city limits as would be necessary for processing reimbursement claim on each occasion.

Or

Option 2: He may else utilize the taxi service for wheelchair users from "Mobility India" at Bangalore. Mobility India (MI) has four vehicles (02 Omni and 02 Eeco) specifically remodelled to suit the needs of persons with



disabilities. The charges of reimbursement to employee towards this taxi service shall be limited to maximum ceiling of Rs.24/- per km as per TA rules of Central Government (all inclusive) on the production of the bill of said cab service provider. Advance booking, payment, coordination etc. with the said taxi service provider shall be done by secretarial team attached to SSI unit after taking advance approval from Head, ISIBC on each occasion and then claim reimbursement after travel accordingly enclosing original bill.

3. The complainant in his rejoinder dated 29.07.2019, submitted that he was not salivating for a few hundred or thousand rupees, but he was demanding a secured transportation support by institutional transport service to keep up his official engagements like his all other faculty colleagues which the ISI has been persistently denying for the last ten years. Each time attention is being diverted harping on the same cost reimbursement offer which does not guarantee to travel in time to honour his official commitment. Almost all faculty members of ISI have their own vehicle and yet covered by guaranteed institutional transport service. The institute drivers persistently refused to drive his accessible vehicle. They have backing of the workers union and the ISI administration has never been able to resolve the deadlock. Mobility India Bangalore Chapter has only two vans. It needs prior appointment for a ride and often fails even have no guarantee to keep up its prescheduled appointment due to paucity of drivers. The options given by ISI are a gross misrepresentation of facts. The most suitable and economically viable measure is to close down the institute transport service and outsource the entire operation. It will not only save huge expenses incurred due to purchase and maintenance of vehicles, but also will do away with payment of inflated fuel bills and other corrupt means of pilferage of funds.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 01.10.2020. The following were present:

1. Mr. Kaushik Kumar Majumdar, the complainant present, but could not connect due to technical reasons.
2. Ms. Ashwini, Chief Executive, ISI, on behalf of the respondent.



Observation/Recommendations:

The written submissions of the complainant have been gone through and as well as the written reply of the respondent have also been perused.

2. Every person with disabilities in general and specific, the complainant suffering with 85% locomotor disability who is confined to a wheelchair deserves to be treated with dignity at par with all other faculty members in ISI. This Court fails to understand the resistance in the management of the institute to provide suitable office transport to the complainant as it is available to other faculty members of the institute. The institute instead of proactively taking any step to either modify the existing vehicle or purchase a new vehicle to suit the need of the complainant is giving all kind of options, which are difficult for the complainant to exercise, that for his official movement.

3. Section 41(1)(b) of the Rights of Persons with Disabilities Act, 2016 is also reproduced as under for information and implementation of these provisions by the respondent:

"41(1)(b) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design."

4. This Court recommends that the respondent will arrange a suitably modified accessible vehicle or a new vehicle for official movement of the complainant from time to time within three months of issue of these orders. A Compliance Report may be sent to this office within 90 days of receipt of these orders.

5. The case is disposed off.

Dated: 13.10.2020



(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. 11185/1022/2019

Complainant : Shri Vijay M. Lonkar, Saraswati Colony College Road, Distt. : Akola, Akot, Maharashtra - 444101.

Versus

Respondent : The Chief Postmaster General, O/o Chief Postmaster General, Maharashtra Circle, Mumbai - 400 001.

Gist of Complaint:

Shri Vijay M. Lonkar vide his complaint dated 20.05.2019 submitted that his son, Shri Pankaj Vijayrao Lonkar, a person with 75% locomotor disability has been selected in the examination for PA/SA post in Postal Department through category of disabled OBC PH-III in the year 2013-14. He stood at Sr. No.5 in the list published by Assistant Director Postal Services (Rectt.) Maharashtra Circle, Mumbai. Out of 12 selected pwd candidates, his son was given Goa Division. However, one Shri Suyog D. Nemane who has also been selected from this category had been given allotment at Akola Division. As Shri Suyog D. Nemane informed him that he is not willing to join as Postal Assistant at Akola Division, therefore, on 02.01.2018 his son requested CPMG Mumbai for posting him at Akola Division in place of Shri Suyog D. Nemane. However there was no response from the management. The CPMG, Mumbai vide their letter dated 07.02.2018 informed that the competent authority would issue a fresh appointment order, but his son did not receive the fresh appointment order yet. Ultimately his son joined Goa Division on 18.02.2019. The complainant has requested for transfer of his son in the vacant post of Postal Assistant at Akola Division in Maharashtra.

2. No reply has been received from the Respondent.

Hearing :

3. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

4. The following persons were present during the hearing;

- 1) None for the complainant.
- 2) Mr. F.B. Sayyed, Assistant Postmaster General, on behalf of the respondent.

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5. An e-mail dated 05.10.2020 has been received from the complainant stating that due to old age and hearing impairment, his complaint may be treated as his argument and he may be allowed to remain absent for online hearing.

6. The complaint was regarding change of region for Shri Pankaj Vijayrao Lonkar, a person with 75% locomotor disability from Goa Division to Akola Division.

7. The respondent informed that the Goa Division was given to the complainant's son Shri Pankaj Vijayrao Lonkar on grounds of his preference and as per the procedure followed by Chief Postmaster General for allocation of divisions. The respondent did not answer as to why the complainant could not be given a different region when the vacancy in that division was available. However, the respondent stated that they can always transfer the complainant to Akola Division as per their internal policy and as per the waiting list prepared for persons with disabilities.

8. The rule position in respect of transfer of persons with disabilities and Equal Opportunity Policy as per the Rights of Persons with Disabilities Act, 2016 is as under:

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

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.

"Section 21.(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be."



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9. In view of the aforesaid, this Court recommends to the respondent that the complainant's son may be transferred to Akola Division expeditiously and on priority. Further the Respondent may consider revisiting the matter of allocation of Akola Division on grounds of disability

10. Accordingly the case is disposed off.

Date : 13.10.2020


(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: 11191/1014/2019

Complainant: Dr. P. Muthu, 3/12, Krishnan Street, Pillaiyarpalayam, Kanchipuram - 631501

R-23672

E-mail: <drmuthulingam6@gmail.com>

Respondent: The Director, National Institute of Epidemiology, Second Main Road, Tamil Nadu Housing Board, Ayapakkam, Near Ambattur, Chennai - 600077

R-23673

E-mail: <directorne@dataone.in> <arockiasamy@nie.gov.in>

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant in his complaint dated 27.05.2019 submitted that he had applied under PwD category for Master of Public Health Programme and appeared in selection test and interview on 14.03.2019. He alleged that the selection list was released without providing reservation to PwDs.

2. The matter was taken up with the Respondent vide letter dated 04.06.2019 under Section 75 of the Rights of Persons with Disabilities Act, 2016. But despite reminder dated 27.08.2020, the respondent did not submit any reply; therefore, the hearing was scheduled for 01.10.2020.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 01.10.2020. The following were present:

- Dr. P. Muthu, the complainant.
- Mr. Michael Antony Joseph, Administrative Officer, on behalf of the respondent

Observation/Recommendations:

3. Both the parties were heard.



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4. The respondent informed that the complainant had in the same matter approached the Hon'ble High Court of Judicature at Madras, which in turn has disposed off the writ appeal of the complainant in August, 2019.

5. In view of the above said, the case is disposed off.

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.10.2020





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. 11254/1023/2019

Complainant : Smt. Madhusmita Sarangi, W/o. Shri Manoranjan Sarangi, Qr. No.B/114, MCL Complex, Anand Vihar, P.O.: Jagriti Vihar, Burla, Sambalpur, Odisha – 768 020.

Respondent : Coal Mines Provident Fund (Through the Commissioner), Head Quarters Office, Police Line, Hirapur, Dhanbad, Jharkhand – 826 014.

Disability: 60% Locomotor disability

Gist of Complaint:

Smt. Madhusmita Sarangi vide letter dated 06.06.2019 complained against deliberate & willful harassment of her husband Mr. Manoranjan Sarangi by his colleagues. He has been posted at Regional office of CMPFO, Sambalpur for last 17 years. Complainant claimed that her husband had been harassed by Shri Upendra Panda and Shri Hari Pachauri with the help of some subordinates. Shri Upendra Panda had changed the sitting arrangement of her husband and also allocated him unsuitable work.

2. The Regional Commissioner-II, RO, CMPF, Sambalpur, Odisha vide letter dtd 31.01.2020 submitted that Shri Manoranjan Sarangi was posted in Accounts Group of settlement of PF/Pension/Advances and Estt./Adm./Section from 2007 onwards. He used to engage himself in corrupt practices in nexus with middle men operating in Collieries and thereby allowing Advances to members beyond eligibility and against provisions of CMPF Act & Scheme in connivance with Officers like Shri Mahendra Singh, Regional Commissioner and Shri Megharaj Singh, Assistant Commissioner-I. After joining of Shri Upendra Panda, Regional Commissioner-I, he did not allow any wrong doing by Shri Sarangi which was unacceptable to him as a substantial amount he earned in bribery through wrong practices was stopped. Since then Shri Sarangi started conspiring against Shri Panda to oust him from RO, CMPF, Sambalpur so that he can regain his earlier status. He filed several false and fabricated complaints against Shri Panda to various authorities in pseudo names which did not yield him anything. Being frustrated, he planned bigger conspiracy against Shri Panda in connivance with a lady contractor worker namely Smt. Pramila Rana, who was favoured by him with an irregular allotment of Govt. Quarters by wrongful use of his position in Estt. Section and proximity to the then Regional Commissioner Shri Mahendra Singh. The contract workers are not their employees and hence are not entitled for Govt. accommodation. Shri Sarangi instigated Smt. Rana to file a false case of sexual harassment on 13.01.2018 against

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Shri Panda. Smt.Rana was assured that she could not only retain the quarters but also her job would be regularized as administration would succumb to her demand. The Respondent submitted that this was a false complaint. The Office was almost destabilized by the anti office activities of Shri Sarangi. As such, being frustrated, the entire staff of the office prayed before the CMPF, Commissioner for his transfer. Shri Sarangi was then transferred by Commissioner, CMPFO to Bhubaneswar which is a place close to his home town and was allowed a chamber without much work, but he represented to return to RO, CMPF, Sambalpur which was also considered by the competent authority within a month with sympathetic ground, he being a person with disability. Shri Sarangi used to bring false allegations against senior officers, if they do not fall in his trap. A warning letter was issued to Shri Sarangi, Sr. SSA for his omission and commission as per direction of CMPF Commissioner.

3. The complainant vide his letter dated 31.03.2020 submitted that the averments in the first para of Respondent's reply dated 31.01.2020 is false, frivolous and fabricated as her husband had worked under Shri Upendra Panda without any complaint for more than three years from April 2015. Shri Panda never issued memorandums to her husband prior to the complaint of sexual harassment of women at workplace against Shri Panda. The complainant submitted that there is no nexus between her husband and Smt. Pramila Rana.

Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

5. The following persons were present during the hearing ;

1. Ms. Madhusmita Sarangi, the complainant heard on telephone.
2. Mr. Hari Pachauri, Regional Commissioner, CMPFO, on behalf of the respondent.

Both the parties were heard.

6. The complainant stated that her husband a person with disability is being harassed and humiliated by his office colleagues from time to time. She did not seek any transfer out of office or any other relief apart from ensuring that the harassment should stop.

7. The respondent explained that there was no such harassment in the small office in which the complainant was working and the entire staff of 18 members was working like a family. He further expressed that this complaint was motivated as the complainant wanted that some violations of rules & regulations may not be reported to higher authorities in CMPFO.



8. In view of the above said, this Court recommends that the Commissioner, CMPFO may ensure that both the complainant and the Regional Commissioner and other officials at Sambalpur may be counseled appropriately by the Head Office, so as to sort out the differences and preventing any harassment or humiliation to any person with disability.

9. The case is disposed off.

Date : 13.10.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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सत्यमेव जयते

5/2/19

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. 11257/1022/2019

Complainant : Shri Patimidi Rajeshwar Reddy, Assistant Geophysicist, Geophysics Division,
Geological Survey of India, North Eastern Region, Rynjah, Shillong-793 006.

Respondent : The Director General, Geological Survey of India, Ministry of Mines, 27, Jawaharlal
Nehru Road, Kolkata - 700 016.

Gist of Complaint:

Shri Patimidi Rajeshwar Reddy submitted that he has been working as Senior Technical Assistant, a Group 'B' post in Geological Survey of India's Hyderabad office since 06.01.2012. He was selected through Staff Selection Commission under PH category. He was promoted to the post of Assistant Geophysicist on 06.08.2018. Without considering his disability, he was transferred from GSI, SR. Hyderabad to GSI, NER, Shillong on 15.06.2019. He submitted that it would be very difficult for him to work at such a high altitude in Shillong. He has requested to exempt him from rotational transfers.

2. The Deputy Director General (HRD), Geological Survey of India vide letter dated 09.08.2019 submitted that Geological Survey of India (GSI) has more than 3000 Gazetted Officers posted under different streams including technical as well as non-technical stream. The transfer and posting of these Officers are done based on the guidelines of the extant Transfer and Placement Policy for Group 'A' and 'B' Officers dated 27.07.2016. It has made provision to protect the interest of the Officers as well as department as a whole and was framed as per the guidelines issued by DoP&T from time to time. Apart from the other guidelines contained in the Policy, the Competent Authority has been empowered vide Para no. 11 to post any Gazette Officer in any of the offices of GSI based on the functional requirement & domain expertise.

The transfer of Shri Patimidi Rajeshwar Reddy, Assistant Geophysicist from RHQ, SR, Hyderabad to NER, Shillong is an outcome of the above para. He has been transferred purely based on the functional requirement. So far as the OH status of the Officer is concerned, the competent authority declined to approve the request of the Officer to cancel his transfer in question due to the following reasons, which may otherwise be termed as 'administrative constraints.

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3. The Complainant submitted that keeping in view his disability and the guidelines issued by the DoP&T, he had requested the competent authority for cancellation of his transfer from Hyderabad to Shillong. However, the competent authority declined his request. He submitted that if there is acute shortage of work force at GSI, Shillong to take up all the approved projects of FS 2019-20, then why the officers have been transferred from NER, Shillong to Hyderabad. If there are more than sufficient officers in Hyderabad as per the project-man power scenario of FS:2019-20, the complainant is questioning the Respondent then why the six officers from other places (GSI, M&CSD), Vishakhapatnam and GSI, RSAS, Bangalore) were deployed as SR, Hyderabad for FS 2019-20

Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 01.10.2020.

5. The following persons were present during the hearing.

- 1) None for the complainant.
- 2) Ms. Niharika Jha, Dy. Director (HR) & Mr. Venu Behera, on behalf of the Respondent.

6. The complainant a 50% orthopedically disabled employee of Geological Survey of India has been requesting for cancellation of his transfer from Hyderabad to Shillong on accounts of difficulties in managing the terrain and climate of Shillong. The respondent stated that the request of the complainant as per their policy and functional requirements cannot be acceded to and orthopedic disability cannot be accepted as a reason for effecting transfer. The respondent further stated that there is acute need of Geophysicist in every region of the organisation and that was the reason of posting Shri Reddy at Shillong.

On inquiry, the respondent informed this Court that earlier they did not have a record on disability of the candidate and thereafter COVID-19 situation has prevented them from considering the case of the complainant. The respondent further stated that there were 200 Geophysicist at present in the organization.

Observation/Recommendations:

7. The rule position in respect of transfer of persons with disabilities as per the Rights of Persons with Disabilities Act, 2016 is as under:

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

....3/-



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

8. The respondent are recommended to accept the request of the complainant and post him out of Shillong to a place close to his home town from where he can function efficiently and effectively for a long period of time.

9. The case is disposed off.

Date : 13.10.2020


(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:11331/1014/2019

Complainant: Shri Nand Kishore
E-mail: <nandknifm@gmail.com>

Respondent: The Secretary, Reserve Bank of India, 16th Floor, Central Office Building, ShahidBhagat Singh Marg, Mumbai – 400001
E-mail: <recruitment@rbi.org.in>

Complainant: 60% locomotor disability

GIST of the Complaint:

Complainant Shri Nand Kishore, Sr. Library Information & Assistant in National Institute of Financial Management vide complaint dated 10.07.2019 submitted that as of 01.07.2018, he was having 6 years and above experience; therefore, he had applied for the post of Assistant Librarian. But RBI Services Board did not shortlist him.

2. The matter was taken up with the Respondent vide letter dated **22.07.2019** under Section 75 of the Rights of Persons with Disabilities Act, 2016.

3. In response, General Manager, Reserve Bank of India vide letter dated **30.08.2019** submitted that as per the advertisement for the post of 'Asst. Librarian' in Grade 'A', three years professional experience in a Library under Central/State Government/Autonomous or Statutory Organization/PSU/University or Recognized Research or Educational Institution or any major automated library was essential for the post. No vacancy (current or backlog) was reserved for PwBD category and the Board had raised the minimum experience from 03 years to 05 years in order to restrict the number of candidates to be called for interview, commensurate with the number of vacancies. They further submitted that Shri Nand Kishore had a work experience of 06 years 4 months 22 days as Sr. Library & Information Assistant in NIFM. This experience was not considered as professional work experience by the Board. Hence, he was not shortlisted for the interview for the said post.

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4. After considering the respondent's reply dated 30.08.2019 and the complainant's rejoinder dated 12.03.2020, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **01.10.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **01.10.2020**. The following were present:

- Mr. Nand Kishore, the complainant.
- Mr. S.D. Bodalkar, AGM, RBI, on behalf of the respondent.

Observation/Recommendations:

5. Both the parties were heard.

6. The respondent informed the Court that in the earlier advertisement, (a) the post was not reserved for persons with disabilities, and (b) they were looking for professional experience at the level of officer only. As the complainant had experience at an Assistant/non-supervisory level, he could not be shortlisted for the said post of Assistant Librarian in RBI.

7. However, the respondents have since reviewed their decision and are now considering candidates with experience in this field at any level. The criteria have been relaxed and interviews have been scheduled in the coming 15 days where the complainant also has been shortlisted for appearing in the interview. The previous process has been cancelled by the RBI.

8. In view of the above, the complainant being satisfied with the reply of the respondent, the case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.10.2020





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. 11332/1022/2019

Complainant : Shri Gautam Waman Gaikwad, Postal Assistant, Shivajinagar Post Office, Pune-411 005

Respondent : The Postmaster General, Pune Region, Pune-411001

Disability: 100% visually impaired

Gist of Complaint:

Shri Gautam Waman Gaikwad vide his complaint dated 06.07.2019 submitted that the Postmaster General, Pune has reinstated him w.e.f. 08.12.2016 due to the intervention of this Court earlier. He had served for 23 years in the Postal Department. He was posted as PA at Shivajinagar S.O., Pune. Now the complainant has submitted that he has been transferred to Pune City H.O. and directed to relieve him from 10.07.2019 to join Pune City H.O. He made a detailed representation and sent to the Sr. Suptd. of Post Office, Pune City, West Division mentioning the difficulties and obstacles he has been facing while attending Pune City H.O. He submitted that Pune City H.O. is situated at the heart of city and during the day time there is always heavy rush of traffic and even normal person cannot move on his road. On 08.12.2016, his wife accompanied him to join the duty. Now he has been going to office alone as his wife had delivered twin babies. He again requested the appointing authority to allow him to continue to work at Shivajinagar S.O. vide letter dated 03.06.2019 but did not get any response. He is facing harassment at the work place. He has requested to cancel the rotational transfer to Pune City H.O.

2. No reply has been received from the Respondent.

Hearing :

3. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

4. The following persons were present during the hearing;

- 1) Mr. Gautam Waman Gaikwad, the complainant.
- 2) Mr. Abhijeet Bansode, Sr. Supdt. of Post Offices alongwith Mr. R.S. Gaikwad, on behalf of the respondent.

Both the parties were heard.

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

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

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5. The complainant who is a person with 100% visual impairment expressed that he had great difficulty in commuting to his present place of posting i.e. Pune City H.O. due to high traffic and fears for his safety.

6. The respondent stated that the complainant was transferred under three years Rotational Transfer Policy of Postmaster General.

7. For the information of the respondent, the rule position in respect of transfer of persons with disabilities as per the Rights of Persons with Disabilities Act, 2016 is as under:

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

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

8. The respondent on being apprised of the rule position stated that since the complainant was posted on the counter job, he had to be shifted in terms of CVC Guidelines as also there was no back office work in the previous office. The respondents were compelled to transfer him to Pune City H.O. The respondent further assured that they are ready to accept the request of the complainant for posting at any other office at which the complainant may find it convenient to function apart from his previous place of posting i.e. Shivajinagar S.O., Pune. In view of this assurance of the respondent, the case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Date : 13.10.2020





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. 11345/1022/2019

Complainant : Shri Rajesh K.R., Postal Assistant, Koodali P.O., Kannur, Kerala – 670 592

Respondent : The Chief Postmaster General Kerala Circle, PMG Junction, Near Planetarium, Thiruvananthapuram, Kerala – 695 033.

Disability: 60% Locomotor disability

Gist of Complaint:

Shri Rajesh K.R vide his complaint dated 12.07.2019 submitted that he has been working as Postal Department at Koodali P.O., Kerala. His both legs were disabled due to polio. He can walk only with the help of two Calipers and two crutches. He has been working as PA at Mamba Post Office and during the rotational transfer in 2019 he was transferred to Koodali P.O., Mamba P.O, 2 kms from his home while Koodali is 12 Kms away from his home. During the rotational transfer, he requested for exemption and to allow him to continue at Mamba P.O., but his request was rejected by the management. He appealed to CPMG Kerala to get the exemption in his transfer. But he was transferred to Koodali on 02.07.2019. He submitted that he registered a complaint in PG Portal on 25.06.2019 vide Regd. No. PMOPG/E/2019/0343243) and the same was closed on 08.07.2019 by saying that as per transfer guidelines, it is not possible to give him exemption. The complainant has requested for his posting at Mamba SO., Kerala.

2. No reply has been received from the Respondent.

Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

5. The following persons were present during the hearing:

- 1) Mr. Rajesh K.R., the complainant.
- 2) Mr. Manoj Kumar, Director, Postal Services, Northern Region, Calicut, Kerala, on behalf of the respondent.

Both the parties were heard.

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6. The respondent informed and the position was confirmed by the complainant that the same matter is pending for a decision before the Kerala High Court in pursuance of an appeal against the decision of Central Administrative Tribunal, Kochi in favour of the complainant.

7. As the matter is sub-judice, the case is disposed off.

Date : 13.10.2020


(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. 11351/1023/2019

Complainant : Shri A. Aswani Pothuraju, Office Superintendent, SSE/P, WAY/O/HPT Main Line, Hospet Post, Bellary Dist., Karnataka – 583201.

Respondent : The Divisional Railway Manager, South Central Railway, Divisional Office, Personnel Branch, Vijayawada – 520 001.

Gist of Complaint:

Shri A. Aswani Pothuraju vide his letter dated 17.07.2019 submitted that he had been appointed as Jr. Clerk during 2001 in UBL division of S.W. Railway(then S.C. Rly.). He has been facing issues as he is living far away from his native place. He applied for Inter railway request transfer in Sr. Clerk's Cadre to BZA Division of S.C.Rly. He had submitted IRRT application dated 06.08.2008. He was informed in reply to his RTI application that his transfer would be considered based on the vacancy position. Later on BZA division accepted the application but the same was not sent to S.W. Railway for further action. Further, BZA reviewed the matter and mentioned that there were no vacancy of Sr. clerk against DR quota to accommodate him. In the same letter Sr. DPO/BZA informed him that his IRRT application had been registered and was in priority no. 1. He had been asked to submit 'Fresh IRRT application' to process the case further. The other employees who had submitted the IRRT application were accepted by his establishment which shows clear negligence and violation of Railway Board guidelines.

2. The APO/Engg, South Central Railway vide letter no. SCR/P-BZA/222/3/EE/IRT/IDT/Vol.I dated 24.10.2019 submitted that Shri A. Aswani Pothuraju had sought Inter Railway request to BZA Division while working as Sr. Clerk on bottom seniority in any department. The CPO/SC vide letter no. SCR/P-HQ/221/EE/IRRT/Clerks dated 05.07.2013 along with the IRRT application of the said employee forwarded to their office advising to review the vacancy position and communicate the approval whether it is possible to accommodate the above named employee as Sr. Clerk in Civil Engineering Department, BZA Division. In reply it was conveyed to Hqrs that there is no vacancy existed in Sr. Clerk in Civil Engineering Department vide their office letter dated 03.09.2013. No communication was received from the Zonal Office in this regard. The competent authority DRM/BZA has agreed to accommodate Shri A. Aswani Pothuraju as Sr. Clerk in Level-5 in Civil Engineering Department, Vijayawada Division as there are vacancies in the category of Sr. Clerk vide letter no. SCR/P-BZA/222/3/EE/IRT/IDT/Vol.I dated 23.10.2019 and the same was sent to DRM(P)Hubli Division for further necessary course of action at their end.

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3. The complainant vide his rejoinder dated 11.12.2019 submitted that as mentioned in Respondent's letter dated 24.10.2019 his establishment once again reviewed his case and accepted his one way request transfer to BZA Division of S.C. Railway. He submitted that acceptance letter sent by DRM/Vijayawada on 23.10.2019 was received by DRM/HUBLI on 04.11.2019, but he was not relieved so far from Hubli Division. He submitted that instead of giving 'high support' to him, his inter railway request transfer was kept pending / neglected for more than 10 years by BZA Division of S.C. Railway. His parent Railway, i.e. Hubli Division of S.W. Railway is not relieving / delaying his transfer. He submitted that since last 10 years, he is living at his place of work alone without his family. Being a person with disability, he was in a very critical position and was finding difficulty in attending to day to day needs alone and he was not in a position to bring his wife to his work place as she has been suffering from mental health issues. He further submitted that all the ministerial staff from his Department who were relieved from Hubli Division of S.W. Railway are juniors to him and their request transfer application were also placed after his IRRT application. Due to the sheer negligence of Railway Administration his request transfer was not effected till date.

Hearing : 01.10.2020

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 01.10.2020.

5. The following persons were present during the hearing.

- 1) Mr. A. Aswani Pothuraju, the complainant.
- 2) Mr. Balaraju, Sr. Divisional Officer, on behalf of the respondent.

Both the parties were heard.

6. The request of the complainant who is 100% locomotor disabled for transfer from South West Railway to South Central Railway is genuine and should be considered by the respondent. The complainant informed that the South Central Railway had conveyed their acceptance for posting him there. However, his parent department i.e. South West Railway is not relieving him though many of his juniors have since been transferred from there. The rule position in respect of transfer of persons with disabilities as per Rights of Persons with Disabilities Act, 2016 is as under:

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

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

7. The Court observes that the complainant has been requesting for this transfer since the year 2008 and it has been more than ten years that his request has not been considered by the respondent.

Observation/Recommendations:

8. This Court recommends that the respondent may transfer the complainant as per his request within a period of three months from the date of receipt of these orders. A Compliance Report may be sent to this office within 90 days of receipt of these orders.

9. Accordingly the case is disposed off.

Date : 13.10.2020


(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. 11419/1023/2019

Complainant : Shri Sandip Janardan Mandlik, Flat No.05, Kapeesh Park Phase-II, Behind Tuljabhawani Mandir, Telco Colony, Talegaon Dabhade Station, Pune, Maharashtra - 410 507.

Respondent : The Food Safety & Standards Authority of India (Through Chief Executive Officer), FDA Bhawan, Kotla Road, New Delhi - 110 002.

Gist of Complaint:

Shri Sandip Janardan Mandlik submitted that he has been working in Food Safety & Standards Authority of India (FSSAI) as a Technical Officer since 17.01.2013. His contract was being renewed along with eligible increments every year. After 31.12.2017, his contract has not been renewed on account of below benchmark evaluation by his reporting officer. He submitted that he has put in almost five years in FSSAI. He has applied against all the posts advertised by FSSAI vide advertisement dated 26.03.2019. He was to give Computer Based Test (CBT) as part of new recruitment process which was scheduled to be held on 24 & 25 of July, 2019. He has done M. Sc in Food Technology from CFTRI, Mysore and is also having almost more than five years of relevant experience on the date of notification of FSSAI (Recruitment and Appointment) Regulations, 2018. He was posted in Delhi during 17.01.2013 to 13.01.2016 and then he was transferred to Mumbai Regional Office where he served from 14.01.2016 to 31.12.2017. The applicant has been issued Show Cause Notice on 28.09.2017 for not doing initial scrutiny of the concerned document properly and for not doing his duty with due devotion/sincerity. The contract agreement of only the complainant has not been renewed beyond 31.12.2017. The complainant has requested for his reinstatement in FSSAI.

2. The Deputy Director, Food Safety and Standards Authority of India vide letter No. E.19020/05/2018-HR/808 dated 04.12.2019 submitted that the complainant was engaged on contract basis as Recruitment Regulations of FSSAI were under preparation. Since his performance as well as his conduct was not found to be upto the mark, the committee did not recommend extension of his contract beyond 31.12.2017. Further, the representations submitted by the complainant against termination of his contract were examined without any prejudice and a

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speaking order was passed by the competent authority on 06.07.2018. The appointment of the complainant was made on contract basis in FSSAI as Technical Officer as the RRs were not available to make regular recruitments. Thus his engagement on contract cannot be treated as regular appointment. So far as his transfer is concerned, it was ordered from Northern Region to Southern Region based on the request made by the complainant and subsequently he was posted to WR, Mumbai. The allegations made by the complainant were found to be baseless. The representations made by him in respect of the irregularities in sampling/inspection were investigated at the headquarter and no concrete substance was found the allegations, made by the complainant. The complainant has also raised the issue of integrity of the Authorised Officer. In this regard, it is clarified that some incriminating information against the AO was brought to the notice of the headquarter. In order to conduct a fair investigation in the matter, AO was transferred from WR, Mumbai to FSSAI headquarter, New Delhi. However, immediately after joining, AO proceeded on leave and also submitted a request for posting him back to WR, Mumbai on familiar grounds. His request was turned down and he was directed to report to the headquarter immediately. The AO complied with the direction and joined duty at the headquarter on 30.07.2018. After joining at the headquarter, AO again made a request for his transfer to Mumbai on the grounds of similar difficulties. The competent authority on re-consideration acceded to his request with the condition that he would not be entrusted with any sensitive work. The complainant has made the allegation of discrimination at the hands of AO but has not submitted adequate proof to support his claim.

3. The complainant vide his rejoinder dated 25.12.2019 submitted that he was engaged in FSSAI on contract basis by signing a Memorandum of Agreement (MOA) between him and FSSAI in which point number 1 of every Memorandum of Agreement whichever signed during complainant's services in FSSAI was described as 'Terms of reference' which clearly states that "the contractual employee will have to discharge the job responsibilities assigned by the authority competent in FSSAI and/or controlling/reporting officer of the contractual employee' and accordingly the complainant had discharged the job responsibilities dutifully from time to time. The complainant was engaged in FSSAI on contract basis on 17.01.2013 but complainant's contract was not renewed beyond 31.12.2017 only on account of below benchmark evaluation by his reporting officer. It has been stated by the Respondent/Competent Authority that the service contract of the complainant was not renewed due to some vigilance/integrity issues, which means either one or more than one or many more vigilance/integrity issues would have been observed by Respondent/Competent Authority against the complainant.



The complainant further submitted that the FSSAI is following the Government of India policy on reservation in services and accordingly provisions have been made in the RRs to extend the reservation benefits to all entitled categories, but when it comes to awarding basic right of allotting compensatory time of 20 minutes for every hour of the examination to the complainant than the abled persons/candidates it was not provided to the complainant. It indicates that FSSAI has not acted free and fair in respect of the complainant and wilfully neglected the complainant's basic right so that the complainant could not be benefitted from the said provision at any point during the said recruitment process of FSSAI. Accordingly, FSSAI deliberately not allotted said compensatory time while writing exam for the post of 'Assistant Director (Technical)', 'Central Food Safety Officer' and 'Technical Officer' whichever advertised by FSSAI through their advertisement vide Advt. No.DR-02/2019 dated 26.03.2019. He submitted that besides harassing the complainant mentally as well as physically, the complainant managed himself to qualify for the first stage of test for the post of Technical Officer and 'Central Food Safety Officer' within the same period of time as like abled persons/candidates whereas the complainant would have definitely obtained marginally higher marks than whatever he has achieved in the said exams if otherwise allotted with stated compensatory time to him/complainant. He submitted that the 'Recruitment Rules (RRs) have been notified on 01.10.2018 merely after a period of nine months post non-extension of contract of the complainant who already have dedicated the important years of his career to the FSSAI. The complainant submitted that he is still fixed on his statement that the consignment of Alkalized Cocoa powder was recommended for rejection but Authorized Officer directed him/to clear it out without raising any objections the complainant shall not follow what he has learned 'DELHI-NR' rather he shall follow what has assigned and directed here in 'MUMBAI-WR'.

Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 01.10.2020.

5. The following persons were present during the hearing.

- 1) Mr. Sandip Janardan Mandlik, the complainant.
- 2) Mr. R.K. Jain, Executive Director, FSSAI, on behalf of the respondent.

Both the parties were heard.



6. The contention of the complainant was that because of his 80% locomotor disability his APAR was under-evaluated by his supervising officer. Further he did not follow the directions of his supervisor which were contrary to the rules of FSSAI, which caused antagonism and bridge in the supervisory officer leading to termination of his contract on 31.12.2017 after five years of working in FSSAI. He further stated that the inquiry/investigation which was conducted in this matter was done by the same supervisory officer and as such it was not a fair investigation. He was not given a chance to present his version of the matter to the respondent.

7. The respondent stated that there was no discrimination on the grounds of disability and the contract was terminated because it was found that the complainant did not do due diligence in a particular case of consignment which was to be rejected out rightly. As per the respondent, the case was investigated properly and decision to terminate the contract was taken at the level of Chief Executive Officer of the organisation.

Observation/Recommendations:

8. After hearing the submissions of both the parties and noting that the complainant is a technically qualified person though suffering from 80% locomotor disability and has worked for five years in the respondent's organisation. Giving the benefit of doubt to the complainant that the principle of natural justices was not followed in the investigation conducted by the respondent in terms of provision of Section 2(y) of the Rights of Persons with Disabilities Act, 2016 quoted as under:

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

9. This Court recommends that the respondent may give another opportunity to the complainant to present his case and consider for continuation of his contract, if found appropriate.

10. The case is accordingly disposed off.

Date : 13.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11583/1022/2019

Complainant : Shri N. Sridhar, No.15E, V.O.C 5th Cross Street, Kaikankuppam, Valasaravakkam, Chennai – 600 087.

Versus

Respondent : Chennai Petroleum Corporation Limited (Through the Chief General Manager (HR & Legal), 536, Anna Salai, Teynampet, Chennai – 600 018

Gist of Complaint:

Shri N. Sridhar, vide his complaint dated 23.09.2019 submitted that he is working as Manager in Chennai Petroleum Corporation Limited (CPCL) in Chennai. He has been promoted from the cadre of Manager of Maintenance Department to the post of Senior Manager. In his promotion order his placement was mentioned at Delhi Liaison Office. He submitted that this is injustice which will disturb him as he may not be able to take care of his son, a person with 50% disability. His son is pursuing 3rd year MBBS Course from a Government Medical College under Disability quota. He submitted that as per the policy of the government, he should have been treated under special provisions and should not have been transferred to any other location other than where his family resides. His daughter is studying in 11th standard. He submitted an application to the Chief General Manager (HR), CPCL to reconsider his posting and place him at Manali Refinery, but his request was rejected. Rather than considering his case under special provisions and post him to work at Refinery Chennai, the management took a decision to withdraw his promotion. The complainant has requested to intervene in the matter and uphold his promotion and to place him at Chennai so that he can continue taking care of his son with disabilities.

2. The Chief General Manager (HR & Legal), Chennai Petroleum Corporation Limited vide his letter no. HRD:05:802389 dated 03.12.2019 submitted that they had introduced a robust Performance Management System, namely electronics Performance Management System (e-PMS) in their company in 2008-09 and all officers have been using the e-PMS since then. The e-PMS has a provision for recording the mobility constraints by the officers during the self-appraisal phase. If an officer records 'Yes' for mobility constraints, the system asks for reasons like

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

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

Dependents' education health and number of years etc.. As per the Promotion Policy, the promotion from Grade 'C' to Grade 'D' is vacancy based and the DPC select the candidates who are found suitable for that post. The Officer promoted under a particular vacancy had to occupy that position. As Shri Sridhar has not recorded the mobility constraints during the past and also in the last five years in the ePMS including the disability of his son, the details of his mobility constraints were not provided to DPC. The Respondent referred to the Clause SI. No.6.0 (ii) and (iii) of the Transfer Policy that stipulates that if an Officer on promotion is transferred to another location and does not join the new location within the specified date, the promotion shall become null and void and the Officer will not be considered for promotion for the next two years. The Management has the discretion to transfer any Officer to any location considering the operational requirement. However, considering the mobility constraint and as per the Special Provision Clause 2.0 V, they have re-considered the posting from DLO to Chennai. In view of complainant's not reporting at DLO, the Promotion Order had to be withdrawn as per the rules.

3. The complainant vide his rejoinder dated 02.03.2020 submitted that till his posting order was released on 23.07.2019, there was not a single occurrence of promotion order along with transfer order in the name of placement outside the place where an employee has been working. His case is the first case after introducing the system of ePMS in the year 2008-09 to release the promotion order with transfer order. As the complainant happened to be the elected Secretary of Chennai Petroleum Officer's Association since the year 2015, he has been engaged in discussion with the management to ascertain the vacancy but it was never spelt out by the management at any point of time that there was a vacancy for Grade 'D' Officer at DLO. Moreover, the promotion was also not offered based on any vacancy at DLO. Placement order was issued for him to report at DLO based on 'post promotion thought' of the management in spite of knowing his son's 50% locomotor disability and pursuing his MBBS degree. The complainant submitted that the disability of his son was informed and has been known to the organisation officially since his birth. He has been availing the medical facility available for the dependants of the employee. He has been availing the facility offered by his organisation since the birth of his son, i.e. 1998. He submitted that it is not fair on the part of the management to mention mobility constraint only in ePMS. He submitted that everyday himself or any one of his family members take care of his son while going to College and back to home. He considered taking care of his son's need as his priority. He could not accept the transfer order to Delhi and for this reason he has been penalized by withdrawing his promotion order and reverted to his old designation.

...3/-



Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

5. The following persons were present during the hearing:

- 1) Mr. N. Sridhar, the complainant alongwith Mr. Vigneswaran, Advocate.
- 2) Mr. Isaac, Dy. General Manager (Personnel), on behalf of the respondent.

Both the parties were heard.

6. Shri N. Sridhar, the caregiver of a disabled son was promoted along with others in 2019 and posted out of Chennai to Delhi. On representing that he needs to continue in Chennai on the grounds of being a caregiver to a person with disability, the respondent stated that he would have to forego his promotion in case he does not join Delhi as per the transfer policy being implemented by the respondent. Accordingly, the complainant was forced to forego his promotion and continue at Chennai.

7. During the hearing, the complainant informed this Court two facts which were confirmed by the respondent:

(a) Complainant was one of the 24 persons who were promoted and out of these 24 persons only one i.e. the complainant was transferred to Delhi. All other 23 transferee officers were retained at Chennai.

(b) Till the date of this hearing, no one had been posted in Delhi against the vacancy caused by not joining of the complainant by foregoing his promotion..

8. With the above two undisputable facts, it is evident that is a clear case of harassment and discrimination to the complainant. He has been singled out for transfer on promotion despite his caregiver situation to be transferred to Delhi. The stand taken by the respondent that they did not know about the position of the caregiver is not acceptable, as the complainant has been working at Chennai office for many years and is availing of all the facilities admissible for a person with disabilities from the respondent.

9. In this respect the rule position as per Department of Personnel and Training, M/o Personnel, Public Grievances & Pensions, Govt. of India O.M. No.42011/3/2014-Estt.(Res) dated 08.10.2018, Para 3.(1) for caregiver are reproduced for information of the respondent:



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"Para 3.(1) – A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints."

10. In view of the position as in Para 7 which shows that there is no administrative constraint and the Rule position in Para 9, the respondent is recommended to restore the promotion of the complainant and retain him at Chennai itself as done in the case of other officers, so as to ensure there is no deliberate discrimination caused against any caregiver of a person with disability.

11. The case is disposed off.

Date : 13.10.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



35



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:11617/1011/2019

वादी

R-23682 श्री सैयद ममनून अख्तर, महासचिव, ब्लाइंड वेलफेयर एसोसिएशन,
मकान नं: 56, गालिब बाग, गली नं: 13, जीवनगढ़, अलीगढ़।
ई-मेल <blindwelfareassociation2013@gmail.com>

प्रतिवादी

R-23683 रजिस्ट्रार, अलीगढ़ मुस्लिम विश्वविद्यालय, अलीगढ़, उत्तर प्रदेश।
ई-मेल <registrar.amu@amu.ac.in>

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 21.10.2019 में कहना है कि अलीगढ़ मुस्लिम यूनिवर्सिटी, दिव्यांगता अधिनियम के अनुसार 01 प्रतिशत आरक्षण दृष्टिबाधितों को ठीक ढंग से नहीं दे रही है चूंकि अभी तक केवल 07 दृष्टिबाधितों को Assistant Professor के पद पर यूनिवर्सिटी ने नियुक्त किया है इसके अतिरिक्त 11 दृष्टिबाधितों को चतुर्थ श्रेणी के पद पर नियुक्त किया। प्रार्थी का आगे कहना है कि सन् 2019 में Uni. Teacher के विज्ञापन में दृष्टिबाधितों के लिए 14 पद निश्चित किए गए जिसमें 09 पद ऐसे थे जिसमें दृष्टिबाधित अभ्यर्थी कार्य नहीं कर सकते, प्रार्थी ने निवेदन किया है कि दृष्टिबाधितों के लिए जो ऐसे पद आरक्षित किए गये हैं जिसमें दृष्टिबाधित कार्य नहीं कर सकते, उनकी जगह सामान्य विज्ञापन में ऐसे रिक्त पद दृष्टिबाधित अभ्यर्थियों के लिए आरक्षित किए जाए जिसमें दृष्टिबाधित कार्य करने पर सक्षम है तथा आयु सीमा में छूट व रियायत भी दिव्यांगजनों को दी जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 03.01.2020 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 21.08.2020 के बावजूद प्रतिवादी ने कोई उत्तर/टिप्पण नहीं भेजे, इसलिए सुनवाई दिनांक 01.10.2020 सुनिश्चित की गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 01.10.2020. The following were present:

- Shri Syed Mamnoon Akhtar – Complainant
- Dr. Farooq Hafeez, Assistant Professor on behalf of respondent



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3. The complainant reiterated his point of view and grievances as above. The respondent however, submitted its written version and informed that few positions in Geography, Chemistry, Applied Physics, Computer Engineering, Costume Designing, Pharmacology of these Departments has been reserved under VH category. The said posts in the following subjects has been reserved as per the provision of Notification of M/oSJ&E, GOI No. 16-15/2010-DD-III dated 29.07.2013 i.e. "if a post has duties and responsibilities similar to an identified post, that post should be construed to be identified. The Department and PSUs are free to identify more posts in their organization, over and above this. Further, submitted that due to preparation of Roster Register 2018, in accordance with the PwD Act, 2016 and Roster guidelines of M/oSJ&E some positions of the TGT/PGT has either been eliminated or interchanged to maintain the cyclic procedures provided in PwD Manuals. The brief summary of Roster as under:

Posts	Total strength	4% reservation	VH	OH	HH	e/d	Filled	Vacant
Asstt. Prof.	1066	43	14	18	NA	11 (e)	15	28
Associate Professor	394	16	05	06	NA	05 (e)	Nil	16
Professor	194	08	04	02	NA	02 (e)	01	07
School Teacher	393	16	06	05	NA	05 (e)	Nil	16
Total reserved posts		83	29	31	NA	23(e)	16	67

Observation/Recommendations:

4. After hearing the parties, the respondent is recommended to provide reservation to persons with benchmark disabilities in all vacancies strictly as per DOP&T's instructions contained in OM No. 36035/02/2017 – Estt. (Res) dated 15.01.2018 and the provisions under Section 34 of Rights of Persons with Disabilities Act, 2016:

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

(a) blindness and low vision;

(b) deaf and hard of hearing;



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

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

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness by the appropriate Government from time to time:

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

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

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

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

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

5. Keeping in view the reply submitted by the respondent and taking into considerations of complainant contention towards 1% reservation for persons with visual impairment, this Court recommends that necessary action may be initiated by the respondent under the aforesaid mentioned clauses of the Rights of Persons with Disabilities Act, 2016 and clear the backlog vacancies for persons with benchmark disabilities in general and persons with visual impairment in particular giving 1% reservation so that the vacancies do not lie unfilled for such a long period and the legitimate rights of persons with disabilities are taken care of.

6. The Respondent may also strictly follow the instructions of the Ministry of Social Justice and Empowerment regarding identification of posts for Persons with disabilities.

7. The Case is accordingly disposed off.

Dated: 13.10.2020




(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

Ex 29

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: 11627/1023/2019

वादी

R-23674

श्री सुरेश चन्द्र, उपमण्डल अभियंता, कार्या. प्रधानमहाप्रबंधक दूरसंचार,
भासनिलि, राया टेलीफोन एक्सचेंज, मथुरा - 281204
ई-मेल <suresh.iitd@gmail.com>

प्रतिवादी

R-23675

अध्यक्ष और मुख्य प्रबंध निदेशक, कॉर्पोरेट कार्यालय, भारत सरकार निगम
लिमिटेड, एच.सी. माथुरा लेन, जनपथ, नई दिल्ली - 110001
ई-मेल <cmdbsnl@banl.co.in> <bsnlestt.3@gmail.com>

वादी

40 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह वर्तमान में भारत संचार निगम लिमिटेड, मथुरा एसएसए के ग्रामीण क्षेत्र राया एसडीसीए में उपमंडल अभियंता पद पर तैनात है तथा पिछले 07 माह से उनसे सरकारी वाहन की सुविधा हटा ली गयी है जबकि अन्य कार्यालयों में वाहन सुविधा जारी है। प्रार्थी का आगे कहना है कि वह पूर्व में ही अपना ग्रामीण कार्यकाल पूर्ण कर चुके हैं फिर भी उन्हें जबर्दस्ती पुनः ग्रामीण सेवा हेतु स्थानांतरण कर दिया गया है। प्रार्थी का आगे कहना है कि उन्हें उच्चाधिकारी द्वारा शारीरिक एवं मानसिक रूप से टोर्चर किया जा रहा है

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 12.12.2019 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 24.08.2020 के बावजूद प्रतिवादी ने कोई उत्तर/टिप्पण नहीं भेजे, इसलिए सुनवाई दिनांक 06.10.2020 सुनिश्चित की गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 06.10.2020. The following were present:

- Mr. Suresh Chandra, the complainant.
- Mr. Anil Kumar, G.M. (HR), BSNL, UP West & Ms. Krishna Verma, BSNL, Mathura, on behalf of the respondent.

Observation/Recommendations:

3. Both the parties were heard.

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4. The complainant expressed the following four grievances:

- (i) Being humiliated, beaten up and abused by one Shri Jagmohan Meena in the presence of Shri Suryakant Agarwal, Chief General Manager in his office.
- (ii) Fear of life and safety and constant monitoring of his daily movement by Shri Suryakant Agarwal.
- (iii) Imposing the penalty of dies-non with break in service and consequent non-payment of salary without hearing the version of the complainant.
- (iv) Removal of government vehicle since last seven months.

5. Regarding the grievance at 4 (iv) the Respondent informed that the government vehicle have been reduced in number as per the policy decision taken in the organisation and the withdrawal of vehicle is not only for the complainant, but for other officers also.

6. Regarding 4(i) and 4 (ii) the respondent stated that they had no knowledge of any such incident of violence against the complainant as the complainant did not report this incidence which happened on 21.08.2019 to any higher authorities in BSNL.

7. This Court notes that the documentary evidence enclosed with the complainant's complaint shows that he has indeed informed the administration department seeking security for his life vide his letter dated 22.08.2019. Hence, the stand taken by respondent of being ignorant about any such happening is not found to be true.

8. Regarding 4(iii), it also appears that the principles of natural justice have not been followed as the Respondent maintained the stance that they have no role to play in such administrative action taken by the immediate supervisor.

9. This Court further notes that the respondent has failed to respond to the communications of this Court dated 12.12.2019 and 24.08.2020. On being asked as to why the respondent did not reply to these communications, a very casual reply from the GM (HR) Mr. Anil Kumar was made that perhaps they have sent the reply to Lucknow. The officers representing the Respondent did not take the trouble of preparing for the hearing by



examining all the facts of the case at hand. It is a very sad state of affairs that BSNL takes the Court of Chief Commissioner for Persons with Disabilities so lightly and does not bother to address the grievances of its employees with disabilities.

10. This Court brings to the notice of the respondent the legal position in the Rights of Persons with Disabilities Act, 2016 as under:

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

Section 7.(1) – The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall –

- (a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;
- (b) take steps for avoiding such incidents and prescribe the procedure for its reporting;
- (c) take steps to rescue, protect and rehabilitate victims of such incidents; and
- (d) create awareness and make available information among the public.

Section 21.(1) – Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

- (2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

Section 23.(1) - Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer.

- (2) Any person aggrieved with the non-compliance of the provisions of section 20, may file a complaint with the Grievance Redressal Officer, who shall investigate it and shall take up the matter with the establishment for corrective action.



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(3) The Grievance Redressal Officer shall maintain a register of complaints in the manner as may be prescribed by the Central Government, and every complaint shall be inquired within two weeks of its registration.

(4) If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability."

11. The respondent shall take cognizance of the complaint dated 04.11.2019 made to this Court and inquire into the whole matter afresh including the beating incident and the imposition of Dies non, diligently following the due procedure. The incharge officer of BSNL, Mathura should also ensure that no person with disability including the complainant is treated badly by colleagues or superiors in his office. The name and all contact details of the Grievance Redressal Officer may be supplied to the complainant immediately.

12. The complainant is also advised to approach the Session Court in case of abuse and violence as per Sections 89 & 92 of the Rights of Persons with Disabilities Act, 2016 which states as under:

"Section 89. – Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Section 92. Whoever, -

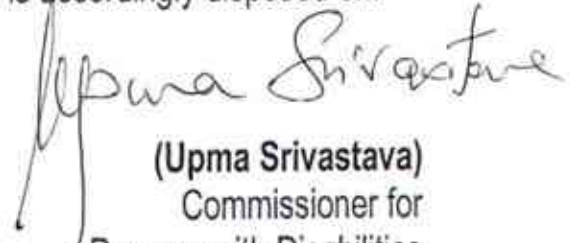
- (a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view;
- (b) assaults or uses force to any person with disability with intent to dishonor him or outrage the modesty of a woman with disability;
- (c) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her;
- (d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;
- (e) voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability;
- (f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability,



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(g) shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

13. A compliance report on action taken in pursuance of Para 10 above may be sent to this Court within 90 days of receipt of these orders. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.10.2020





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. 11647/1024/2019

Complainant : Shri S. Muthusivam, Flat No.1C, Charukesi Block, Doshi Symphony Housing Complex, 129, Velachery, Tambaram Main Road, Pallikaranai, Chennai-600100.

Respondent : Kendriya Vidyalaya Sangathan (Through The Commissioner), 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi – 110016.

Gist of Complaint:

Shri S. Muthusivam, a person with 60% locomotor disability vide his letter dated 14.11.2019 submitted that he retired as Deputy Commissioner(Finance) from Kendriya Vidyalaya Sangathan, New Delhi on 31.12.2017. KVS issued orders after his retirement on 03.01.2018 due to which his pay was revised retrospectively from the post of Accounts-cum-inspecting Officer(AIO) and up to the post of Deputy Commissioner(Finance) till the date of his retirement that is 31.12.2017. It also effected recovery of Rs. 6,80,454/- being an alleged excess withdrawal of pay and allowances from his gratuity amount of Rs. 10,00,000 on 14.05.2018 that is after his retirement.

2. The Respondent vide letter dated 24.02.2020 submitted that the complainant Shri S. Muthusivam submitted that KVS vide letter dated 11.07.2011 has accorded their approval for extending the benefit of fixation of pay under Fundamental Rule 49 of Shri S. Muthusivam who had been working as Accounts Officer at KVS, HQ, New Delhi for holding the additional charge of Accounts-Cum-Inspecting Officer in addition to his duties as Superintendent of Accounts at Regional Office, Mumbai for the period from 01.09.1989 to 15.08.1993. The matter was examined and it was found that after end of the period from 01.09.1989 to 15.08.1993, on 16.08.1993 his salary was fixed on the same basic pay on which he was working. On the approval of the competent authority on 01.09.1989, his salary had been again fixed as per Rule which had been done earlier before his retirement, i.e. 31.12.2017. Therefore, recovery of Rs.6,80,453/- was made from his Gratuity. On his application dated 15.05.2018, the competent authority found that earlier his pay fixation was wrongly done which was corrected by their O.M. dated 29.12.2017 and accordingly the complainant was informed vide office letter dated 24.10.2018.

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3. The complainant vide his rejoinder dated 21.07.2020 submitted that KVS has concealed the fact about the Pay fixation and arrear benefits extended to his senior Shri B.S. Nagaraja, Dy. Commissioner Finance (Retd.) in 2012. He got atleast 05 incremental benefits and consequent benefit of Pension till today. He may be drawing higher rate of pension of approximately Rs.5,000/- p.m.. KVS has taken no action till date for revision of either his Pay or pension. He submitted that if his pay revision is correct, then his pay also needs to be revised retrospectively including pension. KVS has also failed to mention in its reply about the refund or otherwise regarding the irregular recovery of 6.80 lakhs from his DCRG that too four months after his retirement. He retired on 31.12.2017. He submitted that KVS effected similar type of recovery from one Mrs. Cicily Ealias, ASO, Kendriya Vidyalaya Sangathan, RO Ernakulam in Novemebr 2016 (retirement month) and later on with the intervention of Hon'ble CAT Ernakulam (O.A. No.180/00228/2017-dated 11.07.2017(Z) and Hon'ble High Court of Kerala at Ernakulam (OP(CAT) No.249 of 2017(Z) dated 26.10.2017, the recovered amount was refunded by KVS to the aggrieved person after Judgment of Hon'be High Court of Kerala. This has also been concealed in the Respondent's reply dated 24.02.2020.

Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 01.10.2020.

5. The following persons were present during the hearing.

- 1) Mr. S. Muthusivam, the complainant speaks on phone.
- 2) Mr. Anurag Bhatnagar, Asstt. Commissioner (Estt.I) and Mr. A.K. Srivastava, Asstt. Commissioner (Fin.), KVS, on behalf of the respondent, but could not connect due to technical reasons.

Observation/Recommendations:

6. The Court observes that this is a fit matter to be taken up by the complainant in appropriate Central Administrative Tribunal.

7. The case is disposed off.

Date : 13.10.2020



Upma Srivastava
(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. 11661/1024/2019

Complainant : Shri Deepak V. Bhagade, Flat 1/Type-3, BSNL Quarters, Malviya Nagar, Khamla, Nagpur, Maharashtra - 440 025

Respondent : Department of Personnel & Training (Through the Secretary), Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi - 110 001.

Disability: Child suffering from 70% Autism.

Gist of Complaint:

Shri Bhagade submitted that his child is suffering from 70% severe Autism. His wife has taken up a course in Autism so that she can render the required services not only to her son but also to others suffering from Autism. She has been pursuing her D. Ed in Special Education (ASD) from New Delhi w.e.f. July 2019. Shri Bhagade works as a Junior Engineer with BSNL at Nagpur. In June 2019, he requested the Board of Directors, BSNL for grant of Child Care Leave so that he could look after his child in his mother's absence. As per DoP&T's Notification dated 11.12.2018, CCL is available for single male government servant. The notification defines Single Male Government Servant as an unmarried or widower or divorcee Government Servant. His representation was rejected by his establishment citing the reason that he is 'not a single male government servant' and hence not covered under the existing provisions. He further submitted that BSNL has rolled out a VRS package for its employees who are 50 years and above. Here also he falls short by 2 years. Otherwise he would have opted for VRS to care for his child. He submitted that over all these years, he has drained of his resources and is therefore unable to hire any help.

2. No reply has been received from the Respondent.

Hearing :

3. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

4. The following persons were present during the hearing:

- 1) Mr. Deepak V. Bhagade, the complainant on telephone.
- 2) Mr. Rajendra Prasad Tewari, Under Secretary, DoP&T, on behalf of the respondent.

Both the parties were heard.

5. The Court noted that as per Department of Personnel & Training, Govt. of India, the employees of BSNL are not Central Government employees and hence the Board of Directors/Governing Body of BSNL can take a decision in this respect.

6. Observing that Shri Bhagade is a single caregiver of a child suffering from 70% severe Autism, that he has no resources to hire a trained /specialized full time help and that the mother of the child is pursuing D.Ed in Special Education at Delhi to enable her to understand her child better, the respondent may consider one of the following interventions to reasonably accommodate the complainant:

(a) Allow the complainant to work from home as a special case for a period of two years till the complainant become eligible for applying for VRS.

(b) Offer VRS to the complainant two years earlier as a special case.

(c) As no due leave is available with the complainant, consider granting him Child Care Leave as a special case.

7. Any one of the options may be exercised by the BSNL taking into consideration the difficult situation of the complainant and help him in raising his child.

8. The case is disposed off.

Date : 13.10.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities





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. 11670/1032/2019

Complainant:

Shri Gautam Lenka, P-6, Ocean Complex,
502, Noida Sector-18, Noida - 201301
District – Gautambuddh Nagar (UP)
Email – gautamlenka1978@gmail.com

Respondent:

Additional Commissioner (Acad), Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi – 110016; Email – kvs.addicacad@gmail.com

....Respondent No.1

Dy. Commissioner, Kendriya Vidyalaya Sangathan,
Regional Office, Agra, KV No. 2 Agra Cantt Campus,
Grand Parade Road, Agra Cantt., Agra – 282 001 (U.P.)
E-mail : dckvsroagra@gmail.com

....Respondent No.2

Principal, Kendriya Vidyalaya, Sector-24, Noida-201301,
Gautambuddhnagar (UP); Email: kvnoida02@gmail.com;

....Respondent No.3

Gist of Complaint

The complainant filed a complaint regarding providing free books, dress, shoes, transport etc. to his son, Master Manish Lenka, a child with 75% visual impairment, who is studying in Class-III (Section A) at Kendriya Vidyalaya, Sector-24, Noida, District-Gautambuddhnagar (UP) in terms of Section 17(g) of the Rights of Persons with Disabilities Act, 2016.

2. The matter was initially taken up with the Kendriya Vidyalaya Sangathan, Agra Region (KVS Agra Region) and with the Kendriya Vidyalaya, Noida (KV Noida). KVS Agra Region vide their reply dated 06.02.2020

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submitted that no detailed guidelines have been issued by KVS (Headquarters), New Delhi for providing facilities under Section 17(g) of the RPwD Act, 2016. KVS Agra Region vide reply dated 27.08.2020 further submitted that as per the letter dated 26.08.2020 received from KVS (Headquarters), New Delhi, this matter is under consideration to decide a policy/guidelines before the competent authority in the Ministry of Education. After receipt of the approval from the Ministry of Education, the policy/guidelines can be issued in this regard. KVS (Headquarters) had sought two months time.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 01.10.2020. The following were present:

- (1) Mr. Gautam Lenka, the complainant.
- (2) Mr. Mukesh Kumar, Principal, KVS, Noida alongwith Mrs. Indira Mudgil, Assistant Commissioner, KVS, on behalf of the respondent

Observation/Recommendations:

Both the parties were heard.

2. The complainant's case was regarding provision of free books, transport, uniform etc. to children with disabilities. This was in the context of his son studying in Class-III in KVS, Noida and suffering with 75% visual impairment.

3. The respondent explained that in KVS at present children with disabilities studying in Class-I & II are not charged any fee and children from Class-III onwards are charged only Rs.100/- per month as computer fee. The respondent further explained that under the Right to Education, 25% of students belonging to SC/ST/OBC/PwD/EWS children are admitted in Class-I to VIII and are provided free of cost books etc. At present there was no other policy in KVS to provide for any other free of cost facility to children with disabilities.



4. The respondent are directed to note the provisions of Section 31(1) & (2) of Chapter-VI of the Rights of Persons with Disabilities Act, 2016 which are reproduced as under:

"31.(1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

(2) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years."

5. Further they are also directed to note the provision of Section 17(g) & (k) of Chapter-III of the Rights of Persons with Disabilities Act, 2016, which states:

"17(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years.

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

6. In view of these specific provisions of the Rights of Persons with Disabilities Act, 2016, the respondent are recommended to provide free education and books, learning materials, uniform etc. to all students with benchmark disabilities up to the age of eighteen years.

7. The case is disposed off.

Dated: 13.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11674/1141/2019

Complainants:

Shri Virender Kumar,
a person with 64% locomotor disability (Lower limb) &
Shri Kamal Deep, a person with 75% Cerebral Palsy,
(both students of University of Delhi)
A-112, J.J. Colony, Sector-7, Dwarka,
New Delhi – 110075; Email: viren555566@gmail.com;

Respondent:

The Managing Director,
Delhi Metro Rail Corporation Ltd.,
Metro Bhawan, Fire Brigade Lane,
Barakhamba Road, New Delhi-11000;
Email: mdmetro@dmrc.org

Gist of Complaint

The above named complainants, both students with disability, filed a joint complaint dated 14.11.2019 under the Rights of Persons with Disabilities Act, 2016 requesting that Delhi Metro Rail Corporation should consider providing free ride to persons with disabilities and if not possible then provide some concession in fare.

2. On taking up the matter, Delhi Metro Rail Corporation Ltd. [DMRC] in their reply dated 19.02.2020 submitted that the fares of Delhi Metro are decided by a Fare Fixation Committee (FFC) constituted by Government of India under the provision of the **Metro Railway (Operations and Maintenance) Act, 2002**. Under this Act, the fare structure recommended by the FFC is binding on DMRC and DMRC has no right to change the fare structure as decided by the



Page 1 of 2

FFC. As per the fare structure decided by FFC, the DMRC passengers having Smart Cards are given 20% concession in fare.

3. The complainants in their rejoinder dated 14.09.2020 have submitted that DMRC should recommend the FFC for providing some special discount in fare for passengers with disabilities.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **06.10.2020**. The following were present:

- (1) Mr. Virender Kumar & Mr. Kamal Deep, the complainants
- (2) Gp. Capt. S.V. Kute, General Manager, DMRC, on behalf of the respondent

Observation/Recommendations:

Both the parties were heard.

2. The respondent informed that decisions about fare in Delhi Metro are as per the recommendations of the Fare Fixation Committee set up under the Delhi Metro Railway (Operation and Maintenance) Act, 2002. This Committee is constituted by the Ministry of Housing and Urban Affairs and serviced by Delhi Metro.

3. This Court recommends that Delhi Metro Rail Corporation Ltd. may place the agenda of a favourable decision for persons with disabilities in Delhi Metro for its favourable recommendation.

4. The case is disposed off.

Dated: 13.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner
for Persons with Disabilities

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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: 11693/1024/2020

Complainant: Shri Chandrakant C Mistra, R/o B - 20, Sahakar Nagar, Near Satya Sai Baba Temple, Mahakali Caves Road, Andheri (East), Mumbai - 400093
E-mail: cmishra846@gmail.com

Respondent: The Additional Commissioner of Income Tax (HQ), Personnel, O/o Principal Chief Commissioner of Income Tax, 3rd Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400020
E-mail: MUMBAI.dcit.hq.pers@incometax.gov.in

Complainant 59% locomotor disability

GIST OF THE COMPLAINT:

Complainant suffers from disability of Permanent nature which is an undisputed fact. In spite of this fact the percentage of his disability has been determined differently 6 times. He was appointed against the vacancy reserved for PwDs. Certificate of Disability produced by him at the time of appointment described his disability as exceeding 40%. Later on, same institute which certified his disability percentage as exceeding 40% certified his disability as 25%, and 30% on different occasions. Other institutes, defined his disability percentage as 40%, 50% and 59%. Complainant also claims that he holds UNIQUE DISABILITY ID, as per which his disability percentage is 59%.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.10.2020. The following were present:

1. Complainant: Complainant in person; Adv. Rajeev Kumar
2. Respondent: None for the Respondent

RELIEFS SOUGHT:

1. Restoration of Disability Status.
2. Refund of Disability Allowance deducted from the salary of the Complainant.

OBSERVATION & RECOMMENDATIONS:

Section 2(t) of the Persons with Disability Act, 1995 defined 'person with disability' as a person suffering from not less than 40% disability as certified by the medical authority. Further Section 2(p) of the same Act defined 'medical authority' as any hospital or institution specified as such by the appropriate government.



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RPwD Act, 2016 defines term Persons with Benchmark Disability in Section 2(r) as a person suffering from not less than 40% disability as certified by the certifying authority. Section 2(e) defines certifying authority as authority designated as such under Section 57. Further, Section 57 empowers appropriate government to designate a person as certifying authority.

Hence, apart from numbers, definition of PwD in both Acts is same, i.e. person with more than 40% disability certified by the certifying authority (2016 Act) or medical authority (1995 Act).

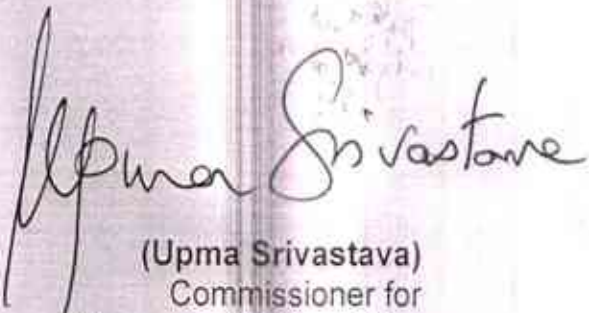
Therefore, it is certain from relevant provisions of both the Acts that certifying authority/medical authority is the competent authority to determine percentage of disability.

In the present case, Complainant was appointed against the post reserved for PwDs. Hence, the disability certificate he produced at the time of appointment must have been issued by the competent authority. Respondent has failed to present any legal provision or rule or regulation or by-law which enables the Respondent to conduct 'Post Offer Functional Employment Test'. It is absurd that the Complainant is subjected to disability test again and again.

Hence this court makes following recommendation :-

- a. Respondent shall restore the disability status of the Complainant.
- b. Respondent shall restore the Disability Allowance of the Complainant.
- c. Respondent shall refund the amount of Rs. 15,600/- which was recovered from the salary of the Complainant by Certificate dated 30.05.2012.

The case is accordingly disposed off.


 (Upma Srivastava)
 Commissioner for
 Persons with Disabilities





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Extra 3

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: 11766/1021/2020

Complainant: Shri Anil Biswas, House No. D - 37, P - 3 Sector, Greater Noida - 201310

R.2367

E-mail: <pbiswas182.pb@gmail.com>

Respondent: The Chairman & Managing Director, Engineers India Ltd, El Bhavan, 1, Bhikaji Cama Place, New Delhi - 110066

R.2367

E-mail: <gopa.pradhan@eil.co.in> <subhendu.jena@eil.co.in>

Complainant: 46% locomotor disability

GIST of the Complaint:

Complainant in his complaint submitted that he had joined Engineers India Ltd (EIL) on 07.01.1994 as Senior Engineer (Mechanical) at Construction Site, KBPL, Jaipur and while on duty, he met with a road accident on 23.02.1995 and he became 46% Divyang. Thereafter, he was transferred to EIL Head Office, New Delhi on 24.12.1995 on Medical Ground. He further submitted that he was last promoted in 2012 as Asstt. General Manager (Level 17) which is now re-designated as Dy. General Manager by the Company but his promotion to next level as General Manager (Level 18) has been denied by EIL.

2. The matter was taken up with the Respondent vide letter dated 19.02.2020 under Section 75 of the Rights of Persons with Disabilities Act, 2016.

3. In response, Chief General Manager (HR), Engineers India Ltd vide letter dated 12.05.2020 inter-alia submitted that promotion from Dy. General Manager (Level 17) to General Manager (Level 18) posts are based on the number of vacancies and effected in order of merit-cum-seniority. The merit order is drawn on the basis of appraisal ratings, seniority and assessment by the Promotion Committee. As per Govt. Directives, the criteria for promotion are kept same for all categories of employees including PwD (Divyangjan)



category employees without any discrimination. Shri Anil Biswas joined EIL on 07.01.1994 and he has always been promoted in Minimum Qualifying period upto the post of Assistant General Manager (redesignated to Dy. General Manager). They further submitted that Shri Biswas did not meet the requisite cut-off marks computed based on the ratings of latest three appraisal years, seniority and assessment by the Promotion Committee, he was not recommended for promotion by the Promotion Committee. Shri Biswas had submitted a representation against non-promotion in 2017-18 but the Committee consisting of CMD & Functional Directors did not recommend him for promotion to higher level.

4. After considering the respondent's reply dated 17.08.2020 and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **06.10.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **06.10.2020**. The following were present:

- Mr. Anil Biswas, the complainant.
- Ms. Smitha Sehgal, AGM (Legal), Mr. Subendu Kumar Jena, Sr. Manager (HR) and Ms. Gopa Swain, GM, on behalf of the respondent.

Observation/Recommendations:

5. Both the parties were heard.

6. Primarily the main complaint of the complainant was regarding non-promotion to the post of General Manager on grounds of his appraisal rating being reduced because of his disability.

7. The respondent have stated that Shri Biswas has never submitted representation against reducing his appraisal ratings prior to the time of consideration for promotion and that in the past all promotions of the complainant have been done in the minimum qualifying period. The respondent further expressed that not all officers eligible for promotions are promoted each time, a large number of officers are not recommended by the Promotion Committee on grounds of non-fulfilment of criteria for promotion which is same for all categories without any discrimination for persons with disabilities. During the process of hearing, Shri Biswas raised the following two other grievances:-



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- (a) Not being provided Double Transport Allowance as per revised rates, and
- (b) Being posted at Gurgaon, which is very far from his home Greater Noida and not being considered for posting to a closer office located at Bhikaji Cama Place, R.K. Puram, New Delhi.

8. The respondent stated that the complainant never represented to them regarding difficulties in commuting to Gurgaon and that he was transferred alongwith a group of officers to Gurgaon. Regarding the payment of Double Transport Allowance, the respondent stated that they are awaiting the advice of the Department of Public Enterprises in this matter.

9. The rule position in respect of transfer of persons with disabilities as per the Rights of Persons with Disabilities Act, 2016 is as under:

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

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.

10. The rule position in respect of Double Transport Allowance, as per the Department of Expenditure, Ministry of Finance, O.M. No.21-1/2011-E.II(B0 dated 5th August, 2013 is as under:

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



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11. In view of the aforesaid rule positions, this Court recommends transferring the complainant to Head Office, Bhikaji Cama Place, R.K. Puram, New Delhi and payment of Double Transport Allowance as per eligibility.

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


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.10.2020



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Extra

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11784/1023/2020

Complainant: Shri Joginder Kumar, House No. 71-P, Sector - 27,
Panchkula, Haryana.
E-mail: joginder.kamboj@rediffmail.com

Respondent: The Chairman, Syndicate Bank, Manipal, Udupai Distt.,
Karnataka
E-mail: lovelywilson@canarabank.com

Disability Percentage: 75% locomotor disability

GIST of the Complaint:

1. Complainant has claimed that he is a permanent employee in Respondent Bank and Bank passed an unlawful unreasonable order dated 01.01.2018, whereby he was suspended. On 26.10.2018, he received letter of imputation of charges. Further, he received detailed charge sheet on 12.01.2019. A detailed inquiry was conducted from 29.07.2019 to 31.07.2019 by the Bank. Subsequently, in consequence of the proceedings, he was punished by reducing two levels of pay scale. Complainant has sought relief to exonerate him from all charges and restore his pay scale after setting aside the punishment imposed upon him.
2. Respondent vide letter 04.05.2020 inter-alia submitted that complainant was always posted at Branch of his choice and punishment was imposed on him after following due process.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.10.2020. The following were present:

1. Complainant: Complainant in Person
2. Respondent: Mr. Manu Pandey, AGM, Canara Bank, H.O.

Both the Parties were heard

OBSEVATIONS & RECOMMENDATIONS:

1. Two main points of contention which emerge after perusal of documents submitted by the both the complainant and the respondent and on the basis argument presented during hearing. First, suspension and second, transfer of the complainant.



Signature

2. Complainant is alleged that he has been wrongly suspended in consequence of unfair disciplinary proceedings conducted against him. He further submits that he made several representations against the suspension order. However, concerned authorities gave deaf hearing and rejection is representations. During the proceedings Respondent submitted that the Complainant can take recourse of filing appeal/review against the suspension Order. It was submitted that such recourse could be taken within 6 months from the date of rejection which was 12.02.2020.
3. Complainant also raised contention that he has been discriminated against because disciplinary proceedings conducted against him were void of principle of natural justice. This court concludes that under light of section 75 of Rights of Persons with Disabilities Act, 2016, it is beyond the jurisdiction parameters of this court to test the correctness and validity by disciplinary proceedings conducted against the complainant.
4. On the issue of filing of appeal/review before higher authority and issue pertaining to transfer, this court recommends following -
 - a. Complainant application before concern authority was rejected on 12.02.2020. As per submissions made during online proceedings, appeal/review could be filed within 6 months from the date of rejection. Considering the extraordinary situation created because of CoVid-19 pandemic and condition of disability of the complainant, this court recommends that 6 months from the date of rejection, i.e. 12.02.2020 shall be waived by the respondent and opportunity shall be granted to the complainant to file reviewing /appeal before the higher authority. Further it is recommended that the concerned appellate/reviewing authority shall decide such appeal/review as per the bank's policy applicable.
 - b. On the issue of transfer, it was informed during the proceedings that presently the complainant is posted in his hometown as per his wish. Therefore, no recommendation is issued on his issue.

The case is accordingly disposed off.


 (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:10630/1014/2018

Complainant: Shri A. Madhab Chandra Patro, At/PO Jagadal Pur (Netaji Nagar), Via
– Nimakhands (Bam), Dist. – Ganjam, Odisha - 761001

R-23759

E-mail: <amadhabchandrapatro@gmail.com>

Respondent: The Director, Swami Vivekanand National Institute of Rehabilitation
Training & Research (SVNIRTAR), Olatur, P.O. Bairoi, Distt. – Cuttack,
Odisha – 754010

R-23760

E-mail: <svnirtar@gmail.com1>

GIST of the Complaint:

Complainant vide complaint dated **26.11.2018** submitted that Director, SVNIRTAR has illegally appointed a person against the post of Pipe Fitter Gr-2.

2. The matter was taken up with the Respondent vide letter dated **06.02.2019** under Section 75 of the Rights of Persons with Disabilities Act, 2016.

3. In response, Director, SVNIRTAR vide letter dated **20.03.2019** has submitted that Sri Madhab Ch. Patro was a candidate for the post of Pipe Fitter Gde-II for which the candidate attended the interview on 16.10.2003. The post was not reserved for PwD and total 10 numbers of candidates attended the interview. As per the selection board proceeding held on dated 16.10.2003 and Sri Pradeep Kumar was selected in the merit list, accordingly, he was issued offer of appointment and he joined on 06.11.2003 in the post of Pipe Fitter Gde-II.

4. After considering the respondent's reply dated **20.03.2019** and the complainant's letter, it was decided to hold a personal hearing in the matter and, therefore, the case was listed for personal hearing on **09.10.2020**.



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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.10.2020**. The following were present:

- Mr. A. Madhab Chandra Patro, the complainant.
- Dr. S.P. Das, Dy. Director, SVNIRTAR, on behalf of the respondent

Observation/Recommendations:

5. Both the parties were heard.

6. The Court noted that the same grievance of the complainant had been heard on 09.08.2007 and orders were passed on 03.09.2007. **A copy of those orders is enclosed with the present orders of this Court.**

7. The respondent expressed that they had no knowledge about the orders dated 03.09.2007, therefore, the question of their implementation does not arise.

8. The Court notes with deep disappointment that an institute which actually deals with rehabilitation of persons with disabilities is so grossly inefficient in maintaining records.

9. This Court in agreement with the orders passed in 2007 recommends that the respondent may implement all the directions as contained in Para 11 a., b., c. & d. of the orders dated 03.09.2007.

10. A compliance report of implementation of directions may be sent to this court within 90 days of issue of these orders.

11. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 14.10.2020





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: 11223/1023/2019

वादी श्री सुनील कुमार, पुत्र श्री रघुनन्दन पासवान, बी - 143, एन.एफ.एल.
टाऊनशीप, बटिडा, पंजाब - 151003
ई-मेल <devisinghbanjara@gmail.com>

प्रतिवादी अध्यक्ष एवं प्रबन्ध निदेशक, नेशनल फर्टिलाइजर्स लिमिटेड, स्कोप
कॉम्पलेक्स, कोर-III, 7 संस्थागत क्षेत्र, लोधी रोड नई दिल्ली -
110003
ई-मेल <kush@nfl.co.in> <cmd@nfl.co.in>

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक रहित में कहना है कि वह सन् 2011 में Tech Gr - V के पद पर नेशनल फर्टिलाइजर्स लिमिटेड, बटिडा में शामिल हुए और तब से ही उच्च अधिकारी उनको कभी CISF कॉलोनी में मीटर रीडिंग के लिए कहते हैं जो कि एक किलोमीटर दूर है और कभी 36 मीटर ऊपर बॉयलर पर चढ़ने का कार्य देते हैं। प्रार्थी का आगे कहना है कि उनको डराया धमकाया जाता है कि सी.आर. खराब कर देंगे, स्थानांतरण कर देंगे।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 20.06.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. प्रबंधक (मा सा), नेशनल फर्टिलाइजर्स लिमिटेड ने ई-मेल दिनांक 01.10.2020 द्वारा जवाब दिनांक 17.09.2019 की प्रति संलग्न की है जिसमें कहा गया है कि श्री सुनील की शारीरिक सीमाओं को ध्यान में रखते हुए, प्रबंधन द्वारा उन्हें बेहतर कामकाजी वातावरण प्रदान किया गया है उन्हें टेंस्टिंग लैब का कार्य सौंपा गया है जिसको वह वातानुकूलित वातावरण में कर रहे हैं और न तो CISF कॉलोनी की मीटर रीडिंग का कार्य सौंपा गया और ना ही कभी बॉयलर प्लांट में पोस्ट किया गया है तथा वर्ष 2018 में उन्हें Engg. Asstt. Gr.III के रूप में पदोन्नत किया गया है।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 09.10.2020. The following were present:

- Mr. Sunil Kumar, the complainant.
- Mrs. Jaya Dikshit, GM (HR), on behalf of the respondent.

(Signature)



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Observation/Recommendations:

4. Both the parties were heard.
5. The complainant informed that though he was been posted in Laboratory of NFL yet from time to time he has given field duties like going to CISF Colony for meter reading, for cleaning the magnetic valve filter of dehydration machine, to climb up to the Boiler Plant, to work on the first floor of Ammonia Plant etc. He is also harassed by his supervisor Shri Gulshan Kumar, Dy. Manager. Because of difficulty in walking, he is unable to perform these duties properly and is humiliated consequently by the supervisors.
6. The respondent expressed that they had no knowledge about these issues raised by the complainant and would definitely look into the grievances empathetically.
7. The rule position regarding reasonable accommodation as per Section 2 (y) of the Rights of Persons with Disabilities Act, 2016 is reproduced as under for information of the respondent:

"Section 2.(y) – "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.
8. In view of the above, this Court recommends that the complainant may be given the work where he could work efficiently over a long period of time at one place.
9. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 14.10.2020



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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. 11227/1023/2019

Complainant : Shri Manish Gautam, Dy. Director (Legal), Association for the Rights of Disabled Persons, BK 2/94, Shalimar Bagh, Near Railway Reservation Counter, Delhi-110088.

Respondent : The Registrar General and Census Commissioner of India, NDCC-II Building, Jai Singh Road, New Delhi - 110 001.

Gist of Complaint:

Shri Manish Gautam, Dy. Director (Legal), Association for the Rights of Disabled Persons vide his email dated 10.06.2019 submitted that the Office of Registrar General of India and Office of Census Commissioner of India were continuously over ruling, avoiding, deviating and neglecting the existing DoP&T OMs in giving good working environment to persons with disabilities and also by not providing certain basic facilities like accessible office building or barrier free environment at work places, Choice based place of posting, exception from rotational transfer postings, effective grievances redressal cell, disabled friendly toilet/rest room, basic accommodation, separate pwd roster on cadre strength etc as per provision of DoP&T O.M. dated 31.03.2014 and RPwD Act, 2016. He submitted that their Association has requested several times to the Office of Registrar General and Controlling Officers of several Directorates to provide such basic facilities and not just neglect the existing DoP&T OMs. Employees with disabilities are facing moral degradation in performing their responsibilities/duties because of the biasness, harassment, threats etc. He submitted that there are several other administrative corruptions like favouritism in transfer posting, promotion, preparation and upgradation of seniority, TA Bill etc.

2. The Under Secretary, Office of the Registrar General, India vide letter No. 13014/11/2017-LC/1109 dated 04.09.2019 submitted that out of the 35 offices (34 Directorates and ORGI) 15 offices are having own building for which CPWD is doing maintenance. Under accessible India Campaign, CPWD have submitted estimates for making the building accessible for persons with disabilities. Their office had given financial approval and the work by concerned is in progress. The construction of office building at four locations is in progress and CPWD/Implementing agency are following the norms of disable friendly building. Eight offices are working from CPWD buildings /CGO complex and the norms of disable friendly building is being followed by CPWD.

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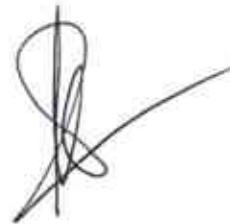
Remaining eight offices are running from private rented /State Government buildings. Out of these some DCO's have already communicated to the concerned State governments to take up the matter for making the office building accessible for persons with disabilities. As far as Grievance Redressal Cell is concerned, the Grievance Redressal Cell is available in ORGI. The Respondent submitted that any petitioner is free to lodge their grievance and the same is forwarded to the concerned section/DCO by the nodal grievance cell and all grievances are disposed timely. The PwD Register for Group 'A' and 'B' posts is already maintained in ORGI. The Respondent submitted that on the date of requisition for filling up of 42 Group 'A' posts, DoP&T instructions OM No. 36035/3/2004-Estt(Res) dated 29.12.2005 were in existence for which following cycle of 100 points divided into blocks comprising the following points :

- i) 1st Block - 1 to 33
- ii) 2nd Block - 34 to 66
- iii) 3rd Block - 67 to 100

As per the said DoP&T instructions, one point was reserved in the roster for points for 1 to 33, the 2nd points was to be filled in the cycle of 34 to 66 point by recruitment of other posts in Group 'A'. It is stated the PwD register roster is maintained group wise not post wise. As regards threat to the employees with disabilities from the Under Secretary level Officers to harm him/her or destroy his or her career, no such incident has come to the notice of their office.

3. The complainant vide his rejoinder dated 21.01.2020 submitted that the ORG Officers were giving excuses that the remaining eight offices are running on private buildings. He submitted that representatives of their association visited many states and it was seen that the basic facilities for persons with disabilities were absent in most of the DCOs except in West Bengal. The Officers of these DCOs are completely insensitive towards employees with disabilities. The complainant wishes to know if the name of the Grievance Redressal Officer has been displayed at the office entrance of the Respondent and also at their website? if the Grievance Redressal Officer has maintained any grievance register?, the total number of grievances registered till date with complete details and its investigation procedure adopted etc. As regards the reservation roster, the complainant submitted that he wished to know from the Respondent if any separate reservation roster for pwds has been maintained by them.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 09.10.2020.



4. The following persons were present during the hearing ;

- 1) Mr. Manish Gautam, the complainant.
- 2) Mr. M.K. Chaudhary, Dy. Secretary, RGI, on behalf of the respondent, but could not connect due to technical reasons.

5. The complaint of the complainant is primarily concerned with the implementation of the provisions of the Rights of Persons with Disabilities Act, 2016 and DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014 entitled "Guidelines for providing certain facilities in respect of persons with disabilities who are already employed in Government for efficient performance of their duties", in the O/o the Registrar General & Census Commissioner, India, specially para 2.D which states as under:

"D. Accessibility and barrier free environment at work place In addition to the guidelines for modification in all public buildings including Government offices to provide easy accessibility and barrier free environment for PWDs as per the provisions of the PWD Act, all Government offices should take special steps to provide barrier free and accessible work stations to PWD employees, access from main building entrance to their work stations and access to common utility areas such as Toilets, canteens etc. Lifts/elevators should 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"

6. The respondent in his reply stated that they have started implementation of the provisions of the Rights of Persons with Disabilities Act, 2016 though it may take some time for all buildings of the RGI to be fully accessible for persons with disabilities.

Observations and Recommendations :

7. This Court recommends as under:

- (i) The senior management of RGI Headquarters, New Delhi may hold a meeting with the members of the Association for the Rights of Disabled Persons to discuss and understand their specific problems which will lead to better resolution of the grievances of persons with disabilities.
- (ii) To appoint a Grievance Redressal Officer as per provisions of Section 23 of the Rights of Persons with Disabilities Act, 2016, which reproduced as under:

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"Section 23.(1) - Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer.

(2) Any person aggrieved with the non-compliance of the provisions of section 20, may file a complaint with the Grievance Redressal Officer, who shall investigate it and shall take up the matter with the establishment for corrective action.

(3) The Grievance Redressal Officer shall maintain a register of complaints in the manner as may be prescribed by the Central Government, and every complaint shall be inquired within two weeks of its registration.

(4) If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability."

(iii) The management may organize a sensitivity campaign in all offices of the RGI across the country which will ensure that the number of grievances of persons with disabilities will be reduced to a large extent.

(iv) Strictly follow the provisions of the Rights of Persons with Disabilities Act, 2016 in letter and spirit.

8. The case is disposed off.

Dated: 14.10.2020


(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

Case No. 11236/1022/2019 भारत सरकार/Government of India

Complainant : Shri Pramod Kumar Sinha, Manager, State Bank of India, SCAB, Patna.
Patna Main Branch Building, Patna-800001.

Respondent : The State Bank of India (Through the General Manager-I), 5th Floor, LHO,
West Gandhi Maidan, Patna – 800001.

Gist of Complaint:

Shri Pramod Kumar Sinha vide his email dated 12.06.2019 submitted that his son Sneh is a child with 90% Cerebral Palsy. The child is 18 years of age. He cannot either speak, stand on his feet and also cannot recognise any person. He cannot even demand for meal and water. He has to be taken care of all the time. His wife is unable to take care of his son alone. Daily physiotherapy is must for the survival of the child. Therefore, the child is under permanent treatment of one Dr. (Col.) S.K. Jha and Physiotherapist Dr. Jaidev Kumar Pandit in Patna. Presently Mr. Sinha is posted at Patna Centre and is now been transferred to Bettiah Branch. He has already given his representation to his establishment to post him at Patna Centre to take care of his son and to discharge Bank's work conveniently. But his representation is still pending and he was going to be relieved on 21.06.2019. The complainant has requested to arrange to post him at Patna Centre so that he can take care of his needy child.

2. No reply has been received from the Respondent.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 09.10.2020.

3. The following persons were present during the hearing ;

- 1) Mr. Pramod Kumar Sinha, the complainant on telephone.
- 2) Mr. Mayank Shekhar, Asstt. General Manager (HR), on behalf of the respondent.

Both the parties were heard.

4. The complainant informed that he is presently posted in Betia, but his family continues to stay at Patna alongwith his disabled son. He is a primary caregiver and wants to be with his son at Patna only.

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5. The respondent informed that the complainant has been transferred to Betia after eight years of stay at Patna in terms of Transfer Policy of the Bank and the written replies of the Bank in this matter have been sent to this Court on 19.09.2019 and 18.01.2020.

Observations and Recommendations:-

6. For the information of the respondent, Section 2.(d) of the Rights of Persons with Disabilities Act, 2016 reproduced as under:

"Section 2.(d) – "care-giver" means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability."

7. In this respect the rule position as per Department of Personnel and Training, M/o Personnel, Public Grievances & Pensions, Govt. of India O.M. No.42011/3/2014-Estt.(Res) dated 08.10.2018, para 3.(i) for caregiver is also reproduced as under for information of the respondent:

"Para 3.(1) – A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints."

8. In view of the above, this Court recommends that the respondent may transfer complainant back to Patna where he can take care of his son.

9. The case is disposed off.

Dated : 14.10.2020


(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: 11277/1014/2019

वादी R-23757 श्री नवीन कुमार निराला, एसटीए, क्षेत्रीय कार्यालय, सड़क परिवहन एवं राजमार्ग मंत्रालय, डीसीएम, अजमेर रोड, जयपुर - 302019
ई-मेल <niralacc@gmail.com>

प्रतिवादी R-23758 अध्यक्ष, रेलवे भर्ती बोर्ड, गुवाहाटी स्टेशन रोड, गुवाहाटी - 781001
ई-मेल <crrb-as@nic.in>

वादी 40 प्रतिशत श्रवण बाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उन्होंने केन्द्रीय विज्ञापन सं० 02/2014 के तहत जूनियर इंजीनियर (वर्क्स एवं ड्राइंग व डिजाइन) के लिए ओ.बी.सी. के अंतर्गत रेलवे भर्ती बोर्ड, गुवाहाटी हेतु ऑनलाइन आवेदन दिया तथा लिखित परीक्षा उत्तीर्ण होने के बाद, प्रार्थी को दिनांक 19.12.2015 को कागजात सत्यापन के लिए बुलाया परन्तु प्रोविजनल पैनल में उनका नाम शामिल नहीं किया गया। प्रार्थी का आगे कहना है कि सूचना के अधिकार अधिनियम के तहत उन्हें मालूम हुआ कि उन्हें लिखित परीक्षा में 56.75 अंक प्राप्त हुए परन्तु प्रार्थी द्वारा ओबीसी प्रमाण पत्र एक साल से ज्यादा पुराना होने के कारण प्रार्थी को ओबीसी श्रेणी से अनारक्षित श्रेणी में माना गया।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 11.07.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. Assistant Secretary, RRB vide letter 24.10.2019 submitted that Shri Navin Kumar had applied for the posts of JE/Works and JE/Drawing/Drawing & Design (Civil) and in the application, the candidate had mentioned his community as OBC. On being successful in the written examination held on 14.12.2014, the candidate was called for Document Verification. On checking the document of Shri Navin Kumar Nirala at the time of DV, it was found that OBC certificate submitted by him was dated 12.12.2009, which was older than



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one year as has been mentioned in the CEN. As such, Shri Navin Kumar Nirala was treated as UR and not as an OBC candidate due to submission of invalid caste certificate. Shri Navin Kumar Nirala secured 56.75 marks out of 150 marks in the written examination. The minimum qualification marks for UR is 60, OBC – 45, SC-45 and ST – 37.5.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.10.2020**. The following were present:

- Shri Navin Kumar - complainant
- Respondent was absent

Observation/Recommendations:

4. During the hearing, complainant reiterated his earlier written submissions and stated that as per the DOP&T's OM dated 08.10.2015, it is clearly mentioned that if a candidate belonging to a SC, ST and OBC is unable to produce a certificate from any of the prescribed authorities, he/she may be appointed provisionally on the basis of whatever prima-facie proof his/she is able to produce in support of his/her claim (copy enclosed). The above OM was also circulated by Ministry of Railways, Railway Board vide letter dated 23.06.2016 regarding acceptance of caste certificate produced by candidate.

5. After hearing the matter, it is recommended that respondent may consider the case of Shri Navin Kumar Nirala as per the existing DOP&T's instructions dated 08.10.2015 and ensure that persons with disabilities should not be deprived of their legitimate right.

6. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 14.10.2020





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. 11374/1023/2019

Complainant : Shri Umed Singh Parashar, House No. E-191, New Roshanpura, Najafgarh, New Delhi – 110 043.

Versus

Respondent 1 :

The Officer Incharge, Records the JAT Regiment, Civil Lines, Bareilly, Uttar Pradesh – 243001

Respondent 2 :

The Adjutant General, Army Group Insurance Fund (AGIF), IHQ of MOD (Army), AGI Bhawan, Post Bag 14, Rao Tula Ram Marg, P.O. Vasant Vihar, New Delhi – 110057

Respondent 3 :

The Officer Incharge, Office of the PCDA (Pensions), Draupadi Ghat, Near Sadar Bazar, Prayagraj, Allahabad – 211014 (U.P)

Respondent 4 :

The Managing Director & CEO, Punjab National Bank, Plot No. 4, Sector – 10, Dwarka, New Delhi – 110075

Disability: 40% Locomotor disability

Gist of Complaint:

Shri Umed Singh Parashar vide his email dated 24.07.2019 submitted that he became a person with disability during his service in the Army and was medically boarded out on 31.07.2004. He has been granted service and disability pension by the Govt. He has done commendable job during the military service and after retirement. His pension has not been revised by the Punjab National Bank and also arrears have not been paid to him.

2. The Respondent No. 1 vide his letter No. Civ-0581-2518800 dated 26.12.2019 submitted that JC-488885N Ex Nb Sub/Clk Umed Singh Parashar was enrolled in Army on 24th June 1986 and discharged from service on 31st June 2004(AN) under Rule 13(3)I(iii)(C) read in conjunction with Rule 13 (2A) of Army Rules 1954 in low medical category S1H1A3P2E1 for diagnoses Bilateral Renal Calculus (OPTD) and Osteoarthritis Left Knee (OPTD) after rendering 18 years, 01 month and 07 days qualifying service, accordingly service pension and disability element was granted vide PCDA (P) Allahabad PPO No. S/040087/2004 and DE/015614/2004. As per Release Medical Board proceeding conducted by medical authorities, the final degree of disabilities of the individual is as under :-

- (a) BILATERAL RENAL CALCULUS (OPTD) aggravated with 20% disability } Composite
(b) OSTEOARTHRITIS LT KNEE (OPTD) aggravated with 20% disability } disability 40%

2/-

The Respondent No. 1 submitted that the admissible pensioner benefits related to the service and disability has been paid/action taken as per details given below:-

- (a) Service element - Sanctioned vide PPO No.S/040087/2004 dated 21st July 2004. The same has been revised @ Rs.23150/- p.m. w.e.f. 01.01.2016 as per 7th CPC Vide PCDA (P) Allahabad suo-moto PPO No.164200400484 (0199).
- (b) Disability element - Sanctioned vide PPO No. DE / 15614 / 2004 dated 20.12.2004. The same has been revised @ Rs.6739/- p.m. w.e.f. 01.01.2016 as per 7th CPC vide PCDA(P) Allahabad circular No.582 dated 05.09.2017 by PDA/ Bank. Now case for notification of corrigendum PPO regarding disability element as per 7th CPC has already been forwarded to PCDA(P) Allahabad on 20.09.2019.

3. The Respondent No. 2 submitted vide letter No. A/56327/AG/Ins/Dis/JAT dated 07.10.2019 that in the context of payment of 'Disability Benefit', it was laid down vide Rule 9(c) that the same shall be entitled only in the event of termination of service of a subscriber on account of his/her physical disability, he/she shall receive such disability benefits as may be prescribed depending on the nature and percentage of the disability and other qualifying conditions as may be notified from time to time. The disability benefit is paid as a lump sum benefit to a member, who is released/invalided out before completing the contractual period of service for the rank and meeting the eligibility conditions based on 'initial Assessment' by invaliding Medical Board or Release Medical Board. The Respondent submitted that JC-48888N Naib Subedar Umed Singh Parashar (Retd.) was discharged from Army on 31.07.2004 (AN) in low medical category 'CEE' (Permanent). Release medical board of the Naib Subedar Umed Singh Parashar (Retd) was held on 03.04.2004 wherein he was awarded 20% composite disability (initial assessment). On receipt of claim documents, disability benefits amounting to Rs.50,000/- on account of 20% disability (initial assessment) was paid to Naib Subedar Umed Singh Parashar (Retd.) by AGIF vide Syndicate Bank, AGI Bhawan, New Delhi vide Cheque No.15690 dated 11.10.2004 as per the then prevailing rate. The maturity benefits amounting to Rs.66,056/- has also been paid to Naib Subedar Umed Singh Parashar (Retd.) on 08.10.2004, but the complainant had appealed for re-evaluation of his initial disability assessment. Accordingly, the Appeal Medical Board (AMB) was ordered under the authority of DGAFMS (Med) letter dated 09.01.2007. His AMB was held at Base Hospital, Delhi Cantt., which was approved on 03.09.2007. The AMB has awarded 40% composite disability to Naib Subedar Umed Singh Parashar (Retd) w.e.f. 03.09.2007. Based on AMB, he had requested AGIF to pay arrears of disability benefits for 50% disability from 01.08.2004 along with interest.

....3/-



4. The Respondent No.3 vide letter No.LC/X/summon/umed Singh/N-Z-2020 dated 02/2020 has requested the Court to provide the case details, Regimental No., Name of Records Office and Pension Payment Order No. of pensioner to the person they will be deputing to this Court to collect the case information to further process the case.

5. The Respondent No. 4 vide letter No. HO/GBD/5132/Pension dated 19.12.2019 submitted that they have revised the basic pension of Shri Umed Singh Parashar as per PPO No.164200400484 Suffix 0199 to Rs.23150/- w.e.f. 01.01.2016. Revised pension and arrear will be paid along with pension payment for the month of December 2019. The Respondent Bank further submitted that the Pension account of Shri Umed Singh Parashar is already converted in PNB Rakshak Plus and SMS has been sent to the pensioners which include detail of Basic/DR/Arrear at the time of credit of pension in accounts centrally.

6. The complainant vide his email dated 04.05.2020 submitted that as per the PCDA (Pensions), Draupadi Ghat, Allahabad's letter dated 31.12.2019, his notional pay of Rs.41100/- with pay level 6 and revised service pension of Rs.23,150/- that is 50% of 41100+5000 (Military Service) pay has been fixed with effect from 01.01.2016 by the PCDA against his last basic pay of Rs.6180/-. The pre-revised scale of Rs.5620-140-8140 in terms of Concordance table page number 173 is wrong. Because as per the said table page number 173, it was to be revised to 15700/-. When one locates the pay range corresponding to the basic pay at column number 12, one will find his notional basic pension relevant to the range as on 01.01.2016 Rupees 16000/- (minimum range) and Rupees 18530/- (maximum range) as such his minimum notional pay basic pension would be Rs.42300 + 5200 which is equal to 475 20 and 50% of which would be Rs.23750/- and maximum that should be fixed would be Rs.49000 + 5200 (MSP) which is equal to 54 200 and 50% of which would be Rs.27,100/-. Even this amount as basic service pension has not been fixed by the PCDA Allahabad. He submitted that after his repeated requests, the PCDA (P), Allahabad has not sent a copy of revised Service Pension Payment Order (PPO) No. 164200400484 (0199). The PCDA (P) Allahabad has not revised his Service Pension as per Notional Pay Method given at concordance Table No.19 of Ministry of Defence, Deptt. of Ex-Servicemen Welfare letter No. 17(1)/2017(02)/D (Pension/Policy) dated 17.10.2018 and PCDA (P) Circular No. 608. The pension was earlier fixed as per length of service. This stipulation was removed by the GOI vide para 5 to 7 of letter No.38/37/08/P&PW (A) dated 06.04.2016. According to this letter, the revision of pension of pre-2006 pensioners was to be done as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years. Therefore, as per the said concordance table his Basic Service Pension should

...4/-

be 50% of Rs.91400=45700+Rs.5200 (MSP) = Rs.50,900/- whereas in the said PPO his service pension has not even been revised considering 50% of Rs.41100+5200 (MSP) as mentioned in the PPO. As per their calculations also it becomes Rs.20550+5200 =25750/- which is less than his pre-revised Basic Pension which is being paid without including amount of the MSP. PCDA (P) has revised his pension to Rs.23150/- including the amount of MSP, i.e. 5200/- which in no way is correct. The complainant has requested to direct the CRO, Records the Jat Regiment, Bareilly, U.P., PAO (OR), and the PCDA (P) Allahabad to revise his service and disability pension correctly and dispatch the revised PPO to all concerned including him and the CPPC, PNB, New Delhi. His Basic Disability Pension is to be revised to Rs.8500/- from Rs.6739/-.

Hearing :

7. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

8. The following persons were present during the hearing;

- 1) Mr. Umed Singh Parashar, the complainant.
- 2) Mr. A. Venkatesan, R.O., Jat Regiment & Mr. Amit Grover, PNB, on behalf of the respondent.

Both the parties were heard.

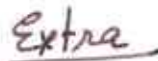
9. After listening to the complainant and the respondents, this Court makes the following recommendations:

- (a) The R.O., Jat Regiment shall modify the records of the complainant as requested by him regarding correct disability percentage, correct date of birth of his wife and revision of pension so as to depict the correct amount.
- (b) The PNB shall convert the Pension Account into PNB Rakshak plus Scheme Account and pay all outstanding arrears as per rule.
- (c) PCDA, Allahabad shall issue revised PPO after the corrections are made.

10. The case is disposed off.

Date : 14.10.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. Case No.10776/1011/2019

Complainant:

Dr. Nitesh Kumar Tripathi,
H.No.B-241, B-Block,
Sant Nagar, Burari, Delhi-110084
Email - niteshtripathi85@gmail.com

Respondent:

Employees State Insurance Corporation,
Through its Director General,
Head Office – Panchdeep Bhawan,
CIG Marg, New Delhi-110002;
Email: dir-gen@esic.nic.in; med6-g@esic.nic.in;

Gist of Complaint:

The complainant, a person with 65% locomotor disability [Crutch user] filed complaint regarding non-implementation the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] with regard to the recruitment of Insurance Medical Officers (IMO) Grade-II (Allopathic) at Employees State Insurance Corporation (Head Office), New Delhi.

2. The complainant furnished a copy of the advertisement published by ESIC HO for recruitment of Insurance Medical Officers (IMO) Grade-II (Allopathic) in ESI Corporation. He alleged that in the advertisement -

(i) the respondent had not shown the exact number of seats reserved for PwD candidates according to RPwD Act, 2016; and for appointment, preference would be given to PwD candidates;

- (ii) as stated at Note 3, recruitment of PwD would be made by a separate recruitment exercise is beyond the scope of the instructions issued in DoPT Om dated 15.01.2018;
- (iii) Rs.250/- had been charged while the fee was fully exempted; and
- (iv) there was no merit of deciding a fixed cut off criteria for the recruitment of identified and reserved vacancies for PwDs;

The complainant sought the following reliefs –

- (i) Participation of person with disability in recruitment exercise from initial stage to final stage;
- (ii) At least 4% reservation in this recruitment exercise and in backlog vacancies also;
- (iii) Vacancy No.1, 26, 51 and 76 must be reserved for persons with disabilities;
- (iv) No pre decided cut of marks as per the verdict of Hon'ble High Court of Bombay;
- (v) No application fee and additional banking charges; and
- (vi) Disabled friendly examination venue close to home.

3. Further, the complainant vide email dated 12.12.2018 furnished a copy of the reply dated 02.11.2018 given by ESIC HO to the complainant.

4. ESIC HO had submitted that "Govt. of India vide OM dated 15.01.2018 has issued instructions on reservation for Persons with Benchmark Disabilities as under:



Category	Types of Disability	Percentage of Reservation
Category A	Blindness and Low Vision	1
Category B	Deaf and Hard of Hearing	1
Category C	Locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy	1
Category D	Autism, intellectual disability, specific learning disability and mental illness.	1
Category E	Multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness.	

Ministry of Social Justice & Empowerment, Govt. of India has identified posts suitable for PwDs in the year 2013 on the basis of recommendations of a High Level Expert Committee. The disabilities under Category D & E and the disabilities – 'leprosy cured, dwarfism, acid attack victims and muscular dystrophy' under Category C have been newly introduced and these are not covered in the existing instructions on identification of posts suitable for PwDs issued by the Ministry of Social Justice & Empowerment in the year 2013.

Under these circumstances, it has been decided by ESIC that PwD vacancies under Category C, D & E may be kept vacant and filled through Special Recruitment Drive after identification of suitability in respect of newly introduced categories by GOI.

The post of Insurance Medical Officer Gr.II is identified as suitable for OA and OL category as per identification of posts suitable for PwDs issued by the Ministry of Social Justice & Empowerment in the year 2013. This post is not identified as suitable for category A (Blindness and Low Vision) and B (Deaf and Hard of Hearing).

In case the PwD vacancies for the post of Insurance Medical Officer Gr.II is advertised as per existing identification under OA and OL category it would deprive the newly introduced categories from applying to this post.

As such in the recruitment for the post of IMO Gr.II the PwD vacancies have been kept vacant to be filled under Special Recruitment Drive for PwDs to be conducted subsequently after identification of post for PwD.

The ESIC HO further informed that at the time of holding Online Examination, the PwD candidates should be allotted disabled friendly Examination Centre nearest possible to their Home. The application fees charged from PwD and other exempted category candidates is refundable on appearing in the Online Examination. Reservation to PwD candidates is provided in ESIC as per Govt. of India instructions."

5. The complainant in his rejoinder dated 12.12.2018 submitted that the respondent had not replied in the form of to the point answers as per his concerns in the original complaint.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 09.10.2020. The following were present:

1. Dr. Nitesh Kumar Tripathi, complainant
2. Shri Deepak Mullick, Dy. Director, Medical Administration, ESIC

Observation/Recommendations:

Both the parties were heard.

2. The respondent is recommended to implement the provisions of Section 34 of the RPwD Act, 2016 and to ensure reservation of 4% seats for candidates with disabilities. Roster should be maintained and horizontal reservation for candidates with disabilities must be given as



per roster points at 1, 26, 51 and 76 in terms of Articles 7 of DoPT OM dated 15.01.2018. Barrier free and accessible examination centres be provided to the candidates with disabilities. As per Clause XIV of the Office Memorandum No.34-02/2015-DD-III dated 29.08.2018 of Department of Empowerment of Persons with Disabilities, which is of "Proper seating arrangement (preferably on ground floor)", should be made prior to the commencement of examination to avoid confusion or distraction during the day of the examination. The candidates with disabilities should be exempted from payment of application fee and examination fee prescribed in respect of competitive examinations in terms of Article 24 of DoPT OM dated 29.12.2005.

3. The case is accordingly disposed off.

Dated: 15.10.2020


(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.: 10852/1021/2019
DATE OF COMPLAINT: 18.01.2019;
further documents submitted on 14.02.2019,
14.03.2019, 22.07.2019, 20.08.2019,
10.01.2020, whereby Complainant has submitted
further details pertaining to the case.

COMPLAINANT: R-23753
Sri T. Raghava, General Secretary, All India Deaf
Bank Employees Association. A-1, New No. 43, Car
Street, Triplicane, Chennai - 600005

RESPONDENT: R-23754
Bank of Baroda (Through Managing Director & CEO)
Baroda Corporate Centre, Plot No. C-26, Block G,
Bandra Kurla Complex, Bandra (East), Mumbai -
400051

DISABILITY PERCENTAGE: NOT MENTIONED

DATE OF REPLY: 16.09.2019

DATE OF REJOINDER: 12.12.2019

SUBJECT OF COMPLAINT: PROMOTION and RESERVATION

FACTS IN BRIEF:

Claims Made by the Complainant:

- Complaint filed by All India Deaf Bank Employees Association, on behalf of 4 employees of the Respondent bank, who belong to Persons with Disabilities category (Hearing Impairment).
- Respondent promoted 437 employees to clerical cadre by circular dated 17.01.2019.
- No staff belonging to Persons with Disability category was promoted hence, rule of 1% reservation is violated.
- Name and details of 4 employees mentioned claim is made that these 4 cleared the exam and are eligible for promotion.
- Bank is not maintaining 100 points reservation roster. (alleged in letter dated 22.07.2019)

Reliefs Sought:

- Stay Order in Promotion of 437 promotes.
- Promotion of said 4 employees.
- Withdrawal of show-cause-notice/memos issued against the 4 mentioned employees.

....2/-

Submissions made by the Respondent

- a. Out of 4 employees, on behalf of whom the present Complaint is made, 3 failed to obtain minimum marks in at least one subject of Online Test, hence not promoted.
- b. One out of 4, i.e. Dinesh Kumar, failed to obtain minimum passing marks in interview, hence not promoted.
- c. Out of 437 employees who have been promoted, 13 belong to PwD category, sub category not mentioned.
- d. All candidates who secured minimum qualifying marks in online test and also in interview have been promoted.
- e. Such promotion, if given, shall amount to 'Out of Turn' promotion.

Submissions made in Rejoinder:

- a. With respect to 3 employees who failed to obtain minimum qualifying marks in written test – These employees belong to PwD category and can not be equated with staff not belonging to PwD category.
- b. With respect to employee who failed to obtain minimum qualifying marks in interview – Bank did not provide any interpreter during the interview. Interview could have been dispensed with for Hearing/Speech impaired staff.
- c. Relaxation in marks could be given to such candidate.
- d. Such promotion shall not amount to 'Out of Turn' promotion. It is promotion under reservation.

Further Submissions made by Complainant in Letter dated 10.01.2020:

- a. Respondent bank has again promoted 3090 staff from Clerk to Officer level.
- b. Also promoted 566 staff to Clerical cadre.
- c. Name of the 4 employees on behalf of whom the Complaint is being filed, not considered even this time.

HEARING DETAILS:

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

The following persons were present during the hearing:

1. Mr. T. Raghava, the complainant.
2. Mr. C.M. Tripathy, Head - HR Operations, on behalf of the respondent.

Both the parties were heard.

POINTS OF CONTENTION/ISSUES:

From perusal of the documents submitted by both the parties and submissions made during hearing, this court observes following Points of Contentions/Issues -:

1. Non implementation of 1% quota of hearing-impaired persons in promotion from Sub-Clerk to Clerk even when hearing impaired persons were available.
2. No pre-promotion training given to hearing impaired persons.
3. Non implementation of roster in respect of persons with disabilities.
4. No relaxation given to persons with disabilities (hearing impaired) vis-à-vis normal unreserved persons.



OBSERVATIONS & RECOMMENDATIONS:

1. In view of the reply of the respondent this Court concludes that the respondent did not provide any interpreter during the interview. It is universally acknowledged that the selection method of interview is inherently subjective and no matter the efforts brought into makes it objective it is difficult to eliminate subjectivity and biases on personal decisions. The Court also noted that Department of Personnel and Training instructions in O.M. No.36035/3/2013-Estt.(Res) dated 31st March, 2014 provided that job specific post-recruitment as well as pre-promotion training programs are required to be organized for the persons with disabilities. If an employee was not able to qualify merely because of failing in the interview, the organization should have provided some support to him in terms of pre-promotion training, so that he got equal opportunity at par with other candidates.
2. Attention of the Respondent bank is attracted to Section 3 of RPwD, 2016. As per the provision it is mandatory for the Appropriate Government to provide reasonable accommodation to Persons belonging to PwD category. Similarly, Section 20 of RPwD Act, 2016, which talks about Non discrimination in Employment, in subsection 2 lays down that it is mandatory duty of Government establishment to provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.
3. Term 'reasonable accommodation' is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments to ensure that Person with Disabilities can enjoy and exercise rights equally with others. Further Section 2(h) of RPwD Act, 2016 defines term 'discrimination'. As per the provision, discrimination includes denial of 'reasonable accommodation'.
4. Provisions mentioned above are reproduced below:-

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

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

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

Section 20(5) - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.



5. In the light of statutory provisions mentioned above, this court concludes that Respondent has violated Employment Rights of the Complainant by not providing interpreter, by failing to give pre-promotion training and by not relaxing the minimum qualifying marks. Therefore, this Court concludes that Rights guaranteed under Sections 3 and 20 read with Sections 2(h) and 2(y) of RPwD Act, 2016.
6. In view of the above, this Court recommends that the respondent for the purpose of giving equal opportunity to persons with disabilities should consider slightly relaxed standards in the process of examination/interview and consider all the four hearing impaired staff working in the bank for promotion to the post of Clerk and necessary orders to this effect shall be issued.
7. The case is disposed off.

Dated: 15.10.2020


(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. 11143/1101/2019

Complainant:

Dr. Nitesh Kumar Tripathi,
H.No.B-241, B-Block,
Sant Nagar, Burari, Delhi-110084
Email - niteshtripathi85@gmail.com

Respondent:

Employees State Insurance Corporation,
Through its Director General,
Head Office – Panchdeep Bhawan,
CIG Marg, New Delhi-110002;
Email: dir-gen@esic.nic.in; med6-q@esic.nic.in;

Gist of Complaint:

The complainant, a person with 65% locomotor disability [Crutch user] filed a complaint regarding non-implementation of Section 45 and Section 46 of the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] with regard to the recruitment of Medical Officers (IMO) Grade-II (Allopathic) at Employees State Insurance Corporation (Head Office), New Delhi.

2. The complainant submitted that he got his name in the final list of recruitment for the post of Insurance Medical Officers Grade-II in ESIC HO in year 2016. He requested the respondent to provide accessible service place allocation as per the binding provisions named as Equal Opportunity Policy covered under RPWD Act 2016. But the respondent did not take any initiative for allocation of Disabled friendly work place to him as IMO Grade 2 for discharge of his duties and responsibilities with respect and dignity.

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3. On taking up the matter, respondent filed their reply dated 05.08.2019 and submitted that the complainant was offered the post of IMO Gr.II vide OM dated 23.08.2016 with advice to join duties in Delhi by 23.09.2016 as per the terms & conditions of the offer of appointment laid down that in case of failure to report for duty by due date, the offer of appointment would stand cancelled. He did not join the duties and vide letter dated 21.09.2016 sought extension in joining for a period of around one year i.e. till July, 2017 without quoting any reason. Extension in joining time to Medical Officers is generally not granted beyond three months because of their perennial shortage in ESIC. It does not also allow extension beyond six months in any case as per DoPT OM No.35015/2/93-Estt(D) dated 09.08.1995:

"....extension beyond three months should not be granted liberally and it may be granted only as an exception and in any case only upto a maximum of six months from the date of issue of original offer of appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment."

Keeping in view, on 28.10.2016 the complainant was asked to furnish the reasons for seeking extension in joining time, but he did not reply. He was reminded vide email dated 25.04.2017 to submit his reply, but he did not reply within the stipulated time. After around one and a half year in 2017 he emailed on 04.11.2017 that he might be allocated service at the dispensary nearest to his home. He did not inform the reasons for extension which could have been examined on merits. Therefore, his offer of appointment stood cancelled in terms of DoPT OM dated 09.08.1995.

4. In the rejoinder dated 19.08.2019, the complainant submitted that the reply filed by the respondent is inappropriate and irreverent. He was the rare one successful candidate with disability falling under most underprivileged category, but the ESIC has tried to eradicate the legitimate share of a person with disability. He requested to provide him the posting at that place where accessible accommodation is readily available under equal opportunity policy.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 09.10.2020. The following were present:

1. Dr. Nitesh Kumar Tripathi, complainant
2. Shri Deepak Mullick, Dy. Director, Medical Administration, ESIC

Observation/Recommendations:

Both the parties were heard.

2. It was observed that the Recruitment Department of the respondent has given sufficient time to the complainant for joining the post as per the norms. However, the complainant requested extension in joining for a period of one year without quoting any reason. However, keeping in view the request of the complaint, the respondent had asked the complainant to furnish the reason for seeking extension which was also not replied to by the complainant.

3. This Court does not find any merit to intervene in this matter and give any recommendation. Therefore, the case is disposed off.

Dated: 15.10.2020


(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. 11635/1081/2019

Complainant:

Dr. Manoj Sharma,
Warden House, Kirori Mal College,
University of Delhi,
New Delhi – 110007
Email: msharma1313@gmail.com;

Respondent:

The Principal, Kirori Mal College,
University of Delhi, New Delhi-110007
Email: principal@kmc.du.ac.in;

....Respondent No.1

The Registrar, University of Delhi,
New Delhi -110007; Email: registrar@du.ac.in;

....Respondent No.2

Gist of Complaint

The petitioner is the Hostel Warden of Korori Mal College, University of Delhi and has been allotted the Warden House within the college premises till September, 2020. He applied for allotment of the Teaching Staff Quarters for Teachers in Kirori Mal College on the medical ground of his younger daughter, Ms Yashvi Sharma, a child with 100% Intellectual disability (Epileptic Encephalopathy). But the House Allotment Committee rejected his representation on the ground that his spouse owns a flat which is nearly five kilometres away from the college. The petitioner's contention is that the condition of his daughter is so critical that these five kilometres are too far away as she requires immediate attention and constant care in any emergent situation. He

Page 1 of 3

alleged that the respondents have not followed the rules regarding allotment of staff quarters on Medical Ground.

2. On taking up the matter, the respondent filed their reply dated 10.02.2020 and submitted that the rule in Swamy's Handbook for Central Government Staff 2020, Page No.150, Point No.2 (2): **Quarters to house-owing employees** states as under:

"2. **Not eligible for adhoc allotment** – Officer/employee who owns a house either in his name or in the name of member of his family in the station of his posting or in the adjoining municipal area is not entitled to adhoc allotment on grounds such as retirement, death, vacation of Departmental Pool Accommodation, medical grounds, physical handicap, special compassionate grounds etc."

In the light of the above rule and the representation of the petitioner that his wife owns the flat, 5-B-Utkarsh Apartment, Civil Lines, Delhi-110054 within 5 kms away from the college, the petitioner is not entitled for allotment of house in the college premises.

3. The petitioner in his rejoinder dated 02.03.2020 submitted that there is no reference to the fact that the daughter of the applicant, being a 'dependent' in terms of clause (v) of the 'University of Delhi, Rules for Allotment of Residences' is suffering from 100% disability. Clause (v) reads as under:

'Family for the purposes of these rules shall include only wife, husband, children, parents, brothers and sisters residing with the employee.'

Further, Rule 5.(iv) of 'Rules for Allotment of Residence' states as under—

'Employees owning houses within a radius of 10 kilometres from the University and who are already in occupation of the University accommodation would continue to occupy the accommodation already allotted to them. They would however, not be eligible for better/higher type of accommodation.'



Rules of the University of Delhi is not in consonance with the Central Government rules pertaining to allotment of residence; and the employees of University are not eligible for residence in the general pool residential accommodation of the Central Government. The rules of own residence within a radius of 10 kilo meters, is not applicable to those who have already been allotted a residence. The only condition is that they would not be eligible for better/higher type of accommodation. The petitioner already occupies a temporary residence – Warden's house - in the college; and if a Type-III house is allotted in the college campus, he would eventually be moving to a smaller house than the present one.

Observation/Recommendations:

In view of the facts mentioned above, it is observed that the Central Government Rule as quoted by the respondent is not in consonance with the 'Rules of Allotment of Residences' of the respondent University. It is recommended that in terms of Rule 5.(iv) of the 'Rules for Allotment of Residence' of University of Delhi, the respondents should accept the request of the petitioner for allotment of the Teaching Staff Quarters on the medical grounds of his younger daughter, Ms Yashvi Sharma, a child with 100% Profound Intellectual disability (Epileptic Encephalopathy).

2. The case is disposed off.

Dated: 15.10.2020




(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. 11837/1101/2020

Complainant:

Shri Jayant Singh Raghav; Shri Mohan;
Mohd. Keshar Ali; and Ms. Nidhi,
all students with disabilities of Ram Lal Anand College;
Email: jsraghav33@gmail.com;

Respondent:

The Principal, Ram Lal Anand College,
University of Delhi, South Campus,
South Moti Bagh, New Delhi-110021;
E-mail: rlac.du@gmail.com

Gist of Complaint

The complainants have filed complaint regarding barrier free and accessible environment at Ram Lal Anand College, University of Delhi. The complainant had also filed a copy of the Order dated 18.10.2019 passed by the State Commissioner for Persons with Disabilities, Govt. of NCT of Delhi, in the similar matter.

2. On taking up the matter, the Principal, Ram Lal Anand College, filed reply dated 02.06.2020 and submitted that as per the suggestions/advice of the Commissioner, Court of Chief Commissioner for Persons with Disabilities, the college had done the access audit through CPWD. CPWD had given an estimate of Rs.24,54,300/- to construct a barrier free campus in accordance with Section 45 of the RPWD Act, 2016. Accordingly, the college had sent a letter on 20.03.2020 to University Grants Commission for release of the amount.

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As soon as the amount would be received from UGC, this Office would be updated further development.

3. The complainants in their rejoinder have submitted the Order passed by the State Commissioner for Persons with Disabilities, Govt. of NCT of Delhi.

Observation/Recommendation:

It is observed that State Commissioner for Persons with Disabilities, Govt. of NCT of Delhi [SCPD Delhi] has already passed Order on 18.10.2019 with regard to provide barrier free and accessible environment in Ram Lal Anand College. It is recommended that respondent shall adhere to para 18 (i) to (iii) of the Order dated 18.10.2019 and create a model for other educational institutions. Moreover, keeping in view the immediate requirements of existing students with disabilities, the college shall take immediate action from its own funds to develop at least required accessibility facilities for barrier free learning of persons/students with disabilities in anticipation of receiving the grants from the University Grants Commission.

2. A copy of these orders are marked to the University Grants Commission with the recommendation that necessary grant may be released to the Ram Lal Anand College for implementing the provisions of the Rights of Persons with Disabilities Act, 2016.

3. The case is disposed off.

Dated: 15.10.2020



Upma Srivastava
(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)

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भारत सरकार/Government of India

Case No. 11127/1024/2019

R-24001

Complainant:

Shri M. Pentarao, President,
Visakhapatnam Steel Plant Differently Abled
Employees Welfare Association,
Door No.13-227, Donkada Colony,
Aganampudi RHC-1, Ward No.56,
Gajuwaka Mandal, Visakhapatnam-530046
Email: vspdaewa@gmail.com; vspdaewa@yahoo.com

Respondent:

The Chairman-cum-Managing Director,
Rashtriya Ispat Nigam Limited,
Visakhapatnam Steel Plant,
Main Administration Building,
Visakhapatnam-530031
Email: cmd@vizagsteel.com

R-24002

Gist of Complaint

The complainant submitted that there are 250 employees in the Rashtriya Ispat Nigam Limited (RINL) all across the country in executive and non-executive cadre. All the employees with disabilities formed an association, namely, Visakhapatnam Steel Plant Differently Abled Employees Welfare Association (VSPDAEWA). Through their association, they submitted to the respondent to resolve their long awaited pending issues pertaining to service matters, accessibility and barrier free working

Page 1 of 2

environment, as provided in the Rights of Persons with Disabilities Act, 2016 and the instructions issued by the Government.

2. On 19.09.2020, the complaint dated 24.07.2019 filed by the complainant was taken up with the General Manager (HR), RINL for submission of their comment. But despite reminder dated 11.03.2020, no reply was found to be received.

Observation/Recommendations:

It appeared that no specific complaint has been filed by the complainant in respect of any individual employee with disability with regard to discrimination of his/her legitimate rights as provided under the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] and the instructions/rules of the Government thereunder.

2. However, the respondent is advised to ensure that all the employees with disabilities have been provided accessible, barrier free and disabled friendly working environment at RINL; and no employee with disability have been deprived of their legitimate rights as provided in Chapter IV – Skill Development and Employment – of the RPwD Act, 2016 and the instructions/rules of the Government.

3. The case is accordingly disposed off.

Dated: 20.10.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities





सत्यमेव जयते

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भारत सरकार/Government of India

Case No. 11656/1022/2019

R-23973

Complainant : Shri Vinay Kumar, Director (P&L), Military Engineer Services, HQ CE (R&D), Probyn Road, Delhi – 110 054.

Respondent : Military Engineer Services (Through the Director General Personnel/E1B, Engineer-in-Chief's Branch, Kashmir House, Rajaji Marg, New Delhi – 110 011.

R-23974

Gist of Complaint:

Shri Vinay Kumar vide his complaint dated 27.11.2019 submitted that he has been working as Director (P&L) in Military Engineer Services in Delhi. His son Ishan Anchit, 17 years old, has been suffering from -40% visual impairment. The complainant submitted that he had earlier made a complaint under Case No. 8687/1022/2017 in this Court on 15.09.2017 regarding his posting from HQ Chief Engineer Pathankot Zone to Delhi to look after his son with low vision. A personal hearing was held in the case on 18.07.2018 and the Respondent was advised to consider the request of the complainant for his posting to Delhi to take care of his son. MES vide posting Order No.70001/SE/15/2019 dated 19.06.2019 posted him to HQ CE (R&D), Delhi but disallowed Transfer TA. The posting has been issued after this Court's order yet he was penalized with monetary value for the tune of Rs.1.5 to 2.00 lakhs. He made a representation to his department to reconsider their decision but it was turned down quoting para-114 of SR which deals with posting on own request. At no stage of time, he was given any undertaking to post him to Delhi without Transfer TA which happens in case of compassionate grant transfer/posting.

2. No reply has been received from the Respondent.

3. The issue before the Court is whether transfer was done in public interest or on request?

4. This Court has jurisdiction because issue of TA deduction is directly related to transfer of the Complainant which was done in compliance of the Orders of this Court. This court passed the Order considering the rights of PwD child. Hence, the issue in the present complaint falls within the jurisdiction of this court.

....2/-



5. In the light of the following facts the complainant's transfer cannot be construed as a transfer on personal request:

- a. This court issued Orders to transfer the Complainant considering the rights of PwD child. Compliance of such Order cannot be termed as 'personal request'. It is public interest to comply with the Order of the court or tribunal.
- b. Complainant has submitted that he has never made any request for transfer to Delhi. No document to disprove the same has been put on record by the Respondent, therefore it cannot be concluded that transfer was made on request.
- c. O.M.s issued by DoPT are not applicable on military personnel. Postings and transfers of military personnel are governed by Posting Policy issued by Ministry of Defence. As per Para 21 of the same, applicability of DoPT O.M. 42011/3/2014 has been extended to military personals. Hence benefit of this O.M. can also be given to the Complainant. As per this O.M. any government employee who serve as main care giver of his own disabled child, he may be exempted from routine transfer.
- d. Transfer to Delhi cannot be said to be transfer after termination of tenure because tenure is deemed to terminate on the expiry of 4 years of posting at a place. Hence contention forwarded by the Complainant that his tenure should be deemed to terminate and hence TA should be granted on this ground alone, cannot be accepted.

Final Observation/Recommendations:

6. This Court recommends that the respondent may refund the entire amount of Transfer TA which was deducted from the complainant's salary on account of his transfer to Delhi in terms of recommendations of this Court's order dated 18.07.2018.

7. The case is disposed off.

Date : 20.10.2020




(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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

भारत सरकार/Government of India

Case No: 11690/1021/2020

Complainant: Shri. Rami Reddy Annapureddy, Higher Grade Assistant, Life Insurance Corporation of India, City Insurance Corporation of India, City Branch – 2, Chandramouli Nagar, Guntur (PO), Andhra Pradesh – 522007
E-mail: <ramireddy610403@gmail.com>

Respondent: The Chairman & Managing Director, Life Insurance Corporation of India, 1st Floor, Yogakeshema Central Office, Jeevan Bima Marg, Nariman Point, Mumbai – 400021
E-mail: <ed_nb@licindia.com>

Complainant 65% locomotor disability

GIST of the Complaint:

Complainant is employed on the post of Higher Grade Assistant in Life Insurance Corporation and is posted in Guntur which also happens to be his hometown. He submitted that he was promoted and posted in Gurazala District, outside his hometown. Gurazala falls under same division as Guntur. He requested for change in place of posting to no avail. Later he rejected the promotion and again appeared for promotion interview. Again, he was promoted and posted to Nellore, which is 198 KMs away from his hometown. Complainant claims that there are vacancies available in Guntur branch, despite that, he was posted hundreds of kilometres away from his hometown. He also claims that other employees have been posted in the same branch where he was posted in his hometown and he is the one who has been discriminated against.

2. The matter was taken up with the Respondent vide letter dated **28.01.2020** under Section 75 of the Rights of Persons with Disabilities Act, 2016.

3. Respondent vide letter **02.03.2020** inter-alia submitted that vacancies are scattered in different branches, all over the division. As far as Guntur is concerned, no vacancies are available in branch in Guntur.



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4. After considering the respondent's reply dated **02.03.2020** and the complainant's rejoinder dated **08.07.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **13.10.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **13.10.2020**. The following were present:

- Mr. A. Rami Reddy, the complainant.
- None for the respondent.

Observation/Recommendations:

5. The written submissions of the complainant have been gone through and as well as the written reply of the respondent have also been perused.
6. The rule position as per the Rights of Persons with Disabilities Act, 2016, in respect of transfer of persons with disabilities as under:

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

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

7. The provisions of reasonable accommodation as per the Rights of Persons with Disabilities Act, 2016 is as under:

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



8. Respondent vide E-mail dated 13.10.2020 informed this Court that complainant filed a Writ Petition before Hon'ble Andhra Pradesh High Court asking for similar relief. Writ Petition Details – Registration Number of the case – W.P. No. 32447/2017. As per information available on the website of Hon'ble High Court, since 2017, when this case was filed, no Order has been uploaded on the website. However, Prayer sought in the Petition is mentioned. As per the same, complainant (as called in the case before this Court)/Petitioner (as called before High Court) has sought relief to direct the Respondent (same before this court and before Hon'ble High Court) to PROMOTE the Complainant with retrospective effect.

From the perusal of the Prayer, as available on the website of Hon'ble High Court and arguments forwarded by the parties in this court, it can be concluded that both the cases are different. Case before this court does not involve issue of promotion. That seems to be the case before the Hon'ble High Court. Before this court, Complainant himself admitted that he has been promoted. His grievance before this court is that, since he has been transferred outside his hometown, post promotion, hence promotion/transfer Orders issued by the Respondent contravenes RPwD Act, 2016.

Therefore, it is safe to conclude that Complaint before this Court and Write Petition before the Hon'ble High Court of Andhra Pradesh are different.

9. In view of the above said, the respondent is recommended to adjust the complainant against a vacancy in Guntur only on promotion, so that the complainant does not have to forego his promotion.

10. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.10.2020





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: 11804/1022/2020

Complainant: Smt. Athira S. Bhaskar, Block - P, Flat 1, Sampa Mirza Nagar
Govt. Housing Estate, P.O. Sarkarpool, Kolkata - 700143
e-mail: <athirasuthan04@gmail.com>

Respondent: The General Manager, Farakka Barrage Project, P.O. Farakka
Barrage, Dist. Murshidabad, West Bengal - 742212

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide e-mail dated 11.02.2020 inter-alia submitted that she was appointed as MTS in Farakka Barrage Project, Murshidabad, West Bengal on 13.08.2018 after qualifying the Special Recruitment Drive 2015 Exam. On joining, she stayed in Officer's Guest House and had filled up the application for the allotment of quarter. After a few months, She was allotted a quarter, but the doors were too small for her wheelchair to enter. So, she couldn't take the possession of the same and requested for a higher type quarter to the General Manager. She alleged that from the very beginning, she is being harassed by one or the other officials of Farakka Barrage Project, Murshidabad specially the Finance Officer and the then Executive Engineer. She has requested for transfer from present place of posting to Kolkata and accept medical certificate of the Kolkata's Physiotherapist for sanction of extra-ordinary leave. She has also requested to take action against the officials who are forcing her to resign by harassing.

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



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3. In response, Consultant (Admn.), Farakka Barrage Project vide e-mail dated 14.08.2020 inter-alia submitted that the matter had been considered by the Inquiry Committee and investigations revealed that everyone at Farakka extended helping hand towards her, owing to her specially abled status. It has been found allegations submitted by the complainant against the officers could not be established on the basis of records and facts, even after detailed investigation of the contents.

Observation/Recommendations:

4. In the light of the above and documents available on record, the case is disposed of with recommendation to the respondent:

- a) to implement the order passed by State Commissioner for Persons with Disabilities, West Bengal on 22.09.2020.
- b) to provide immediate relief to the complainant as per the above order.
- d) to ensure that barrier free facilities are provided in accordance with Rights of Persons with Disabilities Act, 2016.

5. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.10.2020





सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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भारत सरकार/Government of India

Case No: 11688/1024/2020

Complainant: Shri Girdhari Lal Gehlot, House, No. 178, Sardar Pura, Pahli See Road,
Upstairs Prem Tailor, Jodhpur
E-mail: <girdharilalgehlot@14gmail.com>

Respondent: The Managing Director & CEO, Punjab National Bank, Plot No. 04,
Sector - 10, Dwarka, New Delhi - 110075
E-mail: <rkchatterji@pnb.co.in>

Complainant 80% locomotor disability

GIST of the Complaint:

Complainant submitted that he was employed as single window operator, joined the Respondent Bank in year 1983 and was posted in Jodhpur Circle. Complainant submits that he was penalised by the Respondent Bank. In order to discharge his penalty, he had to sell his house.

2. The matter was taken up with the Respondent vide letter dated 16.01.2019 under Section 75 of the Rights of Persons with Disabilities Act, 2016.

3. In response, General Manager, PNB vide letter dated 29.02.2020 submitted that Departmental Inquiry was initiated against the Complainant, subsequently charges were framed and were proved after due process and thereafter Complainant was dismissed from the services without notice.

4. Complainant vide rejoinder dated 06.08.2020 claims that he may be granted pension as he suffers from 80% disability and finds it difficult to sustain himself because of disability and old age.



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5. After considering the respondent's reply dated **29.02.2020** and the complainant's letter **06.08.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **13.10.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **13.10.2020**. The following were present:

- Mr. Som Srivastava, Advocate for the complainant.
- Mr. R.K. Bajpai, GM (HR) HQ, on behalf of the respondent.

Observation/Recommendations:

6. Both the parties were heard.

The complainant raised the following points:

- (a) Since an FIR has been lodge and trial is going on, no decision can be taken by the respondent in the disciplinary case.
- (b) The house of the complainant was sold off by the Bank.
- (c) As per regulation 22 of the Bipartite settlement, pension is admissible for those employees also who are dismissed.

7. The respondent informed the Court that the complainant had been dismissed in 2011 itself on charges of fraud after giving due opportunity to the complainant as per the principle of the natural justice and following the due procedure as laid down in the Bank. The respondent further informed that the sale of the house of the complainant was made as per the consent of the complainant, the documents to that affect being available with the Bank. Rule 22 of the Pension Regulations of the Bank clearly states that no pension or benefits of remaining service will be admissible to persons who are dismissed.

8. This Court also notes that all necessary terminal benefits which were due in this case have been given by the Bank and there is no merit in the complaint. The case is accordingly disposed off.



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 21.10.2020

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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: 11867/1022/2020

Complainant: Shri Shyama Charan, Scientific Officer, SPH 1/23, NPCIL Kaiga Township, Karnataka – 581400
E-mail: <charanshyama78@gmail.com>

Respondent: The Chairman & Managing Director, Nuclear Power Corporation of India Ltd, Nabhikiya Urja Bhawan, Anushaktinagar, Mumbai – 400094
E-mail: <cpsingh@npcil.co.in>

Complainant 40% locomotor disability

GIST of the Complaint:

Complainant has sought relief (1) Nearest place post to his home town Narora, Noida office and Haridwar QA Office (2) identified and suitable post like R&D, QA document cell etc. (3) APAR to be improved so that he could be promoted in time.

2. The matter was taken up with the Respondent vide letter dated **23.06.2020** under Section 75 of the Rights of Persons with Disabilities Act, 2016.

3. In response, Additional General Manager (HRM) vide letter dated **05.08.2020** inter-alia submitted that Shri Shyama Charan, Scientific Officer/C (Electronics Discipline) had submitted an application for transfer to Delhi QS Office, Haridwar QA Office or Mumbai HQ vide online application dated 05.01.2018 but his application was rejected by the Committee for shortage of officers at KGS 3&4. Subsequently, Shri Charan submitted another online application on 02.08.2019 requesting transfer to Haridwar, Delhi (Noida), Gorakhpur (Haryana) and his transfer request along with other applications received will be examined by the Committee. They further submitted that assessment Shri Charan's of APAR was done for the year 2017 – 2018 and grading were disclosed for both the APARs but he did not make any representation in the prescribed time limit for any of the APARs. Shri Charan did not possess the requisite minimum prescribed grading, his case was not considered by the Screening Committee for promotion to the next higher.



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Signature

Signature

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

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

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

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

4. Complainant vide rejoinder dated **22.08.2020** submitted that he disagreed with the respondent's comments.

5. After considering the respondent's reply dated **05.08.2020** and the complainant's rejoinder dated **22.08.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **13.10.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **13.10.2020**. The following were present:

- Mr. Shyama Charan, the complainant.
- Mr. C.P. Singh, Additional General Manager (HR), on behalf of the respondent

Observation/Recommendations:

6. Both the parties were heard.

7. The complainant raised large number of issues pertaining to his harassment by his immediate Supervisor - Shri Mukund Lal Das and Chief Superintendent - Shri T. Prem Kumar. The complainant expressed that he is meet to climb up monkey ladders, go down into trenches, he is left along on operating island and deliberately harassed and humiliated because of his disability and consequently not able to perform field jobs to the satisfaction of his Supervisor. The complainant also expressed that he has been posted at a place very far away from his home town and is finding it really difficult because of the huge distances involved in travelling between his place of residence to office.

8. The respondent stated that there was no substance in the grievances of the complainant and that he had made two representations regarding his transfer requirement, but the same could not be considered by the organisation due to administrative constrain.

9. After listening to both the parties, this Court makes the following recommendations for the respondent:



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- (a) Immediate transfer of the complainant to a station indicated by him, which is closer to his home town and is not a field position in terms of the following rule position in respect of transfer of persons with disabilities:

"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."

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.

- (b) The General Manager (HR) may hear the grievances of the complainant empathetically and ascertain the responsibility of those senior officers/supervisors, who are harassing and humiliating the complainant and initiate disciplinary action against them if so required.
- (c) The Grievance Redressal Officer of the organisation should counsel the complainant and the supervisors in his office to resolve the acrimony and misunderstanding if any.
- (d) The respondent may note the provisions of reasonable accommodation of the Rights of Persons with Disabilities Act, 2016 for implementation in both letter and spirit for all persons with disabilities, which is reproduced as under:

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

10. The case is accordingly disposed off.

Dated: 21.10.2020




(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. 11602/1023/2019

Complainant : Dr. Kapil Jagga, Medical Officer, 819, 2nd Floor,
Mukherjee Nagar, Delhi-110 009

R-24050

Respondent : Ministry of Health & Family Welfare, (Thru Directorate
General Health Services), Room No.244, A, Nirman
Bhawan, Maulana Azad Road, New Delhi – 110 001

Disability : 52% Locomotor Disability

Gist of Complaint:

Dr. Kapil Jagga vide his complaint dated 09.10.2019 submitted that he has been presently posted in Safdarjung Hospital, Delhi. In the year 2005, his initial posting was at Nilokheri in Karnal. He was the only Doctor posted there. He was posted without any training which is against the Disability Act which clearly states that an employee with disability should have been given enough training before joining his job. Therefore, he decided to do Post graduation. For seeking permission to acquire higher education by giving PG Entrance Exam, he applied through proper channel and informed his department a year in advance. He did not hear anything regarding permission from his department. He went on to do PG. He has always been in touch with

his department. He was denied the leave for doing PG and a disciplinary case was initiated against him and a penalty was imposed on him vide letter dated 30.04.2013. The penalty was reduction to the lowest of time scale and stoppage of increment for five years with further direction that he will not earn increments of pay during the period of reduction and on expiry of such period the reduction will not have the effect of postponing the future increments of pay. He submitted that after the completion of his penalty period, the injustice has been still continuing. His grievances are :

- i) Denial of promotion
- ii) Reduction of Rank
- iii) The increments are still reduced every years
- iv) Loss of seniority

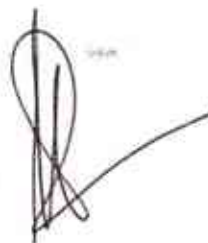
2. No reply has been received from the Respondent.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 25.09.2020.

3. The following persons were present during the hearing:

- 1) Dr Kapil Jagga, Complainant
- 2) Dr S. K. S. Kushwaha, Additional DDG, DGHS on behalf of the Respondent

Both the parties were heard.



Observation/Recommendations:

The Court noted that the complainant was penalized for pursuing a post graduate degree course to further his capabilities and competencies in his chosen field of profession. Efforts made by any person and especially by a Person with disability should have been encouraged and supported by regularising through leave due and admissible rather than punishing him. It is disappointing to see this apathetic attitude of the respondent.

This Court also notes that the Complainant was penalized by Order dated 30.04.2013 for taking leave without permission. Following penalties were imposed upon him.

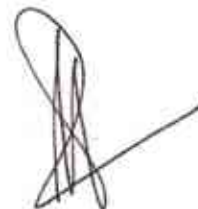
- Reduction of minimum time of the scale pay.
- Stoppage of increment of pay during the period of reduction

With respect to second penalty it is pertinent to note that contradictory statements were made within the penalty order.

Further, it was directed that such reduction will not have the fact of postponing his future increments of pay.

With respect to increments of pay during the period of reduction, language of the operating part of the order is contradictory. Operating part of the Order is reproduced below -:

"AND WHEREAS, disciplinary Authority, after carefully considering all the facts and circumstances, all relevant documents of the case, and advice tendered by the UPSC, has come to the conclusion that good and sufficient reason exists for imposition of penalty of "reduction to the minimum of the time-scale of pay for a period of five years, with further direction that he will not earn increments of pay during the period of the

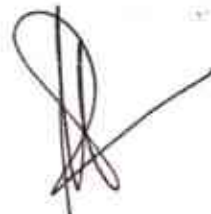


reduction and on expiry of such period. The reduction will not have the effect of postponing the future increments of his pay is imposed on the C.O. i.e. Dr. Kapil Jagga". It is further directed that Dr. Kapil Jagga will earn increments of pay during the period of reduction and that on the expiry of the said period of five years, the reduction will not have effect of postponing his future increments of pay. The period of his unauthorised absence will be treated as dies-non."

Firstly, penalty order says that the complainant in the present case will not earn implements of pay during the period of reduction. In the same Para, after 2-3 lines, contrary statement is made that the complainant will earn the increments of pay during the period of reduction. Since, beneficiary interpretation should be given to the Penalty Order, therefore, this court concludes that penalty of "reduction of the minimum of the time scale of pay for the period of 5 years" was imposed on the complainant.

With respect to issue related to earning increments of pay during the period of reduction this court concludes that the complainant is entitled to earn increments of pay during the period of reduction. With respect to postponing his future increments of pay after expiry of penalty period of 5 years, this court concludes that the reduction does not have the effect of postponing the such increments of pay.

This court would like to attract the attention of the respondent to O.M. No. 22011-7-86/ESH(D) dated 03.07.1986. As per the O.M in cases where reduction is for a specified period and is not to operate to postponed future increments the seniority of the government servant may be fixed in the higher services, grade or post or the higher time scale at what it would have been but for her reduction.



Hence, in the present Complaint, this court concludes that denial of promotion, reduction of rank, reduction of increments and loss of seniority after the expiry of penalty period of 5 years is violation of employment rights of the complainant as guaranteed under Rights of Persons with Disabilities Act, 2016.

Therefore, this court recommends the following to the respondent.

- a. comply with rules relating to fixation of seniority of a government servant reverted to a lower post/grade/service as a measure of penalty, as laid down in O.M. No. 22011-7-86/ESH(D) dated 03.07.1986.
- b. Shall restore the increments of pay during the period of reduction of the complainant since the same cannot be stopped in terms of the aforementioned interpretation of the penalty order dated 30-04-2013.
- c. Shall not postpone future increments of pay of the complainant.
- d. Shall not deny due promotion to the Complainant as Penalty Order does not talk about the same.

Dated: 22/10/2020


(Upma Srivastava)
Commissioner



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: 11618/1022/2019

Complainant: श्री नवीन कुमार, नं० 932542467, मुख्य आरक्षक नवीन कुमार, 133 वीं वाहिनी सीमा सुरक्षा बल।

Respondent: महानिदेशक, सीमा सुरक्षा बल, केन्द्रीय कार्यालय परिसर, 10, ब्लॉक, लोधी रोड, नई दिल्ली - 110003

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 21.10.2019 में कहना है कि वह नलकाटा, त्रिपुरा में तैनात है तथा उनका परिवार चण्डीगढ़ में। प्रार्थी का आगे कहना है कि उनकी 80 प्रतिशत मानसिक रोगी पुत्री का इलाज नेहरू चिकित्सालय स्नातकोत्तर शिक्षा एवं अनुसंधान संस्थान, चण्डीगढ़ में चल रहा है तथा वह रीजनल इंस्टीट्यूट फार मैन्टली हैंडीकैप्ड स्कूल, सेक्टर 31, चण्डीगढ़ में पढ़ रही है एवं प्रार्थी की पत्नी को हर समय बच्ची के साथ रहना पड़ता है इसलिए उन्होंने कई बार चण्डीगढ़ स्थानांतरण के लिए विभागीय पत्राचार भी किया है परंतु अभी तक कोई कार्रवाई नहीं की गई।

2. The matter was taken up with the Respondent vide letter dated 22.11.2019 under Section 75 of the Rights of Persons with Disabilities Act, 2016 but despite reminder dated 02.03.2020, no response has been received from the respondent.

Observation/Recommendations:

3. Complainant being the care giver of a child with intellectual disability, needs to be with the child for taking care for her educational and rehabilitation need. The rule position for the care giver of such child is as follow:

As per the DoP&T O.M. No.42011/3/2014-Estt.(Res) dated 08.10.2018, a Government employee who is a care-giver of dependent daughter/son, parents/spouse/brother/sister with specified disability as certified by the certifying authority may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.



[Signature]

...2....

4. Keeping in view the need of the child and rule position stated above, this Court recommends, the respondent to transfer the complainant to Chandigarh and submit the compliance report to this Court within 90 days.

5. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 22.10.2020



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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. 11725/1032/2020

Complainant:

Shri Shashikant Jha,
R/o House No.225/5, Ward No.2,
Mehrauli, New Delhi – 110030
Email – shashij673@gmail.com;

Respondents:

Additional Commissioner (Acad),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi – 110016;
Email – addlcacad@gmail.com

....Respondent No.1

Principal, Kendriya Vidyalaya, B-5&6,
Kishangarh - Mehrauli Rd,
Pocket B, Sector B, Vasant Kunj, Delhi 110070;
Email: kvvasantkunj@kvsedu.org; kvvk nd70@yahoo.co.in;

....Respondent No.2

SUBMISSION MADE IN COMPLAINT:

1. The complainant's son Master Siddhant Jha is a child with 40% locomotor disability (Duchene Muscular Dystrophy in all four limbs). He studies in Class V in Kendriya Vidyalaya, Vasant Kunj, Delhi. His class room is on 2nd floor. Complainant submitted that his son is unable to climb stairs on his own as all his four limbs are impaired. The complainant alleged that the Principal of the school denied allotting his son a classroom on the ground floor. The Principal even advised the complainant to get his ward transferred from the school. The complainant submitted that his home is near that school.

SUBMISSIONS MADE IN REPLY:

1. The Principal, KV, Vasantkunj, in his reply dated 05.02.2020 submitted that the school has only 20 classrooms and all of them are running at their full capacity. None of the class room is empty on ground and first floors. Classes

Page 1 of 5

from 1st to 4th with two sections of each class are on ground and first floors; and Class V in which Master Siddhant Jha is studying is on second floor.

RELIEF SOUGHT:

1. To shift the classroom of the Child suffering from Disability to Ground Floor from First Floor.

Hearing:

The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.10.2020. The following were present:

- | | |
|-----------------|---|
| 1. Complainant: | Wife of the Complainant |
| 2. Respondent: | Mr. Rajeev Singh, Principal K.V.S. Vasant
Kunj, Mr. Sanjeev Kumar, Assistant Commissioner,
KV Sangathan |

Both the parties were heard.

Observation/Recommendations:

1. A human being needs reasonable mind only to understand the trauma of a child suffering from muscular disability. This court is anguished and astonished to take cognizance of this complaint because of two reasons – first, nature of the complaint and responsible nature of the post occupied by the Respondents.
2. Complaint is filed by the grieving father of a child suffering from Duchene Muscular Dystrophy. As per the Complaint and also admission made by the Respondent, the child of the Complainant is studying in Respondent school. His classroom is situated on the 2nd floor, where he finds it impossible to climb by using stairs, on his own without any external support.
3. Respondents are Additional Commissioner (Acad.) of Kendriya Vidyalaya Sangathan and Principal of Kendriya Vidyalaya, Vasantkunj, where ward of the Complainant is pursuing his primary education.



4. Kendriya Vidyalaya Sangathan is a premier education institution for primary education in this country. This court would like to remind the Mission, Vision and Objectives of KVS to the Respondents, as made available by the organisation itself on its website - <https://kvsangathan.nic.in/>

5. Point No. 2 under heading Mission reads as –

"To pursue excellence and set the pace in the field of school education"

6. Vision of the Sangathan is described on the website as –

"KVS believes in imparting knowledge/values and nurturing talent, enthusiasm and creativity of its students for seeking excellence through high quality educational endeavours."

7. Further, Commissioner's message reads as -

"It is universally acknowledged that a teacher plays a pivotal role in shaping the character and aspirations of a child. Our ancient scriptures too remind us of the bonding and harmonious relationship between Guru and Shishya, but this bonding brings with it the responsibility of enabling the students to realise their full potential by inculcating in them the values of integrity, hard-work and commitment. A teacher is not only a parent, friend, philosopher and guide to his/ her students, but also a mentor who imbues in them the sterling qualities of head and heart, thus moulding the future citizens of our great nation."

8. Manifestly, there is a huge gulf between tall dreams KVS seeks to achieve and actual practice of Respondent Principal and other staff of the organisation who made the Complainant run from pillar to post.

9. Clearly, Respondent Principal of the school and other concerned staff members of the organisation who did not apply their mind to address the problem faced by the child, the Respondent must feel ashamed for not even trying to achieve what is stated by their parent organisation.

10. To the utter surprise of this court, Respondent school has audacity to admit in its Reply that 1000 other students cannot be made to suffer because of one child. Further, Respondent also submitted that Complainant has been



advised to get their child transferred to another KVS School. Also, it is submitted in the reply that on the ground floor, there is staff room which is not suitable for child suffering from disability hence cannot be converted into a class room.

11. To submit that room used as staff room cannot be converted into classroom suitable for child suffering from disability is not how Respondent organisation can impart quality education, values and nurture talent, enthusiasm and creativity in the students whether or not suffering from disability. Expression of inability to convert staff room into classroom, which requires simple furniture and black-board, manifests Zero creativity and absolute Zero application of mind on the part of the Respondents. Furthermore, to not even attempt to address the problem of a child suffering from disability and to suggest the grieving Complainant to get his child transferred to another school and also to play game of 'office-office' is act of utmost shame for the whole Kendriya Vidyalaya Sangathan, and not only the Respondents listed in the present Complaint.

12. This court is also compelled to inform the Respondent about the duties of the Respondent, as mentioned in the Rights of Persons with Disabilities Act, 2016, passed by the Parliament of this country.

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.



13. Hence under the light of Mission, Vision, Objectives mentioned by the Respondent on the website and also the provisions of the RPwD Act, 2016, this court recommends following –

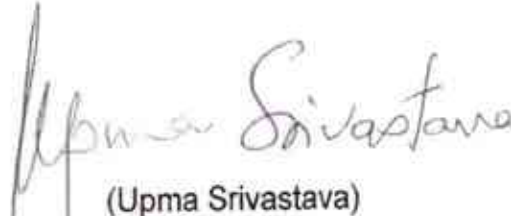
(a) Respondent shall identify class/classes on ground floor in which no child suffering from disability as to make the classroom inaccessible to such student, is studying and substitute that classroom with the classroom in which the child of the Complainant is studying.

(b) If there is no such classroom available on the ground floor, in which Child suffering from disability to make the classroom inaccessible to him, then Respondent shall convert the staff-room situated on the ground floor, as admitted, or any other room occupied as office by the Principal of the school or any other administrative staff, into classroom suitable for child suffering from disability.

(c) The exercise as recommended in Point (a) and (b) shall be carried out within period of 1 month from the date of receiving of this Order.

The case is accordingly disposed off.

Dated: 22.10.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities





सत्यमेव जयते

9

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.11884/1041/2020

R-24033

Complainant:

Shri Gautam Lenka, P-6, Ocean Complex,
502, Noida Sector-18, Noida – 201301;
District – Gautambuddh Nagar (UP);
Email – gautamlenka1978@gmail.com

Respondent:

The Principal,
Kendriya Vidyalaya,
Sector-24, Noida-201301,
District - Gautambuddhnagar (UP),
Email – noida_kv@rediffmail.com

R-24034

Gist of Complaint:

The above named complainant filed a complaint dated 12.12.2019 under the Rights of Persons with Disabilities Act, 2016 for providing 'Writer/Reader' to his son, Master Manish Lenka, a child with 75% visual impairment and student of Class-III (Section-A) at Kendriya Vidyalaya, Sector-24, Noida (UP), as provided in the "Guidelines for conducting written examination for Persons with Benchmark Disabilities" vide Office Memorandum No.34-02/2015-DD-III dated 29.08.2018 and "Corrigendum" dated 08.02.2019 issued by Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment.

2. The matter was taken up with the Principal, Kendriya Vidyalaya Noida vide letter dated 22.05.2020 followed by reminder dated 29.07.2020. Since no reply was received within the stipulated time, the

(Page - 1 - of 3)

[Signature]



case was listed for online hearing on 13.10.2020 and Notice of Hearing was issued to the parties on 08.10.2020.

3. After issue of Notice of Hearing, the respondent filed their reply vide email dated 09.10.2020 and submitted that in Class I & Class II no formal examination was conducted and Master Manish Lenka is presently studying in Class-III. In this session 2020-21 due to lockdown, the Vidyalaya is conducting classes and test on online mode and child is permitted to attempt test/examination from home with the help of Parents/Writer/Reader. Whenever offline examination would be conducted, he would be allowed to bring his own Writer/Reader.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.10.2020. The following were present:

- (1) Shri Gautem Lenka, complainant along with his son Master Manish Lenka
- (2) None appeared for the respondent.

Observation/Recommendations:

The complainant reiterated his grievance for providing 'Writer/Reader' to Master Manish Lenka in the examination by the respondent.

2. This Court noted that though late, yet finally allowed Master Manish Lenka to bring his own 'Writer/Reader' to write the offline exams.

3. The respondent is advised to implement the 'Guidelines for conducting written examination for Persons with Benchmark Disabilities' [Guidelines] 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 followed by the 'Corrigendum' dated 08.02.2019. Master Manish Lenka be provided 'Writer/Scribe' as per Clause IV of the Guidelines which provide as under:

"IV. The facility of Scribe/Reader/Lab Assistant should be allowed to any person with benchmark disability as defined under section 2(r) of the RPwD Act, 2016 and has limitation in writing including that of speed if so desired by him/her.



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

In case of persons with benchmark disabilities in the category of blindness, locomotor disability (both arm affected-BA) and cerebral palsy, the facility of scribe/reader/lab assistant shall be given, if so desired by the person.

In case of other category of persons with benchmark disabilities, the provision of scribe/reader/lab assistant can be allowed on production of a certificate to the effect that the person concerned has physical limitation to write, and scribe is essential to write examination on his behalf, from the Chief Medical Officer/Civil Surgeon/ Medical Superintendent of a Government health care institution as per proforma at APPENDIX-I.

Master Manish Lenka as well as other students with disabilities be also provided "compensatory time" in terms of the Clause XII of the Guidelines (as amended in the 'Corrigendum'). Proper seating arrangement (preferably on the ground floor) should be made as per the Clause XIV of the Guidelines.

4. The case is disposed off.

Dated: 22.10.2020



Upma Srivastava
(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. 12148/1032/2020

Complainant:

Shri Shameer Rishad,
Convenor, Javed Abidi Foundation,
F-311, Royal Residency Sushant Lok,
Phase-2, Sector-56, Gurgram-122011 (Haryana);
Email: shameer.rishad@gmail.com

Respondent:

The Registrar,
Banaras Hindu University,
Banaras Hindu University Campus,
Varanasi – 221005 (U.P); Email: registrar@bhu.ac.in

SUBMISSIONS MADE BY THE COMPLAINANT

1. The complainant submitted that Shri Rahul Tiwari is a 19 year old student with hearing impairment who is pursuing B.Sc. (Hons), Mathematics in Banaras Hindu University (BHU). He is unable to access any of his classes in entirety of his first year of college started in August, 2019. There are no Indian Sign Language Interpreters; and the teachers use traditional oral and auditory methods to deliver their lectures. BHU took no action on the requests made in this regard by the father of Shri Rahul Tiwari.
2. The complainant further submitted that University Grant Commission had formulated a HEPSN Scheme (Higher Education of Persons with Special Needs) which included setting up of Disability Units in colleges, accessibility of built



Page 1 of 4

environment and technology, appointing a coordinator etc. and provided funds for implementing them. This scheme has not been implemented well.

SUBMISSIONS MADE BY THE RESPONDENT:

1. Banaras Hindu University (BHU) in their reply dated 21.08.2020 submitted that there was no position sanction as Indian Sign Language Interpreter (SLI) in the BHU, hence regular recruitment was not possible. As per the list of SLIs available on the website of Indian Sign Language Research & Training Centre, New Delhi (ISLRTC), some of the trained SLIs were contacted over phone but they expressed their inability. After identifying the budget head for payment of remuneration for Contractual Engagement of SLIs, Indian Sign Language Research & Training Centre, New Delhi was approached for providing three SLIs for various Faculties to support the students in need. But at the same time Lockdown due to COVID-19 was imposed and University was closed. After opening of the University and commencement of the regular classes the SLIs would be provided to such students during the coming academic session. Shri Rahul Tiwari and similar other students of intermediate semesters had been given general promotion to the higher semesters. A separate special facility of Audio Recording for Visually Impaired and Dumb Students has been stated to be provided in the Central Library of the BHU.

ISSUE/POINT OF CONTENTION:

Whether respondent is failed in his duty to provide inclusive education and reasonable accommodation to the persons belonging to Pwd category (Deaf and Blind sub category)

HEARING:

The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **13.10.2020**. The following were present:

1. Complainant: Complainant in person
2. Respondent: Dr. Pushyamitra Trivedi, Dy. Registrar (Acad.)



Both the parties were heard.

OBSERVATIONS & RECOMMENDATIONS

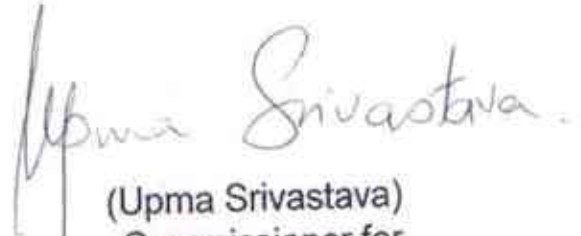
1. Complainant in this case is filed by member of an NGO, on behalf of a student pursuing bachelor course in respondent university. Main point of contention is denial of the education rights by the respondent. At the very beginning, it is not worthy to mention Section 17(c) and Section 16(v) of Rights of Persons with Disabilities Act, 2016. Section 16 of RPwD Act makes it mandatory for the appropriate government to ensure that education to blind or deaf or both is imparted in the more appropriate language and modes and needs of communication. Section 17 elevates this duty to higher step. As per the section it is mandatory duty of the appropriate government to employ teachers who are qualified in sign language and Braille language. Objective of these two provisions is to ensure that students belonging to PwD category, can be given inclusive education so that they can be brought at par with other students who do not belong to PwD category.
2. In the light of the reply filed by the respondent this court notes that respondent has started taken corrective steps towards performance of its duties as indicated in the above mentioned two provisions. However, this court feels compelled to issue following recommendations:
 - a. As soon as next academic session commences, the respondent shall employ qualified Sign Language Interpreters.
 - b. Respondent shall take up the issue of employing Sign Language Interpreters with UGC/HRD to complete the appointment on permanent basis. The respondent shall complete this exercise within 3 months on receiving this order.
 - c. It is to be noted that during the hearing conducted by video conferencing, Complainant presented various ideas which can be used to impart holistic education by using information



technology. Therefore, this court recommends that a meeting shall be organised by the respondent university with the complainant whereby he can effectively suggest the ideas for the consideration by the respondent university.

The case is accordingly disposed off.

Dated: 22.10.2020


(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: 11844/1023/2020

Complainant: Shri Rajendra Prasad Sharma, K - 19, Street No. 13, Gangotri Vihar, West Ghonda, Maujpur, North East Delhi - 110053
e-mail: <negimohit16@gmail.com>

Respondent: The Head - Human Resources, Jones Lang LaSalle Building Operations Pvt. Ltd., Level 16, Tower C, Eptome Building No. 05, DLF Cyber City Phase III, Gurgaon - 122002
e-mail: <admin.pam@ap.jll.com> <khadija.iqbal@ap.jll.com>

Complainant 90% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **24.02.2019** submitted that he had joined the respondent Company on 01.06.2014 and the company issued a warning letter to him on 04.08.2017 for unsatisfactory job performance. He further submitted that after accepting the letter, the company stopped his entry and not paid salary, also not given termination letter. He further submitted that on July 2018, he was admitted in AIIMS for visual treatment and on 19.06.2019, he came to know that he was suffering from visual disability after that he informed the company through e-mail and they had assured him to provide all possibilities on humanity and medical ground. He alleged that respondent neither released his salary and nor provided medical help.

2. The matter was taken up with the Respondent vide letter dated **09.06.2020** under Section 75 of the RPwD Act, 2016.

3. In response, respondent vide letter dated **31.07.2020** inter-alia submitted that complainant had failed to perform his services for which several oral warnings had been given to him. Even after issuing so many warnings, he did not improve, resultant thereon, on



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04.08.2017, the company had issued a warning letter to the claimant for his unsatisfactory job performance and directed him to improve the same. They further submitted that the company is not liable to pay any salary to the complainant as they were neither aware nor being informed about the disability until July 2019.

4. Complainant vide rejoinder dated **03.09.2020** submitted that his entry to the old site was banned by the company on **01.08.2017**, due to which the applicant could neither go to his old site nor did he receive any oral and written order by the company to go to the new site.

5. After considering the respondent's reply dated **31.07.2020** and the complainant's rejoinder dated **03.09.2020**, it was decided to hold a personal hearing in the matter, and therefore, the case was listed for personal hearing on **16.10.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.10.2020**. The following were present:

- Shri Rajendra Prasad Sharma – on phone
- Respondent – absent

Observation/Recommendations:

6. It is observed that assessment of disability of the complainant was done in 2019 and a certificate of disability was issued on 19.06.2019 and the grievance of not allowing him to work is related to the year 2017. Therefore, this Court does not find any merit in the case on the ground of disability. However, since the complainant became person with disability and obtained certificate in 2019, therefore, respondent may consider giving possible help to the complainant on humanitarian ground.

7. The case is disposed off.

Dated: 23.10.2020



Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12047/1023/2020

Complainant: Shri Hunny Chugh, House No. CG, Tower No. 09, Type - 2, Kidwai Nagar East, Delhi - 110023
e-mail: <hunny.chug@gov.in>

Respondent: The Directorate General - Fire Services, Civil Defence & Home Guards, Ministry of Home Affairs, East Block - 7, Level - 7, R.K. Puram, New Delhi - 110066
e-mail: <dgfscdhg@gmail.com>

GIST of the Complaint:

Complainant vide complaint dated 28.05.2020 submitted that Shri D.K. Shami, Fire Adviser and Shri Umesh Sharma ADG were harassing him in petty office matter therefore, he had written a complaint to Chairman of Grievance redressal Cell (Divyangjan) about harassment vide letter dated 01/01/2020 but no action or response was received till date. He further submitted that he had taken earned leave from 9th to 13th March 2020 but unfortunately, he had missed return flight from Ahmedabad to Delhi on 16 March 2020 due to illness of his parents which had been intimated to the office on 16 March 2020. He further submitted that he had informed the office that he was stranded in Red zone Ahmedabad district and requested work from home which was allotted to him by E-mail and WhatsApp started from 21 March 2020 and work completed by him on time. He further submitted that he had requested DDO and ASO cash section by email dated 23/04/2020 not to deduct income tax and any cess from his salary which may be deducted by end of FY 2020-21 as he was stranded in Ahmadabad but when he reached Delhi, he found that an amount of Rs.8424/- as Income-tax had been deducted from his salary.

2. The matter was taken up with the Respondent vide letter dated 09.07.2020 under Section 75 of the RPwD Act, 2016.



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3. In response, respondent vide letter dated 13.08.2020 inter-alia submitted that Mr. Hunny Chugh, Assistant Section Officer was absent for long, still considering the COVID -19 scenario, office has released full salary for the month of Mar, April and May 20, the transport allowance component was deducted for month of Apr and May 2020 in accordance with Dept. of expenditure. They further submitted that Mr. Hunny Chugh reached Delhi as intimated vide mail dated 28.05.2020 and he was instructed to report to Office immediately but vide mail dated 29.05.2020, he had informed that "I can't come to office as I am exempted as per DOP&T orders". However, considering the COVID - 19 scenario and disability of assistant, DG (FS, CD & HG) has taken a lenient view of his case and directed to regularize his leave (referring clarification regarding absence during COVID-19 lockdown period from other Govt. office i.e. CAG) from his leave account (82 EL + 26 HPL) and released the salary and his case for transfer has already been taken up.

4. After considering the respondent's reply dated and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.10.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.10.2020**. The following were present:

- Shri Hunny Chugh – complainant
- Shri Umesh Sharma, ADG on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. The case is disposed off with the recommendation to take action as per the DoP&T's O.M. dated 28.07.2020 and reconsider the issue of leave and deduction of salary during COVID - 19 epidemic lockdown period so as to ensure that rights of persons with disabilities do not get infringed.



Dated: 23.10.2020

Upma Srivastava
(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12091/1022/2020

Complainant: Dr. Khushboo Jha, C – 601 Taj Apartments, Gazipur, Delhi - 110096
E-mail: <dr.khushboo.jha@gmail.com>

Respondent: The Chairman & Managing Director, Food Corporation of India, 16 – 20, Barakhamba Road, New Delhi – 110001
E-mail: <chairman.fci@gov.in>

Complainant 57% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 02.07.2020 submitted that she has been working in the Principal Controller of Defence Accounts Office, Dehradun since September 2018 and her husband is working in FCI, HQ, New Delhi. She further submitted that as per DOP&T's OM dated 20.09.2009, her husband had applied for Transfer from New Delhi to Dehradun on 16.10.2018 but no action was taken, therefore, he again submitted an application to the respondent which is pending.

2. The matter was taken up with the Respondent vide letter dated **28.07.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **16.09.2020** respondent did not submit any reply, therefore hearing fixed on **16.10.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.10.2020**. The following were present:

- Complainant could not connect due to technical reasons.
- Mr. Arun Kumar, GM (Pers), FCI & Mr. R.L. Meena, FCI (HQ), on behalf of the respondent.

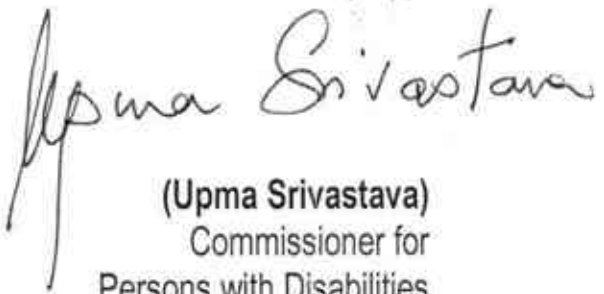


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Observation/Recommendations:

3. Both the parties were heard.
4. The grievance of the complainant is regarding transfer of her spouse presently working in FCI, Delhi to Dehradun, Uttarakhand, where the complainant works in the O/o Principal Controller of Defence Accounts (Air Force).
5. The respondent explained that they do not have any post in Dehradun, Uttarakhand at the level of the complainant's spouse where he could be posted now. However, whenever any vacancy is created in Uttarakhand region in future, he will be considered.
6. Under the circumstances, the only option available for the complainant is to get herself transferred to New Delhi by requesting the O/o Principal Controller of Defence Accounts (Air Force), so that she could be looked after by her spouse, given her disability condition.
7. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.10.2020





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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. 11001/1024/2019

Complainant:

Shri Feyaz Ahmed,
Qr. No.H/228, Sector-15,
Rourkela, Sundergarh-769003 (Odisha)
Email: fezasahmed@gmail.com

Respondent:

The Secretary, Railway Board,
Ministry of Railways, Rail Bhawan,
New Delhi - 110001
Email: secyrb@rb.railnet.gov.in

Gist of Complaint

The complainant is a person with 100% hearing impairment and is working as 'Safaiwala' at Bondamunda, South Eastern Railway, Chakradharpur. He alleged that South Eastern Railway has turned down his request to change his category to 'Hospital Attendant' whereas as per the letter/circular No.E(NG)II/2014/RC-2/1List dated 14.02.2014 issued to the General Manager (P), All Zonal Railways/PUs, the posts of Ward Attendant/Sr. Ward Attendant, Ward Assistant, Ward Boy etc. under this category are identified for persons with hearing impairment.

2. From the perusal of the documents filed by the complainant, it appears that South Eastern Railway vide letter No. E/1/Tfr/1057 dated 07.07.2006 addressed to the Chief Medical Officer, Bondamunda that Deaf and Dumb cannot work as Hospital Attendant (HA) as HAs are supposed to attend to sick

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patients and their demands. Similarly he is unsuitable as 'Peon' or 'Masalchi'. Both the jobs demand listening & speaking.

3. The matter was taken up with the respondent vide this Court's letter dated 10.01.2019 followed by reminder dated 17.09.2020, but no response has been found received despite reminder dated 17.09.2020.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.10.2020**. The following were present:

- (1) Mr. Feyaz Ahmed, the complainant
- (2) Mr. Mahesh Kr. Meena, Dy. Director (Estt.), on behalf of the respondent

Observation/Recommendations:

The complainant expressed that because of his 100% hearing impairment, he is being discriminated in his office and his category of employment i.e. Safaiwala is not being changed to other category like Hospital Attendant, Ward Attendant etc. as done in the case of employees similarly placed in his organisation. The Ministry of Railways stated that it was not possible to post him as Hospital Attendant or on any other post as Peon or Masalchi, because he could not speak or hear.

2. The respondent stated that they have not considered examining the case of the complainant to change his category to any other suitable identified post where he could work efficiently despite his disability.

3. It is extremely disappointing to see the apathetic attitude of the respondent towards the request of the complainant who has been working with them for the last twenty years. The respondent can definitely upgrade the category of the complainant to a post which is suitable for persons with disabilities as would have been identified by the Ministry of Railways in terms



of directions of the Ministry of Social Justice & Empowerment. Posts like Ward Boy, Ward Attendant, Sr. Ward Attendant etc. are identified for persons with disabilities of these categories- i.e. OA, OL, LV, HH, vide Notification No.16-15/2010-DD.III dated 29.07.2013 issued by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment.

4. Accordingly, the respondent is recommended to change the category of the complainant appropriately and send a compliance report within 90 days of the receipt of this order.

5. The case is disposed off.

Dated: 26.10.2020


(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

वाद संख्या - 11975/1141/2020

परिवादी -

श्री इफ्तिखारवसी, 109-बी, मोहल्ला कोट, बस्ती हज़रत निज़ामुद्दीन, दक्षिणी दिल्ली-110013;
ईमेल: iftikharwasitirmizi@gmail.com; Mobile: 96547176221

प्रतिवादी -

दिल्ली दुग्ध योजना,
द्वारा महाप्रबन्धक, पश्चिमी पटेल नगर, नई दिल्ली-110008;
ईमेल - gm.dms@nic.in; दूरभाष 25872455/25872466.

परिवाद का सार -

परिवादी ने समाचार पत्र में प्रकाशित विज्ञापन के अनुसार, दिनांक 12.06.2018 को दिल्ली दुग्ध योजना के पटेल नगर स्थित कार्यालय से पचास रुपये फार्म की फीस जमा कर डीएमएस बूथ आवंटन के लिए सारे प्रमाण पत्रों के साथ आवेदन किया था। दिल्ली दुग्ध योजना के नियमानुसार आवेदकों के वरीयता क्रम के अनुसार 'प्रथम आओ प्रथम पाओ' के आधार पर बूथ आवंटन किया जाता है। दिनांक 22.05.2019 को क्रम संख्या 1 से 20 तक के आवेदकों को साक्षात्कार के लिए बुलाया गया था जिसमें परिवादी का क्रम संख्या 3 था। परिवादी को खाली बूथों की एक सूची भी दी गई जिसमें से निजामुद्दीन या उसके आसपास के बूथ आवंटित करने का परिवादी ने अपनी सहमती दे दी थी। परिवादी को प्रतिवादी के कार्यालय द्वारा यह बताया गया कि दिव्यांग होने के कारण उन्हें वरीयता में प्रथम स्थान पर रखा गया था और आवंटन आरम्भ होते ही सूचित कर दिया जाएगा। परिवादी ने आरोप लगाया कि आज तक प्रतिवादी द्वारा उसे कोई बूथ आवंटित नहीं किया गया जबकि उनके बाद के आवेदकों को बूथ आवंटित किया गया।

2. प्रतिवादी ने उत्तर दिनांक 17.08.2020 प्रस्तुत किया कि परिवादी को दिनांक 22.05.2020 को बूथ लेने हेतु साक्षात्कार के लिए बुलाया गया और साक्षात्कार के समय परिवादी को खाली पड़े बूथों की सूची दी गई कि खाली पड़े बूथों में से कोई पाँच बूथ अपनी पसन्द का वरीयतानुसार चुन कर लिखित रूप में दो कार्य दिवस के अन्दर दिल्ली दुग्ध योजना में जमा कराएँ जिसे वे लेना चाहते थे ताकि उस पर विचार

(Page 1 of 2)

किया जा सके। लेकिन परिवादी ने बूथ लेने हेतु अपना लिखित आवेदन जमा नहीं करवाया जिसके कारण उन्हें बूथ का आवंटन नहीं किया जा सका।

3. परिवादी ने प्रत्युत्तर दिनांक 04.09.2020 में प्रतिवादी के कथन को गलत बताया और कहा कि उन्होंने बूथ लेने हेतु दिनांक 22.03.2020 को अपना लिखित आवेदन जमा किया था

सुनवाई - इस परिवाद में विडियो कान्फ्रेंसिंग के माध्यम से आयुक्त दिव्यांगजन द्वारा दिनांक 16.10.2020 को सुनवाई की गई। सुनवाई में निम्नलिखित व्यक्ति उपस्थित हुए -

1. श्री इफ्तिखारवसी, परिवादी स्वयं दूरभाष पर
2. श्री वीरेन्द्र सिंह, प्रभारी, दिल्ली दुग्ध योजना दूरभाष पर प्रतिवादी की ओर से

अवलोकन/अनुशंसाएँ -

शिकायतकर्ता का तर्क यह है कि यद्यपि वह आवेदकों की सूची में जिन्हें डीएमएस मिल्क बूथ आवंटित किया जाना था, क्रम संख्या 1 पर था, फिर भी उनकी विकलांगता के कारण प्रतिवादी ने उन्हें कोई बूथ आवंटित नहीं किया था, जबकि आवेदक जो सूची की रैंकिंग में कम थे, उन्हें उनकी पसंद के अनुसार बूथ आवंटित किए गए थे।

2. प्रतिवादी ने यह व्यक्त किया कि यद्यपि परिवादी क्रम संख्या 1 पर था, उसे किसी भी बूथ को आवंटित नहीं किया जा सकता था, क्योंकि वह नियत तिथि यानी 22.05.2019 को पाँच बूथों के लिए अपनी वरीयता के लिखित अनुरोध के साथ नहीं आया था, जो उस समय उपलब्ध थे।

3. परिवादी ने कहा कि उन्होंने प्रतिवादी को ऐसा लिखित अनुरोध दिया था।

4. परिवादी और प्रतिवादी द्वारा दिए गए वक्तव्यों को देखते हुए यह अनुसंशा की जाती है कि परिवादी उपलब्ध शेष बूथों में से उनकी वरीयता को विधिवत चिन्हित करते हुए नए सिरे से एक अभ्यावेदन प्रतिवादी को देगा, जो प्रतिवादी द्वारा परिवादी को बूथ आवंटन के लिए विचार किया जा सकेगा।

5. तदनुसार इस परिवाद का निपटारा किया जाता है।

दिनांक : 26.10.2020

उपमा श्रीवास्तव

(उपमा श्रीवास्तव)
आयुक्त दिव्यांगजन





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. 12004/1141/2020

Complainant:

Shri Ajeet Kumar,
S/o Shri Ramjeevan Mahto,
Village-Gokhulpur, Post-Satnag,
PS – Chandi, District-Nalanda -803108 (Bihar)
Email: sahilsinha980pnb@gmail.com

Respondent:

The Chief Executive Officer,
Indian Oil Corporation Limited
Regd. Office: Indian Oil Bhavan,
G-9, Ali Yavar Jung Marg, Bandra (East),
Mumbai-400051; Email: kgwalani@indianoil.in

Date of Complaint: 07.03.2020

Gist of Complaint

The complainant, a person with 70% locomotor disability submitted that he had applied for allotment of Petrol Pump under OBC-PH quota in the Divisional Office, Patna of Indian Oil Corporation Ltd. (IOCL). He alleged that IOCL did not allot him the petrol pump; instead a non-disabled person was allotted the petrol pump.

2. On taking up the matter, IOCL in their reply dated 17.08.2020 submitted that the location "Devaria (Not on SH), Block-Ben, Dist. Nalanda", Bihar was advertised for Rural Retail Outlet (Kisan Sewa Kendra-KSK) under OBC-PH category in Nov 2018. A total of five applications were received against the said advertisement as per the details given below:

- Group-1 (land owned by self/family members) – Single application
- Group-2 (Firm offer of land) – Two applications
- Group-3 (No land) – Two applications.

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Since Shri Arun Kumar was the sole applicant under Group-1, he was declared as selected candidate. Subsequent to the scrutiny of documents, land evaluation & Field Verification, Letter of Intent (LOI) was issued in favour of the selected candidate, Shri Arun Kumar on 21.08.2019. Shri Arun Kumar had submitted PH Certificates – one, bearing ref-149 dated 18.04.2012 issued by Medical Officer, PHC, Ben, Dist. – Nalanda; and another PH certificate bearing ref.-195 dated 01.04.2019 issued by Chairman, Board for Physically Handicapped, Sadar Hospital, Biharsharif, District Nalanda. Confirmation regarding the genuineness of Ph certificate had been sought from the concerned issuing authority.

3. The complainant in his rejoinder dated 08.08.2020 has submitted that Shri Arun Kumar who had been declared the suitable candidate is his co-villager and he know him well that he is absolutely physically fit and fine. With mal-intention and to take undue advantage of this special category and grab a dealership Shri Arun Kumar has managed to obtain wrongfully a certificate of physical disability.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.10.2020**. The following were present:

- (1) Mr. Ajeet Kumar, the complainant
- (2) Mr. Ankit Katiar, Advocate, Mr. R.K. Gupta & Mr. Ajay Garg, IOCL, on behalf of the respondent

Observation/Recommendations:

Both the parties were heard.

2. The contention of the complainant is that the person who was selected for allotment of Petrol Pump under OBC-PH quota in the Divisional Office, Patna of Indian Oil Corporation Ltd. was not actually disabled. As per the complainant, the selected candidate is absolutely fit, whereas he himself who was also an applicant was really disabled.



A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line.

3. The respondent expressed that the selected candidate was indeed disabled as per the certificate given to them by the candidate, which has been issued in 2012 by Medical Officer, PHC, Nalanda. The respondent further stated that they had actually got the certificate re-verified from the PHC, Nalanda and hence they had no doubt that this candidate was disabled. Further the respondent has also enclosed another disability certificate of the candidate in question issued by Sadar Hospital, Biharsharif, District Nalanda of April, 2019 which also certified the same percentage of disability.

4. In view of the submissions and the documents produced by the respondent, there is no merit found in the contention of the complainant.

5. The case is disposed off.

Dated: 26.10.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities

