



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. 12681/1011/2021

Complainant:

Dr. Neha Nema,
H. No.254/255,
Gandhi Vihar North,
(Near Mukherjee Nagar)
West Delhi,
Delhi -110009

- R29597

Versus

Respondent :

Cluster Innovation Centre (CIC)
(Through the Director),
3rd Floor, Rugby Sevens Building,
University Stadium,
University of Delhi,
Delhi – 110 007.

- R29598

Disability : 50% locomotor

Gist of Complaint:

The complainant vide her complaint dated 26.03.2021 submitted that she had given interview on 23.01.2021 for the post of Asst. Professor on Adhoc basis in Cluster Innovation Centre (CIC) in University of Delhi for teaching B.A. Humanities and Social Studies. The post applied was under locomotor disability. But she submitted that she has not received the appointment letter so far. She has done Ph.D in Inter Disciplinary, M.A. in Rural Development, M.A. in Mass Communication and M.Phil in Mass Communication. She

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submitted that she is eligible for this post as per her qualification and disability.

2. The matter was taken up with the Director, Cluster Innovation Centre (CIC) vide letter dated 01.04.2021.

3. No reply has been received from the Respondent.

Hearing : An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 19.07.2021

4. The following persons were present during the hearing ;

- 1) Complainant : Dr. Neha Nema in person.
- 2) Respondent : Could not join the online hearing due to technical problem.

Observation/Recommendations:

5. Complainant submits that she appeared in interview for the post of Ad-hoc faculty Sociology/Social Work which was reserved for PwBD category.

6. During online hearing, Respondent could not join the online hearing and was contacted over telephone. Respondent submitted that result for the recruitment process in question were not declared as on the date of hearing. Various PwBD candidates appeared for the interview apart from the Complainant. Furthermore, Respondent informed that the result will be

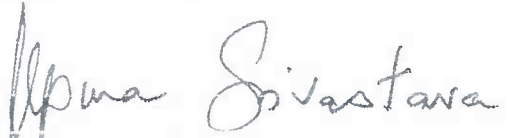


declared in a short while and further committed to inform this Court about the same.

7. Subsequently, by letter dated 27.07.2021, Respondent informed this Court that result for the recruitment has been declared. Candidate, Dr. Rinki Chokhani was found suitable and was appointed for the post of Assistant Professor on ad-hoc basis. It was informed by the Respondent that Dr. Rinki Chokhani is PwBD with Visual Impairment.

8. Since Respondent has appointed a Person with Benchmark Disability on the post which was reserved for a Person with Benchmark Disability, interference of this Court in the present Complaint is not warranted.

Dated: 01.10.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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भारत सरकार/Government of India

Case No: 12777/1023/2021

129653

Complainant: Shri Vikesh Thakur
H.No. C-59, Railway Colony
Hardoi, Uttar Pradesh – 241001
E-mail: <thakur.vikesh93@gmail.com>

Respondent: The Divisional Railway Manager
Northern Railway, Moradabad Division
Moradabad, Uttar Pradesh
E-mail: <drm@mb.railnet.gov.in>

— 129654

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी श्री विकेश ठाकुर, 100 प्रतिशत दृष्टिबाधित, अधीन सहायक मंडल अभियंता – I अधिकारी, विश्राम गृह, हरदोई में खल्लासी पद पर कार्यरत है। उनका अपनी शिकायत दिनांक 29.06.2021 में कहना है कि उन्होंने मध्य रात्रि के समय Divisional Inspector, RPF, Indian Railway को विश्राम गृह में कक्ष (Suit B) में ठहरने की बजाए (Suit A) में ठहरने की व्यवस्था की, चूंकि उस रात कक्ष (Suit B) में बिजली नहीं थी तथा कक्ष (Suit A) खाली था तथा अगले दिन कक्ष (Suit A) की बुकिंग के बारे में प्रार्थी को ज्ञान नहीं था और न ही किसी अधिकारी व किसी सहकर्मी ने प्रार्थी को बुकिंग के बारे में सूचित किया गया। प्रार्थी का आगे कहना है कि सक्षम अधिकारी से उन्होंने अपनी गलती के लिए क्षमा याचना भी की परन्तु अधिकारी द्वारा प्रार्थी की एक वार्षिक वेतन वृद्धि अस्थायी रूप से एक वर्ष के लिए रोकने के आदेश पारित कर दिया। प्रार्थी का आगे कहना है कि उक्त आदेश की अपील सहायक क्षेत्रीय अभियंता (प्रथम), उत्तरी रेलवे, हरदोई में दिनांक 24.06.2021 को दायर कर दी थी जिसपर अभी तक कोई कार्रवाई नहीं हुई।


2. The matter was taken up with the Respondents vide letter dated 06.07.2021 under Section 75 of the RPwD Act, 2016.

3. सहायक कार्मिक अधिकारी, उत्तर रेलवे, मुरादाबाद का अपने पत्र दिनांक 29.07.2021 में कहना है कि श्री विकेश ठाकुर द्वारा ड्यूटी के दौरान अनाधिकृत रूप से एक अधिकारी के पक्ष में आवंटित कक्ष को बिना किसी अनुमति के किसी अन्य अधिकारी को दे दिया था जिसके कारण उस अधिकारी को असुविधा हुई जिन्हें वह कक्ष आवंटित था इसलिए उक्त अनियमितता को देखते हुए उन्हें 03 वर्ष के वेतन वृद्धि रोके जाने का दंड दिया गया है तथा सहायक मंडल अभियंता, हरदोई – प्रथम अपील पर सहानुभूति पूर्व विचार कर अंतिम निर्णय लेंगे।

...2....

Observation/Recommendations:

4. It is settled principle of law that Disciplinary Authority has power to impose penalty. Such penalty must be subject to principles of proportionality.
5. This principle was adhered to by Hon'ble Supreme Court in number of cases. For instance, Hon'ble apex Court in Girish Bhushan Goyal vs. BHEL; (2014) 1 SCC 82 set aside penalty of dismissal imposed by BHEL for omission to perform duty. Court held penalty of dismissal as disproportionate to the nature of charges.
6. In SURENDRA PRASAD SHUKLA VS STATE OF JHARKHAND AND ORS REPORTED IN (2011) 8 SCC 536, a police constable was charged with involvement in the theft of a motor car and held guilty. The Supreme Court found the punishment of dismissal from service as shockingly disproportionate and reduced the punishment from dismissal to compulsory retirement. An order of the same nature was made by the Supreme Court in S.K.GIRI VS HOME SECRETARY, MINISTRY OF HOME AFFAIRS AND ORS. REPORTED IN 1995 SUPP (3) SCC 519 holding the punishment of removal from service as "severe and disproportionate". It set aside the same and ordered reinstatement of the employee.
7. After visiting the reply of the respondent and noting that the matter is pending with Appellate Authority under Disciplinary Rules, it is observed that there is no financial loss caused to the organization. Therefore, considering the nature of charges and disability of the complainant, this Court recommends that Respondent may take compassionate view in the matter and may consider to taking a lenient view which is proportionate with the mistake.
8. For effective implementation of this Order, copy of this order may be forwarded to appellate authority before which complainant's appeal is pending.
9. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 04.10.2021



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

भारत सरकार/Government of India

Case No: 12780/1023/2021

1229658

Complainant: Shri A. Marimuthu
S/o S. Arunachalam, No. 6/19, GangaiammanKoil Street
Vadapalani, Chennai – 26
E-mail: amarimuthu65@gmail.com

Respondent: The General Manager
Southern Railway, Park Town
Chennai – 600003
E-mail: <kbarathan5163@gmail.com>

—1229659

Complainant: 40% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **29.06.2021** submitted that he had not attended office from 16.10.2020 to 01.01.2021 due COVID -19 pandemic situation and his salary was stopped. He has requested to pay salary on the above period as per DoP&T's order.

2. The matter was taken up with the Respondent vide letter dated **07.07.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Chief Personnel Officer, Southern Railway vide letter date **09.08.2021** inter-alia submitted that the case of Shri A. Marimuthu has been examined in detail and necessary action has been taken to arrange payment of salary for the period 16.10.2020 to 01.01.2021.

4. The above reply was forwarded to complainant on **25.08.2021** for submission of his comments/rejoinder but till date no response has been received from the complainant.

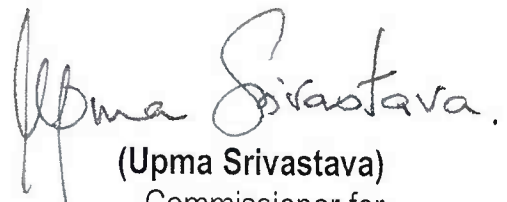
Observation/Recommendations:

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

DOP&T O.M. No.11013/9/2014-Estt.A.III dated 19th May, 2020 – entitled “Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19) Attendance regarding”, states..... “In continuation of this Ministry’s O.M. of even number dated the 18th May, 2020, it has been decided that the Government servants who have underlying conditions (co-morbidities) and were undergoing treatment for these ailments before lockdown, may, as far as possible, be exempted from roster duty upon production of medical prescription from treating physician under CGHS/CS(MA) Rules, as applicable. **Similarly, Persons with Disabilities and Pregnant Women may also not be included in the roster to be prepared.”**

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

6. In view of the aforesaid orders, the respondent shall re-examine the entire matter of withholding salary etc and ensure that no injustice is carried out.
7. Accordingly respondent is recommended to adhere to the DoP&T OM in letter & spirit. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 04.10.2021



सत्यमेव जयते

extra ⑧

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. 12672/1040/2021 | R29641

Complainant:

Shri Dharendra Gautam,
S/o Shri Virender Prasad,
R/o Room No.49, Sushruta Hostel,
Maulana Azad Medical College,
B.S.Z. Marg, New Delhi-110002
Email: dheerugautam2010@gmail.com

Respondent:

(i) National Medical Commission,
Pocket-14, Sector-8, Dwarka, Phase-1,
New Delhi-110077; Email: secy-mci@nic.in

— R29642

(ii) Registrar,
University of Delhi, Delhi-110007
Email: registrar@du.ac.in

— R29643

(iii) Maulana Azad Medical College and Lok Nayak Hospital,
2, Bahadur Shah Zafar Marg, Maulana Azad Medical College
Campus, Balmiki Basti, New Delhi, Delhi 110002
Email: deanmamc.2012@gmail.com

— R29644

1. Gist of Complaint:

1.1 Shri Dharendra Gautam, M-31, a person with 59% Locomotor Disability filed a complaint against the respondents regarding not allowing him to appear in the Final Year (Part-1) University Examination of MBBS Course by Maulana Azad Medical College, Delhi.

1.2 The complainant submitted that he is a regular student of MBBS course 2011 bearing College Roll No.63/11 and attended MBBS classes regularly and did well. He met with a severe road traffic accident on 24.05.2013 and went in COMA. After a long treatment he survived but

(Page 1 of 5)

got disabled with 59% locomotor disability, a Certificate of Disability No.226/2017 was issued on 13.12.2017 by Lok Nayak Hospital, New Delhi. He began to attend classes from January, 2017 and passed First Year and Second Year MBBS University Examination.

1.3 He filled up form for Final Year (Part-1) examination to be held from 20.03.2021. Admit Card was not issued to him, no message and information was given to him. He met with the officials of the university as well as officials of MAMC. On 20.03.2021 at 10.40 AM, he received a telephonic call from (Mobile No.9999912847) Academic Department, MAMC to come and appear in the examination. He went there but was not allowed to sign the attendance sheet because the Roll Number was not allotted to him. After 20 minutes his paper was taken away from him and he was asked to leave examination hall.

1.4 He prayed to allow him to appear in the examination for completion of his MBBS Course.

2. Submissions made by the Respondent No.3

2.1 The Dean, MAMC [Respondent No.3] in their reply dated 22.04.2021 submitted that the case of the complainant had been referred to the Dean, Faculty of Medical Science, University of Delhi [Respondent No.2] on 30.10.2019 and sought for the reliefs on three points.

2.2 The Respondent No.2 approved the same, vide email dated 10.04.2020 that - (a) He is permitted to continue beyond the stipulated span period of 8 years; (b) He will be treated as a PwD student; and (c) He would be allowed extra time in the examination as a PwD candidate. Accordingly, Examination Form of the complainant for appearing in 3rd Prof. (Part-1) MBBS, Annual Examination was forwarded to the Examination Branch of Respondent No.2 for issue of Admit Card for the said examination.

2.3 The Examination Branch intimated that the students of batch 2011 were not being allowed to sit in the examination for 3rd Prof (Part-1) commencing from 20.03.2021 for not completing their course with the stipulated period of 8 years, as given in the UG Ordinance issued by FMS University of Delhi.

2.4 Issuing of Admit Card and allowing a student to appear in the examinations, comes under the jurisdiction of the Examination Branch, University of Delhi, Respondent No.3 have no power in this matter.

2.5 The students of Batch 2011, both 3rd Prof (Part-I), MBBS and 3rd Prof (Part-II) MBBS, who had been denied Admit Cards, had approached and filed Writ Petition, W.P.(C) 3962/2021 with CM APPL. 11998/2021, CM APPL.11999/2021 Aditi Biswas & Ors. Vs Controller of Examination & Ors. before the Hon'ble High Court of Delhi. The Hon'ble Court passed Order dated 25.03.2021 as under:-

“5. There is the some dispute in the present case as to whether the petitioners have taken admission prior to the Ordinance coming into force W.P.(C) 3962/2021 & W.P.(C) 4012/2021 Page 4 of 4 on 09.07.2011. For the purposes of prima facie determination, reference may be made to the schedule in the Bulletin of Information for the 2011-12 session (at page 53 of the writ petition), from which it appears that the counselling closed on 08.07.2011, and admissions would have taken place thereafter. The impugned Ordinance was issued on 09.07.2011. In view of this position, I am of the prima facie view that the Ordinance would apply to the petitioners.”

“6. In view of the above, I am not inclined to pass an interim order at this stage. However, it is made clear that in the event the petitioners succeed in the writ petitions, they will be permitted to take the pending examinations at the first available opportunity.”

3. Submissions made by the Respondent No.1

3.1 Respondent No.1 in their reply dated 31.05.2021 submitted that as per medical treatment records annexed by complainant, he was discharged from the hospital on 06.11.2013 i.e. almost after 5 months from his accident met on 24.05.2013 and his condition at that time was “conscious and oriented”. In spite of that he started attending his first year of MBBS Course from January 2017 i.e. after more than a period of 03 years. He passed his First Professional MBBS Examination on 16.08.2017 i.e. after 06 years from admission; and Second Professional MBBS Examination he passed on 27.10.2020 i.e. after 03 years from passing the First Professional Examination.



3.2 As per the Bulletin of Information issued on 24.01.2011 by the University of Delhi [Respondent No.2], MBBS Course is of a period of certified study extending over 4½ academic years divided into 9 semesters (6 months each) from the date of commencement of study for the subjects comprising the medical curriculum to the date of completion of the examination followed by 1 year compulsory rotating internship within a maximum period of 8 years from the date of admission in the First Professional MBBS Course. In case of complainant, the said 4½ years are already over and the complainant had not even passed his First Professional Year Examination till August, 2017 wherein he took admission in the said course in September, 2011. Thus, he had to complete the MBBS Course in 2017, as per the Bulletin of Information issued by University of Delhi.

3.3 In view of the facts and the legal position as laid down by the Hon'ble Apex Court, it is most respectfully submitted that the prayer and relief sought in the present complaint being contrary to the statutory regulations and the various judgements of the Hon'ble Courts, would not be maintainable and deserves to be rejected.

4. Submissions made in Rejoinder

4.1 Complainant filed his rejoinder dated 17.06.2021, and reiterated that he is a student of Final Year (Part 1) Batch 2011 met with a deadly, unfortunate accident on 24.05.2013 followed by COMA and bed ridden, wheelchair conditions from 24.05.2013 to 30.09.2016 which includes treatment, regular follow up, investigations, Physiotherapy, Rehabilitation, etc. He stated to be a genuine and rarest of rare case of unfortunate circumstances and all series of events subsequently are well on record.

4.2 The rules and directions of debarring him from the Examinations are not only bad in Law but also against all the canon of the humane principles.

5. Observation/Recommendations:

6.1 The complainant could not attend his MBBS classes from 24.05.2013 to 30.09.2016 due to his disability which he sustained after the fatal accident on 24.05.2013 followed by the treatment, physiotherapy and rehabilitation. It does not appear to be intentional on the part of the



complainant to elapse the period from 24.05.2013 to 31.12.2016 i.e. more than 3½ years out of the stipulated period of 8 years to complete the course. He could only be able to attend his classes from January, 2017 and passed First Year and Second Year MBBS University Examination. It also appears that permission had been granted to the complainant by the Faculty of Medical Sciences, University of Delhi to continue beyond the stipulated period of 8 years treating him as a student with disability.

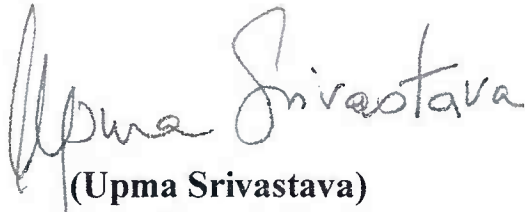
5.2 Although the matter is adjudicated before the Hon'ble High Court of Delhi making it clear that "...in the event the petitioners succeed in the writ petitions, they will be permitted to take the pending examinations at the first available opportunity", Respondents are advised to provide "reasonable accommodation" to the complainant in terms of Section 2.(y) and 3.(5) of RPwD Act, 2016, which reads 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;"

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

5.3 Accordingly the case is disposed off.

Dated: 04.10.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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extra

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. 12757/1101/2021 /R29645

Complainant:

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

Respondent:

Zonal Head – Delhi NCR
Indusind Bank, Pocket-7, Sector-B, Vasant Kunj,
New Delhi – 110070,
Email: zhnorth1@indusind.com

—R29646

1. Gist of Complaint:

Shri Nitesh Kumar Tripathi, a person with 65% Locomotor Disability (Crutch user) had filed a complaint on 17.06.2021 regarding inaccessible ATM premises of Indusind Bank situated at 319, Bhai Parmanand Colony, Delhi. The complainant alleged that due to the inaccessible premises, he could not do banking services at this ATM.

2. Submissions made by the Respondent

2.1 On taking up the matter respondent filed their reply dated 17.07.2021 on affidavit and submitted that the captioned ATM has entrance aligned with outside floor level, hence there is no need for ramp construction, as site entrance does not have any steps.

2.2. Respondent further intimated that complainant had been already replied vide email dated 28.06.2021; the complainant is trying to mislead the Office of CCPD by presenting half cooked and filing false complaint.

3. Submissions made in Rejoinder

The reply received from the respondent was forwarded to the complainant vide email/post dated 26.07.2021. Despite lapse of statutory time, no rejoinder was received from the complainant.

(Page 1 of 2)

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.09.2021**. The following were present:

- (1) Dr. Nitesh Kumar Tripathi, complainant in person
- (2) Shri Ashish Mahajan, Manager (Legal & Compliance), for the Respondent

5. **Observation/Recommendations:**

5.1 Both the parties were heard.

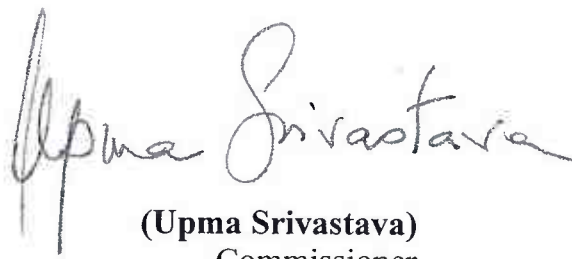
5.2 Complainant submits that ATM of Respondent establishment situated at 319, Parmananda Colony, Mukherjea Nagar, New Delhi is not accessible for wheelchair bound divyang persons. Respondent submits that the main hindrance is caused because of elevation of sewer line situated just below the entrance of the ATM.

5.3 Respondent refuted the claim by submitting that the ATM is situated on the ground floor and entrance of the ATM does not have steps hence, there is no need for construction of the ramp. As far as issue of elevation is concerned, Respondent submits that the elevation is because of the footpath which is situated right at the entrance door of the ATM. If any wheelchair bound will access the ATM from the footpath, he will not face any problem in accessing the ATM. Such accessibility problem will be faced only if wheel chair bound person would access the ATM from the road instead of footpath.

5.4 This Court recommends that the Respondent shall formulate an inspection team comprising of a wheel chair bound divyang person. The team shall inspect the ATM and explore the problems which may be faced by any wheelchair bound person in accessing the ATM machine and further propose the solutions to do away with these problems. Respondent is further recommended to implement these solutions and submit action taken report to this court.

5.5 Accordingly the case is disposed off.

Dated: 04.10.2021



(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12759/1141/2021

1229647

Complainant:

Shri Prasanna Madhukar Rao Dhok
R/o Plot No.8, Ramdev Colony, Phoolchur,
Tehsil & District – Gondia – 441601
Email: prasann1969@yahoo.co.in;
Mobile: 9823140670

Respondent:

Chief General Manager,
Indian Oil Corporation Ltd.,
3079/3, Sadiq Nagar, J B Tito Marg,
New Delhi – 110049;
E-mail: iocl.coccc@indianoil.in; kalikrishna@indianoil.in

— 1229648

1. Gist of Complaint:

1.1 Shri Prasanna Madhukar Rao Dhok, M-52, a person with 95% Locomotor Disability filed a complaint dated 16.06.2021 before the Chief Commissioner for Persons with Disabilities regarding termination of dealership of LPG Distribution of IOCL (Nagpur Area, Maharashtra) allotted under disability quota to him.

1.2 The complainant submitted that the Dealership of IOCL LPG Distribution has been allotted to him under disability quota by IOCL. He alleged that the top officers of respondent IOCL, namely, Chief Area Manager (Nagpur); Field Officer (Chandrapur Area); Chief Manager (Nagpur); Customer Service Officer together made a conspiracy against him to save Shri Arnab Sengupta. These Officers did not make timely supply of Load (Truck of Gas Cylinders) to his agency. His SMS Indents were cancelled. His Gas Agency was being inspected by the officers again and again – in 06 months his agency was got inspected 06 times – and finally on 18.01.2020 his agency was closed without giving any notice. The grievances submitted by the complainant to the Officers of IOCL,

(Page 1 of 5)

were never heard. His request made on 14.10.2019 for arbitration in terms of Clause 37 of MoU was also cancelled.

2. Submissions made by the Respondent

2.1 The respondent filed their reply dated 23.07.2021 out rightly rejecting the allegations made by complainant; and submitted that his rights have not been discriminated on the ground of disability. The Complainant and IOCL had entered into an Indane (Liquefied Petroleum Gas) Distributorship Agreement dated 23.05.2012 whereby the complainant was appointed as a Sole Proprietor of IOCL LPG Distribution, known as 'Indane', in cylinders to customers within the municipal limits of Gondia (Maharashtra). The complainant, by his acts and deeds, violated the terms & conditions laid down in Clauses 21, 23(b) and 23(c) of the Distributorship Agreement dated 23.05.2012 and committed irregularities, therefore, his distributorship was terminated. He cannot take shelter under RPwD Act, 2016 by way of the present proceedings.

2.2 The Clauses 21, 23(b) and 23(c) read as under:-

"Cl.21. The Distributor shall not sell, assign, mortgage or part with or otherwise transfer his interest in the distributorship or the right, interest or benefit conferred on him by this agreement to any person. In the event of the Distributor being a partnership firm any change in the constitution of the firm, whether by retirement, introduction of new partners or otherwise howsoever will not be permitted without the previous written approval of the Corporation notwithstanding that the Corporation may have dealings with such reconstitution firm or impliedly waived or condoned the breach or default mentioned hereinabove by the distributor. In the event of the death of any of the partners, the Distributor shall immediately inform the Corporation giving the necessary particulars of the heirs and legal representatives of the deceased partner and it shall be the option of the Corporation either to continue the distributorship with the said firm or to have a fresh agreement of distributorship with any reconstituted firm or to terminate the distributorship agreement and the decision of the Corporation in that behalf shall be final and binding on all the parties concerned. No claim or premature termination for compensation or otherwise will be made or sustainable against the Corporation on account of such termination."

"C.23(b). It shall be a paramount condition of the Agreement that the distributor himself (if he be an individual) or both the parties of the distributors firm (if the distributor is a partnership firm consisting of two partners only) or



the majority of the partners of the Distributor's firm (if the distributor is a firm consisting of more than two partners) or the majority of the office bearers/elected members of the distributors co-operative society (if the distributor is a co-operative society) managing/whole time elected directors (if the distributor is a private limited company as the case may be shall take active part in the management and running of the distributor and shall personally supervise the same and shall not under any circumstances do so through any other person, firm or body."

"Cl.23(c) Except with the previous written consent of the Corporation -

(i) The distributor shall not enter into any arrangement, contract or understanding whereby the operations of the distributor hereunder are or may be controlled/carried out and/or finances by any other person firm or Company, whether directly or indirectly and whole or in part."

2.3 The complainant was failing to place regular indents and was not able to make delivery of refills on time to the customers resulting huge backlog and gross customer dissatisfaction and inconvenience to customers. Several letters were written to complainant by Nagpur Area Office of IOCL to clear the backlog, but complainant failed to take remedial steps. Due to poor performance of the complainant, IOCL failed to fulfill Government initiative of saturation of Domestic LPG in Gondia and IOCL was constrained to transfer some customers to another nearby gas agency to avoid further inconvenience to the customers.

2.4 Respondent further intimated that complainant had approached the Hon'ble Minister of Road Transport, Highways and Shipping, Government of India on 07.05.2019; and on the direction of Hon'ble Minister, a meeting was held with the complainant on 20.05.2019 wherein the complainant was advised to improve his services by ensuring that the delivery of refills are made on the same day of booking.

2.5 Mr. Priyesh Mudliyar (Respondent No.8 of the complaint) and Mr. Abhinav Maheshwari had complained severely to IOCL that the complainant /the sole proprietor of "Prasann Indane" had entered into agreements with them and that the complainant would induct Mr. Mudliyar and Mr. Abhinav Maheshwari as partners and transfer 49% share/interest to them in his said distributorship of IOCL. Both of them had informed IOCL, in writing with supporting documents, that they had paid money (Rs.40.00 Lakh and Rs.51.00 Lakh respectively) to the complainant for purchasing/transfer of 49% share/interest in the said distributorship, but the complainant failed to officially

induct them as a partner. In view of the facts, the sales, supply and operations of the distributorship were suspended by issuing Show Cause Notices to the complainant asking why action not be taken against him for violation of Clause Nos.21, 23(b) and 23(c)(i). In reply to the show cause notices, the complainant had admitted receipt of money from them by entering into MoU. Thereafter, on 15.01.2020, the distributorship of complainant was terminated.

2.6 The termination of the distributorship was done on account of the breach of Agreement and irregularities found in distribution of IOCL LPG Cylinders. Therefore, the Court of CCPD has no jurisdiction to intervene into this case as there is no discrimination of rights on the ground of disability.

3. Submissions made in Rejoinder

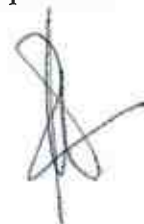
3.1 The complainant filed his rejoinder dated 05.08.2021 and submitted that he did not violate the terms of Distributorship Agreement. The MoU submitted by the respondent is not valid as it is neither notarised nor registered. There was no more backlog in the distribution of Gas Cylinders.

4. Observation/Recommendations:

4.1 Complainant submitted that his distributorship was terminated in furtherance of conspiracy hatched against him by senior management of the Respondent establishment. Respondent countered the allegations and submitted that Complainant and Respondent entered into distributorship agreement. Complainant's distributorship was terminated because he violated certain terms of the agreement. The violated terms were related to transfer/assignment of dealership. It is certain from the perusal of the documents that the violated terms are of commercial nature and these terms are not connected with Disability rights.

4.2 It is pertinent for Complainant to disclose the discrimination on the grounds of disability. Hon'ble Supreme Court laid down the importance of such disclosure in *STATE BANK OF PATIALA v. VINESH KUMAR BHASIN* (2010) 4 SCC 368 whereby it was held in Para 29 as under:

"29. The grievances and complaints of persons with disabilities have to be considered by courts and authorities with compassion, understanding and expedition. They seek a life with dignity. The Disabilities Act seeks to provide them a level playing field, by certain affirmative actions so that they can have adequate opportunities in matters of education and employment. The Act also seeks to ensure non-discrimination of persons with disabilities,



by reason of their disabilities. But the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

Hon'ble Court further illustrated the point in following words:


“Illustration:

Let us assume a case where the age of retirement in an organisation is 58 years for all Class II officers and 60 years for all Class I officers. When a Class II officer, who happens to be a person with disability, raises a dispute that such disparity amounts to discrimination, it has nothing to do with disabilities. Persons with disability as also persons without disability may contend in a court of law that such a provision is discriminatory. But, such a provision, even if it is discriminatory, has nothing to do with the person's disability and there is no question of a person with disability invoking the provisions of the Disabilities Act, to claim relief regarding such discrimination.”

4.3 After perusal of submissions made by the Complainant and the Respondent this court concludes that there is no discrimination on the ground of disability. Intervention of this court in this complaint is not warranted.

4.4 Accordingly the case is disposed off.

Dated: 04.10.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12767/1011/2021

Complainant :

Shri Muralidharan,
General Secretary,
National Platform for the Rights of the Disabled,
36, Pt. Ravishankar Shukla Lane,
New Delhi – 110 001

— R29649

Versus

Respondent :

Sree Chitra Tirunal Institute for Medical Sciences & Technology,
Thiruvananthapuram,
Kerala – 695011

— R29650

Gist of Complaint:

Shri Muralidharan vide his complaint received on 28.06.2021 submitted that Sree Chitra Tirunal Institute for Medical Sciences & Technology (SCTIMST), Thiruvananthapuram had advertised vide Notice No. P&A.II/361/Asst. Laundry.Supvr./SCTIMST/2020 dated 11.06.2020 for recruitment to the post of Assistant Laundry Supervisor-A in the unreserved category, despite it being a post identified for persons with disabilities as per its order of 26.12.2014. In the latest instance, the Institute has advertised on 31.10.2020 for the post of Asst. Laundry Supervisor. This has been advertised as promotion post and applications have been sought in the unreserved category. This is a post, which, despite being identified for persons with disabilities has not seen any recruitment of a person with disability till date. He submitted that the administration of the Institute is biased towards the persons with disabilities. He submitted that it was only on 26.12.2014 vide order no. P&A.II/X/S/57/SCTIMST/2014 that the Governing Body identified and reserved posts for persons with disabilities in appointments to the Institute, 34 such posts were identified. He submitted that he had also pointed out various anomalies in filling up of vacancies against identified posts.

2. The matter was taken with the Director, Sree Chitra Tirunal Institute for Medical Sciences & Technology (SCTIMST), Thiruvananthapuram vide letter dated 07.07.2021.

Mpuna Srivastava

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3. The Director, Sree Chitra Tirunal Institute for Medical Sciences and Technology vide letter no. P&A.VII/SCTIMST/2021 dated 02.08.2021 submitted that Shri Shaijan A.T., Cleaning Attendant-A (Emp Code : 2350) and Shri Prakasan P.V., Cleaning Attendant-A (Emp. Code 2352) of their Institute had filed an O.A. No.180/279/2021 against their Institute before the Hon'ble CAT, Ernakulam Bench, raising the same subject matter of the issue made in the complaint dated 28.06.2021 by Shri Muralidharan, NRPD, New Delhi.

In the said O.A. the first relief sought by them is to call for the records leading to Annexure A7 & A8 notifications dated 20.05.2021 and sent aside the same to an extent it did not provide 4% reservation in appointment/promotion to the post of Unit helper and Asst. Laundry Supervisor-A respectively in the 1st respondent Institute. Annexure A8 is the notification No. P&A.II/361/Asst Laundry supervisor/SCTIMST/2021 dated 20.05.2021 issued by the Institute calling for applications for consideration against the existing one (UR) promotion vacancy of Asst Laundry Supervisor-A. The Hon'ble CAT vide its interim order dated 28.06.2021 inter alia directed the respondents to keep one post of Asst Laundry Supervisor-A till the next day of hearing. This O.A. is now pending before the Hon'ble CAT, Ernakulam and so the matter is sub-judice for giving a detailed reply on the letter of this Court dated 07.07.2021. He further submitted that as per Sec23 of Rights of Persons with Disabilities Act, 2016, Dr. Jayasree R.S., Scientist E, of the Institute is nominated as Grievance Redressal Officer.

4. The complainant vide his rejoinder dated 18.08.2021 submitted that the OAs pending before the Central Administrative Tribunal are complaints initiated in person by two aggrieved employees. Even if one were to concede for the sake of an argument that while the latter may have a complexion of a suit, initiation of an inquiry into the matter of 4% reservations follow an application made by a DPO acting pro boro public as in their case does not qualify as a suit. The very definition of 'SUB JUDICE' envisages two suits by the same parties on the same issue. The doctrine of sub judice is also closely linked to the nature of the relief claimed. The relief claimed in the pending OAs (to which NPRD is not a party) may be of an individual and personal nature, specific to the grievance of the two employees. This is not the case in the matter before the CCPD. The CCPD having taken note of NPRD's grievance that the Respondent has not implemented the 4% reservation may pass an order or make a recommendation in rem and not



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confine it to one or two employees. He submitted that there is no possibility of a contradictory verdict in the matters as the dispute before the CAT is on a different footing while the CCPD is enforcing its power under Section 75 to ensure Section 33 of the Act is enforced in *proprio vigour* by the Respondent.

5. The Director, SCTIMST, Thiruvananthapuram vide their letter no. VIII/SCTIMST/2021 dated 03.09.2021 in response to complainant's rejoinder dated 18.08.2021 submitted that while the PwD Act, 1995 (Act 1 of 1996) was in force, the DoP&T vide its O.M. No. 360/12/24/2009 Esst.(Res) dated 20.03.2014 had directed to identify posts for persons with disabilities. Accordingly, Institute had constituted a committee to identify the posts for PwD reservations. The 91st meeting of the Governing Body (GB) of the Institute held on 14.11.2014 had approved the recommendation of the committee which identified 34 posts to which appointments can be made for persons with disabilities and the Institute published the 34 posts identified vide Order No. P & AI/X/57/SCTIMST/2014 dated 26.12.2014. Therefore, the grievance of the Complainant is *prima facie* false.

As per 1995 Act, Disabilities identified for reservation were (1) Blindness or low vision (2) Hearing Impairment (3) Locomotor disability or Cerebral Palsy, against the post identified for each disability. Hence, while identifying the 34 posts, the above three disabilities were only considered. Among the 34 posts identified, even though recruitment notification and proceedings (Special Recruitment Drive for PwDs-both intra institute & direct) were conducted against three posts – Medical Records Assistant-A (Low vision), Jr. Social Worker-A/Reception-cum-Telephone Operator-A (Locomotor disability) and Lib-cum documentation Assistant-A (Hard of hearing), no selection could be made due to the non availability of eligible candidates. Subsequently, as per Order No. P&A1/X/04/SCTIMST dated 17.01.2020, the Director of the Institute had constituted a committee to study, review and implement the Rights of Persons with Disabilities, 2016 in the Institute. As per this committee's report, there were 25 persons with disabilities employed in the Institute under C category out of which 18 are Orthopedically handicapped, 6 are visually handicapped and 01 is hearing impaired. These recruitments are done between 2007 and 2015. This makes a percentage of 9 of the total cadre strength in 'C' category. Therefore, it is evident that there is adequate representation in terms of the 1995 as well as the 2016 Acts. He submitted that there is no merit in any of the contentions put forth by the Complainant. He further submitted that the Institute is following the instructions issued by DoP&T vide their O.M.



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No.36035/02/2017-Estt(Res.) dated 15.01.2018 in appointments and has been maintained a separate 100 point vacancy based reservation roster register, for Group B and Group C in the prescribed format.

OBSERVATION AND RECOMMENDATION:

6. After going through the submissions made by the Respondent and the Complainant, the Court observed that the issue is pending before the Hon'ble CAT, Ernakulam. Hence no further intervention is warranted.

7. The case is disposed off accordingly.

Dated: 04.10.2021


(Upma Srivastava)
Commissioner for
Persons with Disability



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. 12589/1011/2021 | R29651

Complainant:

Shri Vijay Kumar,
Village : Raimanpur,
Post : Ahimane,
Dist. : Sultanpur,
Uttar Pradesh- 228001

Versus

Respondent :

Northern Railway,
(Through the General Manager),
Baroda House,
New Delhi – 110 001

— R29652

Disability : 80% locomotor.

Gist of Complaint:

Shri Vijay Kumar vide his complaint dated 01.02.2021 submitted he had been selected for the post of Group 'D' in Lucknow Regional under Northern Railway on 23.06.1998. The oral test and medical of the complainant was completed on 24.06.1998 but he neither received any information about the result of the examination nor was appointed to the said post so far.

2. The matter was taken up with the General Manager, Northern Railway vide letter dated 08.02.2021.

3. The General Manager (P), Northern Railway, HQ, New Delhi vide letter No. 220-E/1258/08-CCC/PWD/21/RP Cell dated 27.07.2021 submitted that Shri Vijay Kumar was called for a Screening Test on 23.06.1998. The Divisional Office, Lucknow, Northern Railway vide its letter dated 04.12.1998 declared the results of candidates with disabilities who were found suitable for the post of Group 'D' but name of the complainant was not in the panel list as his name was placed very low in the merit. As his name was not in the panel list, his candidature

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was not found suitable for appointment to the post of Group 'D'. The Divisional Office, Lucknow, Northern Railway had informed about his non selection to the post through its letter dated 27.09.2018. Respondent submitted their inability to further process the case as it is very old, i.e. more than 23 years old and dates back to the year 1998.


4. The complainant vide his rejoinder dated 27.08.2021 submitted that the submission of the Respondent that his name was placed at the bottom in the merit list is wrong as he was called for medical examination. Medical Examination is done only on those candidates who are finally selected for the posts applied.

Observations and Recommendations:

5. It is observed that the case is very old as it dates back to the year 1998. Respondent's reply is satisfactory.

6. No further intervention is warranted in the case. The case is closed accordingly.

Dated : 04.10.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

केस संख्या : 12706 / 1022 / 2021

के मामले में

शिकायतकर्ता

: श्री गुड्डू कुमार, खलाशी
अधीन व. प्रशाखा अभियंता / कार्य / गया
E-mail: guddukumar32815@gmail.com
संपर्क नंबर : 08521260958

— R 29687

बनाम

प्रतिवादी

: महाप्रबंधक,
जी.एम. कार्यालय
पूर्व मध्य रेलवे हाजीपुर,
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पिन-844101

— R 29688

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GIST OF COMPLAINT

शिकायतकर्ता ने सूचित किया है कि वह 100 प्रतिशत दृष्टि बाधित दिव्यांग कर्मचारी है। शिकायतकर्ता वरिय प्रशाखा अभियंता/कार्य पूर्व रेल गया महोदय के अधीन खलाशी हेल्पर के पद पर कार्यरत है। शिकायतकर्ता ने गृह जिला नवादा में स्वयं के अनुरोध पर स्थानान्तरण हेतु अपने कार्यालय में आवेदन दिया था। शिकायतकर्ता ने आगे कहा है कि उनकी माँ लकवा बीमारी से ग्रसित रहने के कारण वह स्वयं से नित्य दिन का क्रिया कलाप नहीं कर पाती है। उनके पिताजी बुजुर्ग होने के कारण अक्सर बीमार रहते हैं। कार्यस्थल से घर की दूरी अधिक होने के कारण स्वयं, पत्नी बच्चा एवं माता पिता को एक साथ देखभाल करना शत प्रतिशत दिव्यांग के लिए लगभग अंशभव है।

अतः शिकायतकर्ता ने निवेदन किया है कि उनका स्थानांतरण उनके गृह जिला के पास करने की कृपा की जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 09.06.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. प्रतिवादी ने पत्र द्वारा दिनांक 05.08.2021, को सूचित किया है कि श्री गुड्डू कुमार खलाशी /अधीन -व.अन.अभि./कार्य/कालोनी गया डी.डी.यू. मंडल पूर्व मध्य रेल का निजी अनुरोध पर स्थानांतरण मंडल रेल प्रबंधक /डी.डी.यू. मंडल का स्वीकृति के पश्चात डी.डी.यू.मंडल से दानापुर मंडल में खलाशी के पद पर निजी अनुरोध पर कर दिया गया है।

Observation /Recommendations:

The complainant of Shri Guddu Kumar, Khalsi with 100% Visual Impairment Disability working under Senior Branch Engineer/Work East Railway Gaya. The Complainant had applied for transfer to his office in home district Nawada on his own request.

The respondent East Central Railway, vide letter no. dated 05.08.2021, submitted that the transfer of Shri Guddu Kumar, Khalssi has been approved by Divisional Railway Manager/DDU and NOC has been given by DNR division with approval of Divisional Railway Manager/DNR.

The complainant has informed by email dated 18.09.2021, and submitted that he has been shifted to home district Nawada. At present, from date 20.08.2021, the complainant has been posted at Nawada, the nearest station of his residence. The complainant has expressed his satisfaction.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 04.10.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

केस संख्या : 12775 / 1022 / 2021

के मामले में

शिकायतकर्ता : श्रीमति शुचि अग्निहोत्री
पत्नी श्री राजेश कुमार अग्निहोत्री
निवासी -2/341, जानकीपुरम विस्तार
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बनाम

प्रतिवादी : महाप्रबंधक
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ईमेल : agmmums1067@centralbank.co.in

GIST OF COMPLAINT

शिकायतकर्ता शुचि अग्निहोत्री ने अपनी शिकायत में कहना है कि उनका बेटा 50 प्रतिशत शारीरिक दिव्यांगजन है। शिकायतकर्ता के पति वर्तमान में सेन्ट्रल बैंक ऑफ इंडिया की शाखा कमलाबाद बढौली, लखनऊ में शाखा प्रबन्धक के रूप में कार्यरत है। शिकायतकर्ता ने अपने पति का स्थानांतरण उचित माध्यम द्वारा अपने बेटे सुयंश अग्निहोत्री की समस्त प्रमाण /साक्ष्यों, बैंक नियमावली एवं भारत सरकार की आश्रयदाता के दिशा निर्देशों का उल्लेख करते हुये, लखनऊ से बाहर न करने का अनुरोध किया था, ताकि दोनों मिलकर अपने बेटे की उचित देखभाल कर सकें। लेकिन बैंक नियमावली भारत सरकार के दिशा निर्देशों की अवहेलना करते हुये उनके पति का स्थानान्तरण सेन्ट्रल बैंक ऑफ इंडिया की शाखा नानपारा जिला-बहराइच कर दिया गया।

शिकायतकर्ता का आगे कहना है कि आयोग के हस्तक्षेप के कारण दिनांक 23 मार्च 2021 को पुनः उनके पति का स्थानांतरण वापस लखनऊ में सेन्ट्रल बैंक ऑफ इंडिया की शाखा कमलाबाद बढौली, कर दिया गया था।

शिकायतकर्ता ने आगे कहा है कि स्कैल-3 पोस्टिंग हेतु उनके पति का स्थानांतरण अहमदाबाद आंचलिक कार्यालय के अन्तर्गत सूरत क्षेत्रीय कार्यालय कर दिया गया है।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उनके बेटे की स्थिति को देखते हुए उनके पति की पोस्टिंग लखनऊ क्षेत्रीय कार्यालय के अधीन शहर के किसी भी शाखा में कराने का कष्ट करे ताकि दोनों मिलकर अपने बेटे की उचित देखभाल व इलाज कर सकें।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 08.07.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. In response, respondent S.K. Garg, Dy. General Manager, HRD vide his letter dated 16.07.2021, submitted that the transfer orders of Shri Rajesh Agnihotri has since been reversed and the officer who is the caregiver to his differently abled son, has been retained in Lucknow as per our orders dated 15.07.2021.

4. The complainant filed his rejoinder by email dated 27.07.2021 and submitted that his husband got retention at Zonal Audit Office Lucknow, but he is not retained in the office. He has been allotted tours for the purpose of audit. He has been given orders to go for audit to Jhansi. The complainant further submitted that in such circumstances how they can look after his son who is suffering from Brain Injury.

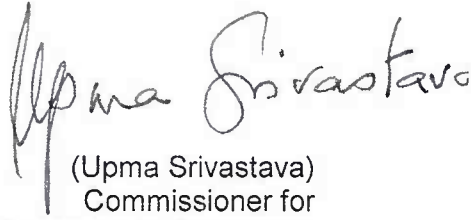
Observation /Recommendations:

i) Complainant submits that the Respondent is assigning outstation tour duties to the Complainant's husband and hence he is not able to look after his divyang son. Earlier this Court recommended to retain the Complainant's husband in Lucknow. Respondent retained the Complainant in Lucknow office however, assigned outstation tours.

ii) It is prerogative of the employer to assign duties to the employees. However, for effective implementation of DoPT O.M. No. 42011/3/2014, dated 06.06.2014, relating to exemption from routine transfer of an employee who is care taker of divyang dependant, it is imperative to avoid assignment of such duties to the employee which can hinder the employee from taking care of divyang dependant.

iii) Hence, for effective implementation of DoPT guidelines in letter and in spirit, this Court recommends that the Respondent may consider to avoid frequent assignment of such duties to the Complainant's husband which keep him away from his divyang dependant son for long period of time.

5. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 04.10.2021



सत्यमेव जयते

Extra

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12819/1141/2021 | R29636

Complainant:

Tmt. Salamath,
R/o 16-57, Pilankala Vilan, Kadayal,
Kahyal Post, Kanyakumari District,
Tamil Nadu – 629101

Affected Person: Ms. Sameeha Barveen,
a person with Speech and Language
Disability

Respondent:

The General Secretary,
All India Sports Council of the Deaf,
1-B, Institutional Area, Near Janta Flats,
Sarita Vihar, New Delhi – 110076
Email: aiscd1965@gmail.com

— R29637

1. Gist of Complaint:

1.1 The complainant, Tmt. Salamath N. filed a complaint regarding denial to select her daughter, Ms. Sameeha Barveen, a person with Speech and Language Disability in the female contestant category from India for the upcoming 4th World Deaf Championship to be held at Dublin and Poland on 23-28 August, 2021.

1.2 The complainant alleged that for the said Championship, in the selection round held in Delhi on 22.07.2021, Ms. Sameeha Barveen scored high and she was found eligible, but she was not selected by the respondent All India Sports Council of the Deaf (AISCD); other girls were also not selected to participate.

2. Submissions made by the Respondent

2.1 AISCD filed their reply dated 07.08.2021 and refuted the allegations labelled by the complainant. They inter-alia submitted that Ms. Sameeha Barveenn had not successfully cleared the trial conducted on 22.07.2021. As per the guidelines, she was called for 100M Run and High Jump as performed in the

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National Athletics Championship held a Chennai in December, 2019; and not for any other event. Her performance in Long Jump satisfied only the required minimum, so her claim is not correct.

2.2 Complainant's claim is also not correct that she was the only female candidate appeared for the trial. There were four girls – one from Delhi and other three from Haryana; and it is still not correct that AISCD denied her entry just because of being a girl.

2.3 Ministry of Youth Affairs & Sports (MYAS) had sanctioned to select only five (total) and one coach on merit. When the trial conducted (apart from the explanation above), the complainant was in the 8th position in merit list. There were another girl from Haryana and another boy from Tamil Nadu, possessing 6th and 7th positions respectively. As per instructions of MYAS, only 05 toppers were selected who were all men.

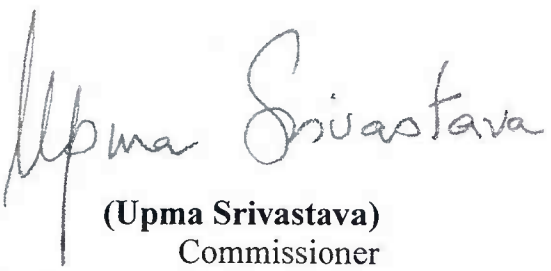
3. Submissions made in Rejoinder

The reply filed by AISCD was sent to the complainant for filing Rejoinder, but no rejoinder was received from the complainant despite lapse of statutory period.

4. Observation/Recommendations:

The reply filed by the respondent is satisfactory. There appears no discrimination against Ms. Sameeha Barveen, a person with Speech and Language Disability. The case is accordingly closed.

Dated: 05.10.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12807/1011/2021

R29667

Complainant:

Shri Pintu Kumar,
House No. 142,
Khirki Extension,
Malviya Nagar,
Delhi – 110 007.

Versus

Respondent :

The Nainital Bank Limited,
(Through the Managing Director & CEO)
Head Office : Seven Oaks,
Mallital,
Nainital,
Uttarkhand – 263001

— R29668

Disability : 100% Hearing Impairment

Gist of Complaint:

Shri Pintu Kumar, the complainant, submitted that the Nainital Bank Limited has not been reserving 4% or more seats for PwDs as per provisions of Rights of Persons with Disabilities Act, 2016. In the notification for engagement of Management Trainees (MTs) and Clerks issued on 17.07.2021, the Bank has failed to fulfil their statutory obligations.

2. The matter was taken with the Managing Director & CEO, The Nainital Bank Limited vide letter dated 02.08.2021.

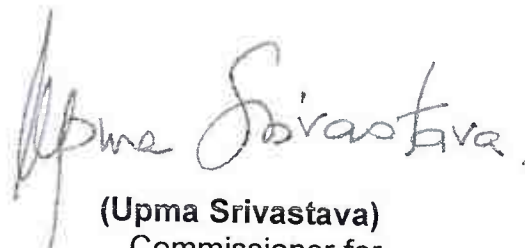
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3. The Vice President, The Nainital Bank Limited through his submissions vide letter dated 01.09.2021 submitted that the Respondent Bank being a private sector Banking Company and not a Government establishment is therefore not amenable to the provisions in Section 33 and 34 and other similar provisions governing reservations for Persons with Disabilities under RPwD Act, 2016 and as such is not bound to provide reservations to the persons with disabilities. The Respondent Bank in its Notification for engagement of Management Trainees and Recruitment of Clerks have clearly mentioned the statement to this effect by making it abundantly clear to the aspirants that it is an old private sector scheduled commercial Bank.

Observation/Recommendations:

4. The Respondent's reply is satisfactory. No further intervention is required in the matter.
5. The case is accordingly disposed off.

Dated: 07.10.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

Extra

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12794/1101/2021 | R29669

Complainant:

Shri S.K. Nirbhay, Bureau Chief – Delhi NCR,
PRESS – Khadi Aur Khaki, R/o C-26,
LIG DDA Flats, East of Loni Road, Shahdara,
Delhi-110093; Email: bureauchiefkhadiaurkhakhi@gmail.com
Mobile: 9811114885

Respondent:

The Chairman,
Life Insurance Corporation of India
Central Office, 'Yogakshema',
Jeewan Bima Marg, Nariman Point,
Mumbai-400021; Email: chairman@licindia.com

— R29670

1. Gist of Complaint:

Shri S.K. Nirbhay, M-58, a person with 54% Locomotor Disability, filed a complaint dated 13.07.2021 that LIC Zonal Office, Sudeep Plaza, Sector-11, Dwarka, Delhi is inaccessible for persons with disabilities. The said office is at first floor of the building without any lift facility. Persons with Disabilities and Senior Citizens have to climb about 30 steps to reach the office.

2. Submissions made by the Respondent

The Executive Director (E&OS), LIC, Mumbai in their reply dated 09.08.2021 submitted that they are exploring the possibility of shifting the said Customer Zone at Dwarka to another convenient place in the same locality. The existing premises which is situated on 1st Floor would be vacated, once the premises on the ground floor is finalized, after giving due notice to the existing landlord.

3. Submissions made in Rejoinder

A copy of the reply dated 09.08.2021 of the respondent was sent to complainant on 16.08.2021 for submission of rejoinder, but no rejoinder has been received from the complainant.

(Page 1 of 2)

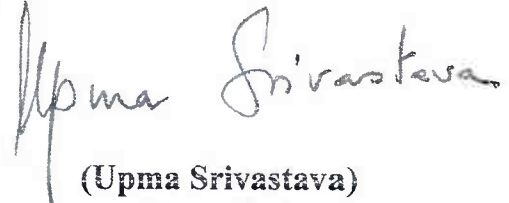
4. Observations/Recommendations:

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

4.2 Respondent is advised to make their office premises accessible and barrier free/disabled friendly in terms of the provisions made under Sections 40 to Section 46 of the RPWD Act, 2016 read with the Rules 15 and 16 of the Rights of Persons with Disabilities Rules, 2017.

4.3 Accordingly the case is disposed off.

Dated: 07.10.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12765/1022/2021

Complainant : Shri Kandula Bala Bhaskar
Engineering Assistant in All India Radio
Q. No. D-3, All India Radio Staff Quarters,
Siripuram Visakhapatnam-530003
E-mail : kandulabalabhaskar@yahoo.com

— R29689

Respondent : Additional Director General (E) (SZ)
Office of Additional Director General (E) (SZ)
All India Radio & Doordarshan
Swami Sivananda Salai
Chennai Pin-600005
E-mail : rams62@hotmail.com
Contact No : 09650869944

— R29690

GIST OF COMPLAINT:

The complainant Shri Kandula Bala Bhaskar, person with 60% disability in left hand working as Engineering Assistant in All India Radio, Visakhapatnam for the last 6 years. The complainant is only bread earning member of his family of 7 members including his aged parents (81 years & 75 years respectively) and dependent handicapped sister and her daughter. The complainant have only one daughter who got selected in IIT Guwahati B.Tech in last year November. His father is retired private employee with EPF pension of Rs. 1000/- per month. He is staying in quarters which do not have all facilities compared to outside houses for last 13 years continuously without break because of large family and due to his financial constraints. The complainant get house for rent for large family (7 members) and he cannot pay huge rents outside due to his financial problems. Due to his financial burdens he could not purchase a small house till now. The complainant wife is also having hearing problem uses hearing machine.

The complainant further submitted that his daughter is away from him for studies as there is no one here to support. His relatives are there in Hyderabad. The complainant has no properties except his ancestral plot at his native place. The complainant applied for transfer to Hyderabad in November 2020 for settle in Hyderabad with the support of his family relatives. If the complainants get transfer to Hyderabad he will get support from his relatives in case of himself and aged parents and handicapped sister. As CGHS Medical facilities are in Hyderabad, It will also help himself as well as parents and handicapped sister. But his zonal office is not considered his request for transferring to Hyderabad.

The complainant applied transfer to Hyderabad as per recent Prasar Bharti transfer policy and DOPT order as per Prasar Bharati Transfer Policy, transfer committee may consider sympathetically in case of transfer of persons with disabilities and as per DOPT order no: 36035 dated 31.03.2014 which indicates the practice of considering choice place of posting in case of persons with disabilities may be continued.

The complainant further stated that transfer committee not considered his name in recent 4 transfer lists. They have considered persons without completing their tenure on medical ground but they have not considered his case even after he has completed tenure and he is disabled person with care giving to another disabled.

Therefore, the complainant is requested to CCPD to direct Additional Director General to transfer him to Hyderabad so that the complainant lives securely in Hyderabad with his relatives support and reasonable accommodation.

2. The matter was taken up with the Respondent vide letter dated 08.07.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent M. Vasuki, Dy. Director General (HR), vide his letter dated 26.08.2021 submitted the following facts:

i) As per office records the complainant has not intimated his wife's is hearing impairment before;

ii) The respondent submitted that he has not intimated his sister's handicapped to this office. The applicant has not intimated the purchase of flat to the office. It is to intimate that Visakhapatnam is also having CGHS facility and the applicant is utilising the CGHS facility for his family and dependent family members. He also complained that this office has not considered his request for transfer to Hyderabad, Prasar Bharati, New Delhi vide its Office Order No.122/2020-PPC issued in F.No.10011/NTP/2019-PPC dated 20.04.2020 has instructed this office that transfer / posting of any officer/official irrespective of cadre, grade, rank shall not be ordered at any level till further orders, in view of the economy instructions on transfer/posting due to COVID-19.

iii) The respondent further submitted that the department considers each and every case sympathetically. The requests of the employees are examined by the transfer committee. Only after examination of the transfer committee, transfer orders are issued. His earlier transfer from Vijayawada to Visakhapatnam was done by zonal office as per his request dated 3/11/2014, in which he has also mentioned his handicapped status. His representations dated 27/7/2019 and 6/2/2020 for retention at ALL India Radio Visakhapatnam were also considered by the transfer committee and transferred 2 staff members to difficult station (Markapur) who are junior in station seniority. The applicant was working at major stations only from his initial posting (Vijayawada, Warangal, Visakhapatnam) whereas other staff are posted to difficult places also. Due to the Covid-19 Pandemic and resultant economy measures taken by Prasar Bharati to avoid incurring expenditures due to large scale transfers, no general transfer orders were issued during the period 2020-21.

iv) The respondent further submitted that the general transfer orders are not being issued due to prevailing Covid-19 pandemic and the resultant economy measures taken by Prasar Bharati to minimise the expenditure. However, it is not out of context to highlight here that the post of Engineering Assistant is an operational post created for the purpose of operation and maintenance of All India Radio & Doordarshan technical facilities. The employee holding this post is liable to be transferred within the zone as per the existing guidelines for transfer of employees of Prasar Bharati. The transfer guideline is to be so followed that the services of Doordarshan and All India Radio are smoothly carried out while addressing the transfer/posting needs of the employee in equality. The various stations of Doordarshan and All India Radio are divided into two category. i) Normal tenure station and ii) Difficult tenure station. Transfer /



posting of employees are planned in such a manner so as to ensure smooth functioning of the services being rendered to the public generally termed as listeners/viewers. As per the guideline for transfer of the employees of Prasar Bharati, those officials who complete their tenure at difficult station should be as far as possible be posted at their choice station. The transferring authority is accountable for smooth functioning of the technical facilities across the zone and posting of employees is a prerogative of the authority in the interest of the service to be rendered to the public/listeners/Viewers. Therefore posting of employees in a manner that leads to a concentration at one location is likely to create difficulties in the functioning of other technical facilities due to shortage of skilled manpower.

v) The respondent further submitted that there is no discrimination by the department while considering the request of the applicant. The representations of the applicant dated 27/7/2019 and 6/2/2020 to retain him at Visakhapatnam were considered by the department and retained him at AIR Visakhapatnam transferring his juniors (Station seniority) and his subsequent representation is pending with the department and the same will be placed before the transfer committee for sympathetic consideration as per the extant rules.

vi) The respondent further submitted that applicant's online grievance dated 24.5.2021 for transfer to Hyderabad from Vishakapatnam has been received by Central Grievance Cell, Prasar Bharati New Delhi but same could not be disposed of timely on account of technical problems and administrative constraints. However, needful action is being taken in this regard in collaboration with concerned office.

4. The complainant has submitted their rejoinder vide email dated 17.08.2021 and submitted the following facts: -

i) The complainant submitted that his wife is not handicapped but having some hearing problem for which she uses hearing machine. The complainant mentioned in the complaint that the absence of his daughter (Away from him for studies) he can't depend upon his wife fully because of her hearing problem. So, that is also one reason for his transfer to Hyderabad where relatives can support me.

ii) The complainant further stated that Zonal office has mentioned mistakenly that the complainant not intimated about purchase of flat. The complainant informed that he never purchased a Flat/House in his life as the complainant in his grievance he want to purchase a flat or house with the help ancestral site dispose amount and with bank loan.

iii) In January 2021, transfer list, Zonal office transferred one person on medical grounds to Visakhapatnam from Hyderabad. Even though there is no vacancy of Engineering Assistant in Visakhapatnam and by that time the complainant already applied for transfer to Hyderabad zonal office have not transferred him in his place instead they have transferred one person to Markapur who is junior to him.

iv) Even though, the complainant never asked Zonal office to retain him permanently at one place. The complainant has also undergone 4 transfers in his service like other normal persons. The complainant worked at B category places only.

Finally, the complainant request to the Hon'ble Court to direct his Additional Director General (E) to consider his case sympathetically and transfer him to Hyderabad immediately.



5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 23.09.2021. The following were present:

- i) Shri Kandula Bala Bhaskara – Complainant
- ii) Shri K. Subbarao, Dy. Director along with Shri K.V. Ramchandran, DDG, Chennai – Respondent

Observation / Recommendations:

1. This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

2. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

- a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b. To create barrier free environment for Persons with Disabilities,
- c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

3. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.



(40)

4. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

5. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

6. Issues related to transfer and posting to divyang employees may be divided into three categories -:

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependant.

STATUTORY PROVISIONS AND GUIDELINES

7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.

d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government

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establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

8. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

9. Even in case of employee who serves as care giver of divyang dependant, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

10. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

11. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

12. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020

13. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

14. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

15. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

16. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

17. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

18. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, Hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal

circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

19. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

20. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

21. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

22. **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

23. O.Ms. dated 06.06.2014 and dated 08.10.2018 and Hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

24. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for

exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

25. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities.—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability."

16. Duty of educational institutions.—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

24. Social security.—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

38. Special provisions for persons with disabilities with high support.—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

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.

26. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

27. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities



(45)

('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

28. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached Hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

PRESENT CASE

29. Complainant has filed the present Complaint seeking transfer to Hyderabad. Respondent submitted that the Respondent is sympathetic towards rights of divyang employees. Complainant is posted in Vishakhapatnam since 2014. He was retained at same location in 2019 and 2020 on his own choice. Respondent further submitted that at present transfer application of the Complainant could not be considered because due to Covid -19 restrictions transfer of all officers irrespective of cadre, rank or grade was prohibited. Further, various offices and posts in the Respondent establishments were either getting closed or were relocated. Due to these reasons administrative exigencies were caused and transfer of the Complainant was not considered. Respondent further assured that decision of Complainant's transfer will be taken in due course of time.

30. Case of the Complainant squarely falls within parameters of O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. Court also takes cognizance of the fact that the Respondent establishment is facing administrative constraints. Therefore, considering the assurance given by the Respondent, this court recommends that the Respondent establishment shall transfer the Complainant to place of his choice as soon as possible.

31. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 04.10.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12643/1021/2021

Complainant: Shri Banwari Lal Sharma
T-III/107, Nirman Vihar-1
Sector-2, Vidyadhar Nagar
Jaipur, Rajasthan – 302023
E-mail: <banwari.sharma@mca.gov.in>

— P29745

Respondent: The Secretary
Ministry of Corporate Affairs, 5th Floor
A – Wing, Shastri Bhawan, Dr. RP Road
New Delhi – 110001
E-mail: <secy.mca@nic.in>

— P29746

Complainant: 40% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **22.02.2021** submitted that he has been working as a Senior Technical Assistant (STA) since May 2012 and he is eligible for promotion from STA to Junior Time Scale (JTS). Accordingly, he had submitted the representations dated 18.09.2018 & 05.02.2020 respectively before the Respondent but till date no action has been taken by respondent. He has requested to consider his promotion in the cadre of JTS as PwD candidate.

2. The matter was taken up with the Respondent vide letter dated **04.03.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Under Secretary, Ministry of Corporate Affairs, New Delhi vide letter dated **06.04.2021** inter-alia submitted that based on the Hon'ble Supreme Court's Judgments quoted by the complainant, he may be considered for promotion to Jr. Time Scale grade of Indian Corporate Law Service cadre as PwD candidate. They further submitted that DoP&T has also filed an application for clarification on 28.09.2020 in the matter of Siddaraju Vs State of Karnataka before Hon'ble Supreme Court.

4. Complainant vide rejoinder dated **15.06.2021** inter-alia submitted that Ministry has not enclosed complete documents as stated in the letter and he has requested to direct the respondent to furnish the complete documents during the course of hearing. In absence of application for clarification filed by DoP&T before the Hon'ble Supreme Court, it cannot be ascertained that what matter is pending before the Hon'ble Court. If the matter is pending for decision on reservation for entry level in service than applicant is eligible for promotion as the applicant has been recruited against the direct recruitment post.

5. After considering the respondent's reply dated **06.04.2021** and the complainant's rejoinder **15.06.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **07.09.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.09.2021**. The following were present:

- Shri Banwari Lal Sharma – complainant
- Sri Randhir Kumar, Under Secretary on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Present Complaint is related to reservation in promotion. Complainant alleged that reservation in promotion is not extended to him. He further claims that is reservation in promotion would be extended to him, he may get promoted to Junior Time Scale. Respondent expressed its inability to extended reservation in promotion because of absence of DoPT guidelines on this issue.

8. It is indispensable to mention Section 34 of Rights of Persons with Disabilities Act, 2016.

Section 34 – Reservation - (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely
 (a) blindness and low vision;
 (b) deaf and hard of hearing;



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

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

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

Provided 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 person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

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

9. For effective adjudication of the Complaint first proviso of Section 34 is important. Reading of the Proviso suggest that two points are laid down in the Proviso. Firstly, there shall be reservation in promotion and secondly, reservation in promotion shall be in accordance with the instructions issued by the appropriate government.

10. In the present Complaint, Respondent expressed its inability to extend reservation in promotion for divyang employees because 'appropriate government' failed to issue necessary instruction under Section 34 of RPwD Act, 2016.

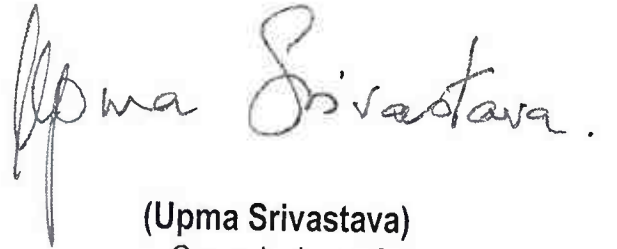
11. Respondent also submitted that DoP&T, which is responsible to issue necessary guidelines under Section 34, has filed a clarification petition in Hon'ble Supreme Court on the issue of reservation in promotion for divyang employees.



12. Petition is no more res integra. Hon'ble Supreme Court disposed off clarification petition by Order dated 28.09.2021 in SIDDARAJU v. STATE OF KARNATAKA; Miscellaneous Application No. 2171 of 2020, whereby Hon'ble Court directed Union of India to implement reservation in promotion for PwBDs and to issue instructions on reservation in promotion under Section 34 of RPwD Act, 2016 within time limit of 4 months from date of Order.

13. This court recommends that as soon as DoP&T issues necessary guidelines, Respondent shall peruse the same without delay and shall adhere to the same in letter and spirit. Further, it is recommended that the Respondent shall extend reservation in promotion according to such guidelines and also dispose the Complaint's grievance in accordance with the guidelines of the DoP&T.

14. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 07.10.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12847/1023/2021

Complainant: Shri V Konda Naik
Q. No. B18-4/1, Door No. 155
Gowtami Nagar Colony, Aswapuram Mandal
Badradri Kothagudem Distt., Telangana – 507116
E-mail: <vkondanaik1@gmail.com>

— R29747

Respondent: The General Manager
Heavy Water Plant (Manuguru)
Badradri Kothagudem, Dist. Telangana
E-mail: <gm@man.hwb.gov.in>

— R29748

Complainant: 50% Locomotor Disability

GIST of the Complaint:

Complainant vide complaint dated **18.08.2021** submitted that table and chair allotted to him are not in good conditions. Therefore, he has requested to provide special furniture so that his work efficiency would be improved.

2. The matter was taken up with the Respondent vide letter dated **25.08.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **25.09.2021** inter-alia submitted that the request of Shri V Konda Naik for provision of Special Furniture is under active consideration.

4. Complainant vide rejoinder dated **25.09.2021** reiterated his grievance and submitted that old table and chair was provided on 24.09.2021 which is not suitable as per his requirement. He has requested to provide Godrej Interio Office Desk T9-Table and Wipro furniture.

Observation/Recommendations:

5. In the light of the documents available on record, it is the respondent to follow necessary government instructions in time and implement the same for all employees who are persons with disabilities, as per following DOP&T's OM :

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 Para C”, states.....

*“Providing aids/assistive devices ...the persons with disabilities could perform their duties efficiently if they are provided with aids and appliances which are suitable to their needs. Ministries /Departments and their attached and subordinate offices, Central Public Sector Enterprises, Cantonment Board, etc. should assist the persons with disabilities by providing them high tech/latest technology led assistive devices (including low vision aids, hearing aids with battery), **special furniture, wheel chairs** (motorised if required by the employee), software scanners, computer and other hardware, etc. in accordance with their requirement, which would improve their efficiency.*

They should either provide or shall reimburse the cost of such devices with a specific time period for such devices to persons with disabilities in accordance with the price/durability of the special devices, special furniture, software, scanners, computer and other hardware, etc. as fixed by them, in consultation with various National Institutes working in the sphere of disability. A review exercise shall be carried out by the Departments/Ministries every three years to check the availability or need for introduction of enhanced/upgraded versions of such devices/software etc. They shall utilise their existing budget provisions for providing these facilities.”

6. Accordingly this Court recommends that the special furniture as required by the complainant shall be provided to him immediately by the respondent.

7. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 07.10.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12846/1023/2021

Complainant: Shri G.V.S. Santosh Kumar
Door No. 2-28-13, MIG II/47
Sector-6, MVP Colony, Near MVP Super Market
& Trinity School, Visakhapatnam – 530017
E-mail: <gvvsantosh@gmail.com>

— 229842

Respondent: The General Manager
Union Bank of India, FGMO – Dwarakanagar
Mohan Manson, Dwarakanagr 4th Lane
Visakhapatnam
E-mail: <fgm.Visakhapatnam@unionbankofindia.com>

— 229843

Complainant: 90% person with disabilities (63%HH+90%OH)

GIST of the Complaint:

Complainant vide complaint dated **15.08.2021** submitted that he has been appointed as a Office Assistant under PwD quota in Union Bank of India on 23.11.2020. He further submitted that previously he was on an Officer Scale –I in Andhra Pradesh Grameena Vikas Bank for two years nine months and was given penalty “removed from service” which shall not be a disqualification for future employment. He has requested to sanction of pay protection as per Govt. of India guidelines as he was shifted from Andhra Pradesh Grameena Vikas Bank (APGVB) to Union Bank of India.

2. The matter was taken up with the Respondent vide letter dated **26.08.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **22.09.2021** inter-alia submitted that at the time of submitting application of recruitment of clerks, complainant has committed to willful suppression regarding his alleged previous employment to hide the fact of “removal from service” by his previous employer i.e. APGVB and he has further submitted a false

....2....

declaration in his application. Therefore, Bank has issued a show cause notice dated 28.04.2021 to the complainant. They further submitted that only Ex-service men who are joining the Banks after completion of specified period of service are alone entitled for the pay protection benefit, hence complainant is not entitled to any pay protection under any Act.

4. Complainant vide rejoinder dated **23.09.2021** inter-alia submitted that before joining Union Bank, he had worked in the Gramina Vikas Bank from 03.10.2013 to 04.08.2016 and he had some problem there and he was removed from service which shall not a disqualification for future employment after conducting disciplinary proceedings. He has requested to pass orders to grant pay protection to PwD.

Observation/Recommendations:

5. In light of the facts and material available on record, the reply of the respondent was found satisfactory. Further, the matter is purely an administrative issue and does not involve any discrimination on grounds of disability.

6. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.10.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12692/1023/2021

Complainant: Shri Dinesh Kumar Silvante
LIG III – 394, New Subhash Nagar
Raisen Road, Bhopal – 462024

— P29844

Respondent: The Divisional Railway Manager
West Central Railway, Habibganj – 462024
e-mail: <gm@wcr.railnet.gov.in>

— P29845

Complainant: 50% Locomotor disability

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक 31.03.2021 में कहना है कि उनकी माताजी पश्चिम मध्य रेल के अंतर्गत खलासी के पद पर कार्यरत थी तथा उनका सेवाकाल के दौरान दिनांक 24.05.2010 को देहांत हो गया तदनुसार, छोटे भाई को अनुकंपा के आधार पर रेलवे में नियुक्ति मिल गई और छोटी बहन को दिनांक 25.05.2010 से 20.12.2011 तक 25 वर्ष की आयु तक पारिवारिक पेंशन मिलती रही फिर उसके बाद पेंशन बंद हो गई। प्रार्थी का आगे कहना है कि उन्होंने अपने लिए पारिवारिक पेंशन हेतु विपक्षी को पत्र लिखा परन्तु अभी तक उनको पेंशन नहीं मिली।

2. The matter was taken up with the Respondent vide letter dated 12.04.2021 under Section 75 of the RPwD Act, 2016. But despite Reminder dated 31.05.2021, no response has been received from the respondent. Therefore, hearing scheduled on 28.09.2021.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.09.2021. The following were present:

- Shri Md. Naseem on behalf of complainant
- Shri M.S. Yadav, APO on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. During online hearing, Respondent informed the Court that grievances of the Complainant have been taken care of. Pension Payment Order has been issued in favour of the Complainant. Respondent further informed that arrears since year 2011 are also being paid.
5. Since the issue is now resolved hence any further intervention of this Court is not warranted.
6. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.10.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

केस संख्या : 12705 / 1022 / 2021

के मामले में

शिकायतकर्ता : श्री मुन्ना चौधरी, चौकीदार
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— 1229989

बनाम

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GIST OF COMPLAINT

शिकायतकर्ता ने सूचित किया है कि वह 40 प्रतिशत दृष्टि बाधित दिव्यांग कर्मचारी है। शिकायतकर्ता वरिय अभियंता/कार्य पूर्व रेल गया महोदय के अधीन चौकीदार के पद पर कार्यरत है। शिकायतकर्ता ने 27.11.2021 को स्वयं के अनुरोध पर अनंतर मण्डलीय स्थानांतरण मुगलसराय मण्डल से दानापुर मण्डल के गृह जिला पटना नजदीकी रेलवे स्टेशन के पास जाने हेतु अपने कार्यालय में अग्रिम कार्रवाई करने के लिए आवेदन प्रस्तुत किया। लेकिन लगभग तीन वर्ष की अवधि बीत जाने के बाद भी उनके आवेदन पर कोई उचित एवं ठोस कार्रवाई नहीं की गई।

शिकायतकर्ता ने बड़े दुख के साथ सूचित किया है कि कार्यस्थल से घर की दूरी अधिक होने के कारण उच्च रक्तचाप से ग्रसित माताजी का सही समय पर इलाज नहीं होने के कारण ब्रेन हेमरेज के कारण लकवाग्रस्त होकर लगभग तीन वर्ष पूर्व स्वर्गवास हो गया। अब पिताजी जो काफी वृद्ध एवं 75 वर्ष के हैं घर पर अकेले रहते हैं वह भी अस्थमा से पीड़ित हैं एवं उनका स्वास्थ्य दिन प्रतिदिन खराब हो रहा है।

अतः शिकायतकर्ता ने आग्रह/निवेदन किया है कि उनके स्थानांतरण की समस्या का निष्पादन करवाने की कृपा की जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 09.06.2021 के द्वारा प्रतिवादी के साथ उठाया गया।

3. प्रतिवादी ने पत्र सं0 770 दिनांक 06.08.2021, के माध्यम से सूचित किया कि श्री मुन्ना चौधरी चौकीदार/अधीन-सहायक मंडल अभियंता/पूमरे0/गया डी.डी.यू. मंडल पूर्व मध्य रेल का निजी अनुरोध स्थानांतरण पर मंडल रेल प्रबंधक/डी.डी.यू.मंडल की स्वीकृति के पश्चात डी.डी.यू.मंडल से दानापुर मंडल में चौकीदार पद पर निजी अनुरोध पर स्थानांतरण कर दिया गया है।

4. वादी ने अपने इमेल दिनांक 14.09.2021 के माध्यम से सूचित किया है कि शिकायतकर्ता का अपने गृह जिला पटना में स्थानांतरण सम्बन्धी जो समस्या थी उसका निदान कर दिया गया है लेकिन जहाँ उन्हें पदस्थापित किया गया है वह कार्यस्थल उनके निवास स्थान से काफी दूर है। अतः शिकायतकर्ता ने अपनी समस्या से अवगत कराते हुए पुनः निवेदन किया है कि उन्हें घर के नजदीक पटना रेलवे स्टेशन के पास पदस्थापित करने की कृपा की जाए।

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5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 05.10.2021. The following were present:

- i) Shri Munna Choudhary – Complainant
- ii) Shri Suresh Chandra Srivastava, CPO, East Central Railway – Respondent

Observation /Recommendations:

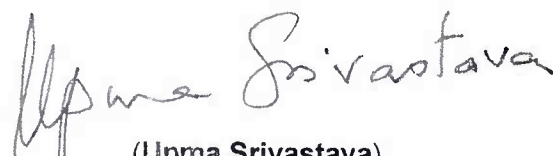
i) Original Complaint was filed whereby the Complainant requested for transfer from Mugalsarai division to Danapur division. Reason given by the Complainant was that his hometown, Patna is situated in Danapur division. Complainant wanted posting near to his hometown. Respondent redressed his complaint partly and Complainant was transferred to Danapur division. However, he was posted away from Patna station. At present his concern is regarding posting near to his hometown, i.e. Patna.

ii) During online hearing, Respondent expressed his inability to post the Complainant at Patna station because there is no vacancy at Patna station. Further the Court was informed that the Complainant has submitted an application to post him either at Patna station or Farsa Bazar station. Complainant also submitted that his home is situated near Farsa Bazar station. Respondent gave assurance that the Complainant will be posted in Farsa Bazar.

iii) Transfer of the Complainant to Farsa Bazar Railway Station situated near to his home will be in consonance with O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T, which lays down that divyang employees may be posted near to their native place.

iv) This Court appreciated the positive approach adopted by the Respondent and recommends that the Complainant shall be posted at Farsa Bazar as assured

6. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.10.2021