



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 & Empowerment

भारत सरकार/Government of India

Case No.12959/1141/2021

Complainant:

Shri Sunil Sharma,
R/o D-3, Tower 15, Type-IV,
East Kidwai Nagar, New Delhi-110023;
Email: sharmasun713@gmail.com

— R31096

Respondents:

(1) Chairman & Managing Director,
National Buildings Construction Corporation Limited,
NBCC Bhawan, Lodhi Road, New Delhi-110003
Email: cmd.nbcc@nic.in / cmdsectt.nbcc@nic.in

— R31092

(2) Ministry of Housing and Urban Affairs
[Through: Secretary]
Room No.122-C, Nirman Bhawan,
Maulana Azad Road, New Delhi-110011
Email: secyurban@nic.in

— R31098

1. Gist of Complaint:

1.1 Shri Sunil Sharma, M-58, a person with 90% Locomotor Disability filed a complaint dated 26.10.2021 regarding shifting of Sports/Recreational Activities built by NBCC in the Park at Type IV Complex, East Kidwai Nagar, New Delhi to another place as the continuous screaming, yelling, shouting, harsh sound of kicking and hitting causing severe health implications in the form of high blood pressure, mental stress, heart ailments, sleep disturbances and noise induced hearing loss.

1.2 The complainant submitted that his residence is a government accommodation allotted to my wife Smt. Meenakshi Sharma at Type IV Complex, East Kidwai Nagar, New Delhi. NBCC has built a park for recreation facilities in the middle of the type IV complex. The Master Plan Delhi 2021 emphasises only the recreational facilities which include open gym, amusement

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5th Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364

Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

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

facilities for kids and cycle path along with greenery and plants should be facilitated in the residential areas. It is surprising that many badminton courts along with one volleyball and basketball court for professional playing have also been constructed. The basketball court which is a team sport and meant to be played in a stadium or sports complex has been constructed in the close vicinity of tower 15 where the complainant resides.

1.3 On enquiring through RTI by the complainant, NBCC had informed that sports facilities are made in the park as per requirement and availability of the area; and there are no opening and closing timings of the park. The complainant submits that there is some timing in public parks also. Even stadiums and sports complex also follow some timing. Then how this park which was supposed to have greenery has been converted into a sports complex with so many professional play courts without any timing? This has eventually attracted professional players to come here in the complex any time on daily basis and play. The badminton players start coming right in the morning at 5 A.M. and start playing with shouting and yelling. Sometimes they play loud music along with playing. This all starts right in the morning. This is followed by kids coming to play cricket then big boys and adults more than the age of 30 who play extensive cricket in the afternoon. Just after they leave, footballers come in different teams one by one and play the game with power shouting. Needless to say, this is a continuance process from 5 A.M. upto late night which continues non-stop

1.4 With so many problems the complainant cannot sleep in night properly as he has to wake up every now and then and his health deteriorates due to these playing courts. He cannot take rest even for a minute. Personal requests to players have yielded no results as most of them come from other places and they play here only as play courts have been made for playing.

1.5 This matter was also raised with the Area Welfare Officer, Govt. of NCT of Delhi. Taking cognizance of the situation, the State Commissioner for Persons with Disabilities, Govt. of NCT of Delhi had passed an order and directed NBCC to shift the playing courts from the closed vicinity of Tower 15. Other residents who reside close vicinity have also made such complaints to NBCC. However, NBCC neither replied nor did take any action on the directions made by the State Commissioner for Persons with Disabilities, Govt. of NCT of Delhi.



2. Submissions made by the Respondents

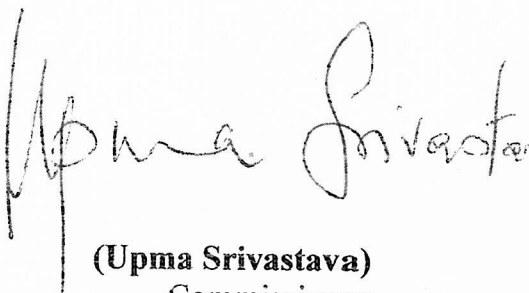
The matter was taken up with the respondents on 15.11.2021 followed by reminders. Despite lapse of statutory time, no reply has been received from the respondents so far.

3. Observations/Recommendations

3.1 After perusal of the complaint, it has been observed that the complaint appears to be general in nature and no specific discrimination towards Persons with disabilities is there. No further intervention is required in the matter by this Court.

3.2 Accordingly the case is disposed off.

Dated: 07.01.2022



(Upma Srivastava)
Commissioner
for Persons with Disabilities



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

भारत सरकार/Government of India

Case No. 13001/1011/2021

Complainant:

Ms. Paridhi Varma,
D/o. Shri Satyendra Varma,
61/19, Sector 6,
Near Haldi Ghati Gate,
Pratap Nagar,
Sanganer,
Jaipur - 302033

— P31099

Versus

Respondent No. 1:

Ministry of Environment, Forest and Climate Change,
(The Secretary)
Indira Paryavaran Bhawan,
Jorbagh Road,
New Delhi – 110 003

— P31100

Respondent No. 2:

Safdarjang Hospital,
(Through the Medical Superintendent)
VMMC & Safdarjang Hospital,
New Delhi - 110029

— P31101

Respondent No. 3:

The Chief Medical & Health Officer(Jaipur II),
Mini Swasthya Bhawan,
Main Road,
Sethi Colony,
Jaipur,
Rajasthan - 302004

— P31102

Disability : 60% low vision in both eyes

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

Gist of Complaint:

Ms. Paridhi Varma submitted that she got selected in Indian Forest Services 2020 AIR-84, with Roll No. 1145549. She is a person with low vision. Her certificate was issued by a reputed government hospital of Rajasthan. Her medical test was commenced on 18th November, at Safdarjung Hospital, where the Orthologist (Dr. Anita Gupta) did not conduct the thorough tests as stated below:-

- i) Made her read small font sized words, which is naturally difficult for her.
- ii) Test for the Colour Blindness did not take place in its totality.
- iii) None of the testing instruments were used

She unilaterally tried to change her category from Low Vision to Blind, which can be challenged with all the attached legal documents issued by competent authorities, along with the clearance of the Physical (Walking for 14kms) Test, which she has accomplished with utmost ease. She questioned the credibility of government-approved and authentic PH documents. In addition to this, she showed unprofessional and offensive behaviour, which was an unfair treatment and caused a lot of distress.

Due to these poor judgements, unfit remarks were sent to the concerned Ministry (MoEFC) and the ministry itself has not given sufficient time to respond upon the same. This resulted in non-issuance of the Offer Letter on 30/11/2021 which restricted her to attend Foundation Course (FC) at

LBSNAA which is expected to commence on 05th December 2021, for which she has completed all the registration formalities already.

The complainant has requested this Court to review her case on urgent basis and direct the Ministry of Environment, Forest and Climate Change to at least grant her permission to attend Foundation Course provisionally at Lal Bahadur Shastri National Academy of Administration, Mussoorie this year itself and to constitute a new Medical Board as soon as possible for further investigation on this case.

2. The matter was taken up with the Respondent No. 1 vide letter dated 01.12.2021 and vide letter dated 06.12.2021 with the Respondent No.2.
3. The Under Secretary, Ministry of Environment, Forest and Climate Change vide letter No.17017/01/2021-IFS.II dated 10.12.2021 submitted that as per IFS Exam Rules, 2020 only low vision category are allowed for Indian Forest Services under Blindness and Low Vision category of PwDs of Rights of Persons with Disabilities Act, 2016. Accordingly, UPSC recommended 89 candidates for appointment in Indian Forest Services. Thereafter, all candidates were directed to undergo Medical Examination and Walking Test. On the basis of same, candidates who were found fit in the said Examination/Test and clear from UPSC have received offer of appointment to join Indian Forest Service. In the instant case, Ms. Paridhi Varma is declared unfit by Central Standing Medical Board, Safdarjung Hospital. The Respondent submitted that as per IFS Exam Rules, 2020, the decision of Medical Board is final. Accordingly, offer of appointment was not issued to Ms. Paridhi Varma on 30.11.2021. Further, the remark of Medical Board has



been informed to Ms. Paridhi Varma vide their Ministry's letter of even number dated 07.12.2021.

4. The Sr. CMO (SAG), Vardhman Mahavir Medical College & Safdarjung Hospital, New Delhi vide letter dated 10.12.2021 submitted that the medical examination in respect of Ms. Paridhi Varma was conducted carefully with the laid down procedure and practice of the hospital while using thorough tests as required for eye examination. He submitted that it is wrong to state that test for the colour blindness did not take place in its totality and the candidate was made to read small font sized words. In fact, a senior well qualified eye specialist conducted medical test on the complainant before giving a final opinion. He further submitted that if the candidate is not satisfied with the result of medical test of Safdarjung Hospital, she may be requested to approach DoP&I for referring her in other government approved medical centre. Safdarjung Hospital does not re-examine the candidates as a policy matter.

5. The complainant vide her rejoinder dated 20.12.2021 submitted that she received from Ministry of Environment, Forest and Climate Change vide letter dated 7/12/2021 stating the reason for not releasing offer letter to her based upon unfit remark which has put her in the blind category by the opinion/judgement made by one Doctor of standing medical board of Safdarjung Hospital. The ministry has asked her to produce piece of evidence from the practitioner of a competent authority who has issued Disability Certificate. After the full disclosure of findings made by standing medical board, she visited the government Hospital again. After full disclosure and undergoing complete procedure, it was certified that she fulfil all



parameters to fall under Low vision (LV) category with the benchmark disability of 60 percent. On 13/12/2021 the Scanned copy of Disability Certificate was sent to the Ministry for releasing the offer letter. However ministry vide letter dated 17/12/2021 informed her that they cannot take that into consideration as the certificate does not contain some specific language. Therefore, she made a written request to the ministry after 7/12/2021 to provide her a standard format in which they demanded to produce piece of evidence.


She submitted that she was highly dissatisfied with the remarks made by Ophthalmologist of Safdarjung Hospital.

The complainant submitted that she is person with disability with low vision and has been submitting the authentic certificates throughout her education. She was well aware that a blind candidate cannot apply to the post. She applied because she is a person with low vision. Even denial of offer letter to her is absolute injustice.

6. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was heard on 30.12.2021.

7. The following persons were present during the hearing ;

- 1) Complainant : Ms. Paridhi Varma, the complainant in person.
- 2) Respondent No. 1 : Shri Ramesh Chandra Jha, Under Secretary, Ministry of Environment, Forest and Climate Change.
- 3) Respondent No. 2 : Dr. Prem Kumar, Sr. CMO (SAG), Safdarjung Hospital
- 4) Respondent No. 3 : No one represented Respondent No. 3



Observations & Recommendations

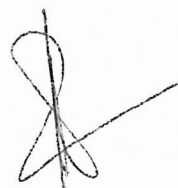
8. Complainant participated in Indian Forest Services Exam 2020. She secured 84th rank. She was called for walking test and medical fitness test. She qualified walking test. Her medical examination was conducted in Safdarjung Hospital. Complainant claims that her medical test was not conducted thoroughly and she was declared 'Blind'. Medical report of Safdarjung hospital was sent to Ministry of Environment, Forest and Climate Change, based on which appointment letter was not issued in favour of the Complainant. Relief sought by the Complainant is that her case be reviewed on urgent basis and order the Ministry to allow the Complainant to attend Foundation Course at LBSNA, Mussoorie.
9. MoEFC filed its reply and informed this court that the exam for Indian Forest Services was conducted by UPSC. 89 candidates were recommended by UPSC. All candidates were directed to undergo a medical examination and Walking Test. Complainant was referred to Safdarjung medical board. Medical Board declared the Complainant as 'Blind'. As per IFS Exam Rules, 2020 only Low Vision category are allowed for IFoS Exam. Further, as per these rules, the decision of the Medical Board is final. Considering all these facts, her offer of appointment was not issued to the Complainant.
10. Safdurjung hospital also filed its reply stating that Medical examination was conducted as per laid down procedure and practice of the hospital. It is wrong to state that the test was not conducted in its entirety. If Complainant is not satisfied with the result of the test, she may approach DoPT for referring

her in other government approved medical center. Safdarjung hospital does not re-examine the candidates as a policy matter.

11. In its rejoinder, Complainant informed this court that Respondent No. 1 (MoEFC) asked the Complainant to produce evidence from a practitioner relating to her disability. Complainant approached Respondent No. 3 (Chief Medical & Health Officer, Jaipur - II, Rajasthan). Respondent No. 3 conducted re-examination of the Complainant and issued a Disability Certificate of '**Low Vision**'. The latest disability certificate was sent to Respondent No. 1. The Respondent refused to accept the certificate because it did not contain some specific language in a format desired by MoEFC.

12. Issue in this present Complaint is that of conflict between disability certificate produced by the Complainant and result of medical examination conducted by Safdurjung Medical Board. Respondent No. 1, i.e. MoEFC could have adopted a relaxed approach and could resolve the issue in view of the complainant clearing all tests. Instead of adopting a relaxed approach, Respondent No. 1 adopted strict approach. Respondent No. 1 did not allow the Complainant to appeal against the decision of the medical board, instead Respondent No. 1 outrightly rejected the candidature of the Complainant. Further, Respondent No. 1, instead writing to Respondent No. 3, compelled the Complainant to produce medical certificate containing specific contents from Respondent No. 3.

13. Respondent No. 1 also failed to take note of the fact that the Complainant successfully passed 'walking test'. The doubt was created because of conflict between disability certificate and medical test. Benefit of



this doubt could be given to the Complainant considering the fact that she was able to qualify 'walking test', within the stipulated time like any other candidate. Obviously the same does not appear to be plausible if the complainant was totally blind this gives credibility to the grievance of the complainant.

14. Attention of the Respondent is also attracted towards concept of 'Reasonable Accommodation' 'Reasonable Accommodation' is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to Divyang employee.

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

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

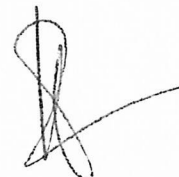
15. This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the



different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with Divyangjan, affirmative conditions have to be created for facilitating the development of Divyangjan. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjan hence the state is bound to provide these facilities to its Divyangjan. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC, 2021 SCC OnLine SC 84.

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016."

16. This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of Divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to Divyang employee in comparison with enabled employee. In

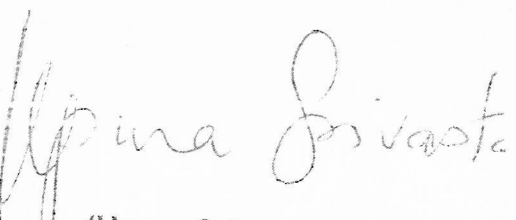


addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of Divyang employee, pre-promotion training, providing assistive aids and devices etc.

17. Ensuring fairness to both the Complainant and the Respondent No. 1 (MoEFC) this Court desired that the Respondent must abide by the duty of providing Reasonable Accommodation to the Complainant and therefore this Court recommends that medical examination of the Complainant may be conducted from an independent medical authority like AIIMS, New Delhi immediately and based on the result of this medical examination, decision on the appointment may be taken, accordingly.

18. The case is disposed off.

Dated: 18.01.2022


(Upma Srivastava)
Commissioner for
Persons with Disabilities