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कार्यालय मुख्य आयुक्त दिव्यांगजन

OFFICE OF THE 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. 13023/1102/2021

Complainant:

Shri Shokin Pal,
R/o K.H.No.17, Flat No.B-65/27,
Gali No.02, Numberdar Colony,
Burari, Delhi-110084;
Email: 786ankurtomar@gmail.com;

133220

Respondent:

The Managing Director,
Punjab National Bank,
Head Office: 7, Bhikhaji Cama Place,
Africa Avenue, New Delhi-110066
Email: md@pnb.co.in

133221

Affected Person: The complainant, a person with 100% Visual Impairment

1. Gist of Complaint:

The complainant filed a complaint dated 30.11.2021 regarding not providing banking facilities to him by the Punjab National Bank, Burari Branch, Delhi [IFSC Code: PUNB0105100]. The complainant has bank account in the said branch for last 08/09 years. When he goes to withdraw money in the bank, he is asked to bring with him a witness. His application given to the Branch Manager regarding problems being faced by him was not accepted. He also alleged to have been misbehaved by the Officers of the Bank.

2. Submissions made by the Respondent:

The Branch Head, PNB Burari, Delhi filed their reply dated 04.01.2022 and submitted that as per bank guidelines, witness is required for making payment to visually impaired persons and if the person is not being able to bring any witness due to security reasons then witness of the staff is being taken and payment is being made to the customer without any delay. At the time of issuance of ATM Card one undertaking has to be submitted by the customer which requires the signature of witness.

(Page 1 of 2)

3. Submissions made in Rejoinder:

No rejoinder has been filed by the complainant to the reply filed by the PNB Burari Branch, Delhi.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.05.2022**. The following were present:

- (1) Shri Shokin Pal, the complainant in person
- (2) Ms. Pooja Sabarwal, Sr. Branch Manager, Punjab National Bank, Burari Branch, Delhi

5. Observations & Recommendations:

5.1 Both the parties were heard.

5.2 Complainant submitted that the Respondent bank was not providing banking facilities to the Complainant. Whenever he went to bank branch to withdraw his money, the staff of the branch did not cooperate and refused to give him his own money.


5.3 Respondent submitted that as per bank guidelines whenever 100% Visually Impaired withdraws his money, presence of witness is indispensable. If such divyangjan is not able to get his own witness because of security reasons, then one of the bank staff acts as witness and money is given to such divyangjan without delay. Similarly, at the time of issuance of ATM card, undertaking has to be given by the customer which requires signature of the witness.

5.4 Presence of witness is made essential for benefit of 100% Visually Impaired divyangjan. Such checks and balances are established so that such divyangjan are not deceived. This Court concludes that the Respondent has committed no error in following the rule for producing witness.

5.5 Since no case of discrimination is made out in the present Complaint, interference of this Court is not warranted.

5.6 Accordingly the case is disposed off.

Dated: 08.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



extra

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

भारत सरकार / Government of India

Case No. 13014/1011/2021

Complainant:

Shri Golak Bihari Pradhan,
C/o Shri Iswar Pradhan,
R/o Backside of Quarter No.A/39,
Sector-18, Jhunmpudy, Roukela-769003 (Odisha)
Email: ganeshwarpradhan@gmail.com

133357

Respondent:

The Chairman,
Steel Authority of India,
Ispat Bhawan, Lodhi Road,
New Delhi-110003
Email: rkl_cocrsp@sancharnet.in

133358

Affected Person: The complainant, a person with 50% Hearing Impairment

1. Gist of Complaint:

In the complaint dated nil received through the Court of State Commissioner for Persons with Disabilities, Govt. of NCT of Delhi vide letter dated 12.11.2021, the complainant submitted that he had applied for selection of Trainees for Medical Attendant Training in Rourkela Steel Plant of Steel Authority of India against their Advt. No.PL-M&HS/393 dated 18.08.2021. But he was not selected as no disability quota had been given by Rourkela Steel Plant (RSP) due to which the complainant could not be selected.

2. Submissions made by the Respondent:

The Respondent filed their reply dated 21.01.2022 and submitted that the advertisement was issued for selection of 75 number of Trainees for Medical Attendant Training programme for 01 year duration on stipend basis, to be conducted under Corporate Social Responsibility (CSR) Scheme for enhancement of Employability & Skill of the local people. Accordingly, preference was given to the applicants from periphery villages/slum areas/adopted villages of RSP and from Sundargarh District viz. Bisra,

(Page 1 of 2)

Lathikata, Naugaon, Kuarmunda blocks of Sundargarh District, Model Steel Villages, Resettlement Colonies of RSP and belonging to SC/ST category. RSP is situated in Sundargarh District of Odisha wherein majority of the people belongs to SC/ST category. As the advertisement was for training of the local people and not recruitment to any post in the Company, reservation was not envisaged for disabled category. Further, the complainant – Shri Golak Bihari Pradhan was not found suitable by the Selection Committee for the aforesaid training programme.

3. Submissions made in Rejoinder:

No rejoinder has been filed by the complainant to the reply submitted by the Respondent.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.05.2022**. The following were present:

- (1) The complainant was absent.
- (2) Shri Gyan Ranjan Dash, Steel Authority of India Ltd., for the respondent

5. Observations & Recommendations:

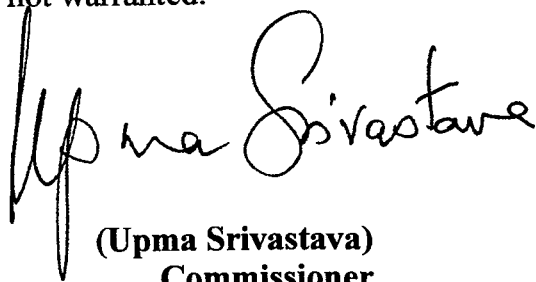
5.1 Complainant submitted that the Respondent establishment issued advertisement for selection of trainees. Complainant's grievance is that no reservation was given to divyangjan.

5.2 Respondent submitted that an advertisement was issued for walk in interview for the selection of Trainees for Medical Attendant Training programme. The training was given for 1 year on stipend basis. The above advertisement was for training the local population and was not a recruitment drive. Complainant's application was rejected because he was not found suitable for the post.

5.3 Respondent's submission is satisfactory. Since it was not a recruitment drive, hence they are not bound to reserve any seat for divyangjan. This Court concludes that interference in the present Complaint is not warranted.

5.4 Accordingly the case is disposed off.

Dated: 08.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra

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

भारत सरकार / Government of India

Case No.12967/1011/2021

Complainant:

Mr. Monosij Banerjee,
Flat No.3C, Suhasini Apartment,
Fatakgora Avenue, Chandan Nagar,
District-Hooghly-712136 (West Bengal)
Email: monosijbanerjee1@gmail.com

13218

Respondent:

The Chief Executive Officer,
Food Safety and Standards Authority of India,
3rd and 4th Floor, FDA Bhawan, Kotla Road,
Near Bal Bhawan, New Delhi-110002
Email: ceo@fssai.gov.in

133219

Affected Person: The complainant, a person with 70% Mental Illness

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 20.10.2021 regarding discrepancy in identification of posts suitable for persons with disabilities in Recruitment Advertisement No.Dr-04/2021 published by the Food Safety and Standards Authority of India (FSSAI).

1.2 At Pages No.2 and No.4 of the Advt. the post of Assistant (Post Code-10) has not been identified suitable for the sub-category Mental Illness (MI) of PwBD which is inconsistent with the Gazette Notification No.38-16/2020-DD-III dated 04.01.2021 issued by M/o SJ&E as the post of Assistant and all such analogous posts have been marked suitable for MI.

1.3 Further, the post of Junior Assistant Grade-I (Post Code 14) which is the feeder grade for the post of Assistant, has been marked suitable for MI in the Advt., therefore, the post of Assistant should have been automatically identified suitable for MI.

1.4 Note 4, Note 5, Note 6 and Note 7 of the Gazette Notification dated 04.01.2021 read as under:-

(Page 1 of 4)

Note 4 – “If a post is identified in the feeder grade, all the posts in the promotional grade should also stand identified”

Note 5 – “If a post having identical nature and place of job with respect to any identified post, the post should be construed to be identified even if the post has a different nomenclature and/or is placed in a different group.”

Note 6 - “This list will be the principal list in respect of the posts identified suitable for persons with benchmark disabilities. However, in case a list of post is separately identified by any Central Government establishment, the list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail.”

Note 7 – “In case a post is identified suitable for more than one sub-category under a broad category, individual Central Ministries or Departments or Public Sector Undertakings or Autonomous Bodies should conduct recruitment for all the sub-categories and cannot suo-motu choose one particular sub-category for appointment.”

2. Submissions made by the Respondent:

2.1 The Respondent filed their reply dated 03.12.2021 and submitted that an Expert Committee comprising officers from FSSAI (including an officer from PwBD category) and an Officer of the level of Under Secretary from Department of Empowerment of Persons with Disabilities, M/o SJ&E familiar with the related instructions, was constituted for identifying all posts in Group ‘A’, ‘B’ and ‘C’ in FSSAI to be filled up from all the categories of disabilities. The Committee had opined that the posts of Assistant involves application of mind and he/she needs to take decisions and accordingly it was decided that the post of Assistant is suitable for –

- (a) Locomotor Disability (OA, OL, BL, OAL) including Cerebral Palsy, Leprosy Cured, Dwarfism, Acid Attack Victims, Muscular Dystrophy
- (b) Blindness and Low Vision (B, LV)
- (C) Deaf (D) and Hard of Hearing (HH)
- (d) Special Learning Disability (SLD)
- (e) Multiple disabilities from amongst the persons under clauses (a) to (d) above except deaf-blindness

2.2 The Expert Committee also considered that if a post is identified suitable for a particular category of PwBDs in the feeder grade, all the posts in promotional hierarchy stand identified for that category of PwBD. However, keeping in view



the complex structure of FSSAI, merger of technical and admin posts upon promotion at the level of Deputy Director and posts in Group 'A' and 'B' involves application of mind and need to take decision, the Expert Committee recommended only the sub-category 'Special Learning Disability' for the post of Assistant. As regards, Note 4, the recruitment in FSSAI is in initial stage and no such case arose where a candidate in the feeder grade are restricted from promotion in the hierarchy based on suitability. The stipulation in **Note 4** shall be followed in promotion.

2.3 The last date for present recruitment advertisement covering the post of Assistant (DR-04/2021) was 12th November, 2021 and accordingly online application portal was closed. The present recruitment is as per Recruitment Regulations, 2018 and the recommendations of the Expert Committee as approved by Competent Authority. Suitability of the categories shall be revisited within the stipulated three years' period.

3. Submissions made in Rejoinder:

No rejoinder has been filed by the complainant to the reply of the respondent. However, vide email dated 11.02.2022 has asked for the status of and final order passed in his case.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **24.05.2022**. The following were present:

- (1) Complainant: Shri Monosij Banerjee - In Person
- (2) Respondent: FSSAI - Ms. Smita Singh; Sri Rajiv Jain; Sri Pradeep Jain

5. Observations & Recommendations:

5.1 Complainant submitted that the Respondent issued notification advertising the posts of 'Assistant' and 'Junior Assistant Grade-I' in 2021. As per the notification, post of 'Assistant' was not identified suitable for 'Mental Illness' category of divyangjan, whereas this post is identified suitable for 'Mental Illness' category by MoSJ&E in its 2021 list. Further, the post of 'Junior Assistant Grade-I', which is feeder grade for the post of 'Assistant', is identified suitable for category of 'Mental Illness'. Therefore, as per Note 4 of MoSJ&E Notification dated 04.01.2021, post of 'Assistant' should also stand identified suitable for 'Mental Illness' category automatically.

5.2 Respondent replied that an expert committee, comprising of officers of the Respondent establishment and the officers of Department of Empowerment of Persons with Disabilities, was constituted. The committee was assigned task of identifying the posts in Respondent establishment for divyangjan. The Expert Committee considered the fact that the nature of post of 'Assistant' in the



Respondent establishment is complex and requires application of mind in taking decisions. Further the Respondent submitted that the committee also considered the fact that the technical and administrative posts get merged upon promotion. Hence, the committee recommended that in Respondent establishment, post of 'Assistant' can only be identified suitable for 'Specific Learning Disability' only and not for 'Mental Illness' category.

5.3 Respondent's contentions are contrary to law. Note 6 of notification dated 04.01.2021 is clear. It lays down that when any department has separate list of identified posts, the list which has wider scope, supersedes the other one. In this case, 2021 list of MoSJE has wider scope because post of Assistant is identified suitable for 'Mental Illness' at Serial No. 80 (Group B posts) and at Serial No. 89 (Group C posts) of the list dated 04.01.2021. As far as exemption is concerned, there is proper procedure laid down in Section 34 of RPwD Act, 2016 to seek exemption. As per the provision, if any department seeks exemption from reservation, it has to send the proposal to Department of Empowerment of Persons with Disabilities (M/o SJ&E), which may decide to exempt after consultation with O/o CCPD.

5.4 During online hearing, the Respondent submitted that the Committee gave its recommendations in January 2021. MoSJE published its list of identified post on 04.01.2021. The impugned advertisement was issued in September 2021. Hence, the Respondent had enough time and opportunity to examine the MoSJE list and make suitable changes in implementation of the same. As noted above, as per Note 6 of the MoSJ&E notification dated 04.01.2021, in the present Complaint list of the Respondent establishment shall stand over-ruled by the MoSJ&E list, because Respondent's list has narrow scope.

5.5 Hence, this Court recommends that the impugned advertisement shall be taken back and fresh notification shall be issued by the Respondent identifying the posts suitable for divyangjan in accordance with MoSJ&E list dated 04.01.2021.

5.6 Accordingly the case is disposed off.

Dated: 09.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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OFFICE OF THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार / Government of India

Case No. 12975/1011/2021

Complainant:

Shri Junaid KKV,
Kizhakke Modangal, Kalpathur PO,
Kozhikode-673524 (Kerala)
Email: junaidkkv7@gmail.com

133222

Respondent:

The Chairman,
Rajiv Gandhi Centre for Biotechnology (RGCB)
Thycaud Post, Poojappura,
Thiruvananthapuram-695014 (Kerala)
Email: director@rgcb.res.in

133223

Affected Person: The complainant, a person with 80% Mental Illness

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 31.10.2021 regarding denial of selection to the post of Technical Assistant against the Notification No.01/2020 dated 12.05.2020 of RGCB.

1.2 The complainant submitted that out of two vacancies one was reserved for candidate PwBD under 'd' and 'e' categories and he was the only candidate in that categories. The minimum passing mark was 40% in written test and skill test. He got 30% (60.5 out of 200). So, the respondent declared him failed as he could not pass in skill test.

2. Submissions made by the Respondent:

2.1 The Respondent filed their reply dated 13.12.2021 and submitted that out of total 143 positions at RGCB 05 positions were identified for PwBD. Out of the 05 positions, the complainant Shri Junaid KKV had applied for the position of Technical Assistant, Group II at RGCB. The application submitted by him was against Section 34(1)(d)/(e) of RPwD Act, 2016.

2.2 Shri Junaid could not score prescribed pass scores/minimum marks in both the Objective Test and Practical Test. He could score 60.5 marks against

(Page 1 of 3)

the cut off marks of 80 out of 200. Further, he failed in the Practical Test conducted by the duly constituted Selection Committee. Accordingly, he was found unfit.

3. Submissions made in Rejoinder:

Complainant filed his rejoinder dated 18.12.2021 and submitted that RGCB had declared the minimum pass mark percentage as 40% after conducting the tests which did not mention in the recruitment notification, which is not fair.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **24.05.2022**. The following were present:

(1) Complainant: Absent

(2) Respondent: Shri R. Jayachandran Nair, Sr. General Manager
Rajiv Gandhi Centre for Biotechnology, Thiruvananthapuram

5. Observations & Recommendations:

5.1 Complaint is filed with respect to vacancy notified for the post of 'Technical Assistant' issued on 12.05.2020. Complainant submitted that out of 2 vacancies, 1 was reserved for divyangjan with 'Mental Illness' category. Complainant claims that he was the only candidate who applied in that category. He further submitted that minimum passing marks were 40%, whereas he scored 30% marks and was declared failed. Complainant pleads that he may be selected on relaxed standards.

5.2 Respondent replied that special recruitment drive was conducted to fill 5 posts identified suitable for divyangjan. Since the process was done under 'special drive' hence the examinations were divyangjan friendly and candidates were being evaluated on relaxed standards. Minimum passing marks were 40%, i.e. 80 marks out of total 200. The Complainant scored only 30% marks, i.e. 60 out of total 200. Hence, he was declared unqualified. Since no one was found suitable for the post, it was carried forward to next recruitment cycle. In 2021, the same post was again readvertised on 06 December 2021 and it has been reserved for divyangjan with same category.

5.3 During online hearing, the Respondent further submitted that the unfilled vacancies have now been renotified in December 2021. Applications from divyang candidates have been received and some have also been shortlisted. It is expected to fill the vacancies in near future.

5.4 This Court concludes that the Respondent's reply is satisfactory. Since the recruitment drive was conducted specially for divyangjan hence, cannot




recommend to relax the standards vis-a-vis to non divyang candidates. Moreover, Complaint pertains to very old facts which happened in 2020. No reason submitted by the Complainant as to why he did not approach this Court in 2020 or in early 2021. Further this Court is inclined to take note of the fact that the Respondent has taken right step in carrying forward the unfilled vacancies and reserving it for same category of divyangjan.

5.5 Considering these reasons, this Court concludes that interference of this Court in the present Complaint is not warranted.

5.6 Accordingly the case is disposed off.

Dated: 09.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13149/1023/2022

Complainant: Shri Suman Debnath
25th Bn, Sashastra Seema Bal
Ghitorni, New Delhi - 110047

133224

Respondent: The Commandant
Office of the Commandant, 25th Bn
Sashastra Seema Bal, PO: Arjangarh
New Delhi - 110047

133225

Complainant: 100% locomotor disability

GIST of the Complaint:

प्रार्थी श्री सुमन देबनाथ का अपनी शिकायत दिनांक 21.02.2022 में कहना है कि वह दिनांक 31.07.2006 को 7वीं वाहिनी सशस्त्र सीमा बल में आ./सा. पद पर नियुक्त हुए तथा दिनांक 02.11.2007 को एस.एस.बी. अकादमी श्रीनगर में विभागीय ड्यूटी के दौरान विभागीय वाहन से दुर्घटना के शिकार हुए जिसमें उन्हें गंभीर से चोट आई एवं अन्य एक सिपाही का स्वर्गवास हो गया। प्रार्थी का आगे कहना है कि विभाग द्वारा दिव्यांग कर्मियों को सेवा से निकालने के लिए एक अभियान चलाया जा रहा है जिसके तहत उन्हें इच्छा के विरुद्ध जबरन बोर्ड आउट किया जा रहा है। प्रार्थी का आगे कहना है कि दिनांक 25.11.2011 को सफदरजंग अस्पताल द्वारा उन्हें 100 प्रतिशत स्थायी दिव्यांगता प्रमाण पत्र प्रदान किया गया परन्तु विभाग द्वारा उन्हें 75 प्रतिशत एवं बाद में रिव्यू करके 88 प्रतिशत दिया गया जिससे उन्हें आर्थिक तौर पर बहुत बड़ा नुकसान होगा।

2. The matter was taken up with the Respondent vide letter dated 16.03.2022 under Section 75 of the RPwD Act, 2016.

3. Commandant, 25th Bn, SSB vide letter dated 12.04.2022 submitted that the subject matter involved in the present complaint is already pending before the Hon'ble High Court of Delhi in WP (C) No. 11688/2021 filed by the complainant. Therefore the present issue is sub-judic before the Hon'ble High Court of Delhi.

[Signature]

4. प्रार्थी ने अपने प्रति उत्तर दिनांक 04.05.2022 ने उक्त तथ्य को स्वीकार करते हुए बताया है कि उनका मामला उच्च न्यायालय में विचाराधीन है।

Observation/Recommendations:

After perusal of the rival submissions, it has been found that Complainant has already filed a WP (C) No. 11688 of 2021 before the Hon'ble High Court of Delhi therefore, matter is sub-judice, no further intervention is required.

5. The Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 09.06.2022



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

भारत सरकार / Government of India

Case No. 13004/1014/2021 & 13035/1141/2021

Complainant:

Shri P.K. Vasudevan Nair
R/o Flat No. C-601,
Saisimran Housing Society,
Deonar Village Road, Mumbai-400088;
Mobile No. 9869834635;
Email: pkvnpc@rediffmail.com

133351

Respondent:

(1) The Dy. Director,
National Career Centre for Differently Abled
Ministry of Labour and Employment, ATI Campus,
V.N. Purav Marg, Sion, Mumbai – 400088
E-mail: vrcmumbai@hub.nic.in

133352

(2) Chairman & Managing Director,
National Handicapped Finance Development Corporation,
Unit No. 11 & 12, Ground Floor, DLF Prime Tower,
Okhla Phase - I, Near Tehkhand Village,
New Delhi – 110020; Email: nhfcd97@gmail.com

133353

Affected Person: Shri Anish Vasudevan Nair, a person with 50% Mental Retardation

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 18.11.2021 regarding non-payment of Stipend to his son Shri Anish Vasudevan Nair, a person with 50% Mental Retardation by the respondents.

1.2 The complainant submitted that Shri Anish had successfully completed one year training course at VRC, Mumbai during the year 2014-15. On completion of the training, the Dy. Director VRC, Mumbai and recommended to NHFDC, which was the fund sanctioning authority, for approval and release of

(Page 1 of 4)

funds for payment of stipend to the trainees. Since the stipend was not paid, after waiting for reasonable time, the complainant approached VRC Mumbai for the payment. It was informed that the matter was recommended to NHFDC for approval.

1.3 Having not received the response, the complainant approached NHFDC. NHFDC informed that the stipend was not released as the VRC, Mumbai had not obtained prior approval from NHFDC for engaging the trainees. Both the Institutes and NHFDC admit the fact of successful completion of training and passing, but stipend of Rs.12000/- (@ Rs.1000/- per month for one year) is delayed and denied which is pending for the last eight years for simple reason of an inter office (same department) procedural requirement.

2. Submissions made by the Respondents:

2.1 Respondent No.1 – VRC Mumbai filed their reply dated 10.03.2022 and submitted that as per the instructions received from DGE, Headquarters vide letter No.DGET-D-23012/1/2011-EE-II dated 12.08.2011, the Financial Support/ Stipend to the PwD's undergoing Training at the Centre was being provided by NHFDC under their scheme for financial support to PwD's registered with VRCs. Accordingly, Financial/Stipendiary support was sought for 68 Trainees (including the complainant's son) for the Financial Year 2012-13 and 2013-14 from NHFDC which is unpaid till date. NHFDC vide letter dated 16.02.2018 informed that NCSC for DA Mumbai had not taken any prior approval. VRC Mumbai submitted that NHFDC had not informed the Centre in any way except a copy of the letter in the year 2018. If any lacking was there from VRC Mumbai side NHFDC must have informed to VRC Mumbai in time or should have returned the proposal for necessary compliance.

2.2 NHFDC in their reply dated 24.12.2021 submitted that VRC Mumbai had not taken any prior approval from NHFDC for stipend support in respect of 83 trainees (including Shri P.K. Vasudevan Nair's son) before starting the training programme. Hence the request of complainant was not considered.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 11.04.2022 reiterated his grievance.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.05.2022**. The following were present:

- (1) Complainant: Shri P.K. Vasudevan Nair, the complainant, in person
- (2) Respondent No.1: Advocate R. Shetty; Shri Yogesh parkhey; and Shri S.K. Khushwaha, Head of Office, National Career Service Centre for Differently Abled, Mumbai
- (3) Respondent No.2: Shri Manoj Sahoo, NHFDC

5. Observations & Recommendations:

5.1 Complaint is filed on behalf of divyang son of the Complainant, referred to as 'beneficiary'. Complainant submits that in 2014, the beneficiary completed 1 year training course in Respondent No.1, i.e. Vocational Rehabilitation Center, Mumbai. This establishment comes under M/o Labour & Empowerment. Complainant submits that the Respondent No. 1 was supposed to pay stipend of Rs. 12000/- to the beneficiary, however till date no stipend has been paid.

5.2 Respondent No. 1 submits that the stipend and other financial support was to be provided by NHFDC (National Handicap Finance & Development Corporation). Respondent submits that it has written letter to NHFDC to give stipend to the participants who undertook training. NHFDC has replied to the Respondent No.1 that since no prior permission was taken from NHFDC hence, stipend cannot be given. Complainant is not the only one, similar cases of other 68 divyangjan are also pending because NHFDC is not releasing stipend money.

5.3 Respondent No.2, i.e, NHFDC (National Handicap Finance & Development Corporation) submits that VRC, Mumbai (Respondent No 1) did not take prior approval hence stipend money cannot be given.

5.4 Cause of the present Complaint lies in procedural lapse committed by the Respondents. Respondent No. 1 did not take necessary permission and Respondent No. 2 did not inform the Respondent No. 1 on time. The ultimate sufferers of this procedural lapse are divyangjan who are forced to knock the doors of this Court to get their rights implemented. The cause of this Complaint reflects lack of sensitivity of both the Respondents who have failed to do any thing to resolve the whole issue for 8 years. Even in the present Complaint, both the Respondents tried to shift their responsibility on one another.

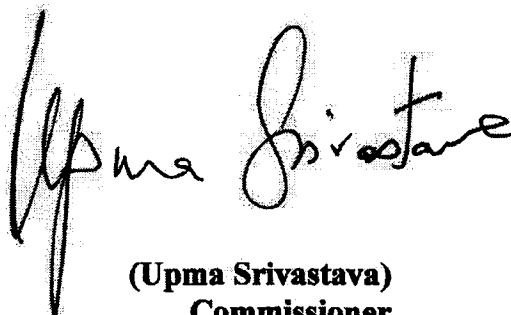
5.5 This Court concludes that both the Respondents have violated rights of divyangjan by denying them the agreed stipend.

5.6 This Court recommends that Respondent No. 2 shall obtain 'post-facto' approval. In order to do the same, Respondent No. 1 shall prepare the whole case and forward it to Respondent No. 2 within 2 weeks of receiving the copy of this Recommendation. Further, Respondent No. 2 shall forward the case to Secretary of the department for obtaining 'post-facto' approval.

5.7 Both the Respondents shall file compliance report of this recommendation within 4 weeks of receiving the copy of this Recommendation, failing which, it shall be presumed that the Respondents have willingly refused to implement the Recommendations of this Court without any reason and the matter may be reported to the Parliament.

5.8 Accordingly the case is disposed off.

Dated: 15.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



extra

कार्यालय मुख्य आयुक्त दिव्यांगजन

OFFICE OF THE 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. 13024/1011/2021

Complainant:

Ms. Monika Dhankhar,
House No.119, Gram Sabha Extension,
Pooth Kalan, Delhi-110086
Email: monika.dhankhar17@gmail.com

P33342

Respondents:

- (1) The Secretary,
Union Public Service Commission,
Dholpur House, New Delhi
Email: secyoffice-upsc@gov.in
- (2) The Director,
Lady Hardinge Medical College &
Smt. Sucheta Kriplani Hospital,
C-604, Shivaji Stadium Bus Terminal,
Shaheed Bhagat Singh Marg,
Connaught Place, New Delhi-110001
Email: registraracademiclhmc@gmail.com
- (3) The Directorate General of Health Services,
Room No.446A, Nirman Bhawan,
Maulana Azad Road, New Delhi-110011
Email: dghs@nic.in

P33348

P33349

P33350

Affected Person: The complainant, a person with 45% Locomotor Disability
(One Leg One Arm)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 07.12.2021 against flouting of Gazette Notification 2021 in the recruitment of Nursing Tutor (Vacancy No.21111707127) Recruitment Advt. No.17/2021 of UPSC by Lady Hardinge Medical College & Smt. Sucheta Kriplani Hospital and Directorate General of Health Service (College of Nursing).

1.2 The complainant submitted that out of total 14 vacancies, 01 post was reserved for PwBD. However, the disabled category 'One Leg' (OL) was restricted as per the advertisement. The complainant is a person with 45% locomotor disability in one leg &

(Page 1 of 3)

one arm and is a permanent employee as a Nursing officer in Health & Family Welfare Department under Govt. of NCT of Delhi.

2. Submissions made by the Respondent:

2.1 UPSC filed their reply dated 28.12.2021 and submitted that in the advertisement published, the post are suitable and one post is reserved for PwBD One Leg affected (OL) only; the post is not suitable for the candidates having disability with One Leg and One Arm (OLA). Therefore, she was not eligible for the said post.

2.2 LHMC filed their reply dated 13.01.2022 and inter-alia submitted that the duties and responsibilities to the post of Tutor require physical involvement in terms of Ward supervision, clinical instructions in the clinical cases during ward supervision, inspection of other premises and extending assistance to the Associate Professor/Vice Principal/Principal as the case may be. As such, the disability with One Arm and One Leg may find difficulties to discharge functions of the Tutors as per the desired expectations and that too in public interest. Therefore, Horizontal Reservation for PwD category for Tutor post was identified for OL.

3. Submissions made in Rejoinder:

No rejoinder has been filed by the complainant to the reply filed by the respondents.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.05.2022**. The following were present:

- (1) Ms. Monika Dhankhar, the complainant in person
- (2) Respondent No.1: UPSC – Absent
- (3) Respondent No.2: Dr. S.K. Sinha, Forensic Medicine & Liaison Officer, Lady Hardinge Medical College
- (3) Respondent No.3: Shri Vum Mang, Director, DGHS, Directorate General Health Services

5. Observations & Recommendations:

5.1 Complainant submitted that 14 vacancies on the post of 'Nursing Tutor' were notified. Complainant's main grievance was that the post was not identified suitable for 'One Leg' category of divyangjan. She submitted that she is a permanent employee as a Nursing Officer in Health & Family Welfare Department under Govt. of NCT of Delhi.

5.2 Respondent No.2 submitted that the post of tutor require physical involvement in works related to ward supervision, clinical instructions and inspection of premises. Therefore, the post was not identified suitable for 'One Leg' category.

5.3 During online hearing, the Respondent No.2 submitted that the post was advertised in November 2020, however, till date exam has not been conducted for the aforesaid post.



5.4 During online hearing, Respondent No.2 was asked to differentiate between nature of work performed by 'Nursing Officer' and 'Nursing Tutor'. Respondent submitted that the work of 'Nursing Tutor' involves teaching, supervision in ward, inspection of different places and assistance to seniors. On the other hand, work of 'Nursing Officer' is that of participation in treatment activities in wards, assistance to seniors. Further it was submitted that job performed by 'Nursing Tutor' also involves movement from one place to another. The only difference between the two posts is that 'Nursing Tutor' is post of 'teaching stream'.

5.5 From the reply of the Respondent it becomes apparent that the Respondent did not identify the post of 'Nursing Tutor' as suitable for 'One Leg' category because this post requires movement from one place to another. Whereas, the post of 'Nursing Officer' which is already held by the Complainant involves even more movement because this post requires participation in 'treatment facilities'.

5.6 It is also indispensable to mention Note 3 of M/oSJ&E Notification No. 38-16/2020-D-III. As per the Note, of any post is already held by divyangjan, such post shall stand identified suitable for such category of disability.


5.7 In the present case the post of 'Nursing Officer' is already held by the Complainant hence, it automatically stands identified for divyangjan belonging to 'One Arm and One Leg' category. Further, the Respondent No.1 and Respondent No. 2 failed to prove a significant difference between the posts of 'Nursing Officer' and 'Nursing Tutor'.

5.8 Hence, this Court concludes that the Respondent No.2 had discriminated with divyangjan with 'One Arm and One Leg' category. This Court recommends considering the fact that the examination has not been conducted yet, the Respondent No.2 shall scrap the advertisement and re-notify the vacancies after identifying them suitable for divyangjan with 'One Leg and One Arm' category.

5.9 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

5.10 Accordingly the case is disposed off.

Dated: 16.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



extra

कार्यालय मुख्य आयुक्त दिव्यांगजन

OFFICE OF THE 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. 12974/1011/2021

Complainant:

Shri Hires Ahluwalia,
R/o 101, New Jawahar Nagar,
Jalandhar City – 144001 (Punjab)
Email: tusharwalia@gmail.com
Email: tusharwalia@gmail.com Mobile: 8054972101

133345

Respondent:

The Chairman,
Staff Selection Commission,
CGO Complex, Block No.12,
Lodhi Road, New Delhi-110003
Email: chairmanssc@gmail.com; sscushqpp1@gmail.com

133346

Affected Person: The Complainant, a person with 40% Specific Learning Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 29.10.2021 regarding non-selection/rejection of candidates with Specific Learning Disabilities [SLDs].

1.2 The complainant submitted that Staff Selection Commission (SSC) is not following the Gazette of India notification No.CG-DL-E-13012021-224370 dated issued by Ministry of Social Justice & Empowerment which says that persons with SLD are suitable to work on the following posts:

- (1) Assistant Accounts/Audit Officer in CAG;
- (2) Income Tax Inspector in CBDT;
- (3) Inspector Central Excise and GST in CBIC;
- (4) Preventive officer in CBIC;
- (5) Examiner in CBIC;
- (6) Divisional Accountant in CAG;

(Page 1 of 4)

- (7) Assistant Section Officer in Central Secretariat Service;
- (8) Assistant (pay level 6) in Central Passport Office in Ministry of External Affairs

It is mentioned in that gazette at Point No.6 Page No.1159 that "This list will be the principal list in respect of the posts identified suitable for persons with benchmark disabilities. However, in case a list of post is separately identified by any Central Government establishment, the list having wider range of identified categories (i.e., having more sub-categories under each category) would prevail."

1.3 The complainant submitted that the above-mentioned posts are not shown as suitable for a person with SLD in the original notification of SSC CGL 2019. Further SSC released many department-wise corrigendum's to the notification of CGL 2019 which also do not consider person with SLD as suitable for the above-mentioned posts. As mentioned in the gazette, the list which has wider disabilities will prevail. Hence the list by ministry of social justice and empowerment through this gazette should prevail rather than the departmental lists of SSC.

1.4 The complainant had applied for SSC CGL 2019 under SLD (category D or others) disability. He cleared all the 4 tiers of SSC CGL 2019 [Roll No. 1402500002]. On the date of Document Verification i.e. 23.09.2021, he was denied the above posts saying that SLD is not suitable for the above posts. He can apply to the posts of ASO in AFHQ, Ministry of External Affairs and Electronics and Auditor in Defence Accounts.

2. Submissions made by the Respondent:

2.1 SSC filed their reply dated 13.12.2021 and inter-alia submitted that SSC being a recruiting agency does not have any role in the recognition of a particular post either suitable or unsuitable for a particular disability. The total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category, including reservation for PwDs through the system of maintenance of roster, are the exclusive domain of respective indenting Ministries/Department/Organisations. Thus, they report the vacancies (Horizontal and Vertical) to be filled up by direct recruitment.

2.2 SSC vide their letter No.3-1/2018-P&P-I(Vol.II) dated 25.05.2018 has already requested all the indenting user departments to identify and inform the suitability of post for newly identified categories of disabilities. Till date only some of the Departments like DoP&T, M/o Railways, M/o External Affairs,

AFHQ, CGDA, CA&G etc. have identified the posts suitable for newly identified categories of disabilities as per RPwD Act, 2016.

2.3 In the Notice of Examination for CGLE-2019 on 22.10.2019, SSC made the following provisions:-

“Para 2...

Note-IH: As the “Rights of Persons with Disabilities Act, 2016 has come into force with effect from 19.04.2017, and beside OH, HH and VH categories, new categories of disabilities such as Autism, Dwarfism, Acid Attack victims, Muscular Dystrophy, Intellectual Disability, Specific Learning Disability, Mental Illness and Multiple Disabilities, etc. have been included. Therefore, the candidates with such disabilities may also apply giving detail of their disabilities in the online Application Form. However, their selection will be subject to identification of posts suitable for these categories as well as reporting of vacancies by the Indenting Departments.”

Accordingly, SSC decided that at the stage of Document Verification suitability of posts for various disabilities and categories would be determined from the information given by the User Departments for CGLE-2019. Till September, 2021, only (i) Assistant Section Officer in Ministry of External Affairs, (ii) Assistant Section Officer in Armed Forces Headquarters (AFHQ), (iii) Assistant Section Officer in Ministry of Electronics and Information Technology, and (iv) Auditor in the Office of Controller General of Defence Accounts (CGDA), posts were informed to be identified suitable for SLD. Accordingly, SSC-NWR acted upon in case of the complainant Shri Hires Ahluwalia.

2.4 In the Notification No.38-16/2020-DD-III dated issued by Department of Empowerment of Persons with Disabilities (Divyangjan) [DEPWD] the posts are generic and the posts mentioned in the CGLE notification are not mentioned. Also there are multiple entries for some posts in the Notification dated and some departments have some reservations and sought clarifications from DEPWD. SSC decided that in absence of clarity on the posts and respective identified disabilities in the Notification dated , it may not be feasible to implement it.

2.5 SSC had requested DEPWD to look into the matter and advise accordingly.

3. Submissions made in Rejoinder:

3.1 Complainant in his rejoinder dated 21.12.2021 inter-alia submitted that new disabilities have been in effect since the last five years. Some departments

till now could not identify posts suitable for candidates with SLD and others are not following the Gazette of India notification dated issued DEPWD. SSC released updated tentative vacancy for CGL 2019 on 06.12.2021 on its website and added two posts of ASO in Central Secretariat Services and in Ministry of Railways under my disability (others category) which was not there in previous tentative vacancy and he was not allowed to apply to these two posts in DV. Hence his DV should be arranged again

3.2 Only two departments CBIC and DoP&T have notified the unsuitability of SLD for their departments which was before the release of this gazette and SSC denied him seats belonging to even the rest of departments by itself saying posts not identified suitable by departments but these departments have till now not framed their own lists hence this gazette by GOI should supersede as it has come at a later date and be followed.

3.3 SSC did not send any annexure about what CAG has to say about the posts of AAO and Divisional accountant whether they are suitable for SLD. He had cleared all the three tiers including the special paper of Finance and Economics and got selected in the list for Assistant Audit officer. But at DV they denied him to fill this post.

4. **Hearing:** The case was scheduled for online hearing via Video Conferencing on **24.05.2022** and accordingly Notice of Hearing dated 17.05.2022 had been issued.

5. Observations/Recommendations:

5.1 The complainant vide email dated 22.05.2022 informed to this Court with a copy to the respondent – SSC, that he did not want to pursue this case as he is satisfied with the post allotted by SSC in CGL 2019. He also submitted that the case may be regarded as withdrawn.

5.2 The case is disposed off accordingly without having gone into merit.

Dated: 15.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra

कार्यालय मुख्य आयुक्त दिव्यांगजन

OFFICE OF THE 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. 13015-1011-2021

Complainant:

Shri Kundan Kumar Singh,
C/o Shri Shambhu Singh,
R/o Vill.: Anandgolwa, PO: Haril,
P.S.: Mohiuddin Nagar,
Samastipur -848501 (Bihar)
Email: kundankumar848501@gmail.com

P33343

Respondent:

The Chairman,
Railway Recruitment Board,
East Central Railway,
Near Civil Court, Mehendru Ghat,
Patna University Campus,
Patna – 800004 (Bihar)
Email: rrbpatna-bih@nic.in

P33344

Affected Person: The complainant, a person with 80% Locomotor Disability
(Left Lower Limb)

1. Gist of Complaint:

The complainant filed a complaint dated 29.11.2021 against his non-selection to the post of Group 'D' under Centralised Employment Notice No.02/2018 – Level 1 Posts published by RRB, East Central Railway, Patna.

1.2 The complainant submitted that he appeared in the exam on 12.12.2018 (Roll No.2680032880) in First Shift. He is not getting selected by 0.65 marks due to not given the marks for the Question No.70 Sr.No.3026165068 and Question No.90 Sr.No.3026164031, for which he had raised objection with RRB Patna. He alleged that RRB Patna was not getting appropriate reply to him.

2. Submissions made by the Respondent:

2.1 RRB Patna vide letter dated 24.12.2021 forwarded the complaint to RRB, Bangalore for necessary action.

(Page 1 of 2)

2.2 RRB Bangalore vide their reply dated 12.01.2022 submitted that the status of the aforesaid questions IDs raised by the complainant was 'Valid_Objection' and discrepancies were found, hence given 'Ignore' in Hindi language attempted by the candidate/complainant.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 23.02.2022 submitted that when his objection was valid, marks for the said questions have not been provided nor the further process like document verification, medical etc are being conducted. The objection fee Rs.100/- charged is also not being refunded.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.05.2022**. The following were present:

- (1) The complainant was absent, none appeared for the complainant
- (2) Shri Rupesh Chandra, Dy. Secretary, RRB, Patna for the respondent

5. Observations & Recommendations:

5.1 Complainant submitted that he failed to qualify the examination by 0.65 marks. He was not awarded any marks against Q. No. 70 and 90. If he would have been awarded marks against those two question numbers he would have been able to qualify the examination.

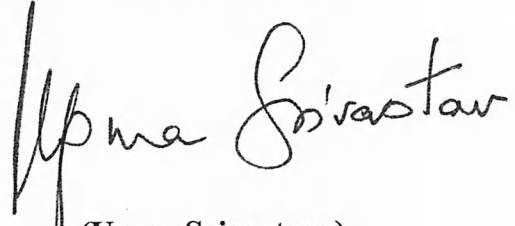
5.2 Respondent submitted that discrepancy was found in two questions, i.e. Q. No. 70 and 90. Hence, those two questions were cancelled for all candidates.

5.3 During online hearing, the Respondent informed this Court that fees submitted by the Complainant at the time of filing objections had been returned. As far as, objections are concerned, the Respondent informed that even after considering the marks of questions which were cancelled, Complainant could not be selected as he fell short of cut off marks.

5.4 This Court is not inclined to interfere in the present Complaint because no case of discrimination on the ground of disability is made in the present Complaint.

5.5 Accordingly the case is disposed off.

Dated: 15.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



extra

कार्यालय 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. 12987/1011/2021

Complainant:

Shri Rahul Juman, 123354
R/o 14/16, Navjeevan Society,
R.C. Marg, Chembur,
Mumbai-400074 (MH)
Email: jumanirahuli@yahoo.com

Respondent:

(1) The Chairman,
Central Board of Direct Taxes,
Department of Revenue, Ministry of Finance,
North Block, New Delhi-110002
Email: chairmancbdt@nic.in 123355

(2) The Chairman,
Staff Selection Commission,
Block No.12, Lodhi Road,
CGO Complex, New Delhi-110001
Email: chairmanssc@gmail.com; sscushqpp1@gmail.com 123356

Affected Person: The complainant, a person with more than 40% Specific Learning Disability

1. Gist of Complaint:

The complainant filed a complaint dated 11.11.2021 regarding non-considering him for the post of Tax Assistant in CBDT on the basis of his disability despite being selected through CGLE-2018 (Roll No.7204711176) conducted by Staff Selection Commission.

2. Submissions made by the Respondents:

2.1 Respondent No.1 CBDT filed their reply dated 11.02.2022 and submitted that an Expert Committee had been constituted in compliance with the Order of the Hon'ble Supreme Court of India for identification of posts suitable for Persons with Benchmark Disabilities (PwBD) in terms of Section 34(1) of the

(Page 1 of 4)

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

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

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

RPwD Act, 2016. The Expert Committee had decided that the disability as defined in point (d) of Section 34(1) of RPwD Act, 2016 would not be suitable for IRS (IT) as the working in department requires leadership qualities, teamwork and good intellectual ability for assessment and other taxation purposes. All other disabilities were identified to be suitable for the IRS (IT). Keeping in view that Clause (d) is not suitable for IRS Officers, it only natural that multiple disabilities if include disabilities mentioned in Clause (d), such cases are also not suitable for recruitment in IRS (IT). Therefore, IRS (IT) Officers should be excluded from provisions of Clause (e). These conditions were also extended for recruitment in group 'B' and 'C' as well.

2.2 Respondent No.2 SSC filed their reply dated 14.01.2022 and submitted that SSC being a recruiting agency conducts examinations for recruitment of various Group 'B' and 'C' posts for filling up the vacancies reported by the indenting Ministries/Departments/Organisations. The total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category, including reservation for PwDs through the system of maintenance of roster, are the exclusive domain of respective indenting Ministries/Department/Organisations. Thus, they report the vacancies (Horizontal and Vertical) to be filled up by direct recruitment.

3. Submissions made in Rejoinder:

The complainant filed their rejoinder dated 21.02.2022 and reiterated his grievance.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **24.05.2022**. The following were present:

- (1) Ms. Bharti Jumani, the complainant in person
- (2) Ms. Meeta Singh, AdG-II (HRD); and Shri Mahesh Sherwan, Joint Commissioner for CBDT
- (3) Shri Awadhesh Kumar Gupta, for Staff Selection Commission

5. Observations/Recommendations:

5.1 Complainant submitted that the Respondent No.2, i.e. SSC issued notification in 2018 for filling vacancies in various Group 'B' and Group 'C' posts in various departments of the government. He passed all the stages of the examination and on 04.02.2021, he was called for document verification. Total 49 posts were advertised, however, he was allowed to apply only against 23 posts. Final result was declared on 01.04.2021. As per the marks scored, he was



eligible for the selection on the post of 'Tax Assistant' in Income Tax department. However, he was denied appointment on that post.

5.2 The Complainant further submitted that the Income Tax Department, i.e. Respondent No.1 informed that an expert committee was constituted for identifying various posts. The committee recommended that the post of 'Tax Assistant' is not identified suitable for divyangjan with 'Specific Learning Disability' (SLD).

5.3 Respondent submitted that an expert committee was constituted to identify various posts suitable for divyangjan. Committee held its meetings on 19.07.2019 and 20.12.2019. The committee decided that all posts in Indian Revenue Services (Income Tax), in all three groups, i.e. Group A, Group B and Group C are not suitable for divyangjan with Specific Learning Disability because these posts require leadership qualities, teamwork and good intellectual abilities.

5.4 During online hearing, Respondent informed this Court that the examination was conducted in 2018. Complainant was declared successful on 01.04.2021, whereas the recommendations by the Committee were given in 2019.

5.5 For proper disposal of the present Complaint, perusal of the List of Identified Posts issued by MoSJ&E dated 04.01.2021 is indispensable. In MoSJE list, the post of 'Tax Assistant' (Group C) is mentioned at Sr. No. 1432 of the list and is identified suitable for SLD category. Hence, Respondent's contention is wrong. Respondent's contentions are contrary to law. Note 6 of notification dated 04.01.2021 is clear. It lays down that when any department has separate list of identified posts, the list which has wider scope supersedes the other one. In this case, 2021 list of MoSJE has wider scope because post of Assistant is identified suitable for 'Mental Illness' at Serial No. 80 (Group B posts) and at Serial No. 89 (Group C posts) of the list dated 04.01.2021. As far as exemption is concerned, there is proper procedure laid down in Section 34 of RPwD Act, 2016 to seek exemption. As per the provision, if any department seeks exemption from reservation, it has to send the proposal to Department of Empowerment of Persons with Disabilities (M/o SJ&E), which may decide to exempt after consultation with O/o CCPD.

5.6 Moreover, it seems that the Respondent has no idea what SLD is. SLD does not mean that person with SLD is not intellectual or cannot participate in team-activities. Distinction between Specific Learning Disability and Intellectual Disability is that SLD impact particular areas of learning such as spelling or




memory or mathematical abilities, whereas an intellectual disability will impact every aspect of an individual's cognitive functioning.

5.7 Hence, this Court concludes that the recommendations given by the 'expert committee' constituted by the Respondent contradicted the MoSJE list of Identified Posts dated 04.01.2021 and hence are not valid. Further, the recommendations of expert committee were based on lack of knowledge and information about various categories of disabilities. The manner in which the 'expert committee' interpreted SLD, reflects insensitive and callous approach of the committee towards understanding of the disability sector.

5.8 Hence, this Court recommends that the Complainant shall be appointed against the post of 'Tax Assistant' in the Respondent establishment.

5.0 Accordingly the case is disposed off.

Dated: 16.06.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13046/1023/2021

Complainant: Shri Abhay Kumar
Village + Post – Sirari, Distt. Shekhpuri
Bihar - 811107
E-mail: <abhay201391@gmail.com>

233539

Respondent: The DIG
Group Caption
CRPF, Muzzafarpur, Bihar – 842004
E-mail: <diggcmzr@crpf.gov.in>

233540

Sr. AO (Pension V)
Director (Accts) Pay & Accounts Office
Ministry of Home Affairs, Rohini, Sector – 23
New Delhi – 110085
E-mail: <paocrpf@crpf.gov.in>
<dgcrpf@crpf.gov.in> <diggcmzr@crpf.gov.in>
Tel: 0621-2814815

233541

Complainant: 95% Locomotor Disability

GIST of the Complaint:

Complainant vide complaint dated **22.12.2021** submitted that he was recruited as a Safaiwala in 2002 and he was retired from CRPF, Muzaffarpur in 2013 on medical ground. He further submitted that he had applied for commutation of pension which is still awaited.

2. The matter was taken up with the Respondent vide letter dated **04.01.2022** under Section 75 of the RPWD Act, 2016.

3. Sr. AO (Pension V), Director (Accts) Pay & Accounts Office vide letter dated **24.02.2022** submitted that incomplete papers were received from the GC, MZR (DDO of Pensioner), therefore, the case could not be processed and case of pensioner will be processed on receipt of duly filled documents.

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4. Complainant vide letter dated **08.04.2022** submitted that he had submitted all desired documents in Muzaffarpur Office but his case is pending between Muzaffarpur Office to Delhi Office .

5. The matter was taken up with DIG, Group Captain, CRPF, Bihar on 08.04.2022 but not response has been received.

6. After considering the respondent's reply dated **24.02.2022** and the complainant's complaint dated **08.04.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **31.05.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **31.05.2022**. The following were present:

- Shri Abhay Kumar - complainant
- Sri G.K. Jha, Account Officer, Deputy Commandant on behalf of respondent

Observation/Recommendations:

7. Complainant submits that he joined the Respondent establishment in 2002 and superannuated in 2013 from Group Center, Muzaffarpur. He submits that by letter dated 08.05.2020 he applied before CRPF, Muzaffarpur for commutation of his pension. When his application was kept in abeyance for long, he filed various Complaints. One such Complaint was filed on 01.04.2021, whereby he was informed on 13.04.2021 that Pay and Account Office, CRPF has written a letter to DIG GC CRPF, Muzafarpur asking for some necessary documents.

8. Later by communication dated 29.10.2021 PAO office informed the Complainant that his application has been returned to office of DIG GC CRPF, Muzafarpur to resubmit the Complainant's application along with necessary documents. Complainant submits that he is facing consequences of inaction of the office of DIG GC CRPF, Muzafarpur.



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9. Respondent submits that the Office of DIG GC CRPF, Muzafarpur forwarded incomplete application. The same was returned to the office of DIG GC CRPF, Muzafarpur for resubmission along with complete documents. Respondent reminded the office of DIG GC CRPF, Muzafarpur on 04.12.2020, 13.04.2021 and 12.10.2021 but no action has been taken yet by the office of DIG GC CRPF, Muzafarpur.

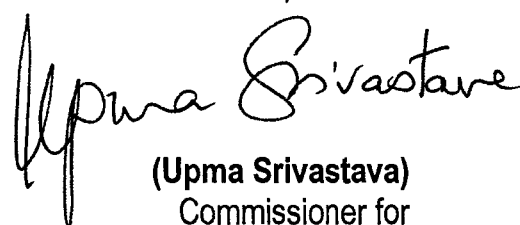
10. During online hearing, Respondent, i.e. Pay & Account Office, submitted that application of the Complainant has been returned to Office of DIG GC CRPF, Muzafarpur. DIG, Muzafarpur informed the Court that his application has been forwarded to PAO office. Furthermore, DIG, Muzafarpur informed that ASI Vimal Kumar, Pension Clerk is being sent to PAO office to know the latest status and reason as to why pension is not getting commuted.

11. This Court expresses its satisfaction with the submissions made by DIG, Muzaffarpur during online hearing. Further this Court recommends that the Respondent, i.e. DIG, Muzaffarpur shall send Pension Clerk to Delhi office within 2 days of receiving the copy of this Recommendation order, if not already sent, to know all the reasons because of which commutation of pension is getting hindered.

12. With these recommendations, this Court closes the present Complaint with liberty granted to the Complainant to approach this Court again in case his grievance filed in this present Complaint is not redressed within 3 months of receiving the Copy of this Complaint.

13. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

14. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 21.06.2022



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: 13089/1023/2021

Complainant: Shri V.Surulikumar
Sr. Manager (IE)
E-mail: <vskumar@refltd.com>

723537

Respondent: The Chairman & Managing Director
Rashtriya Chemicals & Fertilizer Ltd
Priyadarshini Building, Eastern Express Highway
Sion, Mumbai – 400022

723538

Complainant: 49% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **20.01.2022** inter-alia submitted that there are rampant irregularities/corrupt practices/bribes demanding by very senior employees in Rashtriya Chemical & Fertilizer Ltd. He further submitted that Shri Dhattrak and Shri Nawade demanded bribe money from him for promotion and threatened with transfer. He has requested to cancellation of malafide/malicious etc transfer order in 2018. Cancellation of all career hurdles and back dated promotion w.e.f. 2016.

2. The matter was taken up with the Respondent vide letter dated **09.02.2022** under Section 75 of the RPwD Act, 2016.

3. General Manager (HR&A), Thal Unit, RCF vide letter dated **09.03.2022** inter-alia submitted that complaint is not maintainable as the issue raised by Shri V Surulikumar in the said complaint is not related to deprivation of any legitimate rights of the Complainant as a PwD. They further submitted that complainant has parallelly filed a Writ Petition before Hon'ble High Court of Bombay regarding his non-promotion & transfer to the Thal Unit. The said Writ Petition No. 58 of 2020 is pending hearing before the Hon'ble Bombay High Court.

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4. Complainant vide rejoinder dated **31.03.2022** requested that necessary order be passed to the respondent to consider his promotion as Chief Manager w.e.f. 01.04.2016 and subsequent promotion Dy. GM w.e.f. 01.04.2020 and GM w.e.f. 01.04.2022 and cancellation of transfer order.

5. After considering the respondent's reply dated **09.03.2022** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **31.05.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **31.05.2022**. The following were present:

- Shri V.Surulikumar - complainant
- Sri S.M. Kulkarni CGM (HR) Admin along with Sri Ishwar Chaudhary on behalf of respondent

Observation/Recommendations:

6. Complaint is filed on various issues related to transfer, issue of bribery and various irregularities. Complainant alleges that in May 2018 he was transferred to Thal from Trombay. Thereafter he was released in September 2018. Then the basic facilities like chair, table were provided to him after 15 days of joining office in Thal, which also resulted into loss of his operation manual.

7. Further on the issue of bribery, it is alleged that when he demanded his rightful promotion, other officers namely Sh. Dhattrak and Sh. Nawade demanded bribes from him for promotion. Standard procedure for lateral transfer to different disciplines like publishing advertisement, written paper assessment etc is not followed. Nepotism in promotion is practiced. He has also not been granted 'disturbance allowance'.

8. Respondent submits that the Complainant filed writ petition before Bombay High Court regarding his non-promotion and transfer to Thal Unit which is pending before the Court. Complainant was not promoted because he was not found suitable for promotion by DPC. Allegations regarding irregularities are completely baseless.

9. During online hearing Respondent also submitted that the Complainant has filed a Writ Petition before Hon'ble Bombay High Court raising the similar issues.




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10. Since the issues are already pending before the Hon'ble High Court hence intervention of this Court is not warranted.

11. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 21.06.2022



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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

भारत सरकार / Government of India

Case No: 13118/1024/2022

Complainant: Dr. Prabhat Garg
P-38/04, Defence Colony
Gandhi Nagar, Gwalior – 474002
Email: <garg.prabhat.drde@gov.in>
Mob: 09977308220

133535

Respondent: The Director
Directorate of Estates, Ministry of Housing &
Urban Affairs, Nirman Bhawan
New Delhi - 110108
Email: <ravikumararora.ias@ias.nic.in>
<mcsnowal-upsc@gov.in>

133536

Complainant: Km. Priti Garg, a person with 50% mental retardation

GIST of the Complaint:

Complainant Dr. Prabhat Garg vide complaint dated **08.02.2022** he is working in DR&DO as a Scientist 'E' and his sister who is 52 years old, a person with mentally retardation is dependent on him as he is her only brother and guardian. He further submitted that as per Central Government General Pool Residential Accommodation Rules-2017 - 5% quota is given in allotment on medical grounds including ground floor/central area but there is no provision in Directorate of Estates.

He has sought following relief:

- (i) inclusion of dependent sister/brother for the purpose of allotment under out of turn quota on medical grounds and allotment on ground floor/central area.
- (ii) 5% reservation of total accommodations available in each type of accommodation under disability category and not 5% of total vacancies in a year as mentioned in CCGPRA Rules.

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2. The matter was taken up with the Respondent vide letter dated **17.02.2022** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **08.03.2022** inter-alia submitted that as per the guidelines, the allotment on medical grounds including ground floor/central area is made in the case of Govt. Servants and their spouses, dependent children and dependent parents, suffering from any of the diseases mentioned thereof. Thus, the existing guidelines regarding out of turn allotment on medical ground has no provision for considering dependent sisters/brothers for such allotments.

4. Complainant vide rejoinder dated **09.03.2022** reiterated his grievance and requested to amend the provision for the purposes to include dependent disabled sister and dependent brother. He also mentioned that recently DRDO has also issued such amendment after the intervention of CCPD Office.

5. After considering the respondent's reply dated **08.03.2022** and the complainant's complaint dated **09.03.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **17.05.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **17.05.2022**. The following were present:

- Shri Prabhat Garg on behalf of Priti Garg – complainant
- Shri Manik Chandra Sonowal, Dy. Director (Policy) on behalf of respondent

Observation/Recommendations:

6. Grievance filed by the Complainant is of general nature and is not related to some specific incident. He submits that her sister is 52 years old and is divyang. As per 'Central Government General Pool Residential Accommodation Rules-2017 (CAGRA RULES) 5% quota in residential accommodation is reserved for those employees whose spouse or parents or children is divyangjan. His grievance is that sister and brother are not included in this category and are not considered as dependant. However, definition of family as per CAGRA Rules include brothers and sisters.



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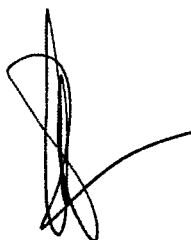
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7. Respondent submits that 'out of turn' government accommodation is governed by DoE O.M. dated 17.11.1997. As per the O.M. out of turn accommodation is provided to those employees only whose spouse or parents or children is divyangjan. Since sister does not fall under this definition hence, this facility cannot be extended to her. Further, the Respondent submitted that hon'ble Supreme Court in the judgment of SS TIWARY v. UOI held that limit of 5% reservation of government accommodation shall not be breached.

8. Case of the Complainant is not of enhancing the quota limit of 5%. Complainant's case is that of including brothers and sisters in the list of 'dependents' so that an employee whose divyang sister/brother is dependant on such employee, may get out of turn accommodation, same as that government employee who has divyang parents/spouse/children dependant on him.

9. Relief sought by the Complainant is not alien to guidelines laid down by government on various issues related to disability. Even transfer guidelines lay down that in case dependant sister and brother of an employee is divyangjan, such employee may be exempted from transfer.

10. It is also important to mention Section 5 of Rights of Persons with Disabilities Act, 2016. The provision confers both right as well as protection to divyangjan. As per the provision, divyangjan have right to live in a community. The provision further lays down that divyangjan cannot be forced to live in any particular living arrangement. If government employee who has dependant divyang sister/brother will be given out of turn accommodation, such dependant divyang will get opportunity to live in community life, which will further augment his living standards.



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11. This Court recommends that the Respondent shall examine the issue and shall consider to amend its definition of 'dependant' to include dependant brother and sister in the definition.

12. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 21.06.2022



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: 13093/1023/2022

Complainant: Shri Shantanu Bandyopadhyay
E-mail: <s.bandyopadhyay@sbi.co.in>

133533

Respondent: The Chief General Manager (HR)
State Bank of India, Corporate Centre
State Bank Bhawan, 16th Floor
Madam Cama Road, Mumbai – 400021
E-mail: <agmphr.lhokol@sbi.co.in>

133534

Complainant: 50% Locomotor disability

GIST of the Complaint:

Complainant Shri Shantanu Bandyopadhyay vide complaint dated submitted that SBI has rejected work from home facility of many persons with disabilities. He has requested to instruct respondent to provide work from home facility to PwDs.

2. The matter was taken up with the Respondent vide letter dated **09.02.2022** under Section 75 of the RPwD Act, 2016.

3. General Manager, Network-II, State Bank of India vide letter dated **08.03.2022** submitted that Shri Shantanu Bandyopadhyay was already granted exemption from attending office physically till 30.10.2021. Thereafter, in view of the revised guidelines, he was advised to report for duty physically w.e.f 01.11.2021. However, he applied for exemption and the same was duly taken up by branch with appropriate authority i.e. Medical Board. The Board opined that Shri Shantanu should have no problem what so ever in attending his daily duties which established that the employee was effectively fully fit to resume office w.e.f. 01.11.2021 as his disability was pre-existing since 2019 and change was occasioned thereafter. They further submitted that Shri Shantanu had neither applied

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for leave for the period 01.11.21 to 10.12.21 in the manner as prescribed in the Bank's rule and procedure, nor obtained any permission from the Competent Authority for his absence. Even then no salary was deducted for the period of absence; rather the said period from 01.11.2021 to the date of his resuming office was treated as leave.

4. Complainant vide rejoinder dated **05.04.2022** inter-alia submitted that SBI by constructing a Medical Board with physicians of its pandering and collaborating private Institution as member, violated the Article 21, PwD Act, 1995 and PRwD Act, 2016 all the way, deliberately with malafide intentions only to exert vindication with evil extend thereupon.

5. After considering the respondent's reply dated **08.03.2022** and the complainant's complaint dated **05.04.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **17.05.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **17.05.2022**. The following were present:

- Shri Shantanu Bandyopadhyay - complainant
- Shri Ashok Kumar Mahakul, General Manager on behalf of respondent

Observation/Recommendations:

6. Complainant submits that he is divyang employee of Respondent establishment. He submits that during Covid he was not allowed to do 'work from home'. No further details are submitted by him in his written Complaint.

7. Respondent replied that till 30.10.2021 'work from home' was available for all divyang employees of the Respondent establishment. On 30.10.2021, Respondent issued letter by effect of which, blanket exemption granted to divyang employees from attending office was terminated w.e.f. 01.11.2021. Respondent submitted that new system was introduced as per which it was decided that exemption from attending office will only be granted to those divyang employees who are facing extreme hardship due to disability.



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8. Further, the Respondent submitted that the Complainant was exempted from attending office till 30.10.2021. Considering his disability he was advised to attend office from 01.11.2021. To access the hardships faced by the Complainant, he was also examined by Medical Officer of the Respondent establishment. Medical Board opined that the Complainant should not face any problem in attending his daily duties. Even though the Complainant did not attend office from 01.11.2021 to 10.12.2021 and even though he did not apply for leave and remained absent during this period, the Respondent did not deduct the salary of the Complainant and considered his absence as leave.

9. During online hearing, the Complainant further submitted that on 21.10.2021 he was informed by email that blanket exemption for divyang employees has ended and if the Complainant wants to avail 'work from home' he will have to appear before 'Medical Board' for examination.

10. Complainant further submitted that on 08.11.2021, he appeared before 'medical board' and requested the Respondent to provide the copy of findings of 'medical board'. Later, on 15.11.2021, he was again informed that he will have to appear again before 'medical board' for examination. The Complainant again appeared before the board on 30.11.2021. On 09.12.2021, Respondent informed the Complainant that the 'medical board' has found him ineligible for work from home and he will have to attend office or else his absence will be considered as leave. He resumed his duties from 13.12.2021.

11. Respondent contended that the steps taken by them are in accordance with the DoPT circulars. Further, the Respondent submitted that blanket exemption was granted to divyang employees till 30.06.2021. After that blanket exemption was not granted.

12. For effective adjudication of this Complaint, it is indispensable to peruse the DoPT circular on the subject of exemption during Covid pandemic. DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M, DoPT continued to exempt divyang employees from attending



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office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instructions that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by latest O.M. dated 14.06.2021.

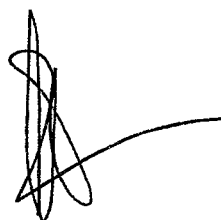
13. In O.M. dated 14.06.2021, it is enunciated that divyang employees will remain exempted from attending office and shall continue to 'work from home' till further Orders.

14. Para 1(iii) and Para 2 of O.M. dated 14.06.2021 need to be analysed in littele detail. Poth the Paragraphs are reproduced below –

Para 1(iii) - Persons with Disabilities and Pregnant Women employees shall continue to be exempted from attending office but are required to work from home **till further Orders**.

Para 2 - All Ministries/Departments/Offices as well as the central government employees are directed to ensure strict compliance of instructions on Covid Appropriate behaviour issued by MHA, MoH&FW and DoP&T from time to time. **The above instructions shall be in force w.e.f. 16.06.2021 untill 30.06.2021, or untill further orders, whichever is earlier.** Biometric attendance shall continue to be suspended and physical attendance registers to be maintained until further orders.


15. It seems that there is apparant conflict between Para 1(iii) and Para 2 w.r.t. applicability of the O.M. Para 1(iii) lays down that instructions in the Para will remain in force till further Orders, however, Para 2 says that all instructions in the O.M. shall reamin in force untill 30.06.2021, or untill further Orders, whichever is earlier. Natural question arises, whether, specific instructions w.r.t. divyangjan, contained in Para 1(iii) shall remain in force till further Orders, as stated in Para 1(iii) or if they were in force till 30.06.2021, as stated in Para 2.



16. To resolve the issue it is important to look at the objective of the O.M. and the problem it was trying to resolve as well as various guidelines laid down in the O.M. The O.M. was issued with bigger perspective of resolving the challenge presented because of Covid-19. O.M. in Para 1(i) and (ii) lays down guidelines to exempt government employees of level 'Under Secretaries' and below from attending office on alternate days. Further, in Para 1(iii) it lays down that divyang employees and pregnant women shall remain exempted and shall work from home. In Para 1(iv) it lays down that timing for attending office shall remain staggered. In Para 1(v) it is laid down that employee who is residing in 'containment zone' shall not attend office till such area is declared as non-containment zone. In Para 1(vi) it is laid down that if an employee is availing the option of work from home, he shall remain on phone and on email. In Para 1(vii) it is laid down that as far as possible, meetings shall be conducted through video conferencing. Further, PArA 1(viii) and (ix) are related to Covid appropriate behaviour. In these Paras it is laid down that employees shall strictly comply with the Covid appropriate behaviour, like washing of hands on regular intervals, wearing of masks and sanitization of work place.

17. Para 2 of the O.M. which lays down that the O.M. shall remain applicable till 30.06.2021 cannot be read and interpreted in isolation. Applicability limitation contained in Para 2 are applicable only with respect to some guidelines and not all. For instance, in order to achieve the objective of the O.M. i.e. to reduce the impact of Covid-19, it was necessary to observe Covid appropriate behaviour like, wearing masks, washing of hands etc even after 30.06.2021. It cannot be claimed that since in Para 2 it is laid down that the O.M. shall remain in operation till 30.06.2021 therefore, wearing of masks and washing hands and sanitizations of work place are not necessary to be observed after 30.06.2021. Hence, applicability of Para 2 vis-a-vis date of enforcement shall not be applicable on guidelines relating to Covid appropriate behaviour.

18. Similarly, there is Para 1(iii) which talks about exemption of divyang employees from attending office. This particular guideline is unique in itself because unlike other guidelines, it contains its own date until which it will remain in operation. Para 1(iii) lays down that it shall remain in operation till further Orders. Since, DoPT while drafting the O.M. carved out the provision relating to date of applicability within PArA 1(iii) itself hence, it is concluded that time limitation of applicability laid down in Para 2 is not applicable w.r.t. Para 1(iii) also.



19. Another question still persists, i.e. until when PAra 1(iii) of O.M. dated 14.06.2021 remained in operation. It can be checked by perusing subsequent O.Ms.

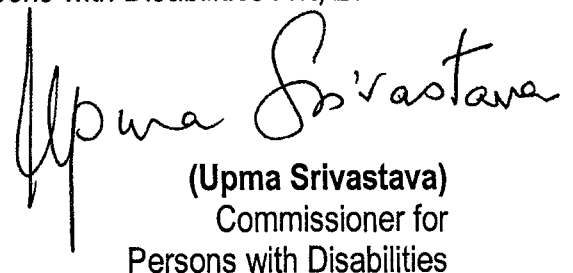
20. After 14.06.2021, on 01.11.2021, DoPT issued another O.M. which did not contain any guideline/instruction w.r.t. attendance of divyang employees. Hence, it is apt to conclude that even after 01.11.2021, exemption for divyang employees continued. Thereafter, DoPT issued another O.M. dated 06.02.2022 whereby it was laid down that all employees of all levels, without any exemptions shall attend office on regular basis w.e.f. 07.02.2022.

21. Hence, this court concludes, after perusal of all the guidelines, that divyang employees were exempted from attending office from 27.03.2020 till 13.02.2021 and later from 19.04.2021 till 06.02.2022.

22. Hence, this Court on the basis of conclusion drawn from perusal of DoPT O.Ms. cited above, recommends that the Respondent shall regularise the leave of the Complainant which have been debited from his leave account for not attending office from 01.11.2021 till 10.12.2021. No requirement of Medical Board assessment for this period. A disabled person as per his disability certificate falls in the category of exempted employees.

23. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

24. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 21.06.2022



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: 12952/1023/2021

Complainant: Shri Phiroze Rustom Dungore
E-mail: <pdungore@gmail.com>

1233341

Respondent: The Director
Jawaharlal Nehru Aluminium Research Development &
Design Centre, Opposite Wadi Police Station
Amravati Road Wadi, Nagpur – 440023
E-mail: <aao@jnarddc.gov.in>

1233342

Complainant: 100% Hearing Impairment

BACKGROUND OF THE CASE IN BRIEF:

1. The present Complaint was filed in two parts. In the original Complaint, issue of promotion was raised. Thereafter, on 03.12.2021 the Respondent issued Order of 'Compulsory Retirement' under FR-56(j), whereby the Complainant was retired prematurely w.e.f. 03.12.2021.
2. Hence, the Complainant filed another Complaint alleging that the Respondent implemented FR-56(j) with intent to harass the divyang Complainant and that the decision of the Respondent to retire the Complainant prematurely under FR-56(j) is marred with mala fide intents.

SUBMISSIONS MADE BY THE COMPLAINANT:

3. In the original Complaint, non-promotion was the main and only issue. Complainant submitted that last time he was promoted ^{was} in 2014. His promotion was due in 2019. He was denied promotion because the Respondent judged his performance at par with non divyang employees.
4. Complainant admitted that his performance is not as good as non-divyang employees. The reason given by the Complainant for lacking in performance is disability. He further submitted that standards to judge performance of divyang and non-divyang employees are same in the Respondent establishment and hence it is injustice with him.

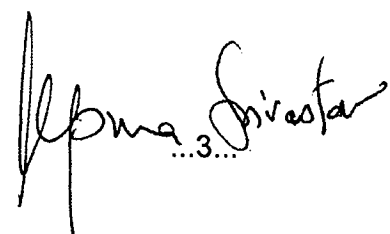
Upma Srivastava

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5. Thereafter the Complainant raised another grievance of 'compulsory retirement'. Genesis of this grievance lies in Order of Respondent dated 03.12.2021. By this Order, the Complainant was Compulsory retired. Complainant again alleged injustice on the ground that the Order was passed after reviewing his performance from 2014 till 2020. He reiterated the contention that the reason for his 'not so good' performance was the disability and effect of disability on the performance was not taken into consideration by the committee which reviewed the performance of the Complainant.
6. Complainant also raised the contention that the premature retirement of the Complainant violates Section 20(4) of Rights of Persons with Disabilities Act, 2016. As per this provision, no government establishment can dispense with the services of any employee who acquires disability during service.

SUBMISSIONS MADE BY THE RESPONDENT:

7. Respondent submits that the Complainant was posted as Principal Scientist in the Respondent establishment. Complainant was promoted last on 01.01.2014. His promotion was due in 2019. He was denied promotion because ACRs of last 5 years is Average and Poor. Eligibility criterion for promotion from the post of 'Principal Scientist' to Sr. Principal Scientist is 3 Excellent grades in last 5 years, on the other hand, grades obtained by the Complainant in last 5 years were as follows -:
 - a. 2016-17 - Average
 - b. 2017-18 - Poor
 - c. 2018-19 - Average
 - d. 2019-20 - Poor
 - e. 2020-21 - Poor
8. Further, the Respondent submits that the performance of the Complainant was deteriorating every year since 2014. He wasted his time in office. He never did any research work. Since 2014 he did not prepare any research paper, never made any presentation, never worked towards any patent. Respondent establishment is engaged in activities of research and development. All these facts are recorded in Self Appraisal Reports which are signed by him.
9. In view of his deteriorating performance, review meeting was conducted on 21.04.2018. In that review meeting, the Committee expressed its concerns over the average performance. The Complainant was informed about the decision of the review meeting and was asked to improve his performance.

 R. P. Singh
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10. Despite the communication, the Complainant did not take any measures to improve his performance and thereafter in 2019 he was removed from the post of HoD and finally by Order dated 03.12.2021 he was retired prematurely by executing FR-56(j). Till, 2014 he was given promotions. Those promotions were based on time rather than on performance.
11. Further, the Respondent also submitted that the fact of Complainant's disability was not known to any employee of the Respondent establishment. It is submitted that the Complainant never informed any one officially or unofficially about his disability. Respondent also expressed its doubt on the genuineness of the Disability Certificate of the Complainant.

SCOPE OF POWERS OF THIS COURT:

12. Section 75 of Rights of Persons with Disabilities Act, 2016 lists the functions and powers of this Court. Clause (b) of Subsection 1 of Section 75 lays down that this Court can inquire into issues of deprivation of rights of persons with disabilities. The provision is reproduced as under:-

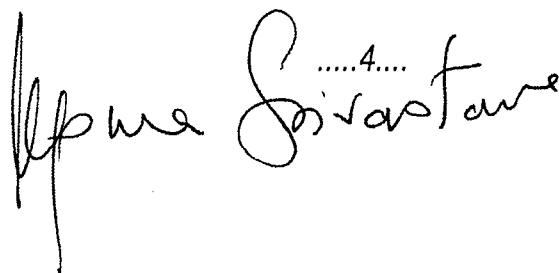
Section 75 - (1) The Chief Commissioner shall

(a)

(b) inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

13. Scope of the function/power delineated under Section 75(1)(b) was explained by the Hon'ble Supreme Court 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."

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14. 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."

15. It is clear from the reading of the hon'ble Supreme Court's judgment that this Court does not have power to inquire into each and every case of divyangjan. Only and only those cases which disclose any instance of discrimination on the basis of disability can be inquired into by this Court.

16. Applying this judgment to the present facts, it can be concluded that this Court can not assume the role of review committee and judge the past years' performance of the Complainant. The only issue which can be inquired into by this Court is whether the Respondent Order of 'premature retirement' under FR-56(j) is eclipsed by 'discrimination on the basis of disability'.

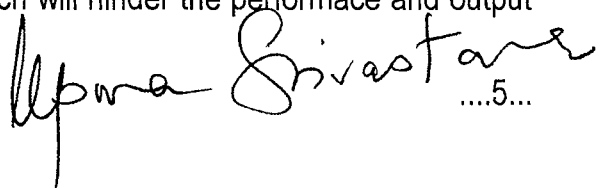
ISSUES FRAMED:

17. Following issues are framed which warrant inquiry by this Court:-

- a) Whether Order of 'premature retirement' under FR-56(j) is based on the discrimination on the basis of disability;
- b) Whether premature retirement of the Complainant violates Section 20(4) of Rights of Persons with Disabilities Act, 2016;
- c) Whether Disability Certificate submitted by the Complainant is genuine or not?

ISSUE (a) - PREMATURE RETIREMENT AND DISCRIMINATION

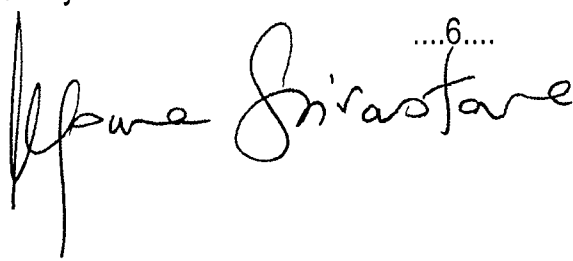
18. Complainant has not raised any issue with respect to authority of the Respondent to exercise its powers under FR-56(j). The ground on which the discrimination is alleged is that the performance of the Complainant cannot be judged at par with the non-divyang employee, because of reason that the disability of divyang employee will always present some natural barrier which will hinder the performance and output of divyang employee.


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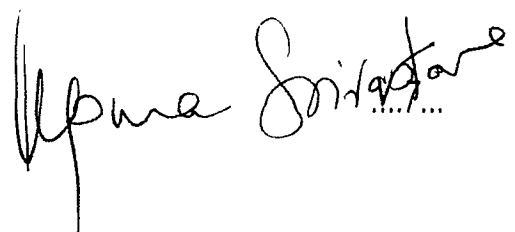
19. Prima facie the argument is correct. While reviewing the performance of any employee, government establishment must take into consideration the nature and percentage of disability of such employee.
20. However, in the present Complaint, another important fact which caught the attention of this Court is the date of the Disability Certificate submitted by the Complainant. The Disability Certificate submitted by the Complainant is dated 08.12.2020. Hence, a natural question arises relating to the disability status of the Complainant before 08.12.2020.
21. Respondent submitted that the Complainant never informed the Respondent establishment that he has any disability because of which his performance was getting affected. In support of this claim, Respondent submitted statement sworn on affidavit that the applicant never informed the Respondent anything about 'hearing problem' before 28.12.2020. Statement made on affidavit by the Respondent is hereafter produced –

"The applicant joined the employment with the Respondent on 01.01.1999. He continuously worked with the respondent without any complaint of hearing impairment. The first communication regarding the alleged hearing impairment is on 28.12.2020. Therefore, for a period of 21 years the applicant never made any correspondence nor shared any concern regarding alleged hearing problem."

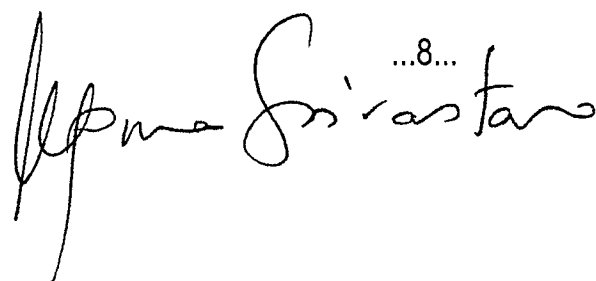
22. Complainant has not submitted to counter this claim made by the Respondent. There is no document on record to prove that the Complainant informed the Respondent regarding hearing impairment during his course of service.
23. During online hearing, Complainant submitted that he started facing some 'problem' in 2014. It was further submitted that the Complainant himself did not know about his nature of disability. However, his performance was deteriorating because of the 'problem'. Further it was submitted that on later date the Complainant approached medical authorities after which he got to know about his disability. To support this argument, the Complainant has submitted two documents. First one is 'Test Report' dated 27.09.2017, issued by 'Amplifon India Pvt Ltd.' and another one is 'Quotation' dated 28.09.2017, issued by the same private establishment, i.e. 'Amplifon India Pvt Ltd.'. Complainant claims that this is evidence of his disability.
24. Both the documents were perused by this Court. 'Test Report', submitted by the Complainant does not mention anywhere disability of the Complainant. This court is not inclined to accept the contention that this 'Test Report' is evidence of the Complainant's disability, let alone that this is disability certificate.

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25. Certification of disability is dealt with in Section 56, 57 and 58 of Rights of Persons with Disabilities Act, 2016. Under Section 58 Disability Certificate is issued by 'certifying authorities' which are designated by the appropriate government under Section 57. Further, Section 58 provides that while examining any person for issuance of disability certificate, the certifying authority shall follow guidelines notified under Section 56 by the central government for the purpose of assessing the extent of specified disability.
26. Complainant has completely failed to prove that the 'Test Report' submitted is issued by the certifying authority designated under Section 57 of RPwD Act, 2016. Complainant has also not proved that guidelines issued by the government for assessing disability, were followed while conducting tests on the basis of which 'Test Report' was made.
27. Moreover, this gives rise to another question. When the Complainant got acquainted about his 'hearing impairment' on 27.09.2017, why he failed to inform the Respondent about the same. It is evident from the perusal of Order dated 03.12.2021 that on 21.04.2018 review committee in its meeting noted that the Complainant secured 'average' grade in the last 3 years and further noted other discrepancies on the part of the Complainant. On 18.06.2018 comments of review committee were communicated to the Complainant and he was advised to take necessary steps to improve his performance. The question which is not answered by the Complainant is that when the Complainant underwent 'Hearing Test' on 27.09.2017 why he did not communicate the result of the same to the Respondent establishment when he was informed about the comments of the 'review committee'. Complainant has the opportunity to inform the Respondent and claim that his performance must not be assessed according to standards established for non-divyang employees. No answer is provided by the Complainant on the issue.
28. This Court also had the opportunity to peruse the Annual Performance Reports ('APR' for short) submitted by the Respondent. In APR of year 2009-10 he is marked as 'Excellent', however, it is also remarked that "more efforts are needed to excel in this area". Similarly, in year 2011-12 he is marked 'Excellent', however it is remarked that "he needs to concentrate on his research activities. However he has the competence to become the outstanding scientist, if he dedicates to his job work".
29. These comments are certainly not enough to conclude that his performance was bad in year 2009-10 and 2011-12, however it can be concluded that some issue with respect to Complainant's performance started showing signs well before 2014.



30. Moreover, the Respondent has pointed out another set of facts which shows that the Complainant tried to obtain Disability Certificate multiple times during period starting from 28.03.2018 to 08.12.2020. Respondent submitted in its written submissions that the Complainant appeared before certified medical authority on 28.03.2018. On that date the test was conducted. Since the doctor conducting the test found differences between Complainant's responses and his verbal conversation hence the Complainant was advised to undergo BERA test on the same day, however, the Complainant did not undergo another test for 12 months hence disability certificate was not issued. After 28.03.2018, he appeared for test in the same hospital on 11.11.2019 and again failed to get disability certificate because the examining doctor again advised him to undergo audiogram test. The Complainant again appeared before the medical authority for the test on 05.03.2020. Same thing again happened and he was again advised to undergo BERA Test immediately. Again he took his time to appear before the medical authority and finally appeared before medical authority on 05.12.2020 and disability certificate was issued in his favour.
31. The chain of events gives rise to obvious question as to why he took so long to appear before the medical authority when he was again and again advised by different doctors to undergo BERA tests immediately. During online hearing, the Complainant explained the delay by subscribing to the excuse of Covid pandemic. Complainant did not refute the submissions of the Respondent on this point.
32. This Court is not inclined to accept delay reason offered by the Complainant simply for the reason that Covid pandemic dates do not match with the dates when the Complainant appeared before the medical authorities. Covid pandemic started in India in March 2020, whereas the Complainant appeared before the medical authority for examination for the first time on 28.03.2018. There is gap of 2 years in Covid pandemic initiation in India and date on which the Complainant appeared for the first time before the medical authorities for examination. Even if Complainant's reason of pandemic is believed to be true, only period starting from 05.03.2020 to 05.12.2020 can be exempted. Complainant has completely failed to prove his reasons for non appearance in BERA test and Audiogram tests during 29.03.2018 till 10.11.2019 and then from 12.11.2019 till 04.03.2020.
33. This is an evidence in itself that even though the Complainant attempted multiple times to obtain disability certificate, he failed to prove his claim of disability before the certifying medical authorities.

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CONCLUSION ON ISSUE (a) - PREMATURE RETIREMENT AND DISCRIMINATION

34. Complainant has completely failed to bring on record any document to prove:-

- a) his disability status before 08.12.2020 was that of 'Person with Disability' or 'Person with Benchmark Disability', as defined under Section 2(s) and 2(r) of Rights of Persons with Disabilities Act, 2016.
- b) he communicated to the Respondent his status of disability or any problem which he was facing which was hampering his performance.

35. Moreover, the complainant was retired pre-maturely on 03.12.2021 on the basis of his performance from 2014 till 2020. Complainant has failed to prove that his status was that of divyangjan during this period. Hence, in absence of any evidence this Court is not inclined to conclude that the Respondent was bound to assess the performance of the Complainant on different standards. In order to claim that the performance must be assessed as per standards different from that of non-divyangjan, the Complainant must first prove that he fell into that category and the same was also known to the Respondent. On the contrary, it is evident that despite the opportunity, the Complainant himself failed to communicate to the Respondent his reasons for deteriorating performance. It is further evident that certifying medical authorities refused to issue disability certificates in his favour, despite of his attempts, during period 28.03.2018 till 08.12.2020. Hence, this Court has no evidence or reason to establish that the Complainant was divyangjan before 08.12.2020.

ISSUE (b) - VIOLATION OF SECTION 20(4)

36. Complainant raised the contention that premature retirement under FR-56(j) is violation of Section 20(4) of RPwD Act, 2016. The provision is reproduced below -:

Section 20(4) - No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

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

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

37. Complainant argued that if an employee acquires disability during service, he cannot be dispensed with. Further it was argued that Section 20(4) of RPwD Act, 2016 is special section enacted for safeguarding the rights of divyang employees. Whereas, FR-56(j) is general in nature. As per established principle, special statute/provision supercedes general statute/provision hence, Section 20(4) must supercede FR-56(j).

Upma Srivastava

38. The issue essentially relates to principles of interpretation of statutes. Prima facie from the reading of the provision it seems that no employee can be dispensed with the service if he has acquired disability during his service. Validity of the Respondent's contention can be examined by applying the principle of construction of statutes.

39. An important and indispensable rule of interpretation was stated by Court in England in the case of *Holmes v. Bradfield Rural District Council*, (1949) 1 All ER 381. The Court stated that in selecting out of different interpretations the court will adopt that which is just, reasonable and sensible rather than that which is none of those things. On the similar lines, the hon'ble Supreme Court of India held in the case of *Shamrao v. District Magistrate, Thana*, AIR 1952 SC 324 that

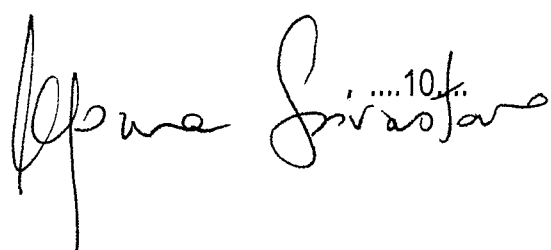
"the object of construction of the statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be avoided."

40. Similar principle was stated in another judgment of House of Lords in *Grey v. Pearson*, (1857) 6 HLC 61. As per the principle, if the grammatical construction leads to some absurdity or some repugnancy or inconsistency with the rest of the instrument, it may be departed from so as to avoid the absurdity. This principle was approved by Hon'ble Supreme Court of India in *Tirath Singh v. Bachittar Singh*, AIR 1955 SC 830. In this judgment hon'ble Supreme Court laid down

"where the language of the statute, in its ordinary meaning and grammatical construction, leads to manifest contradiction of apparent purpose of the enactment, or some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

CONCLUSION ON ISSUE (b) - VIOLATION OF SECTION 20(4)

41. Interpretation adopted by the Complainant is that if an employee acquires disability during service, he cannot be dispensed with his services. Clearly, this interpretation is based upon the literal meaning of the provision. However, this interpretation leads to absurd consequences. If blanket protection shall be given to all the divyang employees from termination of service, it will lead to a situation where divyang employees will do anything and everything and no action can be initiated against them.

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42. Certainly, legislature never intended to place divyangjan above rule of law. Rights of Persons with Disabilities Act, 2016 was enacted to safeguard the rights of divyangjan. What the parliament intended to achieve by enacting Section 20(4) of the statute was to protect those divyang employees from termination who cannot perform their jobs because of the disability which they acquire during service. This section does not afford protection to those divyang employees who have committed punishable act or default.
43. Moreover, as concluded in the proceeding paragraphs, the disabled status of the complainant prior to 08.12.2020, is not established as per the provisions of the Rights of Persons with Disabilities Act, 2016.
44. Hence, this Court concludes that this provision cannot be interpreted as exception to FR-56(j). While discussing previous issue in preceding paragraphs, this Court agreed that parameters for judging the performance of the divyang employee must be different from parameters which are adopted to judge the performance of non-divyang employees. However, this Court does not agree with the interpretation that by virtue of Section 20(4) of RPwD Act, 2016 divyang employees are completely immune from effect of FR-56(j).

ISSUE (c) - GENUINENESS OF DISABILITY CERTIFICATE

45. During online hearing as well as in its written submissions, Respondent raised the contention that the Disability Certificate submitted by the Complainant is fake because the Complainant did not get himself examined. It was someone else who was sent by the Complainant in his place for the examination. Authority of the certifying authority has not been challenged by the Respondent.
46. Section 58(c) of Rights of Persons with Disabilities Act, 2016 lays down that the certificate of disability issued under this section shall be valid across the country.
47. This Court also does not have any reason to disbelieve the genuineness of the Disability Certificate dated 08.12.2020. Respondent has not produced any evidence to prove the claim. However during online hearing, Respondent contended that if the Complainant would get himself re-examined, the Respondent will cooperate. The Complainant also submitted that he is ready for re-examination only if he is reinstated first. This Court expresses its satisfaction that both the parties have agreed for re-examination with some reservations.

CONCLUSION ON ISSUE (c) – GENUINENESS OF DISABILITY CERTIFICATE

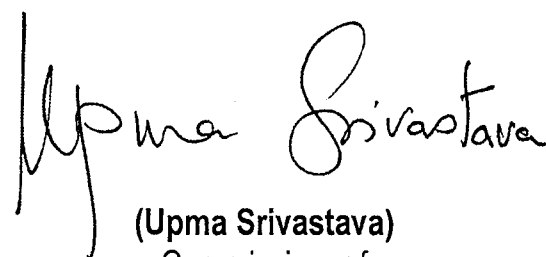
48. This Court is not inclined to accept the contentions of the Respondent. Disability Certificate dated 08.12.2020 holds valid. Allegations of the Respondent are of criminal in nature and cannot be accepted in absence of strong evidence.

RECOMMENDATIONS:

49. As far as issue 'a' & 'b' are concerned this Court concludes that the case of complainant does not fall under the ambit of Section 20(4) because the action taken by the Respondent is based upon the facts which occurred before date of disability certificate. Moreover, performance of the complainant was reviewed for the first time on 21.04.2018. This Court is not inclined to pass any recommendations on this issue.

50. As far as issue 'c' is concerned, considering the contentions of the Respondent's submissions on this issue, this Court as an amicable solution to the whole issue, recommends that with objective of fair play and for removing all doubts, if the Complainant wishes to get himself re-examined, he may do the same in any reputed government medical hospital which is duly certified by the government, like All India Institute of Medical Science, Nagpur or All India Institute of Medical Science, New Delhi. Since, the respondent during the online hearing agreed to give another opportunity to the complainant and also because the disability certificate was issued to the complainant before he was compulsorily retired, this Court recommends that if the complainant will choose to get himself re-examined and if his percentage of disability is found 40% or more, the respondent shall review the performance of the complainant considering his disability. Further, it is recommended that in such case the respondent shall refund all the reasonable expenses which may be borne by the complainant for getting himself re-examined.

51. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 21.06.2022



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: 13173/1022/2022

Shri M. Balakrishnan, Scientist E: Complainant

Plot No. 123, 3rd Cross Street

Heritage Jayendra Nagar

Sembakkam, Chennai-600073

Email: mbk@bis.gov.in

Mobile No: 09444301442/09449976805/044-22780442

133524

Versus

The Head: Respondent

Bureau of Indian Standards

Southern Regional Office, C.I.T. Campus,

IV Cross Road, Chennai 600113

Email: dq@bis.gov.in; hrd@bis.gov.in

133525

GIST OF COMPLAINT

The complainant filed his complaint dated 08.04.2022, submitted that he is 50% Locomotor disability. The complainant was working as Scientist-E in Bureau of Indian Standards at Chennai and suddenly without any prior information he was transferred to Bureau of Indian Standards, Mumbai. The complainant further states that his wife passed away and his daughter studying in XII and his father is 93 years old who totally depended on the complainant. Being the final year study of his daughter the complainant wants to retain in Chennai. The complainant has requested CCPD Court to consider his complaint and requested to give directives to the respondent to retain his transfer in Chennai or nearer to his hometown.

2. The matter was taken up with the Deponent vide letter dated 20.04.2022, under Section 75 of the RPwD Act, 2016.

3. In response, Dy. Director, Human Resource Development Department, BIS, New Delhi, submitted that the BIS is a statutory body working under the aegis of the Ministry of Consumer Affairs, Food and Public distribution having its headquarters at Manak Bhawan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 functioning through its offices situated at various cities in India. The respondent further submitted that the complainant is a senior officer of a Scientific Cadre and was working as Scientist-E/Director at the Chennai Branch office of the Bureau. The decision for transfer of the complainant along with 85 other officers was taken by the placement committee duly constituted by the competent authority of the Bureau. The respondent further submitted that transfer of the complainant was effected during the annual rotational transfer exercise only, considering the volume of work being dealt by the Bureau which has increased manifold and optimum utilization of manpower being the primary requirement.

The respondent further submitted that the complainant has been posted at his hometown or near his hometown almost throughout his entire career with the Bureau till date after considering his physical condition.

However, due to the administrative reasons and shortage of manpower in various branch offices and considering his seniority amongst the Scientific Cadre officers of the Bureau, it was decided that the complainant should be transferred to Mumbai for the interest and the development of the organization.

4. The complainant filed his rejoinder by email dated 18.05.2022, submitted that he is not in the sensitive post for transferring him even before completing 3 years to Mumbai which is 1700 kilometres away from his hometown. As per transfer policy, he is not due for transfer as his daughter studying 12th Class. Being a single parent and disabled person he has requested to transfer him nearer to his hometown Madurai or Chennai.

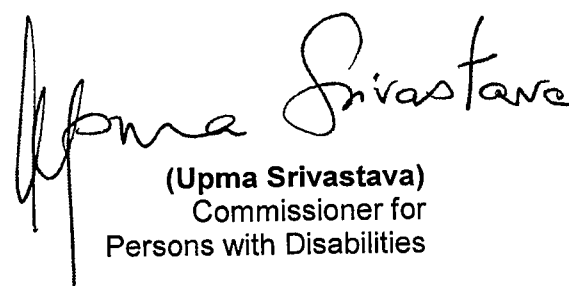
5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 21.06.2022. The following were present:

- i) Shri M. Balakrishnan, Scientist E: **Complainant**
- ii) Shri Sachidananda Kumar, Scientist C, Deputy Director, BIS: **Respondent**

Observations /Recommendations:

- i) Complainant submits that he is working as Scientist – E in Chennai office of the respondent establishment. It is submitted that he was suddenly transferred to Mumbai office of the respondent. Grievance of the complainant is that he is divyangjan and single guardian of his daughter who is studying in class 12th.
- ii) Respondent submits that the complainant was transferred from Chennai to Mumbai by order dated 09.03.2022. Complainant was not the only one who was transferred, 85 other officers were also transferred. Decision to transfer was taken considering volume work and optimum utilisation of man power. Further, it is submitted that the complainant was posted in his home town throughout his career. The present transfer was executed because of administrative reasons and shortage of manpower.
- iii) This Court appreciates the fact that the Complainant was posted in his hometown for considerable period of his career, however considering the fact that his child is studying in Class 12th and will be appearing in board exams, and undue hardship will be caused to him in shifting from one place to another because of his disability, this Court recommends that the Respondent shall defer the Orders of the Complainant's transfer for 1 year till his child completes her Class 12th, i.e. March/April 2023.
- iv) **Respondent shall also file the Implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.**

This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 28.06.2022