



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: 13115/1023/2022

Complainant: Shri Thanneeru Suresh
128, 9th Avenue, Township "GSO"
Kalpakkam – 603102
Email: <suresh190189@gmail.com>

132696

Respondent: The Director
Department of Atomic Energy
Indira Gandhi Centre for Atomic Research
Administration, Kalpakkam – 603102
Email: <cao@igcar.gov.in>

132692

Complainant: 100% hearing impairment

GIST of the Complaint:

Complainant Shri Thanneeru Suresh, Technician - B vide complaint dated **07.02.2022** has sought permission for bringing mobile phone inside the office as his wife is also person with hearing impairment and recently blessed with baby.

2. The matter was taken up with the Respondent vide letter dated **15.02.2022** under Section 75 of the RPwD Act, 2016.
3. Respondent vide letter dated **24.03.2022** inter-alia submitted that as a special case, Competent Authority has granted permission to Shri T. Suresh to carry a basic phone (without camera) in the office premises.
4. Complainant vide rejoinder dated **27.04.2022** submitted that he got permission to carry a basic mobile phone to office to enable them to contact his spouse.

Observation/Recommendations:

5. In light of the reply of the respondent and facts and material available on record, no further intervention of this Court is required as subject matter has been resolved.

6. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार / Government of India

Case No: 13058/1023/2022

Complainant: Ms. Sonia Shiv
Sister of Sunil Shiv
Flat No. 144 B, Pocket 12, DDA LIG Flats
Jasola Vihar, New Delhi – 110025
E-mail: <soniashivdseok@gmail.com>

R32710

Respondent: The Joint Secretary
Ministry of Defence, Office of the JS & CAO
E-Block, Hutments, DHQ PO, New Delhi -- 110011
E-mail: <ddpg.cao-mod@gov.in>

R32711

Complainant: Shri Sunil Shiv, a person with 80% Multiple Sclerosis

GIST of the Complaint:

Complainant Ms. Sonia Shiv vide complaint dated **30.12.2021** submitted that her parents are not alive and her brother Shri Sunil Shiv, 47 years old, unmarried is suffering from 80% Multiple Sclerosis declared by GB Pant Hospital. She has requested to recommend her brother's case to Ministry of Defence to grant Family Pension.

2. The matter was taken up with the Respondent vide letter dated **04.02.2022** under Section 75 of the RPwD Act, 2016.

3. Director (DCW & Trg), Office of the JS & CAO vide letter dated **07.03.2022** submitted that the disability certificate issued by GB Pant Hospital, New Delhi does not reflect his inability to earn his livelihood due to his disability, which is a mandatory requirement as per CCS (Pension Rules), 1972. They further submitted that Ms. Sonia Shiv has approached the GB Pant Hospital to get issued the requisite certificate, but the hospital has referred her case to Department of Empowerment and the ibid complaint is only for seeking help from M/o Social Justice to update/issue Disability certificate from the hospital.

4. Complainant vide rejoinder dated **29.03.2022** reiterated her grievance and stated that the facts mentioned in the reply relates to the confusion of the formats available at few government hospitals and inability of GB pant Hospital to issue the same.

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5. After considering the respondent's reply dated **07.03.2022** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **05.05.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.05.2022**. The following were present:

- Ms. Sonia Shiv on behalf of Shri Sunil Shiv - complainant
- Shri M. Srinivas, AO, CAO, Pension Cell on behalf of respondent

Observation/Recommendations:

6. Complaint is related to grant of family pension. Complainant submits that he applied for family pension and to support his claim, he submitted Medical Certificate dated 07.05.2020, which declared him unable to earn his livelihood. However, Respondent is denying him benefits of family pension.

7. Respondent submits that father of the Complainant was an employee of the Respondent establishment. He superannuated on 30.04.2005 and died on 19.02.2019. after the demise of the employee, his son, the Complainant applied for extending the benefits of family pension to him. To support his claim, he submitted Disability Certificate issued by Dr. B N Bose Hospital, Kolkata. Respondent forwarded the certificate to the hospital for verification and received information vide letter dated 20.03.2020 from the hospital that the Complainant is 'able to earn his livelihood'. Respondent submits that since this particular certificate declares him able to earn livelihood hence, benefits of family pension were not extended to him.

8. This court receives Complaints related to denial of Family Pension, therefore this court is compelled to delineate the legal provisions which govern issue of Family Pension.

9. Rule 54 of CCS (Pension) Rules, 1972 lays down provisions for Family Pension. Sub Rule 6 of Rule 54 contains provision relating to time period for which Family Pension is payable. As per the provision, Family Pension is granted in favour of son of Government Servant till the age of 25 years maximum. Similarly, in case of daughter of Government Servant, maximum period for which Family Pension is granted is till marriage or re-marriage of such daughter or until she starts earning her livelihood. However, second Proviso carves out the exception of the above rule. As per the Proviso, Family Pension is granted to son or daughter of Government Servant for life if following conditions are fulfilled –

- a) Such daughter/son is suffering from physical/mental disability; and
- b) The disability is such so as to render her/him unable to earn livelihood; and
- c) Inability to earn the livelihood is evidenced by a certificate obtained from a Medical



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Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child.

10. ISSUE – Whether certificate declaring the disabled daughter/son as 'unable to earn livelihood' is necessary?

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

12. ISSUE - Who will issue the certificate declaring the person 'unable to earn livelihood' OR who will decide issue of inability to earn livelihood?

13. Two O.M.s, O.M. No. 1/18/01-P&PW(E), dated 30.09.2014 and O.M. No. 1/18/01-P&PW(E), dated 05.11.2015 sheds light on the history and clarify the issue. Prior to O.M. dated 30.09.2014, competent authority to issue disability certificate for the purpose of family pension was 'Medical Officer' not below the rank of 'Civil Surgeon'. Later the position was changed and Medical Board comprising of Medical Superintendent and two other members was made competent authority to issue disability certificate replacing 'Civil Surgeon'. Subsequently by O.M. dated 30.09.2014, it was decided that for issuing disability certificate the competent authority would be as specified in the guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010. For the purpose of issuing disability certificate for 'Multiple Disabilities', Medical Board was retained as competent authority.

14. Subsequently, by O.M. No. 1/18/01-P&PW(E), dated 05.11.2015, the rule was formed that in addition to authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010, competent authority to issue disability certificate would also be any hospital or institution specified as Medical Authority by state or central government for the purpose of Persons with Disabilities Act, 1995. Hence, as per the two notifications competent authorities to issue disability certificate are –

- a) Medical Board in case of 'Multiple Disabilities' only;
- b) Authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010;

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- c) Any hospital or institution specified as Medical Authority by state or central government for purpose of issuing disability certificate.
15. **ISSUE** – Can Appointing Authority decide to grant family pension by itself, in absence of Disability Certificate?
16. With respect to Appointing Authority, word used in the rule is SATISFY. Rule DOES NOT SAY that Appointing Authority can decide whether the applicant can earn his livelihood or not. Further, the rule says that such satisfaction has to be evidenced by the Certificate issued by the Medical Board.
17. This position was made clear by Gujrat High Court in the matter of Naresh Bansilal Soni v. Union of India; 2016 SCC OnLine Guj 654. In this case Appointing Authority stopped Family Pension on the ground that the beneficiary did not produce 'living certificate'. Later he was denied the benefit on the ground that he was present in person before the Appointing Authority and he looked physically abled to earn his livelihood. Court held that decision of Appointing Authority that beneficiary can earn his livelihood, is arbitrary. Court held that in order to preclude Appointing Authority from taking arbitrary decisions, Rule lays down that such satisfaction has to be evidenced by the Disability Certificate. Hence, subjective decision of authority is illegal and arbitrary.
18. It was held in a case reported as Narsi Sambunath Suval v. G.M. Western Railways; 2015 SCC OnLine CAT 1584 by CAT, Ahmedabad that such certificate cannot be issued even by the private hospital. CAT decided that such certificate would be valid ONLY if it is issued by the prescribing authority.
19. **ISSUE** – When it can be deemed that the person is earning his livelihood?
20. O.M. No. 1/17/2019 P&P W (E), issued by Ministry of Personnel Public Grievances and Pension, dated 08.02.2021 settled the issue. As per the OM such disabled child shall be deemed to be not earning her/his livelihood if her/his overall income from sources other than family pension is less than the entitled family pension at ordinary rate and the dearness relief admissible thereon, payable on death of Government servant or pensioner concerned.
21. However, O.M. does not absolve the child from producing medical certificate declaring him 'unable to earn livelihood'. Para 4 of the O.M. lays down the same. As per the Para, it is mandatory to produce medical certificate.
22. **ISSUE** – If the employee/pensioner or her/his spouse did not furnish or intimate the details of the divyang child to Pension Sanctioning Authority during their lifetime and after the death of such employee/pensioner or her/his spouse, divyang child claims family pension, whether benefit of family pension can be extended to divyang child in such case?



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23. O.M. No 1/2/09-P&PW(E), dated 30.12.2009 established the basic rule that non intimation of details of divyang child by the employee/pensioner or her/his spouse does not make such child ineligible for family pension.

24. Further O.M. No. 1/18/2001-P&PW(E) dated 25.01.2016 laid down that even if divyang child obtains disability certificate after death of employee/pensioner or her/his spouse, benefits of family pension can be extended to the child on the basis of such certificate if a) the authority is satisfied that the child is unable to earn his livelihood and b) the child was suffering from the disability on the date of death of employee/pensioner or her/his spouse. The same O.M. reiterates the rule position established in O.M. 1/18/01-P&PW(E), dated 30.09.2014 that in case the child produces disability certificate of permanent disability, issued prior to the death of employee/pensioner or her/his spouse then the child need not to obtain disability certificate afresh. Hence, litmus test in such situation is that whether or not the child was suffering from disability on the date of death of the employee/pensioner or her/his spouse.

25. **ISSUE** – Procedure if family pension is granted to guardian of divyang child because of child's minor age or intellectual disability.

26. O.M. No 1/04/06 -P&PW(E) dated 31.07.2006 clears the position that in case the pension is granted to the guardian of divyang child the guardian has to produce certificate issued under National Trust Act, 1999 for his nomination/appointment for grant of family pension.

27. In the present Complaint, the Complainant submitted three Disability certificates to buttress his claim of Family Pension. First one is dated 04.06.1998. This certificate declares disability of the Complainant as 40% of permanent nature, hence, this case is covered under Para 4 of O.M. issued by Ministry of Personnel, P.G. & Pensions dated 25.01.2016. Since, the certificate issued prior to the death of the employee declares the Complainant as permanently disabled hence he need not to obtain the Disability certificate afresh.

28. However, this does not resolve the issue of 'ability to earn livelihood'. Respondent relied on the Disability certificate dated 04.06.1998 to reach to conclusion with respect to 'ability to earn livelihood'. O.M. issued by Ministry of Personnel, P.G. & Pensions dated 25.01.2016 does not mention that the disabled dependant must not be able to earn livelihood on the date of issuance of Disability Certificate. O.M. lays down that Disability Certificate issued after the death of the employee must declare the beneficiary dependant as disabled on the date of death of the employee. This test is not applicable with respect to ability to earn livelihood. Relevant paras of the O.M. are reproduced below –

"3. A disability certificate issued after the death of the pensioner/employee or his/her spouse for the disability which existed before their death may be



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accepted by the appointing authority if he is satisfied that a) it renders him or her unable to earn his livelihood and b) the child was suffering from the disability on the crucial date, i.e. on the date of death of employee/pensioner or her/his spouse, whichever was later."

PRESENT COMPLAINT

29. Complainant is filed on behalf of the divyang dependant of the deceased employee (hereinafter referred to as 'beneficiary'). Father of the beneficiary who was the employee in Respondent establishment died on 03.06.2021. Mother died in year 1989. Beneficiary is 47 years old and is unmarried who because of his disability cannot even feed himself and cannot look after his daily basic needs hence it is not possible for him to earn his livelihood. Complainant has to engage full time attendant to take care of the beneficiary. She submits that she applied for the family pension in favour of the beneficiary which was denied because the disability certificate does not mention the fact that the beneficiary cannot earn his livelihood.

30. In its Reply, the Respondent has accepted the fact that the Complainant applied for family pension and the same was denied on the ground that the disability certificate does not mention the fact of inability to earn livelihood.

31. During online hearing, the Complainant apprised this Court that the beneficiary's condition has deteriorated too much and as on the date of hearing, he has become completely bed-ridden. He cannot go to hospital on its own for re-examination for re-assessment of his disability and 'ability to earn livelihood'. Further, Complainant informed that the beneficiary's disability assessment was done and the disability certificate was issued by Govind Ballabh Pant Hospital, New Delhi.

32. During online hearing, the Respondent informed that in usual course, medical boards of hospitals other than Govind Ballabh Pant Hospital, New Delhi are issuing disability certificates with observations on the point of 'ability to earn livelihood'. Respondent also expressed its inability to issue family pension in favour of the beneficiary in absence of comment on 'ability to earn certificate'.

33. The present situation has catapulted the Complainant in a predicament, whereby she does not have disability certificate declaring the beneficiary as 'unable to earn livelihood' and on the other hand, she cannot take the beneficiary to the hospital for re-examination because the beneficiary has become completely be-ridden.



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34. As far as rule position is concerned, Complaint filed can be resolved by referring to O.M. No. 1/18/01-P&PW(E), dated 05.11.2015, delineated above. This O.M. provides for various authorities which can issue 'inability to earn certificate'. Further, O.M. No. 1/17/2019 P&P W (E), issued by Ministry of Personnel Public Grievances and Pension, dated 08.02.2021 provides for the situation when it can be deemed that the divyang dependant is not able to earn livelihood.

35. Respondent is recommended to refer the two O.Ms. mentioned and delineated above and forward the application to Govind Ballabh Pant Hospital, New Delhi for determining 'ability to earn livelihood' of the beneficiary, within 01 month of receiving this Recommendation Order, in accordance with the rule position delineated above. Copy of this Order-Recommendation shall also be forwarded to Govind Ballabh Pant Hospital, New Delhi.

36. The Complaint is disposed off with liberty granted to the Complainant to re-approach this Court in case the grievance of the Complainant is not resolved within 45 days of receiving this Recommendation-Order

37. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022

Copy to:

Medical Superintendent
Govind Ballabh Pant Hospital
New Delhi – 110002

: for necessary action



न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

भारत सरकार / Government of India

Case No: 13055/1021/2022

Complainant: Shri Ajay Kumar Singh
Employee No. 123451
E.S.I.C. Hospital, Sector - 15
Rohini, Delhi - 110089
E-mail: <ajaykumarsingh523@gmail.com>

132712

Respondent: The Director General
Employees State Insurance Corporation
ESIC, Panchdeep Bhawan, CIG Road
New Delhi - 110002
E-mail: <anil.thakur@esic.nic.in>
<admin2a@esic.nic.in>

132713

Complainants: 40% locomotor disability

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक 05.01.2022 में कहना है उनकी भर्ती दिनांक 20.04.2011 को ई.एस.आई.सी. अस्पताल, बद्धी, हिमाचल प्रदेश में कुकमेट के पद पर हुई और दिनांक 28.09.2015 को अन्तर क्षेत्रीय स्थानान्तरण पॉलिसी के तहत स्थानान्तरित होकर दिल्ली क्षेत्र में आए। प्रार्थी का आगे कहना है कि ई.एस.आई.सी., दिल्ली द्वारा वर्ष 2016 और 2018 के बीच दो बार हेड कुक संवर्ग की डी.पी.सी. की गई जिसमें दिव्यांगजन कोटा नहीं दिया गया।

2. The matter was taken up with the Respondent vide letter dated 04.02.2022 under Section 75 of the RPwD Act, 2016.

3. उप-निदेशक (प्रशासन), कर्मचारी राज्य बीमा निगम, नई दिल्ली का अपने पत्र दिनांक 03.03.2022 में कहना है कि प्रधान रसोइया के पद पर पदोन्नति के लिए (प्रमुख रसोइया के आरआर के अनुसार) - 'कुक/कुकमेट-सह-मसालची-सह-बेयरर में तीन साल की नियमित सेवा पदोन्नति के लिए' आवश्यक है। वर्ष 2016 और 2018 में प्रार्थी पदोन्नत नहीं किया गया क्योंकि वह उस समय पदोन्नति हेतु अर्हक सेवा शर्त पूरी नहीं करते थे। प्रतिवादी का आगे

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कहना है कि वर्ष 2016 और 2018 में आयोजित विभागीय पदोन्नति समिति में पदोन्नति के लिए कोई भी पीडब्ल्यूडी उम्मीदवार पात्रता पूर्ण नहीं कर रहा था तदनुसार पदोन्नति समिति में किसी पीडब्ल्यूडी उम्मीदवार का नाम प्रस्तावित नहीं किया गया।

4. प्रार्थी का अपने प्रति उत्तर दिनांक 17.03.2022 में कहना है कि वह प्रतिवादी द्वारा दिये गये जवाब से संतुष्ट नहीं है।

5. After considering the respondent's reply dated **03.03.2022** & complainant's letter dated **17.03.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.04.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.04.2022**. The following were present:

- Shri Ajay Kumar Singh – complainant
- Sri Dharamvir Singh, Dy. Director on behalf of respondent

Observation/Recommendations:

6. Complainant submits that he was appointed on the post of 'Cook-mate' on 20.04.2011 in the Respondent establishment. At the time of appointment he joined in Solan, Himachal Pradesh. Later on 28.09.2015 he was transferred to Delhi Region by 'Inter Region Transfer'. He submits that in Delhi Region DPC for promotion to the post of 'Head-Cook' was conducted twice between 2016 and 2018, however he was not promoted and any other employee was also not promoted. He filed Complaint with the Respondent on 13.11.2018. Respondent rejected the application giving reason that he is not eligible for the same.

7. Respondent submits that relevant guidelines for the promotion to the post of 'Head Cook' were issued on 27.02.2013. As per these guidelines, 3 years minimum service is required for the promotion to the post of 'Head-Cook'. Further, as per Point 9 of these guidelines, service period is counted from the date on which the person joins at the new place of posting. He joined in Delhi region on 28.09.2015, hence he became eligible for promotion only on 01.01.2019 hence he was not promoted in DPCs which were conducted in 2016 and 2018.



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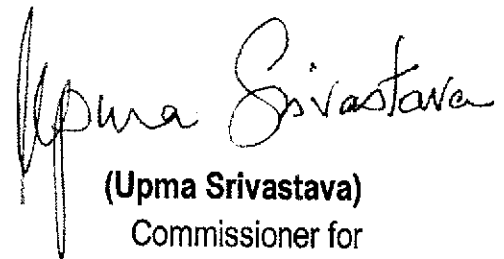
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8. During online hearing Respondent submitted that post of 'Cook' is regional cadre post, not subjected to All India Transferability. Whenever any employee opts for Inter-Region Transfer, he loses his seniority. Further, the Respondent submitted that in next 2-3 months DPC will be conducted and the Complainant may be considered in that DPC.

9. It is worthwhile to note that the Complaint filed is with respect to non promotion in 2016 and 2018 and hence very old. Furthermore, Complaint is not related to disability because the rules are same for divyangjan as well as non divyangjan.

10. Hence, intervention of this Court in the present Complaint is not warranted.

11. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No.12970/1101/2021**Complainant:**

- (1) Ms Kanchan Pamnani,
Advocate & Solicitor
Office: 9, Suleman Chambers, Battery Street,
Mumbai-400039
Email: kanchanpamnani@gmail.com P32716

- (2) Shri Rahul Bajaj, SRF,
Vidhi Centre for Legal Policy, New Delhi
R/o 44 I 8/21, Near Chota Taj Bagh,
Raghuji Nagar, Nagpur – 440009.
Mobile: 91 9890281068
Email: rahul.bajaj1038@gmail.com P32712

Respondents:

- (1) The Chairman,
Central Board of Direct Taxes (CBDT),
North Block, New Delhi-110002
Email: chairmancbdtd@nic.in P32218

- (2) The Chief Executive Officer,
Infosys Ltd., Plot No.44/97-A, 3rd Cross,
Electronic City, Hosur Road, Bengaluru-560100;
Email: salil/parekh@infosys.com P32219

- (3) The Secretary,
Department of Financial Services,
Ministry of Finance, 3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi-110001; Email: secy-fs@nic.in P32220

Affected Persons: Persons with Visual Impairment**Date of Hearing: 21.04.2022****Present:**

- (1) Ms. Kanchan Pamnani; and Mr. Rahul Bajaj, the complainants
(2) Mr. Pitambar Kumar, Dy. Director – Income Tax for Respondent No.1;
(3) Advocate Avinash Balakrishna, for Respondent No.2
(4) None for Respondent No.3

(Page 1 of 3)

RECORD OF PROCEEDINGS

Both the parties were heard.

2. The complainants, both person with 100% Visual Impairment, filed their complaints regarding inaccessibility of the new Income Tax E-filing Portal. Complainants submit that The Income Tax E- filing Portal was accessible for many years and the Visually Impaired could file their own Returns and check the status etc. themselves without assistance of third person. The current Income Tax e-filing portal cannot be accessed using the screen reading software. Complainants submit that improper functioning of screen reading software happens because of faulty design of the website.
3. Complainant sought relief from this Court to recommend the Respondent to make their website accessible.
4. Respondents filed their Reply. CBDT submitted that the issue of making the EF2.0 (E-Filing 2.0) portal www.incometax.gov.in compatible for visually impaired taxpayers is currently under progress. It further submits that some steps have been taken in this regard, for instance, meeting was conducted with representatives of visually impaired persons to understand the requirements and have directed M/s Infosys (MSP for the project) to implement the requisite changes. A draft notice has been prepared addressed to Infosys communicating the urgency of the requirement & the inconvenience caused. While the development is ongoing for the technical changes on the portal, M/s Infosys is being asked to expedite the process. The petitioner is also being communicated that pending the rollout of the compatible portal, the e-filing helpdesk and the local Aaykar Seva Kendra will be guided to assist the petitioner with all suitable assistance.
5. Infosys filed their reply dated 15.12.2021 and inter-alia submitted that there were certain areas that needed Infosys's attention and ensured that necessary changes would be implemented by 15th March, 2022. The entire system, required for the Project, is build ground up for increasing the scale/volume and enhanced experience with latest technologies. It is denied that the website is badly designed and executed and visually impaired have lost their privacy and independence.
6. Department of Financial Services, Ministry of Finance endorsed a copy of the Office Memorandum No.FZ-3/1/2021-SCT dated 08.12.2021 addressed to the Under Secretary (Coordination), Department of Financial Services; and intimated that the matters relating to Income Tax E-filing Portal are handled by the Income Tax Department, Department of Revenue, Ministry of Finance.
7. During online hearing, Respondent No.1 submitted that it failed to make the portal accessible by 15.03.2022. The portal remained ineffective even on the date of hearing. One of the Complainants, Mr. Rahul Bajaj offered to inform the 'problematic-

areas' of the portal which need attention and rectification. This Court was further apprised that date to file income tax returns is approaching and the portal needs to become fully accessible for divyangjan with Visual Impairment before 30 May 2022.

8. For proper understanding of the problems and effective redressal of the grievance, this Court recommends for personal meeting of Shri Rahul Bajaj and Shri Pitambar Kumar, Deputy Director Income Tax. Both the parties also agreed for the same. Further, this Court directs that outcome of the meeting shall be informed to this Court before 20.05.2022.

Dated: 13.05.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra (104)

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. 12961/1011-2021

Complainant:

Shri Ganesh Kumar,
R/o Sidharthapuri Colony,
Road No.1 (Belhanta Niwas),
Manpur, Gaya823003 (Bihar)
Email: ganeshmedhanical331@gmail.com

132721

Respondent:

The Chairman-cum-Managing Director,
N M D C Limited,
'Khanij Bhawan, 10-3-311/A Castle Hills,
Masab Tank, Hyderabad-500028
Email: cmd@nmhc.co.in

132722

Affected Person: The complainant, a person with 40% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 22.10.2021 regarding violation of Hon'ble Supreme Court Judgement and discrimination with candidates with Disabilities in the recruitment process for Executive Trainee against Emp. Notification No.03/2020 dated 24.02.2021 through GATE 2021 in NMDC Ltd.

1.2 The complainant submitted that out of 67 vacancies, 03 were reserved for PwD. 06 candidates with disabilities including him were shortlisted for Group Discussion (GD) and Personal Interview (PI), but no any candidates were provisionally selected under PwD quota to the post of Executive Trainee (Mechanical). In GATE 2021, out of 100 marks, he had secured 49.81, Gunjan Saheb Bala secured 73 marks and Aman Gupta had secured 53 marks.

1.3 The complainant further alleged that during interview, the Interview Panel were laughing at his disability; they were saying that "What will you do for NMDC with your Single Leg". The PwD candidates were illegally and arbitrarily not selected in NMDC.

2. Submissions made by the Respondent:

2.1 NMDC filed their reply dated 29.11.2021 and categorically refuted the allegations made by the complainant. The respondent submitted that a similar

(Page 1 of 3)

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complaint had been filed by Shri Manish Kumar, S/o Shri Akhileshwar Singh, Resident of Sidharthapuri Colony, road No.1 (Belhanta Niwas), Manpur, Gaya, Bihar-803003 with same father's name and address. Shri Manish Kumar was not a candidate in the impugn Employment Notification 03/2020 dated 24.02.2021. Shri Manish Kumar had misled this Court and now Shri Ganesh Kumar, the complainant, who seems to be the brother of Shri Manish Kumar had put forth the complaint. In that reply it was submitted that the allegations made by Shri Manish Kumar were baseless, devoid of truth and absolutely no merit in that case (No.12890/1011/2021).

2.2 The respondent stated to have followed all the rules/regulation of Govt. of India in the recruitment process and the candidates with disability have been given all relaxation i.e. age relaxation, relaxation in qualifying marks in the essential qualification, relaxation in marks for calling in Group Discussion and Personal Interview.

2.3 2.2 In response to the above Employment Notification, 27 valid applicants have applied to the post of Executive Trainee (Mechanical) through GATE-2021 under PwD category. In addition to the above, as per Clause No. 8.0 of the above Employment Notification, the candidates would be called for Group Discussion & Interview based on the marks secured in GATE-2021 discipline wise, category wise in the ratio of 1:10 which is on the basis of the marks obtained in GATE-2021. Accordingly, a cut off GATE score of 35 and above marks for UR category and 30 & above marks for PwD candidates was prescribed to be called for GD & Interview. Accordingly 10 PwD candidates were shortlisted for GD & Interview in Mechanical discipline in the ratio of 1:10. Further, as per Clause No.7.0 of above Employment Notification, the weightage marks of selection were as follows:

Sl. No.	Component	Weightage (marks) out of 100
1.	GATE-2021 score in concerned discipline	70
2.	Group Discussion (GD)	15
3.	Interview	15

2.3 After GD & Interview, the following cut off marks for GATE score, GD & Interview was taken for selection to the post of Executive Trainee (Mechanical):-

Unreserved : 87.06 marks out of 100 marks
OBC (NCL) : 80.92 marks out of 100 marks
SC : 76.55 marks out of 100 marks
ST : 76.36 marks out of 100 marks
EWS : 83.45 marks out of 100 marks



As the marks obtained by the above six candidates even after relaxed standards were very less in comparison to other candidates, none of the candidates were found suitable to be selected as Executive Trainee (Mechanical) in PwD category by the duly constituted Committee and the above vacancies reserved for PwDs were carried forward for the next recruitment as per rules. The notice for the next recruitment was also issued by NMDC.

2.4 As per Clause No.7 of the Employment Notice, the merit list was prepared and the complainant Shri Ganesh Kumar obtained 53.20 marks. He was shortlisted for GD & PI.

2.5 The Selection Committee comprising of senior officials having extensive experience in respective fields, made objective assessments on the suitability of the candidates allowing admissible relaxation/concession in the standard of suitability to PwD candidates as per the laid down Rules. The respondent denied the allegations of the complainant that the Interview Panel were laughing at his disability saying that "What will you do for NMDC with your Single Leg" being farfetched, untrue, baseless and uncalled for.

2.6 The selection was done as adjudged by the duly constituted Committee, after following diligent procedures like score obtained in GATE-2021, Group Discussion and Interview. No injustice whatsoever was meted out to the complainant.


3. Submissions made in Rejoinder:

The complainant in his rejoinder has reiterated his complaint and added that NMDC had not disclosed the marks obtained by all the PwD candidates and has misled the Court. He has inquired if there is any individual cut off for GD & PI.

4. Observation/Recommendations:

In the lights of the facts submitted by the parties, the Respondent's reply is satisfactory. No further intervention is required in this matter, and the case is disposed off.

Dated: 13.05.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



(107)

extra

न्यायालय मुख्य आयुक्त दिव्यांगजन**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No. 12839/1011/2021**Complainant:**

- (1) Shri Mukesh Gupta, President,
Northern Railway Physically Handicapped
Employees Welfare Association,
C-5/81, Ground Floor, Sector-11, Rohini,
Delhi – 110085
Email: Mukeshgupta6.mg@gmail.com
Mobile: 9891945350/9540001259

— P32723

- (2) Shri Pururaj Moyal,
1055, Mahaveer Nagar,
2nd Near Patshanti Girls College,
Kota – 324005 (Rajasthan)
Email: ppururaj@gmail.com
Mobile: 8739921297

— P32724

- (3) Shri Anil Kumar Sisodia,
S/o Shri Kishan Lal Sisodiya,
Hindon road, Saloda Mod, Mahadev Colony,
Gangapur, Sawai Madhopur-322201 (Rajasthan)
Email: anil151kumar@gmail.com
Mobile: 9875031160

— P32725

Respondent:

The Secretary,
Railway Board, Ministry of Railways,
Rail Bhawan, Rafi Marg,
New Delhi – 110001
Email: secyrb@rb.railnet.gov.in

— P32726

Affected Person: Divyangjan

1. Gist of Complaint:

The complainants filed a complaint received on 03.08.2021 regarding non-maintenance of Roster Register for Persons with Disabilities in direct

1 | Page

recruitment w.e.f. 01.01.1996 by various Zonal Railways. The complainants submitted that their Association took up the matter regarding preparation of Roster Register with the Northern Railway Administration vide letter dated 17.09.2018 followed number of reminders and follow ups. But they are not maintaining Roster Register and computation of vacancies as per DoP&T guidelines. The complainants requested to take up the following matter with the respondent;

- i) Roster Register may be prepared by all the appointing authorities (HQ, Divisional Offices including Accounts) in the posts filled by direct recruitment from 01.01.1996 to till date as per DOP&T instructions dated 29.12.2005 and 15.01.2018.
- ii) Backlog of vacancies be cleared within a stipulated time as fixed by this Court.
- iii) To Constitute a monitoring committee to check the Roster Register in which atleast two representatives of their Association may be included.
- iv) One copy of the Roster Register may be provided to their Association.

2. Submission made by the Respondent:

Director Estt.(N), Railway Board filed their reply dated 03.11.2021 and prayed for extension time limit up to 31.12.2021 for submission of reply. Despite Final Reminder dated 13.04.2022, no response has been found received from the respondent.

3. Observation & Recommendations:

3.1 A very sad state of affairs was presented before this Court by the Complainants by virtue of their petition. Complainants submitted that the Respondent is not implementing government guidelines relating to reservation and maintenance of PwD roster.

3.2 The Rights of Persons with Disabilities Act, 2016 is the legislation which seeks to guarantee equality in public employment through reservation. Act of the Respondent is evident of slow and systematic failure in implementing relevant guidelines relating to reservation and maintenance of Reservation Roster.

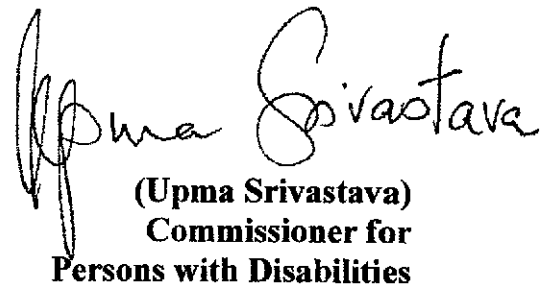
3.3 This Court had an opportunity to delineate laws and guidelines related to various aspects of reservation in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021, titled as NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH. The copy of the Order is attached herewith.

3.4 Hence, this Court recommends that Respondent shall pursue the Order dated 15.06.2021 attached along with this Order and shall follow and implement all the guidelines delineated, in letter and in spirit.

3.5 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.

3.6 The case is disposed off accordingly.

Dated: 13.05.2022


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Encl.: As above



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Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 13017/1141/2021

Complainant:

Shri Bonamukkala Renuka Reddy
H.No.11-33-948/2, Vengalrao Nagar,
Near Vidya Bharati School (Old),
Kavali-524201, SPSR Nellore District (Andhra Pradesh)
Email: brreddy68@gmail.com
Mobile: 9440505230

R3222

Respondent:

The Chief Executive Officer (CEO)/
Managing Director,
Vishnu Cars Pvt. Ltd.,
31A, Jawaharlal Nehru Salai,
Ekkattuthangal, Chennai-600032
Email: support@vishnucars.in

R3228

Affected Person: The complainant himself, a person with 47% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 16.11.2021 regarding denial of delivery of booked Car - Maruti Suzuki S-Presso VSI+AGS 2020 Petrol to him by the dealer, the respondent.

1.2 The complainant submitted that the respondent dealer should have delivered his booked car immediately after receiving the GST Concession Certificate dated 30.07.2020, but even after expiry of the validity of the GST Concession Certificate, the dealer could not deliver the car to the complainant.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply in Affidavit on 31.01.2022 and refuting the allegations made by the complainant inter-alia submitted that after receipt of the GST Concession Certificate through email on 31.07.2020, they consulted the

X

(Page 1 of 4)

local GST Office about the procedure to be followed. The dealer informed the complainant and asked him to pay the entire invoice amount and thereafter claim the benefit under the GST Concession Certificate, which would be refunded to the complainant directly by the concerned authority. The respondent submitted that the complainant refused to pay the entire money and demanded that the vehicle should be delivered by accepting the amount after deducting the benefit that he should get under the GST Concession Certificate.

2.2 The respondent further submitted that the expiry of the period of 3 months in the GST Concession Certificate is also because of the refusal of the Complainant to pay the Invoice amount of the vehicle and taking delivery of the Car. Had the amount been paid, the vehicle would have been delivered within few weeks and the benefit of the GST Concession Certificate could have been availed by the complainant by now by getting refund of the concession amount.

3. Submissions made in Rejoinder:

The complainant in his rejoinder reiterated his complaint.

4. Observation/Recommendations:

4.1 From the reply, the respondent appears to be unaware of the procedure to be followed for booking/sell/delivery of a Car to a person with disability under concessional rate of GST. It also appears that the respondent did not go through the Guidelines, which had been sent to him along with the Notice to file comment, for issue of GST Concession Certificate for purchase of vehicles by the persons with Orthopedic Physical Disability, issued by the Ministry of Heavy Industries and Public Enterprises vide Order No.12(42)/2015-AEI dated 24.10.2019.

4.2 Clause 10, 11 and 12 of the said Guidelines stipulates as under:-

“10. DHI will send a copy of the Certificate to respective dealer, Original Equipment Manufacturers (OEM) and Regional Transport Office for their record and cross check/confirmation.”

“11. Car dealers would be required to charge concessional rate of GST to the individual in whose name GST certificate is issued and stamp the invoice of all such cars purchased with GST concession with hologram symbol of ‘To be registered as Adapted vehicle’.

“12. All vehicles sold on the strength of certificate issued by DHI and with concessional GST would be registered as “Adapted Vehicle”, as per

new Motor Vehicle Act 2019. Ministry of Road Transport and Hghways (MORTH) would issue necessary instructions in this regard.”

4.3 The Respondent Dealer did not follow the Guidelines/Instructions issued by the Government.

4.4 Since the validity of the GST Concession Certificate dated 30.07.2020 has expired, it needs to be got issued again for booking/sell/delivery of the Car to the complainant on concessional rate of GST.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 21.04.2022. The following were present:

- (1) Shri Bonamukkala Renuka Reddy, the complainant in person
- (2) Shri Vishnu Girish, Sales Manager, Vishnu Cars Pvt. Ltd. for the Respondent

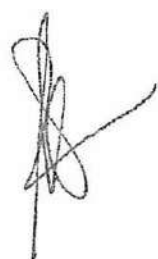
6. **Observation/Recommendations:**

6.1 Both the parties were heard.

6.2 Complainant submitted that he booked a Car and availed GST concession. He also submitted GST Concession certificate dated 30.07.2020. But the car was not delivered to the Complainant and now the GST Concession Certificate has expired.

6.3 Respondent submitted that after receipt of the GST Concession Certificate through email on 31.07.2020, they consulted the local GST Office about the procedure to be followed. The dealer informed the complainant and asked him to pay the entire invoice amount and thereafter claim the benefit under the GST Concession Certificate, which would be refunded to the complainant directly by the concerned authority. The respondent submitted that the complainant refused to pay the entire money and demanded that the vehicle should be delivered by accepting the amount after deducting the benefit that he should get under the GST Concession Certificate. The respondent further submitted that the expiry of the period of 3 months in the GST Concession Certificate is also because of the refusal of the Complainant to pay the Invoice amount of the vehicle and taking delivery of the Car. Had the amount been paid, the vehicle would have been delivered within few weeks and the benefit of the GST Concession Certificate could have been availed by the complainant by now by getting refund of the concession amount.

6.4 Respondent clearly failed to implement the GoI guidelines in this respect. Ministry of Heavy Industries and Public Enterprises, by virtue of Order dated



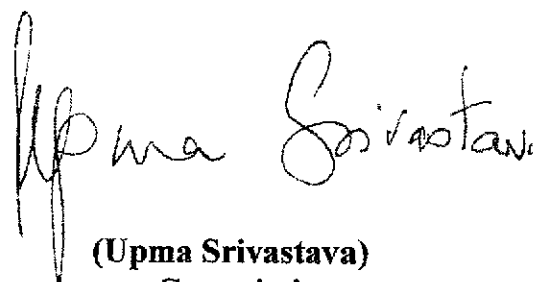
24.10.2019 has laid down detailed procedure to avail GST concession. As per the Order, it is duty of the Department to send the GST Concession certificate to the car dealer. Car dealer is directed to charge the concessional amount from the divyangjan who has booked the car. Submission made by the Respondent that divyangjan has to pay whole amount and then the GST is paid back to the divyangjan is against the guidelines. In the present case, GST concessional certificate was valid for 3 months only. It was dated 31.07.2022. Now it has expired.

6.5 During online hearing, the Respondent promised that if GST Concession certificate would be submitted once again, they would take necessary steps as per the guidelines and would deliver the car at concessional rates.

6.6 This Court recommends that the Complainant may again obtain the GST Concession Certificate and the Respondent after receiving the same, shall deliver the car at concessional rates in accordance with the guidelines laid down in Order dated 24.10.2019 issued by Ministry of Heavy Industries and Public Enterprises.

6.6 Accordingly the case is disposed off.

Dated: 13.05.2022



(Upma Srivastava)
Commissioner
for Persons with Disabilities



extra

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 12968/1011/2021

Complainant:

Mr. Saurabh Kumar,
President, Toshiyas,
G/8, Nandan Tower, Colony More,
Kankarbagh, Patna-800020 (Bihar)
Email: toshiyassaurabh@gmail.com

—R32729

Respondent:

The Chairman,
Railway Recruitment Cell,
Central Railway, 1st Floor,
Chief Project Manager (Conv.)'s Office Bldg.,
Goods Shed, P.D'Mello Road, Wadi Bunder,
Mumbai – 400010
Email: aporrc@cr.railnet.gov.in

—R32730

Affected Person: Mr. Bhat Raj, a person with 100% Visual Impairment

1. Gist of Complaint:

The complainant filed a complaint dated 22.10.2021 regarding denial of appointment to Group 'D' post by Central Railway to Mr. Bhat Raj [Roll No.242042084500029 and Regn No.2481320097] despite after document verification and medical examination against Centralised Employment Notification No.02/2018. She had appeared in the Recruitment Exam on 04.10.2018 and in Interview on 23.04.2019.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 17.12.2021 and submitted that out of the total 4625 vacancies notified, 46 were for VI candidates (15 for Blind and 31 for Low Vision). Mr. Bhat Raj had obtained 71.41171 marks in the CBT, as such as per merit he was one of the candidates called for document verification on 23.04.2019 under VI (LV) category.

(Page 1 of 3)

2.2 Railway Board vide letter No.E(NG)II/2017/RC-2/I Policy dated 18.04.2019 had advised to examine and re-adjust the distribution to the extent possible to ensure that adequate number of posts are available to be filled in by meritorious Blind candidates under the VI quota.

2.3 RRC CR, vide their letter dated 22.04.2019 requested to the Railway Board that as per merit order, 31 blind candidates had to be called and remaining 15 would be from Low Vision category. In that scenario, the Railway would not be able to accommodate the Blind candidates against the notified vacancies which are suitable only for low vision; and Railway Board requested to clarify whether RRC CR should strictly to as per the merit within the VI category irrespective of total Blind or Low Vision or whether the candidates should be called within VI as per Railway Board's letter dated 18.04.2019.

2.4 In response Railway Board vide letter dated 24.04.2019 advised that since the extent and scope of the specified disability can be known only after medical examination, it would not be appropriate to segregate between Blind and LV candidates within the VI category while calling for document verification. Hence, VI candidates should be called for document verification and medical examination (based on 1.05 times vacancies based on merit/score obtained in the CBT examination without distinguishing between LV and Blind merit/score at this stage. Railway Board further advised that while adjustment/distribution of posts suitable for both Blind and LV sub-categories be done as advised in Board's letter dated 18.04.2019, final empanelment/posting of PwBD candidates would, of course, be based on vacancies notified and the relevant PwBD categories/sub-categories for which these vacancies/posts were available and suitable.

2.5 Accordingly, in terms of Railway Board's letter dated 24.04.2019, merit list of VI category candidates was reviewed and 46 VI candidates based on merit/score obtained in CBT examination, without distinguishing between LV and Blind, were considered for document verification and medical examination.

2.6 Mr. Bhat Raj was declared medically fit in VI (Blind) vide Medical Certificate No.438090 issued by MD/Byculla. He was empanelled in 4th part panel issued on 02.01.2020 and allotted the post of Hospital Attendant, BSL division. On 11.02.2021, BSL Division returned the papers stating that there were 5.3% PHP excess quota in the cadre of Hospital Attendant and 12.7% PHP quota in Peon. Accordingly, Shri Bhat Raj was allotted Electric Locomotive Workshop, Bhusawal on 01.04.2021. However, CWM/ELW, Bhusawal returned



the papers stating that the competent authority had constituted a Technical Officers Committee for identifying the PwD post of JE(EL), Technician and Helper. The committee had recommended the PwD OL and HH for Helper. ELW Helper post being a safety post, VI (Blind) candidates cannot be accepted for Helper category.

2.7 In order to allot the post to empanelled candidate, the allotment of post was reviewed and Shri Bhat Raj had been allotted the post of Helper Engineering Works, Bhusawal division vide letter No.P/CR/HQ/RRC/CEN/02/2018/Bhatraj dated 26.11.2021 in terms of the Railway Board's letter No.E(NG)II/2017/RC-2/1 Policy Pt. dated 11.11.2019 in non-notified post. Mr. Bhat Raj had been issued offer of appointment by Bhusawal division vide letter No.BSL/P/540/EBW/RRC/Helper (Wks) dated 04.12.2021. Bhusawal Division vide their letter dated 16.12.2021 issued O.O.No.1628/2021 for appointment of Shri Bhat Raj.

3. Submissions made in Rejoinder:

The reply filed by the Respondent was forwarded to the complainant for filing his rejoinder, but no rejoinder has been received from him.

4. Observation/Recommendations:

4.1 From the reply filed by the Respondent, it appears that Offer of appointment has been issued by Bhusawal Division, Central Railway vide its letter No.BSL/P/540/EBW/RRC/Helper (Wks) dated 04.12.2021 and vide Office Order No.1628/2021 dated 16.12.2021 Shri Bhat Raj has been appointed, no further intervention is required in this matter.

4.2 Accordingly the case is disposed off.

Dated: 13.05.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



extra (117)

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. 12947/1011/2021

Complainant:

Shri Saurabh Kumar,
President, Toshiyas,
G/8, Nandan Tower, Colony More,
Kankarbagh, Patna-800020 (Bihar)
Email: toshiyassaurabh@gmail.com

P32731

Respondent:

The Chairman,
Railway Recruitment Cell,
Central Railway, 1st Floor,
Chief Project Manager (Conv.)'s Office Bldg.,
Goods Shed, P.D'Mello Road, Wadi Bunder,
Mumbai - 400010
Email: aporrc@cr.railnet.gov.in

P32732

Affected Person: Ms Shikha Mehra, a person with 100% Visual Impairment

1. Gist of Complaint:

The complainant filed a complaint dated 21.10.2021 regarding not issuing Joining Letter by RRC, Central Railway to Ms Shikha Mehra [Roll No.242042041700001 and Regn No.2480335690] for appointment to the Level 9 Post despite after document verification and medical examination against Centralised Employment Notification No.02/2018. She had appeared in the Recruitment Exam on 04.10.2018 and in Interview on 23.04.2019.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 01.12.2021 and submitted that out of the total 4625 vacancies notified, 46 were for VI candidates (15 for Blind and 31 for Low Vision). Ms. Shikha Mehra was one of the candidates called for document verification on 23.04.2019 under VI(LV) category.

2.2 Railway Board vide letter No.E(NG)II/2017/RC-2/1 Policy dated 18.04.2019 had advised to examine and re-adjust the distribution to the extent

(Page 1 of 4)

possible to ensure that adequate number of posts are available to be filled in by meritorious Blind candidates under the VI quota.

2.3 RRC CR, vide their letter dated 22.04.2019 requested to the Railway Board that as per merit order, 31 blind candidates had to be called and remaining 15 would be from Low Vision category. In that scenario, the Railway would not be able to accommodate the Blind candidates against the notified vacancies which are suitable only for low vision; and Railway Board requested to clarify whether RRC CR should strictly to as per the merit within the VI category irrespective of total Blind or Low Vision or whether the candidates should be called within VI as per Railway Board's letter dated 18.04.2019.

2.4 In response Railway Board vide letter dated 24.04.2019 advised that since the extent and scope of the specified disability can be known only after medical examination, it would not be appropriate to segregate between Blind and LV candidates within the VI category while calling for document verification. Hence, VI candidates should be called for document verification and medical examination (based on 1.05 times vacancies based on merit/score obtained in the CBT examination without distinguishing between LV and Blind merit/score at this stage. Railway Board further advised that while adjustment/distribution of posts suitable for both Blind and LV sub-categories be done as advised in Board's letter dated 18.04.2019, final empanelment/posting of PwBD candidates would, of course, be based on vacancies notified and the relevant PwBD categories/sub-categories for which these vacancies/posts were available and suitable.

2.5 Accordingly, in terms of Railway Board's letter dated 24.04.2019, merit list of VI category candidates was reviewed and 46 VI candidates based on merit/score obtained in CBT examination, without distinguishing between LV and Blind, were considered for document verification and medical examination. Thus, 16 (LV) candidates, who were earlier called for Document Verification as per sub-category i.e. Blind and LV, were not considered for further process of recruitment. Ms. Shikha Mehra is also one of those 16 candidates. She had scored 64.7591 in CBT and as on date last candidate called for document verification under VI(LV) category after revision is 65.07787. Therefore, Ms. Shikha Mehra was not considered for further process of recruitment under CEN 02/2018.



3. Submissions made in Rejoinder:

The reply filed by the respondent was forwarded to the complainant vide this Court's letter dated 21.12.2021 for submission of Rejoinder, but no response was received from the complainant.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.04.2022**. The following were present:

- (1) Shri Saurabh Kumar on behalf of Ms. Shikha Mehra, both in person
- (2) Shri Ajay Raj, Assistant Personnel Officer, Central Railway for the Respondent

5. Observation/Recommendations:

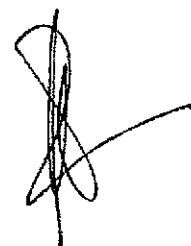
5.1 Both the parties were heard.

5.2 Railway Recruitment Board conducted examination and result was declared. Subsequently, Complainant was declared successful in the examination and was called for document verification and medical examination. Though, the Complainant's medical examination was successful, she was not given appointment letter.

5.3 Respondent submitted that total 4625 vacancies were notified. Out of which 46 were reserved for the Visually Impaired category. With objective to give adequate representation to 'Blind' divyangjan, category of 'Visually Impaired' was further divided into subcategories of 'Low Vision' and 'Blind'. 15 candidates of 'Blind' category and 31 of 'Low Vision' categories were called for medical examination in order of merit. Complainant was one of them. Later Railway Board realized that if 'Visually Impaired' candidates will be categorized into 'Blind' and 'Low Vision' it will cause injustice because actual disability can only be known after medical examination. Hence, it was decided to create a merit list without making sub categories of 'Blind' and 'Low Vision'. Thereafter, merit list of 'Visually Impaired' candidates was created without sub categories of 'Blind' and 'Low Vision'. In new merit list, the Complainant could not qualify and hence, appointment letter was not issued to him. As per new merit list, Cut off marks are 65.07787 and Complainant's marks are 64.7591.

5.4 During online hearing, Respondent apprised this Court that all 46 vacancies reserved for Visually Impaired category have now been filled.

5.5 The issue needs to be examined under Section 34 of Rights of Persons with Disabilities Act, 2016. This Court concludes that the first merit list of



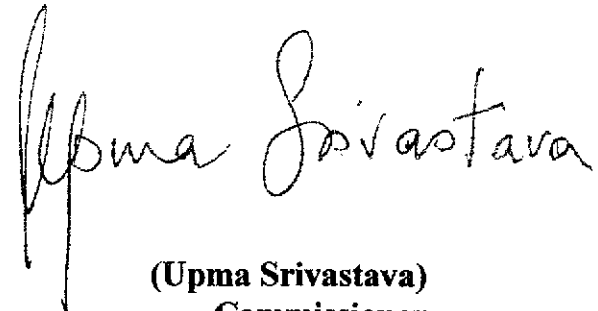
Visually Impaired candidates issued by the Complainant was wrong and contrary to law. Section 34 of RPwD Act lays down not less than 4% vacancies shall be reserved and out of which 1% shall be reserved for divyangjan with 'Blindness and Low Vision'. For the purpose of reservation, Section 34 considers sub categories of 'Blind' and 'Low Vision' as one single category. The provision does not consider 'Low Vision' and 'Blind' as two separate categories. Law does not bifurcate 1% reservation among Blind and Low Vision categories.

5.6 Respondent, while preparing first merit list of Visually Impaired candidates sub-divided 'Visually Impaired' category into 'Blind' and 'Low Vision' and hence, the Respondent ended up preparing two separate merit lists, one of Blind category and another of Low Vision category. The action of the Respondent was not in consonance with Section 34. Respondent submitted that it was done to give enough representation to Blind candidates.

5.7 Later another merit list of 'Visually Impaired' candidates was prepared, without distinguishing 'Blind' and 'Low Vision'. In first merit list Complainant qualified and was called for medical test. In second merit list, the Complainant could not be selected. Since the merit list prepared second time was in consonance with Section 34 of the RPwD Act, 2016 and all vacancies have been filled by Visually Impaired candidates, hence, intervention of this Court in the present Complaint is not warranted.

5.8 Accordingly the case is disposed off.

Dated: 13.05.2022



(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: 13059/1023/2022

Complainant: Shri Sanjeev Kumar
Divisional Railway Manager Office
Near DO Batti, Shastri Nagar
Ratlam, Madhya Pradesh – 457007
Mob: 09691031048

R32694

Respondent: The Divisional Rail Manager
Divisional Rail Manager Office
Near DO Batti, Shastri Nagar
Ratlam, Madhya Pradesh – 457007
E-mail: < srdcm.rtm@wr.railnet.gov.in> < srdcm.rtm@wr.railnet.gov.in>
PH: 07412-230715

R32695

Complainant: 40% Visual Impairment

GIST of the Complaint:

प्रार्थी श्री संजीव कुमार, कनिष्ठ लिपिक का अपनी शिकायत दिनांक 30.12.2021 में अनुरोध किया है कि कार्यालय के कार्य के लिए उन्हें आवश्यक सॉफ्टवेयर और Low Vision Device तथा उचित ट्रेनिंग दिलवाई जाए।

2. The matter was taken up with the Respondent vide letter dated 04.02.2022 under Section 75 of the RPwD Act, 2016 but despite reminder dated 17.03.2022, no response has been received from the respondent. Therefore, hearing scheduled on 28.04.2022.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.04.2022. The following were present:

- Shri Sanjeev Kumar – complainant
- Shri Deepak Parmar, DPO Ratlam on behalf of respondent

....2....

Observation/Recommendations:

3. Complainant submits that he was appointed under disability quota. He was appointed in DRM office on the post of Junior Clerk in 'Salary department'. He has submitted multiple grievances –

- a) Because of the nature of his disability he is not able to read smaller words, because of which he is not able to discharge his functions efficiently.
- b) He is being assigned 24 bills-unit which is over burdening.
- c) Proper training has not been given to him

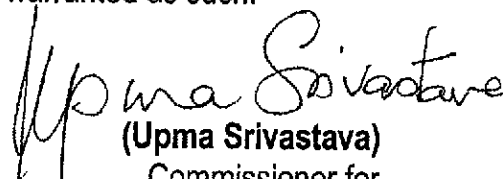
4. Respondent submits that after receiving the Complaint following steps were taken by the Respondent –

- a) He was transferred from Salary Cell to RP Cell. He assumed charge in RP Cell w.e.f. 12.04.2022. On previous occasion, he was transferred to Salary Cell on his own request.
- b) He has been nominated for Special Training Programme which is to be held in Jodhpur.
- c) He has been asked about specific software which he wants to read small letters

5. During online hearing, Complainant informed this Court that all his grievances have now been resolved and he has no problem as on the date of hearing.

6. Intervention of this Court in the present Complaint is not warranted as such.

7. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.05.2022



Extra (123)

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. 12979/1092/2021

Complainant:

Shri Ranvir Kumar, S/o Late Ramanand Roy
Village – Jethulee, Post: Kachcheergah,
PS – Nadi, District – Patna – 803201 (Bihar)
Email: ranvirkumar2013@rediffmail.com
Mobile No.9954246251

P32867

Respondent:

(1) General Manager - East Central Railway;
Hajipur; District: Vaishali-844101(Bihar);
Email: gm@ecr.railnet.gov.in

P32868

(2) Divisional Railway Manager,
DRM Office , East Central Railway, Danapur,
P.O.-Khagaul, District : Patna – 801105 (Bihar)
Email: drm@dnr.railnet.gov.in

P32869

Affected Person: The Complainant himself, a person with 50% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 03.11.2021 regarding validity of Railway Concessional Photo ID Card [Photo ID Card] to be co-terminus with that Concession Certificate.

1.2 He submitted that he had been issued a Photo ID Card No.002030 dated 08.07.2021 by ECR, Danapur having validity by 07.07.2026, whereas as per Para 1.iii Commercial Circular No.64 issued by Railway Board it is clearly mentioned that the validity should be according to the Concession Certificate. Accordingly, he vide letter dated 23.07.2021, had requested the Sr.DRM/ECR, Danapur for necessary modification in the said Photo ID Card, but no action was taken on his request. He also had filed a complaint on CPGRAMS Portal of Railway, but his complaint was disposed off in terms of the old Circular.

(Page 1 of 3)

2. Submission made by the Respondent:

2.1 For Respondent No.2, Assistant Commercial Manager, ECR Danapur filed their reply in Affidavit on 06.01.2022 and inter-alia admitted that the Photo ID was issued to the complainant on 08.07.2021 on the basis of the concession certificate submitted by him, as per which the claimant is a permanent orthopedically disabled person having 50% disability. The validity of his concession certificate is life time as he was more than 35 years of age at the time of issuance of the concession certificate. In terms Para 8 of the Commercial Circular No.18 of 2015 dated 19.03.2015, the validity of the card was five years from the date of issue or till the last date upto which the concession certificate was valid, whichever was earlier. The respondent also admitted that vide commercial circular No.64/2017 of dated 29.09.2017, the validity of the Photo ID Card is co-terminus with that of concession certificate.

2.2 Before issuance of Photo ID Card, details column valid from and valid upto..... (actual date) are mandatory field to be filled up. In case of life time validity of Concession Certificate, option of life time validity is not available in the software. It is not possible to assume life span of a person. As such, it is not clear that what the exact figure be fed in the field of **Valid up to**

2.3 The respondent further submitted that Dy. CCM/PS/ECR/HJP has been requested to define the age of a person for issuing a concession certificate in case of permanent disability having age above 35 years; and on receipt of guidelines from the Office of Dy.CCM/PS/ECR/HJP, curative action would be taken with regard to validity of such ID Card.

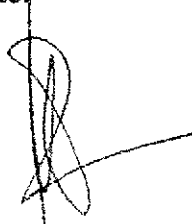
2.4 No reply was received from Respondent No.1.

3. Submissions made in Rejoinder

The complainant in his rejoinder dated 13.01.2022 reiterated his request that his Photo ID Card should be coterminous validity with that of the Concession Certificate as his age is more than 35 years.

5. Observation/Recommendations:

5.1 The complainant submitted in his written complaint that Divyangjan Rail Identity Card, also referred to as Photo ID Card, was issued by the respondent in favour of the complainant. Complainant requested to extend the validity date of the Identity Card. He submitted that the validity should be decided in accordance with the validity of Concessional Certificate.

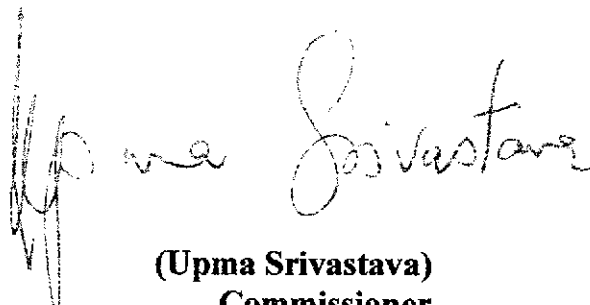


5.2 Respondent submitted that the Photo ID Card was issued on 08.07.2021. On this date Commercial Circular dated 29.09.2017 was in force. As per this Circular, validity of the Photo ID card is co-terminus with the validity of the Concession Certificate of the Applicant. In the present Complaint, validity of Concession Certificate of the Complainant is lifetime. Respondent further pointed out a discrepancy in the procedure that the Circular dated 29.09.2017 lays down that the validity shall be co-terminus with Concession Certificate. Earlier situation was not the same. Before this Circular, validity of the Photo ID Card was 5 years. Respondent was bound to follow the old procedure because the online portal maintained by the Dy. CCM asked for some details like validity period of concessional certificate. In case when concessional certificate is issued for life time, it is not possible to feed 'lifetime' span on the online portal. The anomaly has been pointed out to the office of Dy. CCM and curative action would be taken.

5.3 This Court is satisfied with the fact that the Respondent itself has identified the problem and has taken steps to rectify the same. This Court recommends that all the necessary changes in the procedure should be incorporated within 3 months of the date of this Order so that intended benefits can be delivered to divyangjan.

5.4 Accordingly the case is disposed off.

Dated: 24.05.2022



(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra

128

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. 13026/1011/2021

Complainant:

Shri Krishna Puna More,
At & Post: Telegaon,
Tehsil: Chalisgaon,
District: Jalgaon-422108 (Maharashtra)
Email: morek5121@gmail.com

132820

Respondent:

The Secretary,
Railway Board, Ministry of Railways,
Rail Bhawan, Rafi Marg,
New Delhi-110001
Email: secyrb@rb.railnet.gov.in

132821

Affected Person: The complainant, a person with 50% Locomotor Disability (Left Lower Limb)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 22.11.2021 against his non-appointment on the basis of his disability, in place of his father Shri Puna Soma More working as Gangman at Unit 4, Rohinin Station, Chalisgaon under the LARSGESS Scheme of the Indian Railways.

1.2 The complainant submitted that he cleared the written exam conducted under the Scheme, but at the time of medical test, he was declared unfit on the ground of his disability and he was not appointed.

2. Submissions made by the Respondent:

2.1 DRM Office, Central Railway filed the reply dated 22.02.2022 and inter-alia submitted that Railway Board vide letter dated 02.01.2014 had introduced a Safety related scheme for the category of Gangmen and Drivers. Under the scheme employment to a suitable ward of the employee whose application for retirement under the scheme is accepted will be considered only in the lowest recruitment grade of the respective category from which the employee seeks

(Page 1 of 3)

retirement, depending upon his/her eligibility and suitability but not in any other category. The discretion to accept the request for retirement will vest with the administration depending upon the shortage of staff, physical fitness and suitability of the ward for appointment in t category of Driver/Gangmen as the case may be. The condition of eligibility in the case of ward being considered for appointment would be the same as prescribed for direct recruitment from Open Market. The request of the employee for retirement under this scheme would be considered only if the ward is considered suitable for appointment in all respect including medical fitness.

2.2 The said scheme was modified vide Railway Board's letter dated 11.09.2010 and the nomenclature of the scheme was decided as **Liberalized Active Retirement Scheme For Guaranteed Employment for Safety Staff (LARSGESS)**. It was reiterated that the recruitment of the employee be considered only if the ward is found suitable in all respects.

2.3 Department of Empowerment of Persons with Disabilities (DEPWD) Notification No.16-15/2010-DD-III dated 29.07.2013 grants total exemption to the Railways from reservation in certain posts and partial exemption in some others. Based on the same a consolidated list of posts identified suitable for PwDs was circulated by Railway Board vide letter dated 14.02.2014. The post of Gangmen/Track-Maintainer is not a identified post for person with disabilities. Therefore, the case of the complainant Shri Krishna Puna More was regretted by Railway Administration within rules without prejudice.

3. Submissions made in Rejoinder:

No rejoinder has been filed by the complainant to the reply of the respondent.

4. Observations/Recommendations:

4.1 The central issue in this Complaint is related to non-appointment of Complainant. Complainant submits that he was entitled for appointment under LARSGESS scheme of the Respondent's establishment. The Complainant applied for the appointment to the post of 'Track Maintainer/Gangmen'. Respondent conducted written examination which the Complainant qualified. However, in medical examination he was declared unfit.

4.2 Respondent submitted that Department of Empowerment of Persons with Disabilities had granted complete exemption to the Respondent establishment in certain posts. Based upon this exemption, consolidated list of posts identified


suitable for divyangjan, dated 14.02.2014 was issued by the Respondent establishment. As per that list, post of Track Maintainer/Gangmen is not identified suitable for divyangjan. Hence, the Complainant was not appointed against the post.

4.3 This Court agrees with the decision of the Respondent to not identify the post of 'Track Maintainer/Gangmen' for divyangjan. Job of Track Maintainer/Gangmen comprises of inherent dangers to life for divyangjan as well as non-divyangjan. In case of divyangjan, level of such dangers gets aggravated. Any divyang employee is assigned duty near railway track may not be able to identify approaching trains, which can cause serious injury to divyang employee.

4.4 This Court concludes that interference of this Court in present Complaint is not warranted.

4.5 Accordingly the case is disposed off.

Dated: 24.05.2022


(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: 13102/1022/2022

Shri Hitendra Mahendra Pandya: Complainant

V.K. Patel Street No. 01

Near Dr. Nilesh Soni, Ta Bhuj Kachchh

Gujarat-370020

Email: dgujarat@gmail.com

Mobile No: 09714421384, 09428554359

132876

Versus

The Chairman : Respondent

Baroda Gujarat Gramin Bank

Head Office Vadodara- Gujarat

Sanbhaji Ganj-3/4, Floor Suraj Plaza-1

M.P. Vadodara, Gujarat-370005

Email: hrm.ho@barodagujaratinfo.co.in

132877

GIST OF COMPLAINT

The complainant in his complaint dated 03.01.2022, submitted that both husband and wife are Persons with Disabilities. The complainant has 70% Locomotor disability whereas his wife has also 50% Locomotor disability. The complainant submitted that as per his knowledge, transfer of bank officers used to be made in five years, as per circular of the government. However, to harass him, an office assistant serving for 24 years at one place is transferred to his place whereas, three years are even not completed in his case. The complainant further submitted that the bank manager has given letters out of rules of banks to harass him. The complainant has requested CCPD Court to give directive to the respondent for transfer him near his native place.

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

3. In response, Chairman, Baroda Gujarat Gramin Bank, vide letter dated 04.03.2022, submitted that the complainant was recruited as "Part Time Messenger-cum-Sweeper" and joined the bank on 24.11.1992 and his services were converted to "Full Time Messenger-cum-Sweeper" w.e.f. 01.02.2000. The complainant was promoted to Office Assistant cadre w.e.f. 01.10.2018. The respondent further submitted that as per his request letter dated 12.11.2018, the complainant has been posted at Nagor branch w.e.f. 28.12.2018 by the Competent Authority i.e. Regional Manager, Bhuj Region (erstwhile Dena Gujarat Gramin Bank).

The respondent further stated that Competent Authority i.e. Regional Manager, Bhuj Region of the bank, considering the disability of the complainant and distance from residence to Bhuj which is approximately 5 kms (where as the distance to previous place of posting i.e. Nagor was approximately 12 kms) taking into account the location of premises i.e. on ground floor has transferred to Bhuj (Main) branch which is located at district head quarter with good medical facilities available.

The respondent further submitted that Regional Manager, Bhuj Region has been taking a very kind/sympathetic view towards the complainant and has allowed him to work from home in the wake of spread of Covid-19 for 262-days from 30.10.2020 to 18.07.2021.

4. The complainant filed his rejoinder reply dated 11.04.2022, submitted that Chairman of the bank is harassing. The complainant submitted that six clerks at his post are transferred to their desirable place. The complainant once again requested CCPD Court to transfer him to his native place.

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

- i) **Shri Hitendra Mahendra Pandya: Complainant**
- ii) **None appeared on behalf of the Respondent.**

Observations /Recommendations:

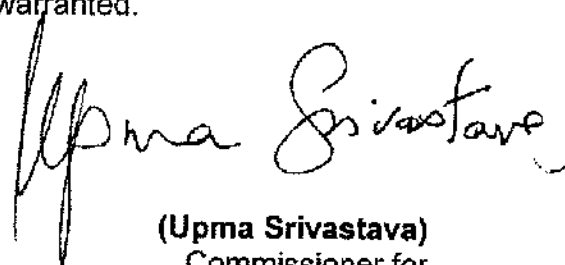
1. Complainant submits that presently he is posted at Bhuj branch. Earlier he was posted at Nagor branch. He was transferred away from Nagor because he had some information about illegal acts of the Nagore branch manager hence he was transferred out to save the manager. Complainant submits that many other employees who were posted at Nagor branch were transferred

2. Respondent submitted that the Complainant was appointed on 24.11.1992. He was promoted to Office Assistant w.e.f. 01.10.2018. Previously the Complainant was posted at Nagor branch. In year 2015 and 2018, he requested for transfer to Bhuj. His request was acceded to and he was transferred to Bhuj. His home is also situated in Bhuj and is only 5 K.Ms. away from the present place of posting in Bhuj. On the other hand, distance between Nagore, i.e. his earlier posting and his home is 12 K.Ms. The Complainant never informed the bank regarding problems he faces in Bhuj branch. He never applied for transfer away from his present place of posting.

3. During online hearing, this Court asked the Complainant about the hardship/difficulties he faces at his current place of posting because of his disability. Complainant failed to disclose any reason related to disability. This Court concludes that

in the present Complaint no cause of action related to disability is noticed, hence intervention of this Court in the present Complaint is not warranted.

4. This case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.05.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 13098/1022/2022

Shri Ashok B. Wargantiwar : Complainant
Peon

CWM/WR/LPL

Shamnagar, Ambedkar Chowk

Chandrapur-442402, Maharashtra

Email: ashokwargantiwar1234@gmail.com

Contact: 09420300997

132878

Versus

The DRM: Respondent

DRM Office, Personnel Branch,

Central Railway, Nagpur

Email: srdponqocr@gmail.com

132879

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत दिनांक 17.01.2022, में कहना है कि वह 100 प्रतिशत दृष्टि बाधित दिव्यांगजन है तथा चपरासी /खलासी के पद पर पश्चिम रेलवे में कार्यरत है। शिकायतकर्ता ने अपने स्थानान्तरण के लिए पश्चिम रेलवे से मध्य रेलवे नागपुर के लिए आवेदन किया था परंतु मंडल रेलवे प्रबंधक पिछले तीन महीनों से अनापत्ति प्रमाण पत्र जारी नहीं कर रहा है। अतः शिकायतकर्ता ने मुख्य आयुक्त दिव्यांगजन कोर्ट से विनम्र निवेदन किया है कि उनकी दिव्यांगता को देखते हुए उनका स्थानान्तरण मध्य रेलवे नागपुर करवाने की कृपा की जाए।

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

3. In response, the respondent vide letter dated 13.04.2022, submitted that the complainant has not fulfilled the requisite medical category for the post of Khalasi in Mechanical/Carriage & Wagon Department under PwDs quota.

4. In response, the complainant filed his rejoinder vide email dated 19.04.2022, submitted that his wife is suffering from heart problem and there is no one to look after her except him. The complainant is suffering heavily in daily commuting to reach the office every day in Mumbai because of his disability. His wife is working in Chandrapur Municipal Corporation (Group D). The complainant is fulfilling all the criteria even though he is not getting justice in this issue. The complainant has requested once again to CCPD Court to transfer him to the Central Nagpur division of Central Railway.

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

- Shri Ashok B. Wargantiwar: Complainant
- DRM, Central Railway: None appeared on behalf of the respondent.

Observations /Recommendations:

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

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

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

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

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



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

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

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

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

STATUTORY PROVISIONS AND GUIDELINES

7.
 - a) **ARTICLE 41 of INDIAN CONSTITUTION** – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
 - b) **SECTION 20 (5) OF RPWD ACT, 2016** – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
 - c) **SECTION 20 (2) OF RPWD ACT, 2016** – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
 - d) **O.M. No. 302/33/2/87 dated 15.02.1988** issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.
 - e) **O.M. No. 14017/41/90 dated 10.05.1990** issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
 - f) **O.M. No. 14017/16/2002 dated 13.03.2002** issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
 - g) **O.M. No. 36035/3/2013, dated 31.03.2014** issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer

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

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

i) O.M. No. 42011/3/2014, dated 08.10.2013 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

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

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

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

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

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

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

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

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

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

PRESENT CASE:

29. Complainant submits that he is working in the Respondent establishment since 13.01.2017 on the post of Peon. Presently he is posted at Carriage Repair Workshop in Mumbai. He wants transfer to Nagpur. Ground for transfer is that he and his wife, both are divyang. His wife is employed in Chandrapur City Municipal Corporation, Nagpur. If transferred to Nagpur both can look after each other.

30. Respondent submits that the Complainant's transfer application was considered and was not acceded to because he belongs to 'Low Vision' category which is not identified suitable for the post of Khalasi in Carriage & Wagon workshop.

31. Despite prodigious efforts by this Court, Respondent was reluctant in attending online hearing conducted by this Court. It is shameful on the part of the Respondent to not accede to the opportunity of participating in the online hearing. Such hearings are conducted by this Court to resolve the grievances of divyangjan. Reluctance on the part of the Respondent reflects careless attitude towards rights of divyangjan.

32. In its written Reply, Respondent submitted that the Complainant cannot be transferred to Carriage & Wagon Workshop because no post in Carriage & Wagon workshop is identified suitable for divyangjan with Visual Impairment.

33. Complainant informed during online hearing that there are several office jobs available in Carriage & Wagon workshop, which can be performed by divyangjan with Visual Impairment. Complainant also submitted that there are other divyang employees with 'Visual Impairment' who are performing office jobs in Carriage & Wagon Workshop.

34. Case of the Complainant squarely falls under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T. O.M. lays down that divyang employees may be posted near to their native place. The same guideline was reiterated in O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. In this O.M. it is provided that at the time of transfer/posting divyang employee may be given preference in transfer/posting. Objective of these guidelines is to provide an environment to divyang employee where they can perform and achieve desired results.

35. This Court recommends that the Respondent shall transfer the Complainant to office situated in Nagpur. If no post is suitable for divyangjan in Carriage & Wagon workshop, he may be adjusted at some other post which is identified suitable for Visually Impaired candidate. Respondent shall also endeavour to adjust the Complainant in any department situated in Nagpur, other than Carriage & Wagon Workshop, if vacancies are available there.

36. 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.

37. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.05.2022



(141)

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: 13071/1023/2022

Complainant: Shri Krishan Kumar Verma
Scientific Officer – F
A-11, Kailas Building, Anushakti Nagar
Mumbai – 400094
Email: <vermakk@barc.gov.in>
Mob: 09969120502

132882

Respondent: The Director
Bhabha Atomic Research Centre
Central Complex, Trombay, Mumbai – 400085
Email: <estt1@barc.gov.in>
Mob: 022-25592739

132883

Complainant: 82% locomotor disability

GIST of the Complaint:

Complainant Shri Krishan Kumar Verma, Scientific Officer-F vide complaint dated **22.12.2021** submitted that he had applied for LTC approval before starting journey and Department had given approval on account of PwD as per Rule. After completion of LTC journey, he had submitted claim on mileage basis and he has also submitted petrol & toll receipts as documentary proof of journey asked by Department. He further submitted that department has settled amount on petrol & toll receipts on documentary proof but claim has not paid as per kilometres travelled while LTC is sanctioned for mileage basis.

2. The matter was taken up with the Respondent vide letter dated **04.02.2022** under Section 75 of the RPwD Act, 2016.

3. Dy. Establishment Officer, Bhabha Atomic Research Centre vide letter dated **03.03.2022** inter-alia submitted that there is no provision for grant of mileage allowance as claimed by him as per DoP&T OM No. 31011/3/2009-Estt (A) dated 28.10.2009. The LTC claim has been settled as per extant orders issued from time to time and hence there was no manipulation or harassment meted out to the complainant.

...2...

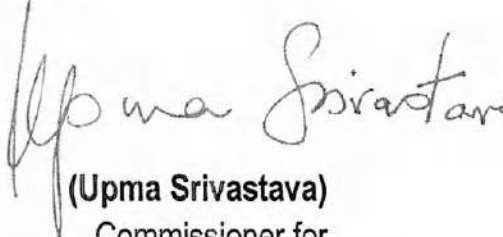
4. Complainant vide rejoinder dated **31.03.2022** inter-alia submitted that it is clearly mentioned in OM No. 19030/3/2008-E.IV dated 23.09.2008 para D "Mileage allowances for Journey by Road" point b)i) Mileage allowances by road journey performed in own car@ Rs. 16 per Km. in year 2008". It is a clear case of misleading the grievance officer and harassment.

Observation/Recommendations:

5. After perusal of the submissions made and documents submitted, this Court concludes that in the present complaint, the issue is not related with the discrimination on account of disability. This is purely an administrative issue.

6. No intervention of this Court in the present Complaint is warranted.

7. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.05.2022



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: 13137/1023/2022

132884

Complainant: Shri Vinod Kumar Dubey
E-mail: <vinoddubey1988.com>

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

13288

Complainant: 50% locomotor disability

GIST of the Complaint:

प्रार्थी श्री विनोद कुमार दूबे, पुस्तकालयाध्यक्ष का अपनी शिकायत दिनांक 17.02.2022 में कहना है कि उनकी पुत्री कुमारी अकिंता द्विवेदी का इलाज विवेकानन्द अस्पताल, लखनऊ से हुआ था जिसका बिल प्रार्थी ने अपने कार्यालय केन्द्रीय विद्यालय, ए.एम.सी., लखनऊ में जमा किया परन्तु अधिकारियों द्वारा उनके मेडिकल बिल को रोक लिया गया।

2. उक्त मुद्दा दिनांक 23.02.2022 को केन्द्रीय विद्यालय संगठन (मुख्यालय), नई दिल्ली से लिया गया।

3. प्रशासनिक अधिकारी, केन्द्रीय विद्यालय संगठन, नई दिल्ली ने अपने पत्र दिनांक 08.04.2022 के माध्यम से बताया है कि कथित मेडिकल बिल का भुगतान प्राचार्य, के.वि., लखनऊ द्वारा दिनांक 26.02.2022 को श्री विनोद कुमार दुबे के खाते में किया जा चुका है।

4. उपरोक्त जवाब की प्रति शिकायतकर्ता को दिनांक 12.04.2022 को टिप्पण हेतु भेजी गई थी परन्तु कोई जवाब नहीं आया।

Observation/Recommendations:

5. In light of the reply of the respondent and facts available on record, no further intervention of this Court is warranted.

6. Accordingly, the Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.05.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13070/1024/2022

Complainant: Shri Risal Singh
Tehsil & District – Charkhi
Dadri, Haryana – 127026

132886

Respondent: The Secretary (Posts)
Department of Posts, Dak Bhawan
Sansad Marg, New Delhi – 110001
E-mail: <secretary-posts@indiapost.gov.in>

132882

Complainant: 70% locomotor disability

GIST of the Complaint:

प्रार्थी श्री रिसाल सिंह का अपनी शिकायत दिनांक 05.01.2022 में कहना है कि वह दिनांक 04.10.1985 से शाखा डाकपाल के रूप में शाखा डाकघर, तिवाला में कार्य कर रहा है और वह ड्यूटी के दौरान 100 प्रतिशत दिव्यांग हो चुके हैं जिस कारण कार्य करने में असमर्थ है। प्रार्थी का आगे कहना है कि भारतीय डाक विभाग में प्रावधान है कि ड्यूटी के दौरान यदि कर्मचारी की मृत्यु हो जाती है या 100 प्रतिशत विकलांग हो जाता है तो कर्मचारी के वारिश या आश्रित को उसके स्थान पर नियुक्ति दी जाती है। प्रार्थी ने निवेदन किया है कि उनके स्थान पर उनके पुत्र को नियुक्ति दी जाए।

2. The matter was taken up with the Respondent vide letter dated 04.02.2022 under Section 75 of the RPwD Act, 2016.

3. Assistant Director General (PE-I & SCT), Department of Posts, Dak Bhawan, New Delhi vide letter dated 08th March, 2022 inter-alia submitted that as per Departmental Rules, there is no provision for engagement of dependents of any Gramin Dak Sevak on compassionate on the basis of disability of an incumbent.

4. The above reply was forwarded to the complainant on **17.03.2022** for submission of his comments/rejoinder but till date no response has been received from the complainant.

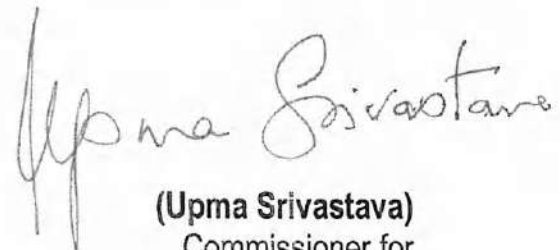
Observation/Recommendations:

5. Complainant submits that he has acquired 100% disability and it is not feasible for him anymore to perform the assigned duties. Further he submits that his son may be given employment in his place. He has also claimed that as per the existing guidelines of the Respondent establishment, such appointment can be made.

6. Respondent has submitted that there is no such guidelines in force and hence, such appointment cannot be made.

7. Though the Complainant has claimed that such guidelines exist, he has not submitted any details of such guidelines. ~~Also he has not submitted any details of such guidelines.~~ Hence, this Court concludes that no cause of action has been disclosed by the Complainant in the present Complaint. Interference of this Court in the present Complaint is not warranted.

8. The Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.05.2022



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: 13062/1023/2022

Complainant: Shri Santosh Kumar Pawan
E-mail: <santoshdbg0812@gmail.com>
Mob: 07654220490

132888

Respondent: The Director
Prasar Bharti, Akashvani
Akashvani Road, Post -- Lalbagh
Thana-Nagar, Dist-Darbhanga, Bihar -- 846004
E-mail: <ddeairdarbhanga@rediffmail.com>
Tel: 0120-2344211

132889

Complainant: 50% visual impairment

GIST of the Complaint:

प्रार्थी श्री संतोष कुमार पासवान का अपनी शिकायत दिनांक 27.12.2021 में कहना है कि वह आकाशवाणी, दरभंगा (बिहार) में चतुर्थ वर्गीय केजुअल कर्मचारी के रूप में अगस्त 2004 से सितम्बर 2021 तक लगातार 17 वर्षों से बिना कोई त्रुटी/रूकावट के कार्य कर रहा था परन्तु 01 अगस्त 2021 को छटनी कर दिया गया।

2. The matter was taken up with the Respondent vide letter dated 04.02.022 under Section 75 of the RPwD Act, 2016.

3. कार्यालयध्यक्ष, आकाशवाणी, दरभंगा का अपने पत्र दिनांक 15.03.2022 में कहना है कि श्री संतोष कुमार पासवान की नियुक्ति आकाशवाणी, दरभंगा एजेंसी के माध्यम से ठेका के आधार पर अकुशल मजदूर के रूप में मुहैया करायी जाती रही है। किसको नहीं रखना है यह निर्णय एजेंसी का है आकाशवाणी दरभंगा कार्यालय इस संबंध में किसी तरह का हस्तक्षेप नहीं करता है।

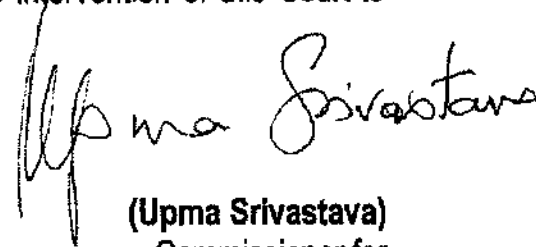
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4. प्रार्थी ने अपने पत्र दिनांक 26.04.2022 द्वारा अवगत करवाया है कि वह आकाशवाणी, दरभंगा के जवाब से संतुष्ट नहीं है तथा निवेदन किया है कि उन्हें उचित न्याय दिलवाया जाए।

Observation/Recommendations:

5. After perusal of documents available on record, Court is in the view that there is no provisions for mandatory regularization of contractual/outsourced employees as per extant Rules and instructions of Government of India. Therefore, no intervention of this Court is warranted at this stage.

6. The Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.05.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13141/1021/2022

Complainant: Shri Jitender Kaushik
Bhagini Nivedita College
Kair, Near Najafgarh, New Delhi - 110043
E-mail: <jkdip999@gmail.com>

132894

Respondent: The Principal
Bhagini Nivedita College
Kair, Near Najafgarh, New Delhi - 110043
E-mail: <gkpathakadvocate1@gmail.com>

132895

Complainants: 71% hearing impairment

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक 21.02.2022 में कहना है कि वह भगिनी निवेदिता कॉलेज में कनिष्ठ सहायक के पद पर दिनांक 14.03.2011 से कार्यरत है तथा सहायक पद काफी समय से खाली होने के बावजूद उनको प्रमोट नहीं किया गया। प्रार्थी ने आरोप लगाया है कि कॉलेज ने सन् 2015 के पश्चात् अभी तक दिव्यांगजनों का रोस्टर अपडेट नहीं किया जिसके कारण प्रार्थी का प्रमोशन नहीं हो पा रहा।

2. The matter was taken up with the Respondent vide letter dated 25.02.2022 under Section 75 of the RPwD Act, 2016.

3. In response, respondent's counsel vide letter dated 04.2022 inter-alia submitted that reservation roster will be finalized after following the due process and obtaining the approval from nodal officers at the college level. The promotions of all similar employees in the cadre are due and are due and are under consideration of the College.

4. प्रार्थी का अपने प्रति उत्तर दिनांक 18.04.2022 में कहना है कि कॉलेज से स्पष्ट करे कि वह किस निश्चित व उचित समय सीमा के अन्दर नॉन टिचिंग स्टाफ का दिव्यांगजन रोस्टर बनवाकर, प्रार्थी का प्रमोशन करवाएंगे।

5. After considering the respondent's reply & complainant's letter dated 18.04.2022, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 17.05.2022.

...2...

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

- Shri Jitender Kaushik – complainant
- Adv. Girindra Kumar Pathak on behalf of respondent

Observation/Recommendations:

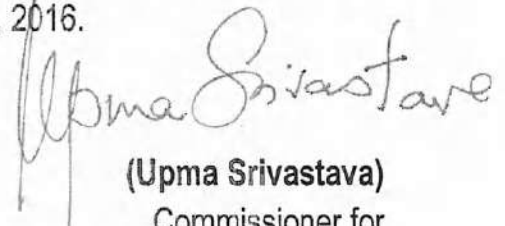
6. Complainant submits that he is employed in the Respondent establishment on the post of Junior Assistant since 14.03.2011. He submits that the college has not made PwD roster since 2015. In the accounts section, post of Assistant is vacant, however, Complainant has not been promoted. Complainant has requested this Court to Order the Respondent to update Reservation Roster within stipulated period of time.

7. Respondent submits that promotion in Group C posts have not been made since a long time due to continuous change of college authorities and change of Recruitment Rules in 2020. Promotion of all the employees of same cadre are due and are under consideration. Reservation Roster of divyangjan will be made after following due process.

8. During online hearing, Respondent informed this Court that Roster of divyang employees has already been updated and it has been posted on the college website inviting objections and suggestions. After receiving objections and suggestions, the draft will be forwarded to Delhi University for necessary approval.

9. This Court recommends that the Respondent shall update Roster of divyang employees within 3 months of receiving the copy of this Recommendation-Order. Respondent shall also file compliance report of this Recommendation Order within 3.5 months of receiving the copy of this Recommendation-Order. If the Respondent shall not file such report, this Court shall assume that the Respondent has failed to comply with the recommendations without any reason and the issue shall be reported to the Parliament as per relevant provision of Rights of Persons with Disabilities Act, 2016.

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.05.2022



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: 13152/1021/2022

Complainant: Shri Navin Kumar Nirala
Sr. Technical Assistant
Regional Office, Ministry of Road Transfer & Highways
Patna, Bihar – 801105
E-mail: <niralacc@gmail.com>
Mob: 08604387275

132896

Respondent: The Secretary
Ministry of Road Transport & Highways
Transport Bhawan, 1, Parliament Street
New Delhi – 110001
E-mail: <secy-road@nic.in>
Tel: 011-23714104

132897

Complainant: 40% hearing impairment

GIST of the Complaint:

प्रार्थी श्री नवीन कुमार निराला का अपनी शिकायत दिनांक 12.02.2022 में कहना है कि वह दिनांक 23.12.2016 से सड़क परिवहन एवं राजमार्ग मंत्रालय में वरिष्ठ तकनीकी सहायक, समूह 'ख' के पद पर सेवारत है तथा 01.01.2022 को 05 वर्षों की आपेक्षित अर्हत सेवा पूरी कर चुके हैं तथा सहायक अभियंता सिविल समूह 'ख' राजपत्रित भर्ती नियम-2012 के अनुसार सहायक अभियंता सिविल समूह ख राजपत्रित ग्रेड 4200/- के पद पर रिक्ति वर्ष 2022 में पदोन्नति हेतु पात्र है। प्रार्थी का आगे कहना है कि उन्होंने दिनांक 28.01.2022 को सहायक अभियंता सिविल के पद के लिए वर्ष 2022 में पदोन्नति हेतु गठित डीपीसी पैनल में शामिल करने हेतु आवेदन सड़क परिवहन एवं राजमार्ग मंत्रालय नई दिल्ली को प्रेषित किया परन्तु अभी तक लंबित है।

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

...2....

3. Under Secretary, Ministry of Road Transport & Highways vide letter dated **30.03.2022** submitted that Shri Nirala, STA has intimated to the Ministry that he has obtained Associate Membership of the Institution of the Civil Engineers (India) [AMICE (i)] from 'The Institution of Civil Engineers (India), Ludhiana' and he had registered vide membership no. 68669 dated 10.05.2011 and passed Section 'A' exam in year 2018 and Section 'B' in the year 2020. They further submitted that earlier 03 other STAs who have obtained Associate Membership from 'The Institution of Civil Engineers (India), Ludhiana' were denied for promotion from STA to AE during the DPC held on 16.02.2021 and matter is subjudice in the CAT.

4. प्रार्थी श्री नवीन कुमार निराला का अपने प्रति उत्तर दिनांक 12.04.2022 में कहना है कि उक्त केस के अन्तर्गत नहीं आता क्योंकि द इंस्टीट्यूट ऑफ सिविल इंजीनियर्स संस्थान, लुधियाना से दिनांक 31.05.2013 के पूर्व से ही निबंधित है और उसी निबंधन के द्वारा बीटेक की उपाधी को प्राप्त किया। प्रार्थी ने अनुरोध किया है कि उन्हें सहायक अभियंता सिविल के पद पर रिक्ति वर्ष 2022 में पदोन्नति प्रक्रिया में शामिल करवाए।

5. After considering the respondent's reply dated **08.04.2022** & complainant's letter, 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 Navin Kumar Nirala – complainant
- Shri Sushant, Dy. Secretary on behalf of respondent

Observation/Recommendations:

6. Complainant submits that he is employed as Senior Technical Assistant in the Respondent establishment since 23.12.2016. He completed 5 years on this post on 01.01.2022. He submits that he is eligible for being promoted to the post of Assistant Engineer (Civil). Eligibility criterion for promotion to the post is 5 years experience on the post of Senior Technical Assistant in the Respondent establishment along with 'Associate



....3....

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Membership' in civil engineering of recognised university along with 2 weeks training given by the government organisations. Respondent shortlisted names of 6 Senior Technical Assistants for 2 weeks training in National Highways Engineering Academy. Complainant has not been shortlisted, on the other hand, another employee who is junior to the Complainant has been shortlisted. Consequences of non-shortlisting of name would be denial of promotion.

7. Respondent submits that the Complainant informed the Respondent that he got registered with the 'The Institute of Civil Engineers, Ludhiana' on 10.05.2011. He passed his exams in 2020 and obtained 'Associate Membership' of the institute. On earlier instance 3 other employees who obtained 'Associate Membership' of 'The Institute of Civil Engineers, Ludhiana' were denied promotion because of some recognition issue of that institute. Their case is still pending before CAT. Since the Complainant obtained his 'Associate Membership' from the same Institute, his case was referred to 'All India Council for Technical Education'. All India Institute of Technical Education vide letter dated 16.03.2022 informed that all those candidates who enrolled with Institutes with permanent recognition upto 31.05.2013 are eligible for consideration for government courses.

8. During online hearing Complainant submitted that the institute has informed the Respondent that the Complainant registered with the institute in 2011.

9. Respondent refuted the claims and submitted that the Complainant got registered in the institute in 2011 for Diploma course, whereas, the eligibility condition is registration in B.Tech course before 2013.

10. The main issue in this Complaint is date of registration in B.Tech course, also referred as 'Section A'. Though Complainant submitted that registration was done only ones in 2011 for both, Diploma course and B.Tech course, the Respondent insisted that the Complainant's candidature can only be considered if the institute will specifically give in writing that he was registered for B.Tech course before 2013.

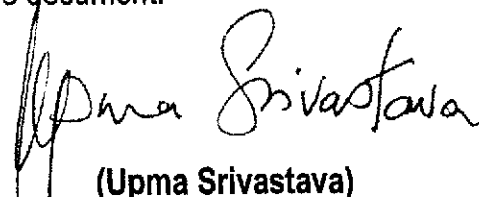


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11. Since, the eligibility condition is rule oriented and is same for divyangjan and non-divyangjan, this Court is not inclined to issue specific recommendations on this point. However, the Respondent may send weekly reminders to the institute to specifically indicate that the Complainant got registered for B.Tech course (Section 'A') before 2013. Complainant may also make endeavours to get in writing the same document.

12. The Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.05.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No.12966/1011/2021

Complainant:

Shri Abhay Kumar,
R/o A 101, Prateek Fedora,
Plot E-11, Block-D,
Sector 61, Noida-201301 (UP)
Email: abhay.nitkkr@gmail.com

122904

Respondent:

The General Manager,
(Central Recruitment & Promotion Department),
State Bank of India,
1st Floor, Tulsiany Chambers, West Wing,
212, Free Press Journal Marg,
Nariman Point, Mumbai-400021 (MH)

122905

Affected Person: Ms. Archana, a person with 86% Multiple Disability
(Locomotor Disability + Speech and Language Disability +
Mental Illness)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 24.10.2021 against the barrier created by the State Bank of India for PwD candidates leading to a situation of posts reserved for PwD candidates remaining unfilled and denial of job of Junior Associate (Customer Support & Sales) to his sister, Ms. Archana, a person with 86% Multiple disability by SBI in its Recruitment Advertisement No.CRPD/CR/2019-20/20.

1.2 The complainant submitted that out of 8000 vacancies notified, 393 were reserved for PwBD candidates and out of 393 vacancies, 76 were kept reserved for 4th category of disability i.e. Autism, SLD, MD etc. Due to Covid-19 Pandemic, online preliminary and mains tests got postponed, however, the recruitment process had ended and Zonal Office of Respondent had uploaded the result on its website. The cut off marks indicates that 4th category of PwBD have been kept out of final selection.

(Page 1 of 3)

1.3 In reply to an RTI application, the respondent submitted that in UP Circle alone, for 8 vacancies which were notified reserved; 138 PwBD applied and 80 qualified the prelims test. But only 02 PwBD were declared successful in mains test. Consequently, most of the vacancies under 4th category remained unfilled, despite the fact that suitable disabled candidates were available in large numbers. The data for other circles were denied to furnish by the respondent.

1.4 The complainant prayed to remove the barrier of minimum cut off marks and fill up the vacancies by applying Relaxation of Standard of Suitability in terms of Clause 11 of DOP&T OM No.36035/02/2017-Estt.(Res) dated 15.01.2018.

2. Submissions made by the Respondent:

The respondent in their reply dated 04.12.2021 submitted that the recruitment Junior Associates in SBI is state-wise and not zonal office-wise as mentioned in the complaint. It is not correct that no relaxation has been provided to PwD candidates. It is clearly mentioned in the advertisement No.CRPD/CR/2019-20/20 at Page-4, Para-4, that there are minimum qualifying marks in the Main Examination which will be decided by the bank. 5% relaxation in minimum qualifying marks will be given to all PwD candidates and the same relaxation was considered while processing the result. Thus, no violation.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 07.01.2022 submitted that his sister scored 55.50 marks in the main examination whereas the cut off marks were kept at 60 for D & E category PwBD candidates. The same cut-off was applied for ST, Ex-serviceman and Disabled Ex-serviceman candidates. The respondent had not declared these minimum qualifying marks at any stage prior to preparation of result. The respondent in their reply had submitted that 5% relaxation were provided to PwBD candidates, but it is clearly evident from a large number of vacancies lying unfilled that no 'reasonable accommodation' has been provided in terms of DoP&T OM No.36035/02/2017-Estt.(Res) dated 15.01.2018.

4. Observation/Recommendations:

4.1 In the lights of the submissions put up before this Court, the respondent shall opt to apply the concept of Reasonable Accommodation in terms of Section 2(y) and Section 20(2) of the RPwD Act, 2016 and make some changes to



accommodate the complainant and any such candidates with benchmark disabilities who is otherwise found eligible for appointment.

4.2 Reference can be made to DoPT OM No.36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability, if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to benchmark disability categories may be selected as per relaxed standards to fill up remaining unfilled reserved vacancies for them.

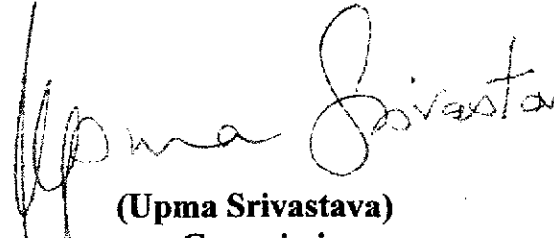
4.3 The Court recommends that the Respondent shall relax the criterion and shall promote any meritorious divyang employee who might have failed as per the present criterion.

4.4 Further, in this specific case this Court recommends that keeping in view several vacancies available for persons with disabilities in SBI and the fact that a few marks are required to declare them as qualified, reasonable accommodation may be done to give grace marks to that extent to them. This shall enable them to progress in their cases at par with other applicants and lead a life of dignity.

4.5 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order in terms of Section 76 of the RPwD Act, 2016. 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 the RPwD Act, 2016.

4.6 Accordingly the case is disposed off.

Dated: 24.05.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No. 13025/1011/2021**Complainant:**

Shri Abhay Kumar,
R/o Plot E-11, Block -D, Sector-61,
Noida-201301 (UP)
Email: abhay.nitkkr@gmail.com

132906

Respondent:

The Chief General Manager (In-Charge),
Human Resource Management Department,
Reserve Bank of India,
21st Floor, Central Office Building,
Shahid Bhagat Singh Road,
Mumbai-400001
Email: cgmhrmd@rbi.org.in

132907

Affected Person: Ms. Archana, a person with 86% Multiple Disability
(Locomotor + Speech & Language Disability + Mental
Illness)

1. Gist of Complaint:

The complainant filed a complaint dated 04.12.2021 regarding non-considering his sister Ms. Archana, a person with 86% Multiple Disability for appointment to the post of 'Assistant' on the basis of her disability by Reserve Bank of India in its Recruitment Advt. dated 23.12.2019 to fill up 51 vacancies reserved for Persons with Benchmark Disabilities (PwBD) out of a total 926 vacancies. The complainant alleged that the cut-off for the examination was not decided but was decided at the time of preparation of the result which kept the PwBD out of the recruitment. The respondent deliberately kept the vacancies reserved for PwBD unfilled by keeping the cut-off very high and prescribed separate cut-off for each section of the examination. No relaxation was provided to PwBD candidates.

(Page 1 of 3)

2. Submissions made by the Respondent:

2.1 RBI filed their reply dated 28.01.2022 and submitted that 33 PwBD candidates passed the Mains Examination, out of which 14 were selected in their social category on their own merit. As per the instructions contained in the Advt. Grace marks (14 marks) were granted to the remaining provisionally selected PwBD candidates, however, they could not score above the final cut-off of their respective social category despite being assessed on a relaxed standard i.e. grace marks (of 14 Marks). Eventually, 06 candidates were selected and remaining vacancies were treated as backlog. RBI denied the allegation that the Bank had deliberately kept the PwBD vacancies unfilled.

2.2 All candidates must obtain the minimum qualifying marks prescribed as per their social category for each test. Thus, for an OBC candidate, the sectional cut-off was 12 out of 40, i.e. 30%. The final cut-off was not decided and was determined based on the marks obtained by the last meritorious candidate who makes it to the final select list. The said approach of determining cut-off was not in breach of the instructions. The following observations of Hon'ble Supreme Court in the matter of Ramesh Chandra Shah & Others Vs. Anil Joshi and Others was placed in reliance –

“24. In view of the propositions laid down in the above noted judgment, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the Respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection...”

2.3 Ms. Archana (Roll No.1411013896 and Regn. No.1820528135) belonging to OBC category did not obtain the minimum qualifying marks 30% prescribed for OBC in T1, T3 and T4 tests. Therefore, she did not pass the Main Examination.

3. Submissions made in Rejoinder:

The complainant filed his rejoinder and reiterated his complaint.

4. Observation/Recommendations:

4.1 In the lights of the submissions put up before this Court, the respondent shall opt to apply the concept of Reasonable Accommodation in terms of Section 2(y) and Section 20(2) of the RPwD Act, 2016 and make some changes to accommodate the

complainant and any such candidates with benchmark disabilities who is otherwise found eligible for appointment.

4.2 Reference can be made to DoPT OM No.36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability, if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to benchmark disability categories may be selected as per relaxed standards to fill up remaining unfilled reserved vacancies for them.

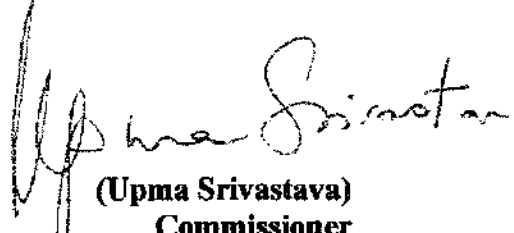
4.3. The Court recommends that the Respondent shall relax the criterion and shall promote any meritorious divyang employee who might have failed as per the present criterion.

4.4 Further, in this specific case this Court recommends that keeping in view several vacancies available for persons with disabilities in SBI and the fact that a few marks are required to declare them as qualified, reasonable accommodation may be done to give grace marks to that extent to them. This shall enable them to progress in their cases at par with other applicants and lead a life of dignity.

4.5 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order in terms of Section 76 of the RPwD Act, 2016. 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 the RPwD Act, 2016.

4.6 Accordingly the case is disposed off.

Dated: 24.05.2022


(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

Case No: 13159/1022/2022 भारत सरकार/Government of India

Shri Umesh Udhavrao khade

Helper S&T (Signal)

Email: uukhade@gmail.com

Mobile No: 09503085973

R32880

Versus

The Divisional Railway Manager

DRM Office, Personal Branch

Nagpur Division, Central Railway

Email: srdpongpcr@gmail.com; drm@ngp.railnet.gov.in

R32881

GIST OF COMPLAINT

प्रार्थी का अपनी शिकायत पत्र दिनांक 07.03.2022 में कहना है कि वह वर्तमान में एस. एण्ड. टी सिगनल (असिस्टेंट/हेल्पर) के पद पर नागपुर डिविजन वरारा डिपो के अंतर्गत कार्य कर रहा है। प्रार्थी 40 प्रतिशत दृष्टिबाधित दिव्यांगता से पीड़ित है। प्रार्थी का आगे कहना है कि उसका चयन आरआरसी के माध्यम से दिव्यांग कोटे के अंतर्गत हुआ था तथा मुंबई डिविजन नंदुरबार में टेलिकॉम में हेल्पर पद पर सेवा दे चुका है। प्रार्थी वरारा डिपो में नाइट ड्यूटी कर रहा है तथा ड्यूटी समाप्ति के बाद सुबह 7 बजे तक उन्हें वहीं पर रहना पड़ता है। प्रार्थी का आगे कहना है कि भांदक स्टेशन में प्रार्थी का परिवार अपने मकान में रहता है। प्रार्थी की पारिवारिक स्थिति एक दूसरे पर निर्भर है तथा प्रार्थी स्वयं भांदक स्टेशन का रहने वाला है। अतः शिकायतकर्ता ने मुख्य आयुक्त दिव्यांगजन से विनम्र निवेदन किया है कि प्रार्थी की मानसिक परेशानी/स्थिति को देखते हुए उनका स्थानांतरण भांदक स्टेशन टेलिकॉम में करने की कृपा की जाए।

2. The matter was taken up with the Respondent vide letter dated 22.03.2022 under Section 75 of the RPwD Act, 2016.

3. In response, APO (W), DRM Office, Personnel Branch, Nagpur, vide email dated 28.05.2022, submitted that the competent authority has considered his request and he has been transferred from Warora (Signal) to Bhandak Station(Tele) vide office order dated 26.04.2022.

4. The complainant did not file the reply against the rejoinder letter issued by Office of CCPD vide letter dated 28.04.2022.

Observations /Recommendations:

i) The respondent vide email dated 28.04.2022, submitted that based on the representation dated 07.03.2022 of the complainant, the complainant has been transferred at desired place vide office order dated 26.04.2022. This Court appreciates the sympathetic view taken by the respondent. Since necessary relief has already been provided, there is no need of further intervention in the matter.

ii) This case is disposed off.

(Upma Srivastava)

Commissioner for
Persons with Disabilities

Dated: 25.05.2022



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: 13018/1023/2022

Complainant: Ms. Jyoti Rekha Devi
E-mail: <jyoti_jury@rediffmail.com>

Respondent: The Commissioner for Persons with Disabilities
SIDR Buidling, Capital Hospital Campus
Unit - 6, Bhubhaneswar -- 751001

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant Ms Jyoti Rekha Devi, PA to SCPD vide complaint dated 06.12.2021 inter-alia submitted that she was initially appointed as Secretarial Asst. on contractual basic in the Office of State Commissioner for Persons with Disabilities, Odisha on 01.08.1999 and continued worked till Independent Commissioner for PwDs was appointed in 2010 and a regular office was set up. She further submitted that strength of her experience and skills/expertise, she was given an appointment to work as PA to SCPD w.e.f. 05.04.2010. She has requested that her service as the PA to SCPD be absorbed as regular cadre in the SSEPD Department with applicable regular scale of pay based.

2. The matter was taken up with the Respondent vide letter dated 09.12.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Commissioner for Persons with Disabilities vide letter dated 17.01.2022 submitted that they are not the appropriate authority to solve the problem of Ms. Jyoti Rekha, her representation is being forwarded to the Department of Social Security & Empowerment of PwDs, Odisha for consideration of the grievance.

Observation/Recommendations:

4. In the light of the above and documents available on record, this Court observed that cause of action is a purely administrative matter of State Government and there is no violation of any Rule/Guidelines/Law of the Central Government. State Commissioner has already taken necessary action.

5. The case is disposed off.

(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 25.05.2022



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: 13139/1023/2022

Complainant: Shri Rajneesh Bhatnagar
A-11/45, Sector - 18
Rohini, Delhi - 110089

132900

Respondent: The Accounts Officer (Admn)
Pay & Accounts Office (IB), Ministry of Home Affairs
D-Wing, 4th Floor, AGCR Building, ITO
New Delhi - 110002
E-mail: <paoib.del@mhg.gov.in>

132901

Complainants: 50% hearing impairment

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक निल में कहना है कि उन्होंने फैमिली पेंशन पाने के लिए प्रतिवादी को आवेदन दिया था परन्तु वरिष्ठ लेखा अधिकारी प्रार्थी के दिव्यांगता प्रमाण पत्र को नकली बताते हैं तथा फैमिली पेंशन से इंकार कर रहे हैं।

2. The matter was taken up with the Respondent vide letter dated **23.02.2022** under Section 75 of the RPwD Act, 2016.

3. In response, Sr. Accounts Officer (Admn.), Pay & Accounts office (IB) vide letter dated **08.04.2022** inter-alia submitted that their office has never called his disability certificate is forged, however, their office vide letter dated 27.01.2022 has written to Shri Rajneesh Bhatnagar that is medical certificate is not as per rule 54 (6) (iv) of CCS Pension Rule, 2021 and requested to furnish the same alongwith Income Certificate issued by Competent Authority for family pension but requisite information/certificate are still awaited.

4. प्रार्थी का अपने प्रति उत्तर दिनांक निल में अपनी शिकायत को दोहराया और निवेदन किया है कि उन्हें फैमिली पेंशन दिलवाये।

Observation/Recommendations:

5. This Court receives Complaints related to denial of Family Pension, therefore this Court is compelled to delineate the legal provisions which govern issue of Family Pension.

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6. Rule 54 of CCS (Pension) Rules, 1972 lays down provisions for Family Pension. Sub Rule 6 of Rule 54 contains provision relating to time period for which Family Pension is payable. As per the provision, Family Pension is granted in favour of son of Government Servant till the age of 25 years maximum. Similarly, in case of daughter of Government Servant, maximum period for which Family Pension is granted is till marriage or re-marriage of such daughter or until she starts earning her livelihood. However, second Proviso carves out the exception of the above rule. As per the Proviso, Family Pension is granted to son or daughter of Government Servant for life if following conditions are fulfilled –

- a) Such daughter/son is suffering from physical/mental disability; and
- b) The disability is such so as to render her/him unable to earn livelihood; and
- c) Inability to earn the livelihood is evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child.

7. **ISSUE** – Whether certificate declaring the disabled daughter/son as 'unable to earn livelihood' is necessary?

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

9. **ISSUE** - Who will issue the certificate declaring the person 'unable to earn livelihood' OR who will decide issue of inability to earn livelihood?

10. Two O.M.s, O.M. No. 1/18/01-P&PW(E), dated 30.09.2014 and O.M. No. 1/18/01-P&PW(E), dated 05.11.2015 sheds light on the history and clarify the issue. Prior to O.M. dated 30.09.2014, competent authority to issue disability certificate for the purpose of family pension was 'Medical Officer' not below the rank of 'Civil Surgeon'. Later the position was changed and Medical Board comprising of Medical Superintendent and two other members was made competent authority to issue disability certificate replacing 'Civil Surgeon'. Subsequently by O.M. dated 30.09.2014, it was decided that for issuing disability certificate the competent authority would be as specified in the guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010. For the purpose of issuing disability certificate for 'Multiple Disabilities', Medical Board was retained as competent authority.



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11. Subsequently, by O.M. No. 1/18/01-P&PW(E), dated 05.11.2015, the rule was formed that in addition to authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010, competent authority to issue disability certificate would also be any hospital or institution specified as Medical Authority by state or central government for the purpose of Persons with Disabilities Act, 1995. Hence, as per the two notifications competent authorities to issue disability certificate are –

- a) Medical Board in case of 'Multiple Disabilities' only;
- b) Authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010;
- c) Any hospital or institution specified as Medical Authority by state or central government for purpose of issuing disability certificate.

12. **ISSUE** – Can Appointing Authority decide to grant family pension by itself, in absence of Disability Certificate?


13. With respect to Appointing Authority, word used in the rule is SATISFY. Rule DOES NOT SAY that Appointing Authority can decide whether the applicant can earn his livelihood or not. Further, the rule says that such satisfaction has to be evidenced by the Certificate issued by the Medical Board.

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

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

16. **ISSUE** – When it can be deemed that the person is earning his livelihood?

17. O.M. No. 1/17/2019 P&P W (E), issued by Ministry of Personnel Public Grievances and Pension, dated 08.02.2021 settled the issue. As per the OM such disabled child shall be deemed to be not earning her/his livelihood if her/his overall income from sources other than family pension is less than the entitled family pension at ordinary rate and the dearness relief admissible thereon, payable on death of Government servant or pensioner concerned.



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18. However, O.M. does not absolve the child from producing medical certificate declaring him 'unable to earn livelihood'. Para 4 of the O.M. lays down the same. As per the Para, it is mandatory to produce medical certificate.

19. **ISSUE** – If the employee/pensioner or her/his spouse did not furnish or intimate the details of the divyang child to Pension Sanctioning Authority during their lifetime and after the death of such employee/pensioner or her/his spouse, divyang child claims family pension, whether benefit of family pension can be extended to divyang child in such case?

20. O.M. No 1/2/09-P&PW(E), dated 30.12.2009 established the basic rule that non intimation of details of divyang child by the employee/pensioner or her/his spouse does not make such child ineligible for family pension.


21. Further O.M. No. 1/18/2001-P&PW(E) dated 25.01.2016 laid down that even if divyang child obtains disability certificate after death of employee/pensioner or her/his spouse, benefits of family pension can be extended to the child on the basis of such certificate if a) the authority is satisfied that the child is unable to earn his livelihood and b) the child was suffering from the disability on the date of death of employee/pensioner or her/his spouse. The same O.M. reiterates the rule position established in O.M. 1/18/01-P&PW(E), dated 30.09.2014 that in case the child produces disability certificate of permanent disability, issued prior to the death of employee/pensioner or her/his spouse then the child need not to obtain disability certificate afresh. Hence, litmus test in such situation is that whether or not the child was suffering from disability on the date of death of the employee/pensioner or her/his spouse.

22. **ISSUE** – Procedure if family pension is granted to guardian of divyang child because of child's minor age or intellectual disability.

23. O.M. No 1/04/06 -P&PW(E) dated 31.07.2006 clears the position that in case the pension is granted to the guardian of divyang child the guardian has to produce certificate issued under National Trust Act, 1999 for his nomination/appointment for grant of family pension.

24. Respondent is recommended to consider complainant's grievance in accordance with guidelines delineated above.

25. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 25.05.2022



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: 13092/1023/2022

Complainant: Shri Amit Chatterjee
10/1, Marconi Avenue

Durgapur – 7132205, West Bengal

E-mail: <amitchatterjee181@gmail.com>

R32902

Respondent: The Chief Executive Officer

Steel Authority of India Ltd

Durgapur Steel Plant

Durgapur – 713203, West Bengal

E-mail: <chairman.sail@sail.in>

R32903

Complainant: 40% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **10.01.2022** has requested for Transport Allowance at double the normal rates with retrospective effect.

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 (Pers-T, M&E), Steel Authority of India Ltd vide letter dated **05.04.2022** inter-alia submitted that the issue of applicant Shri Amit Chatterjee has been referred to SAIL Corporate Office for consideration and once they receive the guidelines in this regard from SAIL Corporate Office, the same will be implemented in respect of the applicant.

4. Complainant vide rejoinder dated **19.02.2022** reiterated his grievance and submitted that it is not impossible that SAIL/DSP may be sanctioned Rs. 20/- per day as Transport Allowance for him but previously respondent had sanctioned Rs. 48/- per day.

[Signature]

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5. After considering the respondent's reply dated **05.04.2022** & complainant's letter dated **19.02.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.05.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.05.2022**. The following were present:

- Shri Amit Chatterjee - complainant
- Shri Smarajit Jee Jachuck, CGM (P&A); Shri R.V. Sharma, G.M. (Law); Shri M. Aggarwal D.G.M. (Law) on behalf of respondent

Observation/Recommendations:

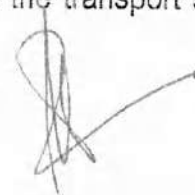
6. Complainant submits that he acquired disability during service in 1994. Earlier transport facility was provided to him by the Respondent for commutation between office and home. During Covid transport facility was withdrawn and the Complainant was given Transport Allowance at the rate of Rs. 48 per day. On 21.10.2021, wage revision for non-executives was done and Transport Allowance of the Complainant was stopped.

7. Respondent was given transport subsidy at the rate of Rs. 48 per day. After pay scale revision of non-executive, all the allowances were restricted to upper ceiling of 26.5% of basic pay covering allowances and subsidies. Later the policy was changed. By O.M. dated 21.02.2022 Department of Expenditure issued guidelines to exclude 'Double Transport' Allowance' from upper ceiling limit. Accordingly, the issue of the Complainant has been referred to corporate office of the Respondent.

8. During online hearing, Respondent further explained that in November 2021 concept of 'Perks' was introduced in the Respondent establishment. as per this concept, all the employees are given Transport subsidy of Rs. 128 per day of attending office. This roughly comes to Rs. 3327 per month. Further the Respondent informed that in April 2022 it was further decided that in addition to Transport subsidy given under 'Perks' concept, transport subsidy of Rs. 24 per day will also be continued to be paid to divyang employees of certain category.

9. Complainant, however objected and insisted that the Respondent is liable to pay Rs. 48 per day and not Rs. 24 per day.

10. Objective of providing Transport Allowance at double rate is to facilitate the divyang employees in overcoming challenges they face during commutation. From the present facts, it is clear that divyangjan are given Rs. 24 per day over and above the transport subsidy. Complainant has failed to prove requirement of Rs. 48 per day instead of Rs. 24 per day despite the fact that Rs. 24 is given over and above the transport subsidy of Rs. 128 per day.



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11. Reply of the Respondent is found to be satisfactory.
12. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 25.05.2022



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: 13091/1023/2022

Complainant: Shri Manoj Kumar
 R.Q. No. – 244 D, Loco Colony
 Khagul, Near Danapur Station, Patna, Bihar – 801105
 Mb: 09398798292

Respondent: The Divisional Railway Manager
 East Central Railway
 Danapur, Bihar
 E-mail: <ecourtcelldnr@gmail.com>

Complainants: 45% locomotor disability

GIST of the Complaint:

शिकायतकर्ता श्री मनोज कुमार का अपनी शिकायत दिनांक 25.08.2021 में कहना है कि वह करीब दो वर्षों से रेलवे में सिग्नल सहायक/हेल्पर पद पर कार्यरत है उन्हें जबरन indoor duty से हटाकर outdoor duty/line duty में लगा दिया है जो कि जोखिम भरा कार्य है। प्रार्थी का आगे कहना है कि outdoor में ड्यूटी करने के लिए लाइन पर तेजी से उठकर हटना पड़ता है क्योंकि ट्रेन तेजी से आती है और जाती है। प्रार्थी ने निवेदन किया है कि उन्हें किसी दूसरे विभाग में स्थानांतरण किया जाए।

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

3. In response, Assistant Signal & Telecom Engineer, East Central Railway vide letter dated 15.03.2022 inter-alia submitted that the concerned authority examined the issues involved in the matter and found that the complainant is a 45% locomotor employee and he was assigned indoor duty but due to certain administrative exigencies he was assigned for outdoor duty for sometimes. Now, he has been removed from outdoor duty and is working in the office of SSE/Sig-I/DNR as indoor duty.

4. Complainant vide rejoinder dated 02.04.2022 inter-alia submitted that in real fact that present disputation of work of the complainant is feeling instable and clearness or in transparent with regard to his present posting, hence the written submission of the respondent is fit to be set aside i.e. rejected.

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5. After considering the respondent's reply dated 15.03.2022 & complainant's letter dated 02.04.2022, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.05.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.05.2022**. The following were present:

- Non appeared on behalf of complainant
- Shri R.K. Singh, ASTE, Danapur on behalf of respondent

Observation/Recommendations:

6. Complainant submits that he is assigned outdoor duties near railway track which is dangerous for his life considering the nature of his disability. Earlier he was assigned indoor duties, which he performed for 22 months. He submits that he never faced any problem during that period. In order to perform outdoor duties one has to run on railway tracks, which makes such duty inherently dangerous for divyang employees. He further submits that he requested the supervisor to change his duties but he did not forward his application. He has requested to be posted away from railway track.

7. Respondent submits that after receiving the application from the Complainant, his case was reviewed and he was removed from outside duties.

8. The hearing was conducted online. Complainant was informed in advance about process to join online hearing. However, he failed to join the hearing. At the time of hearing, this Court made efforts to connect with the Complainant over phone, however, the same was switched off, hence the online hearing were conducted in the absence of the Complainant.

9. During the online hearing, Respondent informed this Court in month of March, Complainant was given indoor duties. Since then he is working indoors away from the railway track.

10. This Court expresses satisfaction with the step taken by the Respondent. At the same time this Court recommends that in future, Respondent shall always take into consideration the nature of disability of divyang employees while assigning duties. Further it is recommended that the Respondent shall always assess the risk and danger to the life of the divyang employee while assigning duties to the divyang employees. As apparent from

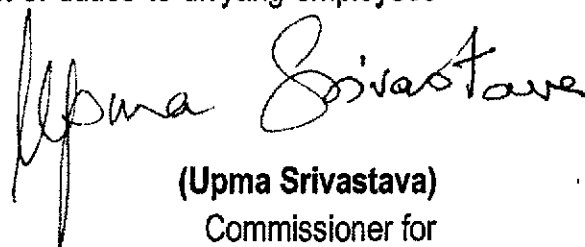


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the present case, the Complainant was assigned duties near railway track which presented great danger to his life. Respondent in addition to steps recommended above, must formulate mechanism to avoid such dangerous assignment of duties to divyang employees in future.

11. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 25.05.2022