



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. 13084/1141/2022

Complainant:

Shri Nidhin Antony E.J.
 Etturuthil House, Behind Lourdes Hospital,
 Pachalam, Kochi, Kerala-682012
 Email: nijuej@gmail.com

1234059

Respondent:

The Managing Director,
 Star Health & Allied Insurance Co. Ltd.
 No.1, New Tank Street,
 Valluvarkottam High Road,
 Nungambakkam, Chennai-600034
 Email: support@starhealth.in

1234060

Affected Person: The complainant himself, a person with 60% Locomotor Disability

1. Gist of Complaint:

The complainant filed his complaint dated 14.01.2022 regarding denial of health insurance to him by Star Health & Allied Insurance Co. Ltd. The complainant submitted that the process of denial of all insurance companies for disabled community is a violation of the Rights of Persons with Disabilities Act, 2016 and equality of human rights. He prayed to pass a favourable order that would benefit disabled community.

2. Submissions made by the Respondent:

2.1 On taking up the matter, the respondent filed their reply dated 01.03.2022 and inter-alia submitted that every insurance product can be sold by them only after obtaining prior approval of Insurance Regulatory and Development Authority of India (IRDAI). They provide better services to every proposer including a person with disability without any discrimination as per a Board approved Underwriting Policy to evaluate the risk associated with every proposal. Insurance Coverage is given to persons with disability and mental illness.

2.2 In the present case, the complainant submitted his proposal on 13.01.2022 admitting that he is suffering from Locomotor Disability. His disability certificate issued by the Medical Authority, Ernakulam, Kerala, states that he is suffering from Cerebral Palsy Right Hemiplegia. Risk evaluation was done by the panel of doctors in line with the respondent's Board approved Underwriting Policy and the proposal was rejected. But the rejection has nothing to do with the disability of the complainant and was based on pre-existing medical condition falling under Section 1B of Annexure-II of the Underwriting Policy listing out general and specific

(Page 1 of 4)

declined risks. His medical condition was found to be falling under the category of Central Nervous System. Thus, there is no discrimination on part of the respondent company.

3. Submissions made in Rejoinder:

3.1 The complainant filed his rejoinder dated 01.04.2022 and submitted that disability is of several categories, and cerebral palsy is one of the disabilities identified in the RPwD Act, 2016. Most disability conditions may be categorized as pre-existing and Insurance companies may put a waiting period to cover any medical cost incurred for that condition.

3.2 As per Regulation 8 of HIR, 2016, any proposal for health insurance may be accepted as proposed or on modified terms or denied wholly based on the underwriting policy of the concerned insurer as approved by the Board of the Insurance Company. The underwriting policy shall cover the approach and aspects relating to offering health insurance coverage to standard lives and sub-standard lives. Thus, insurance companies shall have the norms covering Persons with Disabilities (Divyangjan) in their respective underwriting policies.

3.3 IRDAI vide its circular No.IRDAI/HLT/MISC/CIR/129/06/2020 dated 02.06.2020 has instructed all the insurance companies to disclose their underwriting philosophy and approach with regard to providing health insurance coverage inter-alia to persons with disabilities.

3.4 The fact that a person with a disability may have one or more health issues is expected, and denying the policy based on the same is discrimination. IRDAI and the insurance companies should formulate a proper policy if needed for providing insurance cover to all categories of disabled people.

3.5 The objective of the circular and the principle of the undertaking is for standard disclosure and not to find means and ways to deny policy to specific categories of disabled people that the companies feel are non-profitable.

3.6 The Star Health & Allied Insurance Co. Ltd ('Company') have denied the policy without even considering waiting period, which is a violation and discrimination against disabled people like the complainant.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.06.2022**. The following were present:

- (1) Shri Niju Josh, Brother of the complainant
- (2) None for the respondent

5. Observation/Recommendations:

5.1 Complainant's brother submitted that his brother applied for health insurance policy. Respondent denied the policy on the ground of his disability.

5.2 Respondent submitted in his written reply that the complainant applied for health insurance policy on 13.01.2022. In his application form he submitted that he is Divyangjan with locomotor disability. As per established procedure of the respondent panel of doctors evaluated the risk and the application was rejected. Respondent further submitted that rejection was not related to disability but it was done on pre-

existing medical condition. As per policy of the respondent, if there are any pre-existing medical conditions then the application is rejected irrespective of divyang status of the applicant.

5.3 This Court completely agrees with the fact that Insurance is a concept based on 'pooling'. People of similar background & risk profile, i.e. those who are under acceptable levels of tolerant limits, are placed in one single group. Each member of this group contributes to cover an unwanted situation, like an accident or disease, which may arise in future. Such contribution is called 'premium'. Hence, such policies must be fair and reasonable for all the members of the group. Any person whose level of risk is higher in comparison to the other members of the group, cannot be made member of the group since it will result into discrimination with other members of the group who are at lower levels of risk. Therefore, people with higher percentage of disabilities are denied insurance products.

5.4 This basic philosophy of the Insurance business does not stop establishments from forming special insurance products for divyangjan. Divyangjan have every right to live with dignity at par with others. Divyangjan cannot be precluded from enjoying the benefits of various sectors, including the insurance sector, excluding divyangjan from obtaining benefits of insurance schemes amounts to discrimination and further amounts to exclusion of divyangjan from participation in community life, the right which is guaranteed under Section 5 of Rights of Persons with Disabilities Act, 2016.

"SECTION 5 - COMMUNITY LIFE - The persons with disabilities shall have the right to live in the community."

5.5 Further, Section 24 Rights of Persons with Disabilities Act, 2016 mandates that the appropriate government shall formulate schemes related to social security and health of Divyangjan. Section 24 is reproduced below –

"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 ...

(3) The schemes under sub-section (1) shall provide for –

(j) comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Schemes, or any other statutory or Government-sponsored insurance schemes."

5.6 This Court had an opportunity to examine the similar Complaint and delivered its recommendation in Complaint titled and numbered as DANISH MAHAJAN v. ADITYA BIRLA & ORS.; Complaint Number - 12446/1092/2020. In that 'recommendation - order' this Court recommended Insurance Regulatory Development Authority of India ('IRDAI' in short) to abide by functions of IRDAI as laid down in Section 9 and Section 14 of IRDAI Act, 1999 and issue necessary guidelines to all the insurance companies, private as well as public, to form separate pools for higher risk people and design insurance products dedicated for Divyangjan. This Court reiterates its previous recommendation and recommends the Respondent

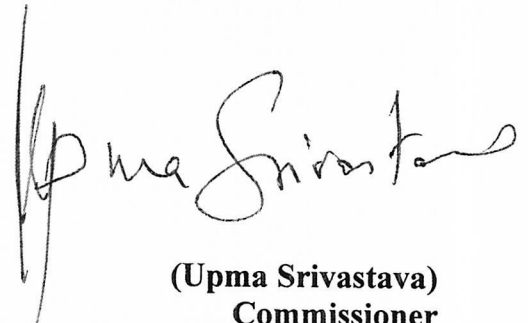
in the present Complaint as well as IRDAI to form separate pools for higher risk people and design insurance products dedicated for Divyangjan. In the previous similar Complaint, which has been referred to above, IRDAI informed this Court that it has framed policies with respect to Divyangjan, e.g., disclosure of underwriting policies for Divyangjan by insurance companies. This court further recommends that IRDAI shall ensure that its guidelines are effectively followed and insurance companies do disclose the underwriting policies which is available on the websites of the companies for easy access to Divyangjan.

5.7 Since, IRDAI is not party in the present Complaint hence, copy of this Recommendation-Order may be forwarded to IRDAI.

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

5.9 Accordingly the case is disposed off.

Dated: 01.08.2022



(Upma Srivastava)
Commissioner
for Persons with Disabilities



extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 12787/1011/2021

Complainant:

Shri Hariram Brahmadin Pande,
House No.66, 1st Lane, Old Tapadiya Nagar,
In front of Shri Gajanan Maharaj Temple,
AT VPO and Distt. Akola,
Maharashtra – 444005; Email: harirampande@rediffmail.com

P34061

Respondent:

Railway Recruitment Cell,
(Through the Chairman), Central Railway,
1st Floor, Chief Project Manager,
Conversion's Office Building, Goods Shed,
P.D'Mello Road, J. Rathod Marg, Wadi Bunder,
Mumbai – 400010; Email: aporrcc@cr.railnet.gov.in

P34062

Affected Person: The complainant, a person with 69% Locomotor Disability (Both Lower Limbs)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 06.07.2021 regarding non-selection to the Group 'D' post even after medical checkup done having twice by Central Railway.

1.2 The complainant submitted that he had applied as an OH candidate for the post of Group 'D' in Central Railway against its Employment Notification No. 03/2013 dated 08/08/2013. After passing the test, he was referred for medical examination and other tests. His pathological tests were found normal. The other candidates who passed the medical examination and other tests were appointed by the Central Railway and they had completed 5 years of their appointment whereas he had been denied the job due to his disability.

2. Submissions made by the Respondent:

Railway Recruitment Cell, Central Railway filed their reply dated 10.08.2021 and submitted that an Employment Notification No.03/2013 dated 08.08.2013 was issued for filling up 3840 erstwhile Group 'D' posts including 115 for PwDs (VH-38, OH-39 and HH-38). No vacancy was specifically mentioned for 'Muscular Dystrophy' under PwD quota. Shri Hariram Brahmadin Pande had applied as OH candidate by enclosing Disability Certificate dated 22.07.2000 indicating his disability as "Duchenne Pseudo Muscular Hypertrophy". PwD candidates are exempted from Physical Efficiency Test (PET). He qualified the written test held on 09.11.2014. He was called for Document Verification on 26.05.2016 in which he did

not produce original Disability Certificate dated 22.07.2000 and therefore, his case was kept pending by the Document Verifying Officer. He produced the required documents in supplementary document verification held on 30.08.2016. He was then sent for medical examination, however, he was found 'Unfit in PHP (OH quota) vide medical certificate No.413277 dated 07.09.2016. Shri Pande was accordingly advised of his medical unfitness by giving him an opportunity to prefer an appeal against his medical unfitness vide letter dated 30.09.2016 within prescribed limit of one month. The appeal of Shri Pande dated 30.11.2016 was considered by PCMD and re-medical board was constituted at Dr. B.R. Ambedkar Memorial Hospital, Byculla, Mumbai with one Orthopedician and two physicians. As per findings of the re-medical board, Shri Pande was made unfit for all classes. All the OH candidates were appointed in these mentioned categories under notification and no separate candidate having "Muscular Dystrophy" only has been empanelled as per records available at RRC/CR.

3. Submission made in rejoinder:

The complainant vide his rejoinder dated 02.09.2021 submitted that the respondent has in their affidavit categorically stated that the re-medical board was constituted at Dr. B.R. Ambedkar Hospital Memorial Hospital Byculla Mumbai and the date of the said medical examination is denoted as 24.11.2017. He submitted that the Government resolution published by the Ministry of Law and Justice in the Gazette dated 27.12.2016 is prior to the said constitution of the re-medical examination of the complainant. Therefore, the instant Gazette filed at Annexure-10/01 of the complainant is applicable to the Medical Board as the said resolution cannot be overlooked while considering the claim of the complainant with disabilities and when more specifically the same has been held legal by the Govt. of India. In view of above, the respondent was trying to evade themselves by giving illogical and unjustified reasons as here is no case more specifically for the respondent to demonstrate.

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

- (1) Shri Hariram Bhramdin Pandey, the complainant in person
- (2) Shri G.M. Srinivas, Chairman, Railway Recruitment Cell for the respondent

5. Observations/Recommendations:

5.1 Complainant submitted that the Respondent issued notification for filling 3840 vacancies in Group D posts. 115 were reserved for PwDs out of which 39 were reserved for Orthopedically Handicapped category. Complainant applied under OH category and qualified written examination. In medical examination he was declared unfit for the post.

5.2 Respondent refuted the claim and submitted that the Complainant suffers from 'Muscular Dystrophy'. This category was not identified separately in 1995 Act. He did not present original Disability Certificate hence his case was referred to Medical Board. Medical Board declared him unfit hence he was not appointed.



5.3 A hearing was conducted on 21.12.2021. Respondent submitted that the Complainant was found medically unfit for the post advertised, hence his candidature was rejected. Respondent was specifically asked whether medical board was informed about the fact that the post is identified suitable for divyangjan with locomotor disability and the Complainant is divyangjan with locomotor disability. Respondent could not answer the question and sought time. Till date no response was submitted by the Respondent.

5.4 With respect to argument relating to identification of post is concerned, it is indispensable to note that Muscular Dystrophy was sub category of Locomotor Disability before RPwD Act, 2016 came into force. In RPwD Act, 2016, in the schedule, 'muscular dystrophy' is expressly included in the definition of 'locomotor disability'. Hence rejection of Complainant's candidature is contrary to law. Exact same issue came up before the Hon'ble Gujarat High Court in case of Shivashankar Karunasankar Pandya Vs State of Gujarat; Judgment dated 07.06.2021 whereby the Hon'ble Court decided that 'Locomotor Disability as defined in PwD Act, 1995, includes muscular dystrophy.

Furthermore, it is to be noted that the Respondent has failed to apprise this Court about the reason of the medical board for rejecting the complainant on medical grounds.

5.5 Further, it is also important to note that in Para 12 of DoPT OM No. 36035/02/2017 dated 15.01.2018, it is expressly stated that the Medical Board conducting physical examination shall be informed that the post is identified suitable for divyangjan of particular category and the board shall examine the candidate after taking into consideration the fact of disability.

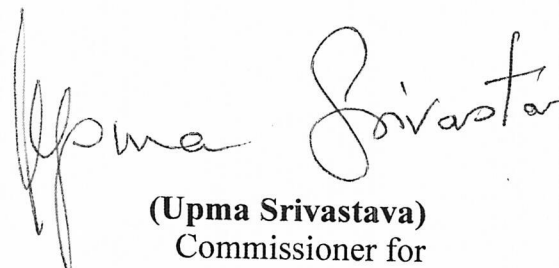
5.6 In its original reply, the Respondent did not submit as to why the Complainant was declared unfit to hold the post. Respondent was given time to submit in writing the reasons for declaring the Complainant as medically unfit, however the Respondent failed to submit the same.

5.7 Since, the Respondent failed to provide any reason for rejecting the Complainant, hence this Court is inclined to conclude that the Complainant has been discriminated against on the ground of disability.

5.8 This Court recommends that the Complainant shall be appointed against the post against which he was selected. If it is not possible for the Respondent to appoint him against the said post because of any reason, the Complainant may be adjusted against some other post, which is identified suitable for divyangjan with category of disability, to which the Complainant belongs.

5.9 The case is accordingly disposed off.

Dated: 02.08.2022


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Extra



न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No. 12976/1011/2021

Complainant:

Shri Mayank Prasad,
Nepali Patty, Azad Road,
PO: Doomdooma,
Tinsukia-786151 (Assam)
Email: mayankprasaddm1234@gmail.com

1234065

Respondent:

The Chairman & Managing Director,
Oil and Natural Gas Corporation Limited,
Deendayal Urja Bhawan, \\\nPlot No.5A-5B, Nelson Mandela Road,
Vasant Kunj, New Delhi-110070
Email: grievance@ongc.co.in

1234066

Affected Person: The complainant, a person with 60% Hearing Impairment

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 03.11.2021 regarding not considering the candidates with Hearing Impairment in the recruitment of Graduate Trainees at E-1 Level through GATE-2021 in Advt. No.3/2021 (R&P) by ONGC.

1.2 He submitted that in the Gazette Notification dated 07.01.2021 issued by Department of Empowerment of Persons with Disabilities (Divyangjan), M/o Social Justice & Empowerment, the post is identified at Post numbers 288, 289, 290, 291, 321, 322 and 323 for Hearing Impairment. But ONGC did not reserve a single post in their Advertisement No.3/2021(R&P) for Hearing Impairment (HH) out of total 33 posts for recruitment.

2. Submissions made by the Respondent:

2.1 ONGC filed their reply dated 15.12.2021 and denied the averments made in the complaint and submitted that the post of AEE (Production-Chemical) is the only post which desires qualification possessed by the complainant, however, the post is to be filled by Category 'c' disability. As per Gazette Notification dated 07.01.2021, the post of AEE (Production) is not identified suitable for any PBwD, however, ONGC voluntarily identified for PBwD of category 'c'. The complainant admittedly belongs to category 'b'.

2.2 ONGC acted in aid of various gazette notifications in order to identify posts of Divyangjan. As per the Gazette Notification dated 07.01.2021 the post of Management Trainee/Graduate Trainee/Assistant Executive Engineer in Production discipline is not identified suitable for Deaf and Hard of Hearing in the upstream oil

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and gas business. As relied by the complainant, the posts mentioned at Sl.No.288, 289, 290, 291, 321, 322 and 323 do not envisage upstream Oil * Gas business for which Petroleum Engineers and Mechanical Engineers are also eligible, besides Chemical Engineers. The posts mentioned at Sl.No.288, 289, 290 and 291 are GM/DGM level posts quite different from Management Trainee, therefore, cannot be equated. The posts at Sl.No.321 and 322 are for non-executive cadre and cannot be equated with that of Management Trainee/Graduate Trainee. The post at Sl.No.323 is of Management Trainee (Chemical Engineering) whereas the post at ONGC is Graduate Trainee i.e. AEE (Production) mostly outdoor in offshore and onshore locations and the qualification required is Mechanical/Petroleum/Chemical Engineering.

2.3 To ensure proper reservation for PwDs 91 out of 309 (i.e. 29.45%) vacancies were reserved for PwBD; 33 out of 309 i.e. 10.68% of total vacancies and 36.26% of total vacancies were reserved for PwBD for category 'b' (Deaf and Hard of Hearing).

3. Submissions made in Rejoinder:

Not rejoinder to the reply of ONGC has been found received from the Complainant.

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

- (1) Complainant: Not attended.
- (2) Respondent: Shri Prakhar Bhatnagar, Advocate; and Shri Aseem Kumar Sinha, CGM (HR)

5. Observations & Recommendations:

5.1 Complaint is filed with respect to recruitment of Assistant Executive Engineer (Production), referred as AEE (Production), in Respondent establishment. Complainant submits that the post is identified suitable for divyangjan with Hearing Impairment at Sr. No. 288, 289, 290, 291, 321, 322 and 323 of list of identified posts issued in 2021. However the Respondent establishment has not reserved the post suitable for divyangjan.

5.2 Respondent submitted that the post of Assistant Executive Engineer is not identified suitable for any category of divyangjan in the list of posts identified suitable, issued by DEPwD in January 2021. Respondent refuted the claim of the Complainant that the posts are mentioned at Sr. No. 288, 289, 290, 291, 321, 322 and 323 of 2021 list. On this point the Respondent submitted that the posts mentioned at these serial numbers are not related to Oil & Gas business, which is core business of the Respondent establishment.

5.3 The Respondent explained that the function of AEE (Production) is mostly outdoors on offshore and onshore installations. Functioning on these posts require high fitness levels, including ability to hear sounds and communications, as they involve risk of high nature. Hence, divyangjan cannot be employed on such post.

5.4 Further, the Respondent stated to be sympathetic towards rights of divyangjan. It has reserved 91 out of 309 posts for divyangjan (29%) and out of these 91, 33 are reserved for divyangjan with Deaf & Hearing Impairment.

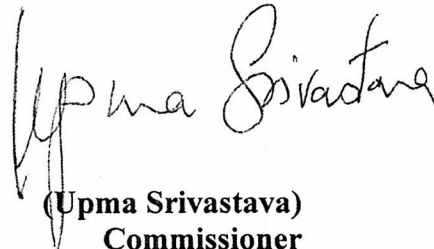
5.5 During online hearing, the Respondent submitted that the post is highly hazardous. Moreover, in 'Production' stream no post is reserved. For 'Hearing Impairment' category posts in other streams, for instance, Geologist, Chemist, Geo Physics, Programmer, Mathematician etc are identified suitable.

5.6 The post of Assistant Executive Engineer is not mentioned in the 2021 list. However, post of Junior Engineer (Production/Chemical) is mentioned in the list, which is identified suitable for 'Hearing Impaired category'.

5.7 This Court is inclined to conclude that the Reply filed by the Respondent is satisfactory. Intervention of this Court in the present Complaint is not warranted.

5.8 The case is accordingly disposed off.

Dated: 01.08.2022



**(Upma Srivastava)
Commissioner
for Persons with Disabilities**



extra

न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
 भारत सरकार / Government of India

Case No.13105/1033/2022

Complainant:

Shri Gambheer Singh,
 R/o Vill- Tiket, PO – Baramai,
 Teh – Sadabad, Distt- Hathras (Uttar Pradesh)
 Email: anilchaudhary07744@gmail.com; csou1698@gmail.com
 Mobile No. 06395478793

1234063

Respondent:

The Director,
 'Nirman IAS' Institute,
 10/14, Elgin Road, Civil Lines,
 Prayagraj, Uttar Pradesh - 211001
 Ph: 9984474888; Email: nirmanias07@gmail.com

1234064

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

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 06.01.2022 regarding rejection for free coaching and scholarship by 'Nirman IAS Institute'. He admitted to the Institute through a test held on 14.03.2021 for free coaching and scholarship. The Free Coaching and Scholarship programme was conducted by the Ministry of Social Justice & Empowerment. He alleged that his admission was cancelled by the Ministry on the ground of aged candidate while the upper age limit for visually challenged candidate for UPPCS exam is 55 years. He was approx. 49 years and 03 months old at the time of admission. No guidelines regarding age limit has been issued neither by the Ministry nor by the Institute.

1.2 The complainant prayed that he may be provided free coaching and scholarship, and maximum compensation to avoid him from an opportunity which is against his fundamental right.

2. Submissions made by the Respondent:

The respondent filed their reply dated 21.03.2022 and inter-alia submitted that the admission of the complainant was rejected in view of the fact that he did not qualify the test and the merit list. The complainant was under the impression that his admission coaching institute was rejected on ground of being the over aged candidate. It is false to say that his admission was rejected on the ground of being the over aged candidate.

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3. Submissions made in Rejoinder

No rejoinder has been found received from the complainant to the reply filed by the respondent.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.06.2022**. The following were present:

- (1) None for complainant
- (2) Advocate Rahul Ranjan, Counsel for the respondent

5. Observations and Recommendations:

5.1 Complainant submitted that he applied for scholarship in Civil Service Coaching Institute which was rejected.

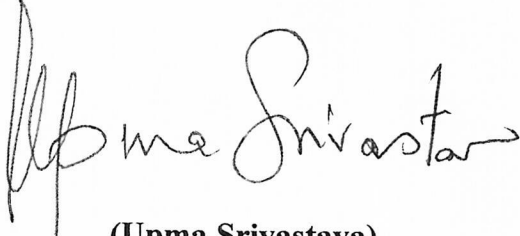
5.2 Respondent submitted that Ministry of Social Justice and Empowerment provides scholarship and offers suitable financial assistance to candidates at both pre matrix and post matrix study. Respondent establishment is empanelled to give free classes under SC/OBC Scholarship 2021 scheme. Respondent further submitted that the test was conducted to provide free coaching and scholarship. The complainant failed to qualify the examination and submission made by the Complainant that he was rejected because of his disability, is false.

5.3 During online hearing, Respondent submitted that there were total 85 seats. 70% were reserved for candidates belonging to Scheduled Castes. Complainant filled his application under 'OBC' category and scored very less marks and was rejected merits.

5.4 This Court concludes that the Complainant has failed to disclose any case of discrimination on the basis of disability. Interference of this Court in the present Complaint is not warranted.

5.5 Accordingly the case is disposed off.

Dated: 01.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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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. 12965/1092/2021

Complainant:

Shri Nisheeth Mehta,
Authorised Signatory,
Microsign Products, Mehta Terrace,
Satyanarayan Road, Bhavnagar-364001 (Gujarat)
Email: microsign@microsignproducts.com
Mobile: 9624769693

1234062

Respondents:

- (1) Central PF Commissioner,
Employees Provident Fund Organisation,
EPFO Head Office, Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi-110066
Email: cpfc@epfindia.gov.in
- (2) Department of Empowerment of Persons with Disabilities
[Through: Secretary]
5th Floor, Pt. Deendayal Antyodaya Bhawan,
C.G.O. Complex, New Delhi-110003

1234068

1234069

Affected Persons: 26 employees with disabilities of M/s Microsign Products,

1. Gist of Complaint:

1.1 Shri Nisheeth Mehta, Authorized Signatory, Microsign Products, Bhavnagar (Gujarat) filed a petition dated 30.09.2021, regarding non-receipt of contribution of EPF Share/Component for the 26 number of Persons with Disabilities employed in their Organisation from EPFO Office as per the Government Scheme - "Incentive to Private Sector for Providing Employment to Persons with Disabilities".

1.2 M/s Microsign Products is manufacturing Identification Marking System; Binding, holding and Tying System; and Plastic Fasteners Closures. For this purpose, the company has its own plant, machinery, building and all other necessary equipments & amenities. Over 50% of it's workforce are Persons with Disabilities and their salary are paid as per Government rules and Provident Fund is deducted both from the Employees and Employer side.

1.3 The Petitioner alleged that despite their best efforts, the concerned Offices i.e. EPFO and DEPWD are not giving their response; and prayed that as per the Government Circular, EPFO should pay the PF share amount which is applicable to M/s Microsign Products.

1.4 Section 35 of the RPwD Act, 2016 provides that "The appropriate government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five percent of their work force is composed of persons with benchmark disability."

2. Submissions made by the Respondents:

2.1 Respondent No.1, EPFO filed their reply dated 20.12.2021 and submitted that the complainant filed this complaint without approaching EPFO. The provisions of the RPwD Act, 2016 which came into force w.e.f. 19.04.2017, are not invocable for seeking the benefits of the Incentive Schemes of 2008 under the provision the EPF Act and the Schemes thereunder. The benefits claimed by the complainant under the provisions of the Incentive Schemes of 2008 for giving employment to disabled employees under the provisions of EPF Act and the Schemes thereunder are not governed by the provision of Section 35 of the RPwD Act, 2016. Hence the impugned proceedings are misconceived and erroneous.

2.2 After promulgation of the Incentive Scheme on 08.05.2008, to get the benefits, the complainant had applied for registration under the provisions of the EPF Act and for allotment of new PF Code vide application dated 18.08.2008 by citing that more than 50% employees of his establishment were "Persons with Disabilities". Accordingly, complainant's establishment was allotted the PF Code. Had the complainant approached EPFO, the claim for seeking benefits would have been duly considered.

2.3 After receipt of the notice from concerned office, the Enforcement Officer from District Office Bhavnagar was deputed for examining the issue and guide the complainant's Establishment for doing the needful. The Enforcement Officer reported that due to lack of awareness, the complainant had not approached EPFO to get benefit under the Scheme. EPFO vide letter dated 14.12.2021 requested the complainant to submit his claim for reimbursement of the contribution remitted by him for the Divyang Employees along with the necessary documents in the prescribed format. The complainant vide email dated 16.12.2021 had sought time to produce the relevant and necessary documents for seeking the benefits.

2.4 EPFO has undertaken to do the needful in accordance with the provisions of the above referred Scheme of 2008 after the receipt of the requisite documentary evidence from the complainant or the Establishment.

2.5 Respondent No.2, DEPWD filed their reply dated 19.05.2022 and submitted that the Scheme was launched in 2008 for providing employment to persons with disabilities which was revised in 2016 with effect from 01.04.2016. The implementing agency of the Scheme is EPFO and Employees' State Insurance Corporation (ESIC). DEPWD does not deal the reimbursement on case-to-case basis and instead provides the implementing agencies with the requisite amounts as per the Advance Claims, in accordance with Para 5(a) of the Revised Scheme Guidelines, once the Advance Claim is submitted by the implementing agencies. As per EPFO's letter dated 31.03.2022, as on 31.03.2022 a balance of Rs.44.06 Lakhs is already available with EPFO under the Scheme. Further, Advance Claims from the implementing agencies can only be considered for release once the unspent balance is fully utilized.

3. Submissions made in Rejoinder:

No rejoinder has been found received to the reply filed by EPFO by the complainant.



4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.06.2022**. The following were present:

- (1) Shri Nisheeth Mehta, complainant in person
- (2) Shri Abhishek Ranjan, Central PF Commissioner for the Respondent

5. **Observation/Recommendations:**

5.1 Complaint was filed by a private company which claimed that 50% of its work force comprise of Divyangjan. Complainant submitted that as per the Government scheme, incentive is given to private company which employs Divyangjan. As per the complainant, Government scheme dated 07.02.2018 provides that organisation which employs Divyangjan are eligible for receiving employments contribution for EPF in respect of Divyang employees. Complainant submitted that it has made repeated requests for refund of amount contributed towards EPF to Divyang employees, however, the same has not been released.

5.2 Respondent submitted that the complainant establishment is registered under incentive scheme dated 08.05.2008. Complainant itself applied for registration under that scheme on 18.08.2008. Complainant's application was approved and he was successfully registered under the scheme.

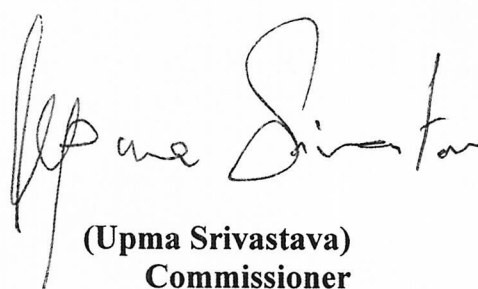
5.3 Complainant never approached respondent's establishment for refund of money paid towards EPF of divyang employees. Without approaching the respondent the complainant directly filed complaint before court of CCPD. After receiving the notice from the court of CCPD the respondent deputed district officers for examination of the issue. The officer contacted the complaint and concluded that the complainant never approached the respondent for refund of money and instead applied under 'CHAMPIONS' portal of ministry of MSME.

5.4 It was further submitted that the respondent sufficiently guided and asked the respondent to apply for refund of money along with the requisite documents. Complainant had sought time to produce the relevant documents.

5.5 During online hearing, the Complainant informed this Court that his present grievance has been effectively redressed. This Court expresses its pleasure and satisfaction with the Respondent's proactive approach. This Court concludes that there is no further requirement to intervene in the present Complaint.

5.6 Accordingly the case is disposed off.

Dated: 01.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
 भारत सरकार / Government of India

Case No. 13234/1031/2022

Complainant:

Shri Rahul Kumar Sharma,
 R/o Village: Madanpura,
 Post & Thana: Nichlaur,
 District: Maharajganj (UP) Pin:273304

134076

Respondent:

The Registrar,
 Jawaharlal Nehru University,
 New Mehrauli Road, JNU Ring Road,
 New Delhi-110067
 Email: registrar@mail.jnu.ac.in

134071

Affected Person: The complainant, a person with 40% Locomotor Disability (Left Leg)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 27.04.2022 stating that his document verification is not being done by JNU due to non-payment of fees.

1.2 The complainant has been selected for MBA course 2022-2023 under PwD category. He belongs to a financially weak family and due to financial crunch he could not deposit fees. He has submitted that his father passed away 4 years back; his brother and sister-in-laws both passed away during Covid-19. His mother is alive. He is doing part time job as well as free-lancing and his earnings are limited. He requested to grant him full fee waiver.

2. Submissions made by the Respondent:

The respondent filed their reply dated 09.06.2022 and submitted that University has already provided relaxation in the selection procedure according to the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016]. As per Ordinance of JNU, there is no provision for fee concession/fee waiver. MBA is a professional programme and the student had the knowledge of fee structure of this programme at the time of filing application. Hence it is not feasible to consider the request of the complainant. The student may be informed accordingly.

3. Submissions made in Rejoinder:

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

4. Observations/Recommendations:

4.1 The reply filed by the respondent is satisfactory. Hence, further intervention of this Court is not warranted.

4.2 Accordingly the case is disposed off.

Upma Srivastava

Dated: 01.08.2022

(Upma Srivastava)
 Commissioner
 for Persons with Disabilities



Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
 भारत सरकार / Government of India

Case No. 13083/1041/2022

Complainant:

Shri Zeeshan Ali,
 R/o OTA 29 GM Office Campus,
 Hajipur, Vaishali-844101 (Bihar)
 Email: a.zeeshan0088@gmail.com

Respondent:

The Chairman cum Managing Director,
 The New India Assurance Co. Ltd.
 Head Office: 87, M.G. Road, Fort,
 Mumbai-400001
 Email: cmd.nia@newindia.co.in

Affected Person: The complainant, a person with 90% Multiple Disability (Low Vision 75% + Hearing Impairment 93%)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 14.01.2022 alleging that the respondent neither provided assistive device nor did allow display of text in accessible format during the Phase-2 Computer Mode Online Exam conducted on 04.12.2021 by virtue of Recruitment Advertisement Ref. No.CORP.HRM/ AO/2021.24.08.2021 at the venue ION Digital IDZ Sandalpur, Patna-6 (Bihar).

1.2 The complainant submitted that due to his retina problem, he needs large magnified font with black background to read text. As it is not corrected by any lenses/magnifying glass, so he uses the magnifier as an assistive device to read the text in accessible format. The magnified font on white background of computer provided at the online exam centres looks to him blurred.

1.3 The complainant further submitted that during form filling for these exams, it was not being asked what were needed to a Divyangjan, to answer the questions in an exam, like option of choosing/mentioning assistance out of a number of assistive devices, mode of exam – online or paper based, required large font and background of computer, display etc. In online exams the respondent did not call him in advance to check the computer system to make him eligible to read having advancement of the technology. Only asked about the scribe, which was not enough to him as he could not hear the scribe. Like-wise the complainant, other divyang candidates had to face a lot of problems in the exams and when a candidate any how arranged the magnifier himself, then, it was frowned upon and had to fight tooth and nail for allowing the assistive device.

1.4 The complainant prayed for re-conducting of the exam.

2. Submissions made by the Respondent:

2.1 The Respondent filed their reply dated 16.03.2022 and submitted that – (a) the candidate sought permission for the use of Senorita 5 HD video magnifier with charger/power bank, which was not considered by the examination conducting body (IBPS).

(Page 1 of 4)

IBPS had pointed out that the said device has storage feature. The candidate was provided with the zoom feature in the screen on the day of Phase-2 examination along with the Scribe and Extra Time.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 30.03.2022 reiterated his complaint.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.06.2022**. The following were present in the hearing:

- (1) Shri Zeeshan Ali, the complainant in person
- (2) Shri B.B. Phonde, Chief Manager; and Shri Sandeep Sharma, Assistant Manager, for respondent

5. Observations and Recommendations:

5.1 Complainant submitted that he is a Divyang person with multiple disabilities. He is low vision (75%) and hearing impaired (93%). Because of the combination of these two disabilities, he cannot read the display of computers and also cannot hear the other person. He faced problems in appearing in recruitment examinations, because he could not avail the facility of scribe, nor could he watch clearly the computer-display of the online examination. Solution to this problem was the use of an assistive device known as 'video magnifier'. Another solution is magnifying the font and keep its color white on black background.

5.2 Complainant further submitted that he appeared in the examination conducted by the respondent establishment. In the examination he requested the respondent to allow the use of video magnifier, which was denied by the respondent. On the day of examination he requested the authorities to magnify the font of the computer display. The same could not be done and the background on the screen was white instead of black. He prays before this court to allow him to reappear in the examination.

5.3 Respondent submitted that the complainant sought permission for use of 'video magnifier'. The said request was denied by the examination conducting body IBPS. During the discussion of the respondent and IBPS, IBPS informed that video magnifier has storage feature, possibility of cheating exists. Further, respondent submitted that zoom feature in the screen along with scribe and extra time was given to the Complainant.

5.4 The main issue in the present Complaint was related to use of assistive devices in competitive examination. Legal position on this issue gets clearly reflected in concept of 'Reasonable Accommodation' and guidelines laid down in MoSJE O.M. dated 29.08.2018.

5.5 Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 3(5) of the RPwD Act, 2016 mandates that every government establishment shall take necessary steps for providing 'Reasonable Accommodation' to divyangjan.

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

"SECTION 3(5) - Equality and Non-discrimination - The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities."

5.6 This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognized or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyang persons, affirmative conditions have to be created for facilitating the development of Divyangjan. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjan hence the state is bound to provide these facilities to its Divyangjan. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

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

5.7 This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees.

5.8 Further, in MoSJE O.M. No. 34-02/2015-DD-III dated 29.08.2018, the concept of 'reasonable accommodation' gets reflected in Para IX and Para XIII. Para IX of the O.M. provides that when divyang candidates are allowed to take examination on computer system, they should be allowed to check the computer system one day in advance. Further the O.M. provides that the divyang candidates must not be allowed to bring their own computer system, however, they should be allowed to use 'enabling accessories' such as keyboards, customized mouse etc. Similarly, Para XIII of the O.M. lays down that divyang candidates must be allowed to use assistive devices and augmentative communication devices.

5.9 Hence, it is clear from the guidelines that divyang candidates should be allowed to use assistive devices in computer based exams. Objective of these guidelines is to provide level playing field to divyang candidates. Divyangjan face challenges in examinations because infrastructure designed for conducting examination does not cater to the essential and basic needs/requirements of divyangjan. Computer based examinations do away with some hindrances, however many other hindrances and challenges remain obstructing the journey of divyangjan. Hence, the O.M. provides for use of assistive devices to provide level playing field to divyang candidates.

5.10 Applying these guidelines and principles to the facts of present case, this Court concludes that the Respondent failed to implement the above mentioned guidelines and principles in letter and spirit. It is an acceptable fact that the Respondent is duty bound to ensure that no candidate use unfair means to qualify the examination. Hence, the

Respondent was right in not allowing the assistive device which had some kind of storage capacity. However, Respondent failed to provide magnified white colored fonts on black background. The whole situation, which caused disadvantage for Complainant, could have avoided if the Respondent would have allowed to inspect the computer system well in advance. Therefore, this Court recommends the following for future computer based examinations -:

- a) Divyang candidates shall be allowed to inspect computer systems at least one day in advance. Such inspection should not be a mere formality. If during inspection candidate points out any shortcoming in computer hardware or software, the Respondent or such other examination conducting authority shall allow the note such shortcomings in writing and shall ratify before the examination.
- b) If any divyang candidate intends to use any assistive device or augmentative communication device, the Respondent or such other examination conducting authority shall check such device at least one day before the examination and shall inform the candidate in writing whether such device can be used or not. If for any reason, such as possibility of cheating etc, Respondent or such other examination conducting authority cannot allow use of such device, the same shall be given in writing. This exercise must be completed by the Respondent or such other examination conducting authority at least one day in advance, so that divyang candidate remains aware of use of device and may also change the device.

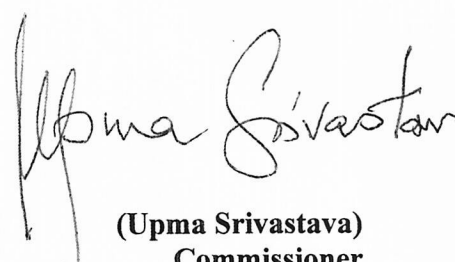
5.11 The copy of this recommendation-order shall be forwarded to all examination conducting agencies for effective implementation of non-discrimination practices in examinations.

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

5.13. Accordingly the case is disposed off.

Dated: 02.08.2022

04


(Upma Srivastava)
Commissioner
for Persons with Disabilities