



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: 13195/1023/2022

Complainant: Shri Ved Parkash
Email: <ved2010parkash@gmail.com>

134122

Respondent: Punjab & Sind Bank
Through the Managing Director
Bank House, 21, Rajendra Place
New Delhi – 110008
Email: <ho.hrd@psb.co.in>

134123

Complainant: 100% visual impairment

GIST of the Complaint:

Complainant Shri Ved Parkash, a person with visual impairment vide complaint dated **08.04.2022** submitted that he is working in Punjab & Sind Bank, Hisar and he is being harassed by the then Manager Shri Vinay Lot who is a person with locomotor disabilities. He further submitted that Manager has intentionally spoiled his promotion opportunities by ruining his APAR and debarred from participating in promotion process. He further submitted that though he is a visual challenged, yet his Manager sent him to another Bank Branches for collecting huge case and assigned him several duties on record by issuing office orders and several duties off record.

2. The matter was taken up with the Respondent vide letter dated **22.04.2022** under Section 75 of the RPwD Act, 2016.

3. Sr. Manager HR/Personnel, Punjab & Sind Bank vide letter dated **20.05.2022** submitted that duties performed by Shri Ved Prakash is Bank's routine work and as per Bank's norms. Respondent further submitted that APAR portal can be accessed by an employee through his Active Directory User ID and Password and as such there is no question of acceptance by any other employee.

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4. Complainant vide rejoinder dated **15.06.2022** inter-alia submitted that Public Sector Banks already issued guidelines to define the duties of visually impaired employees as per rules and Active Directory User ID is the employees ID that is known to all the co-workers in the Branch and it is not biometric for the privacy and security.

Observation/Recommendations:

5. Two main issues which need consideration of this Court are relating to assigning of light duties and acceptance of APAR by the manager named Vinay Lot.

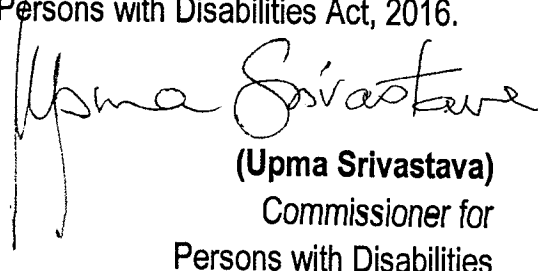
6. The Complainant is divyangjan with 100% Visual Impairment, hence he must not be assigned such duties which cannot be performed by him even though such duties are of routine nature for non-divyang employees. Section 20(2) of Rights of Persons with Disabilities Act, 2016 lays down that every employer must provide barrier free and conducive environment to divyang employees. By assigning jobs which are not impossible for divyang employee to perform, Respondent has failed to perform its duties under Section 20(2) of RPwD Act, 2016.

7. As far as issue of APAR is concerned, considering the nature and percentage of disability of the Complainant, there exists possibility of fraud which might have been committed with the Complainant.

8. This Court recommends that the Respondent shall assign light duties to the Complainant. Further this Court recommends that the Respondent shall again review the APAR relating to which the allegations are being made by the Complainant.

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

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022



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: 13182/1023/2022

Complainant: Shri Medapati S Narayana Reddy
DEO, Grade 'A' OE-II (Inward Section)
O/o the Principal Accountant General (A&E)
Vijayawada, Andhra Pradesh – 520002
E-mail: <msnarayanareddy74@gmail.com>

Respondent: The Sr. Deputy Accountant General (Admn)
O/o the Principal Accountant General (A&E)
Shillong, Meghalaya – 793001
E-mail: <agaemeghalaya@cag.gov.in>

Complainant: 45% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **16.03.2022** submitted that he had applied for CHSLE – 2015 (Combined Higher Secondary Level Exam) under PwD category and after qualified, at the time of documents verification when he had submitted disability certificate issued by Army authorities, the verifier told that they would accept disability certificate issued by only Civil Hospital and directed him to obtain the same within a week but he expressed inability to obtain and submit the same within such a short period. He further submitted that they had changed his candidature from 'UR+EXS+OH' to 'UR+EXS' and after joining, he had submitted an application in the O/o the Accountant General (A&E), Meghalaya, Shillong to change his category from 'UR+EXS' to 'UR+EXS+OH' based on the disability certificate but his request was not acceded by the respondent.

2. The matter was taken up with the Respondent vide letter dated **19.04.2022** under Section 75 of the RPwD Act, 2016.

3. Sr. Deputy Accountant General (Admn.), O/o the Accountant General (A&E), Meghalaya vide letter dated **04.05.2022** submitted that his application for change of category was sent to CAG's Office and in response, they have informed that his selection category cannot be changed from 'UR+EXS' to 'UR+EXS+OH'

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4. Complainant vide rejoinder dated **01.06.2022** reiterated his grievance and requested to change his category.
5. After considering the respondent's reply dated **04.05.2022** and the complainant's rejoinder dated **01.06.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **30.06.2022**.
6. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.06.2022**. The following were present:
 - Shri Medapati S Narayana Reddy - Complainant
 - Dy. Accountant General - Sri Anish, Sr. DAG, Meghalaya on behalf of respondent

Observation/Recommendations:

7. Complainant submits that he qualified Combined Higher Secondary Exam - 2015 conducted by SSC. At document verification stage he was informed that his disability certificate has not been issued by authorised certifying authority and was asked to submit new certificate within 7 days. Before he could obtain the disability certificate, the result was declared and he was declared qualified under 'General - Ex-serviceman' quota. He was not declared successful under disability quota. He submits that he has requested the Respondent and SSC to change his category to General - Ex-serviceman PwD' however the same was refused.
8. Respondent submits that the application of the Complainant was sent to CAG office, which has refused to change the category of the Complainant.
9. This Court concludes that the Respondent's decision to deny the change the Complainant's category to 'Person with Disability' is violative of the rights of persons with disabilities. Any person who is selected on open merit without obtaining benefits of relaxations given to divyangjan cannot be denied rights which are conferred upon divyangjan. Consequences of not changing the Complainant category to 'Person with



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Disability' would be denial of Double Transport Allowance, denial of reservation in promotion and similar other rights which are available for other divyang employees. These rights are conferred upon divyangjan so that divyangjan can be compensated for the disadvantage they face because of their disability. Selection of any divyangjan without obtaining relaxation does not ipso facto remove challenges which divyangjan face.

10. Therefore this Court recommends that the Respondent shall change the category of the Complainant to 'Person with Disability' subject to production of valid disability certificate.

11. 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.

12. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022



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भारत सरकार / Government of India

Case No: 13064/1021/2022

Complainant: Shri Sathish Mandala
Email: <sathishs8016@gmail.com>

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

The Chief Postmaster General
Telangana Circle, Hyderabad – 500001
Email: <cpmg_tlg@indiapost.gov.in>

Complainant: 53% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **28.12.2021** submitted that he has been working in Department of Posts as a Postal Assistant since 21.02.2014. He further submitted that Department of Posts has published a notification of Limited Departmental Competitive Examination for promotion to the cadre of Inspector of Posts dated 09.11.2021 without providing reservation, relaxation in qualifying marks, provision of compensatory time etc for persons with disabilities.

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 **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:

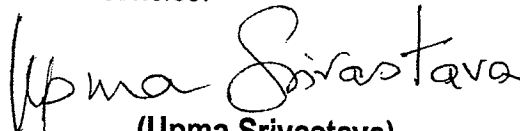
- Shri Sathish Mandala – complainant
- Shri Nirmaljit Singh, DDG, Shri Santhosh Netha Kairam Konda, Sr. Superintendent of Post Offices (Secunderabad Postal Division) and Ms. Hemavathi, Assistant Postmaster General, O/o Chief Postmaster General, Telangana on behalf of respondent

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Observation/Recommendations:

3. Complainant submits that the Respondent conducted Limited Department Competitive Examination for the promotion to the post of 'Inspector of Post'. No vacancies were reserved for divyangjan.
4. Respondent has submitted that the reservation in promotion is given in accordance with government guidelines, which are silent on the point.
5. During online hearing, this Court was further apprised that the post of 'Inspector of Post' is Group B post.
6. Impugned Limited Department Competitive Examination was notified on 10.12.2021. Respondent has submitted that on the date of notification of impugned examination guidelines on the issue of reservation in promotion were not issued by DoPT and hence, reservation in promotion could not be extended.
7. This court receives similar complaints regularly. Order have been passed by this court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. In all these Complaints, this Court recommended to extend reservation in promotion.
8. Recently, on 17.05.2022 DoPT issued guidelines relating to reservation in promotion for divyang employees. O.M. provides that reservation in promotion shall be extended. Same O.M. also lays down that the government establishments shall prepare a reservation roster of divyang employees. This Court cannot recommend to cancel the promotions which have already been executed, because it will amount to injustice with those employees who have already been promoted. However, this Court recommends that the Respondent shall maintain, cadre wise and group-wise, a separate 100-point vacancy-based reservation roster/register, as in the case of direct recruitment, for determining/effecting reservation for the PwBDs in promotion. Details of the format of reservation roster are provided in Para 10 of the O.M. Further, this Court recommends that the respondent shall maintain reservation roster since 19.04.2017, date from which the Rights of Persons with Disabilities Act, 2017 came into effect. Furthermore the Respondent is recommended to commute backlog vacancies from 19.04.2017 and initiate promotion process to these vacancies.

9. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022



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

भारत सरकार / Government of India

केस नं: 13193/1023/2022

वादी: श्री सुखदेव सिंह
148 ए, चंद्र विहार
मंडावली, दिल्ली - 110092
ई-मेल: <sukhdevs380@gmail.com>

प्रतिवादी: केन्द्रीय सरकार स्वास्थ्य योजना
द्वारा - महानिदेशक
स्वास्थ्य एवं परिवार कल्याण विभाग
निर्माण भवन, नई दिल्ली - 110011
ई-मेल: <sandhy.k@nic.in>

Complainant: 50% अस्थि बाधित

GIST of the Complaint:

प्रार्थी श्री सुखदेव सिंह का अपनी शिकायत दिनांक 04.04.2022 में कहना है कि वह शारीरिक रूप से विकलांग एवं बेरोजगार है और पूर्ण रूप से अपने पिता पर आश्रित थे। उनका कहना है कि उनके पिता सी.जी.एच.एस. CZ में ड्रेसर के पद से सेवा निवृत्त हुए थे तथा उनका देहांत दिनांक 06.05.2021 को हो गया। प्रार्थी के अनुसार उनका नाम उनके पिता के पीपीओ में उनके आश्रित के रूप में भी दर्ज है। प्रार्थी का कहना है कि उन्होंने फैमिली पेंशन हेतु दिनांक 27.08.2021 को आवेदन दिया था परन्तु अभी तक कोई जवाब नहीं आया।

2. The matter was taken up with the Respondent vide letter dated 21.04.2022 under Section 75 of the RPwD Act, 2016.

3. अपर निदेशक, के.स.स्वा.यो., केन्द्रीय अंचल, नई दिल्ली का अपने पत्र दिनांक 13.05.2022 में कहना है कि श्री सुखदेव सिंह के सभी दस्तावेज एवं फोटोग्राफ को सत्यापित करके वेतन एवं लेखा अधिकारी, के.स.स्वा.यो., न्यू राजिंदर नगर, नई दिल्ली को दिनांक 22.12.2021 को अग्रेषित किये गये थे, जोकि आपत्ति टिप्पणी के साथ दिनांक 23.12.2021 को वापिस भेजे गये। उन्होंने पत्र दिनांक 14.01.2022 को आवेदक को संबंधित अन्य आवश्यक

दस्तावेज जमा कराने हेतु सूचित किया। प्रार्थी द्वारा संबंधित अन्य आवश्यक दस्तावेज दिनांक 24.01.2022 को कार्यालय में जमा करा दिये गये। मामले की जाँच उपरान्त अपर निदेशक ने टिप्पणी करी कि "AD is only Head of Office (HOO), Head of Department (HOD) is HQ. May please be confirmed if HOO can verify." तदनुसार पत्र दिनांक 15.02.2022 एवं 05.04.2022 द्वारा वेतन एवं लेखा अधिकारी से स्पष्टीकरण माँग गया। प्रार्थी के सभी दस्तावेज एवं फोटोग्राफ को वेतन एवं लेखा अधिकारी को पत्र दिनांक 12.05.2022 को अग्रेषित किये गये।

4. प्रार्थी श्री सुखदेव सिंह का अपने प्रति उत्तर में कहना है कि जब वह पी.ओ.ए. ऑफिस गए तो उन्हें एक फार्म दिया और कहा कि पुराना फार्म गलत है तथा अगस्त या सितम्बर तक पेंशन के बारे में निर्णय लिया जा सकता है। प्रार्थी ने निवेदन किया है कि उन्हें फ़ैमिली पेंशन दिलवाई जाए।

5. After considering the respondent's reply dated 13.05.2022 & complainant's rejoinder dated nil, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.07.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.07.2022**. The following were present in the hearing:

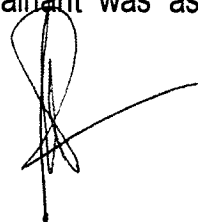
- Shri Sukhdev Singh – complainant
- Shri Tarkeshwar Sah, Office Supdt. on behalf of respondent

Observation/Recommendations:

6. The complainant has submitted that his father was the employee in the Respondent establishment. His father died on 06.05.2021.

7. The complainant also submitted that his name was already included in the PPO. He applied for family pension on 27.08.2021. Till date, he has neither received any communication from the Respondent.

8. The Respondent has submitted that after receiving the application of the Complainant. By letter dated 14.01.2022, the Complainant was asked to resubmit the

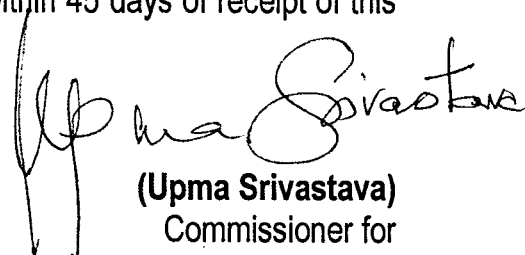


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application with requisite documents. Complainant re-submitted the application along with necessary documents on 24.01.2022. Respondent further submits that since there was no clarity on the point of verifying authority. Hence, the file was forwarded to higher authorities for seeking clarification. Finally on 12.05.2022, his application was forwarded to Pay & Accounts Office, Rajinder Nagar.

9. The Respondent has also informed this Court that from its end the name of the Complainant has been approved as pensioner and by letter dated 12.05.2022 all documents of the Complainant have been duly forwarded to Pay & Account Office, New Rajinder Nagar, New Delhi for further action. The complainant may peruse his application with the Pay & Account Office, New Rajinder Nagar, New Delhi.

10. As the complainant's grievance is pending in PAO for issuance of family pension, the case is disposed off with the direction to the respondent to take up the matter with the PAO and to intimate the final outcome of the matter to this Court within 45 days of receipt of this order.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022
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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: 13183/1023/2022

Complainant: Shri Tara Sankar Mukherjee
Staff & Welfare Inspector
Asansol Division, Asansol – 713301
Email: <tmukherjee35@gmail.com>

134113

Respondent: The Divisional Railway Manager
DRM Building, Eastern Railway
Asansol Division, Asansol – 713301
Email: <adrmghwh@er.railnet.gov.in>

134114

Complainant: 60% Hearing Impairment

GIST of the Complaint:

Complainant Shri Tara Sankar Mukherjee is working as Staff & Welfare Inspector under Sr. DPO/ASN/Eastern Railway from 11.06.2018. He vide complaint dated **17.03.2022** inter-alia submitted that he is being continuous harassed by Sr. DPO and APO by providing show cause notice and less grading given in Annual Performance Appraisal Report. He alleged that he got Good remark in ACR report on 25.01.2022, which means loss of promotion (APO exam) & MACP in future. He further alleged that during Oct. 2020, he was sick for 15 days with Corona symptoms and had applied for 15 days LAP leave but Officers marked his absent for 10 days LWP.

2. The matter was taken up with the Respondent vide letter dated **19.04.2022** under Section 75 of the RPwD Act, 2016.

3. Divisional Personnel Officer, Eastern Railway, Asansol vide letter dated **09.05.2022** has inter-alia submitted that several verbal complaints of corruption were received by the administration against Shri Mukherjee. The Railway Administration had attempted to

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examine these complaints and therefore, questioned employees with whom Sri Mukherjee had worked. The respondent further submitted that he was absent from duty from 14.09.2020 and he undergone COVID test on 17.09.2020 and on 18.09.2020, the report came "Negative" but neither he intimated the office nor reported for duty though he has been provided with official CUG SIM. Therefore, the leave sanctioning authority sanctioned LAP from 14.09.2020 to 18.09.2020 and 19.09.2020 to 28.09.2020 leave without pay. Shri Mukherjee has himself admitted that he has been served with Show Cause Notices, written warnings, he has himself produced the proof that he is a delinquent employee and repeat offender.

4. Complainant vide rejoinder dated **24.05.2022** inter-alia submitted that the words delinquent and repeat offender used in reply is highly derogatory and objectionable.

5. After considering the respondent's reply dated **09.05.2022** and the complainant's rejoinder dated **24.05.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.06.2022**.

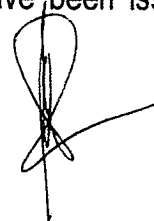
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.06.2022**. The following were present in the hearing:

- Shri Tara Sankar Mukherjee – complainant
- Shri S.K. Basu, DPO, Asansol Eastern Railway on behalf of respondent

Observation/Recommendations:

6. The complainant has submitted that APO-II and Sr. DPO threaten him to terminate his service. He was given 'Good' remark in ACR, because of which he will lose promotion and MACP.

7. The Respondent has submitted that several corruption Complaints are filed against him. Respondent started examination of such Complaints. Complainant has filed the present Complaint out of fear and guilty conscience. Further it is submitted that on several occasions, 'show cause notice' and written warnings have been issued against him. He



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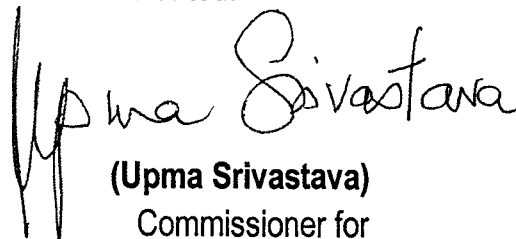
never objected to these measures. He never filed any objection or appeal against such measures. Further it is submitted that he has filed allegations against two officers, APO-II and Sr. DPO. APO-II held exemplary record and no divyang employee had ever filed Complaint against him. He has been transferred to another division. Sr. DPO is lady officer who belongs to minority community. On previous occasions, the Complainant tried to intimidate and defame her.

8. The Respondent informed that other officer, i.e. Sr. DPO against whom the Complaint has been made, is also being transferred to another location w.e.f. 30 June 2022. Since both the officers against whom the Complaint was made have been posted away from the Complainant and there is no possibility of regular interaction between those employees and the Complainant hence grievance of the Complainant is settled.

9. This Court recommends that the Respondent can conduct counseling of all the employees of the establishment so as to make them more sensitive towards basic rights of divyang employees.

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

11. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022
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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: 13194/1023/2022

Complainant: Smt. Sapna Singh
204/3, Railway Colony
Kishan Ganj, Delhi – 110007
E-mail: <shilpiagnihotri9821@gmail.com>

Respondent: Northern Railway Trainset Depot
Through Dy. Chief Manager (M)
Shakur Basti, Delhi
E-mail: <ssbdepot@gmail.com>

Complainant: 100% Visual Impairment

GIST of the Complaint:

प्रार्थी सुश्री सपना सिंह का अपनी शिकायत दिनांक 08.04.2022 में कहना है कि उनके पति श्री मोहन सिंह Northern Railway Trainset Depot में तकनीशियन ग्रेड-1 के पद पर कार्यरत हैं। उनका कहना है कि वह एवं उनके पति दोनों ही दृष्टिबाधित व्यक्ति हैं। प्रार्थी के अनुसार उनके पति के कार्यालय में काम करने वाले श्री सुभाष चंद्र (शेड मैसेंजर) व सुश्री ज्योति (अंडर ट्रेनिंग अप्प्रेन्टिस) उनके पति को तरह-तरह से मानसिक रूप से प्रताड़ित कर रहे हैं। उनके पति पर दबाव डाल कर जबरदस्ती से SC/ST Railway Employee Association की मेम्बरशिप रसीद दिनांक 17.11.2021 की कटवाई, और जबरदस्ती जय भीम के नारे लगवाने की कोशिश करते हैं व ईश्वर की पूजा ना करने का भी दबाव बनाते हैं। प्रार्थी का यह भी कहना है कि उनके पति को मरवाने के लिए दिनांक 01.03.2022 को बाहर से कुछ गुंडे भेज गए।

2. The matter was taken up with the Respondent vide letter dated 22.04.022 under Section 75 of the RPwD Act, 2016 but despite reminder dated 23.05.2022, no response has been received from the respondent. Therefore, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 07.07.2022 but due to absence of respondent, the scheduled hearing is re-scheduled to 12.07.2022.

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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.07.2022**. The following were present in the hearing:

- Mrs. Sapna Singh with Shri Mohan Singh for complainant
- Sri Sudhir Jain, ADME for respondent

Observation/Recommendations:

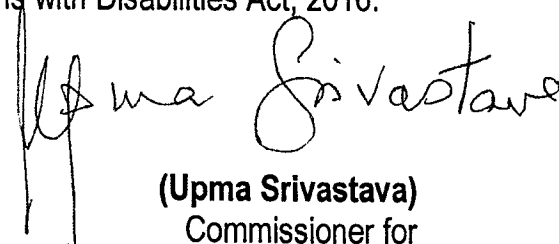
3. Complaint has been filed on behalf of the employee of the respondent establishment. It is submitted that the employees namely Subhash Chandra and Jyoti force the complainant's husband Shri Mohan Singh to do non official work against his will. It is also submitted that when Shri Mohan Singh refuses to do what is asked by the above two named employees, they threaten him to file false complaint and cases against him.

4. During online hearing, Respondent informed the Court that 4 employees are posted in the section where Shri Mohan Singh is also posted. When the Complaint was received, an enquiry committee was constituted on 11.04.2022. The committee submitted its report and concluded that no such incident happened as has been alleged by the Complainant.

5. Considering the nature and percentage of the disability of the Complainant, this Court recommends that Sri Sudhir Jain, ADME, who represented the Respondent during hearing shall conduct a personal meeting with Subhash Chandra and Jyoti and shall conduct a counselling of both these employees. Further, this Court also recommends that the two employees against whom the Complaint has been filed, namely Subhash Chandra and Jyoti shall be adjusted out to some other section so that regular interaction between Shri Mohan Singh and the two named employees does not happen in future.

6. 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.

7. The complaint is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022
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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: 13101/1023/2022

Complainant: Ms. Yogita
WZ-H-30, Block – H
Sant Nagar, Tilak Nagar
West Delhi – 110018
Mob: 08447401708

Respondent: The Director
Ledure Lightings Ltd
A-40, Sector – 58, Noida
Gautam Buddha Nagar, U.P.-201301
Mob: 9999991151, 9999991152 & 9289214499

Office of the Chief Labour Commissioner
Through the Chief Labour Commissioner
Shram Shakti Bhawan, Rafi Marg, New Delhi
E-mail: <clc-mole@nic.in>

Office of the Regional Labour Commissioner
Through the Regional Labour Commissioner
Gautam Budh Nagar – U.P. – 201301
E-mail: <rlcnoida-mole@gov.in>
Tel: 012-2401040

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी सुश्री योगिता का अपनी शिकायत दिनांक 01.02.2022 में कहना है कि उन्होंने दिनांक 30 अप्रैल 2018 को उक्त कम्पनी में ज्वाइन किया, जो कि पहले मंगोलपुरी, दिल्ली में स्थित थी उसके बाद मई 2019 में कम्पनी मंगोलपुरी से नोएडा शिफ्ट हो गई और बिना कारणवश/बिना सूचित किये प्रार्थी को नौकरी से निकल दिया। प्रार्थी का आगे कहना है कि पी.एफ. फण्ड भी उनको रिफण्ड नहीं किया गया।

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2. The matter was taken up with the Respondent vide letter dated **10.02.2022** under Section 75 of the RPwD Act, 2016 but despite reminder dated **16.03.2022**, no response has been received from the respondent. Therefore, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.06.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.06.2022**. The following were present:

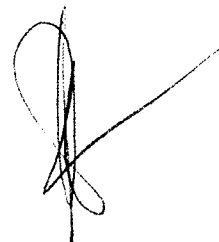
- Shri Ranjeet for complainant
- Shri Niranjana Kumar, Regional Labour Commissioner Noida for Respondent No. 2 and also on behalf of Chief Labour Commissioner & Shri Vinay Mishra, Legal Executive, Respondent No. 01 on behalf of respondents

Observation/Recommendations:

3. The complainant has submitted that she was employed in Mangolpuri, Delhi office of Respondent establishment. She was transferred to Noida office in 2019 and later she was terminated from services. She further submits that her PF amount was also not released.

4. Since the Complaint was filed against the private company hence O/o Labour Commissioner, Gautam Buddha Nagar was also made party in the case. O/o Labour Commissioner submitted that after receiving the Complaint, an investigation was conducted and it was found that the Complainant was recruited in 2019 and later on humanitarian grounds she was transferred to Noida. During Covid lockdown, the unit where the Complainant was working was shut down for 2 months. After expiry of 2 months, work resumed but the Complainant did not join. Respondent submits that the establishment where the Complainant was employed is ready to give employment to the Complainant as she was not terminated from the job.

5. On the issue of PF, Respondent submits that the Complainant can go to office and fill the form. Private establishment is ready to guide her so that she can claim her PF amount.




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6. During online hearing, Respondent No. 1 submitted that her PF issue has now been settled. It was further submitted that post Covid work has resumed in Noida office of the establishment. If the Complainant wants to join, the Respondent establishment shall employ her. Further, if the Complainant does not wish to join Respondent will give her lump sum amount to settle her dues.

7. This Court concludes that no instance of discrimination has been made out in the present Complaint. Intervention of this Court is not warranted.

8. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022

04



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: 13161/1023/2022

Complainant: Shri K Ganesaramu
Section Officer (R&I E-Office E-Dak)
3/5 NCERT, Govt. of India, Ministry of Education
Sri Aurobindo Marg, New Delhi – 110016
E-mail:<kganesaramu@gmail.com>

Respondent: The Director
National Council of Educational Research & Training
Sr. Aurobindo Marg, New Delhi – 110016
E-mail:<director.ncert@nic.in>

Complainant: 100% hearing impairment

GIST of the Complaint:

Complainant Shri K. Ganesaramu, Section Officer vide complaint dated **03.03.2022** submitted that NCERT didn't provide the exemption of duty during Covid lock down in 2020 and 2021 and illegal recovering of huge salary and 600 days EL HPL. He further submitted that no salary, no promotion, no seniority with all full financial service benefits w.e.f. 01.01.1995.

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

3. Dy. Secretary, E.II/R-II, NCERT vide letter dated **13.05.2022** submitted that Shri K. Ganesaramu was appointed as Assistant in 2009 and after completion of required qualifying service 05 years as Assistant, he was promoted to the post of Section Officer on 31.12.2014, his further promotion to Under Secretary would be considered on the basis of

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his seniority and availability of the vacancy. They further submitted that he was absconding and remained outstation from the Hqrs, New Delhi without any permission/intimation to the concerned authority since May, 2021 to 23.01.2022, accordingly, a memorandum dated 03.09.2021 was issued to him but he didn't reply to the memo nor report for duty, therefore, an order for stoppage of his pay was issued vide order dated 15.11.2021.

4. Complainant vide letter dated **06.06.2022** submitted that he is facing continuous harassment, discrimination, degradation and ill-treatment.

5. After considering the respondent's reply dated **13.05.2022** and the complainant's rejoinder dated **06.06.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **30.06.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.06.2022**. The following were present:

- Shri K Ganesaramu – Complainant alongwith Shri Bhawan Singh, Advocate
- Prof. P.K. Mandal, Secretary, NCERT with Ms. Abha Munzni, Dy. Secretary on behalf of respondent

Observation/Recommendations:

6. The complainant alleges that the Respondent is 'ill treating' divyang employees. He has not mentioned any specific incidence. He submits that no exemption was given to divyangjan from attending duties during Covid. Salary is obtained illegally, promotions are also denied. Complaint is of general nature and no specific incidence is mentioned.

7. Respondent submits that the Complainant was appointed in 2009 on the post of Assistant. After completion of 5 years of service he was promoted to post of Section Officer. Further promotion to the post of Under Secretary will be considered on the basis of seniority and vacancies. He remained absconding and remained on leave without permission since May 2021 to 23.01.2022. A memorandum was issued to him to report to duties within 15 days, however he did not reply to the O.M. and thereafter his salary was stopped by Order dated 15.11.2021.



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8. During online hearing, Respondent informed that Orders have been issued to release the salary of the Complainant.

9. On the issue of leave during Covid period both the parties have made rival contentions. Complainant submits that he informed the Respondent regarding work from home on email. On the other hand, the Respondent informed that no intimation was given by the Complainant and he was absconding and was considered 'on leave without permission' from May 2021 to 23.01.2022.

10. It is important to mention some DOPT guidelines on the issue. DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by latest O.M. dated 14.06.2021 and is still in force.

11. In O.M. dated 14.06.2021, it is enunciated that divyang employees will remain exempted from attending office and shall continue to 'work from home' till further Orders. Thereafter on 01.11.2021, DoPT issued another O.M. which did not contain any guideline/instruction w.r.t. attendance of divyang employees. Hence, it is apt to conclude that even after 01.11.2021, exemption for divyang employees continued. Thereafter DoPT issued another O.M. dated 06.02.2022 whereby it was laid down that all employees of all levels, without any exemptions shall attend office on regular basis w.e.f. 07.02.2022. Hence, it is concluded that divyang employees were exempted from attending office from 27.03.2020 till 13.02.2021 and later from 19.04.2021 till 06.02.2022.

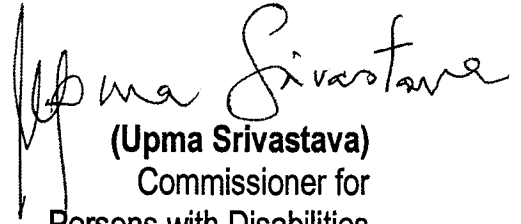


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12. This Court recommends that the Respondent shall regularise the absence of the Complainant from May 2021 to 23.01.2022 if the Complainant is able to prove that he intimated his willingness to do work from home, as claimed by him during hearing.

13. The Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022

04



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: 13179/1023/2022

Complainant: Shri G. Hemabhushanam

Father of Shri H. Denadalan, 60% mental retardation

Plot No. 1633, LIG – 2, TNHB Main Road

Velacherry, Chennai – 600042

E-mail: <ghem1959@gmail.com>

Respondent: The Principal

Controller of Communication Accounts, DOT

Tamilnadu Circle, No. 238, 7th Floor, Telephone Exchange Bldg

R.K. Mutt Road, Chennai – 600028

E-mail: <pccatn.ccatn@nic.in>

GIST of the Complaint:

Complainant Shri G. Hemabhushanam vide complaint dated 31.03.2022 inter-alia submitted that he is a pensioner of BSNL. As per him, his only son Shri H. Dheenadayaln, (60% Mental Retardation) is wholly dependent on him. He had submitted all relevant papers for sanction of family pension to his disabled son with CGMM, STR, BSNL alongwith his pension paper in 2019. He further submitted that based on the letter dated 18.06.2019 by the O/o Pr. CCA, DoT, TN, the CGMM, STR, BSNL, Chennai the competent authority, to sanction the Family Pension for his son in STR, BSNL, Chennai had sanctioned the family pension to his son vide letter dated 18.08.2019 and sent the same to CCA TN DOT, Chennai on 22.08.2019 for necessary endorsement of coauthorisation in part IV of his PPO. Though the Family Pension was duly sanctioned by the competent authority but no action was taken by the CCA, DOT, TN for the coauthorisation of his son's name in his PPO after lapse of more than 02 years. .

2. The matter was taken up with the Respondent vide letter dated **19.04.2022** under Section 75 of the RPwD Act, 2016.

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3. The Joint Controller of Communication Accounts (Admin) vide letter dated **26.05.2022** inter-alia submitted that complainant had submitted representation for co-authorization of family pension to his disabled son, his request for co-authorization of his disabled son in PPO could not be considered as he did not submit disability certificate evidencing that the disability is of such a nature so as to prevent him or her from earning his or her livelihood as stipulated under Rule 54 (6) (iv) of CCS (Pension) Rules 1972. He has requested this Court to advise the complainant to submit disability certificate which evidences that the handicap/disability is of such a nature so as to prevent him or her from earning his/her livelihood as stipulated in Rule 54 (6) (iv) of CCS pension Rules 1972 so as to enable this office to issue co-authorization in part IV of PPO.

4. Complainant vide rejoinder dated **04.06.2022** inter-alia submitted that Medical Authority had politely refused to add in the certificate because it is violative of the Statutory Provision/Mandate of PwD Act/Rules.

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.

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



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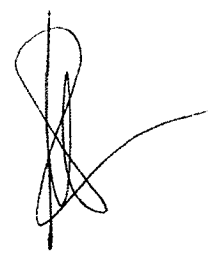
- c. Inability to earn the livelihood is evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular 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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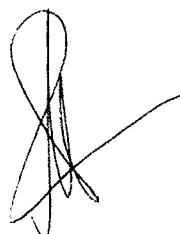
11. Subsequently, by O.M. No. 1/18/01-P&PW(E), dated 05.11.2015, the rule was formed that in addition to authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010, competent authority to issue disability certificate would also 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 BansilSoni v. Union of India, 2016 SCC OnLineGuj 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.



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15. It was held in a case reported as NarsiSambunathSuval 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?

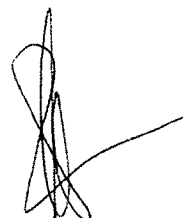
17. O.M. No. 1/17/2019 P&P W (E), issued by Ministry of Personnel Public Grievances and Pension, dated 08.02.2021 settled the issue. As per the OM such disabled child shall be deemed to be not earning her/his livelihood if her/his overall income from sources other than family pension is less than the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

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. 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.

25. 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 –



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"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 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 CASE

26. In the present complaint, stand taken by the Respondent is partly correct. Respondent is right that the disability certificate does not mention the ability of the Divyangjan to earn livelihood. However, the responsibility of the Respondent does not end here. The Respondent is duty bound to refer the case of the Complainant to medical board, which shall consider the question of earning of livelihood. In the proceeding paragraphs all the authorities which are competent to issue medical certificate declaring the ability or inability to earn livelihood have been mentioned. It has been observed by this Court that unless the government establishments do not refer the person to medical board for assessment of ability to earn livelihood, such assessment is not done by the certifying authorities on the request of the applicants.

27. Therefore, this Court recommends that the Respondent shall refer the Complainant to medical board specifically directing the medical board to assess the divyang's child ability to earn livelihood. Respondent shall also forward the copy of this Recommendation-Order to such medical board.

28. 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.

29. The Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022

04



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: 13209/1021/2022

Complainant: Shri Dewan Harun Rashid
P.O. – Khagra, Dist - Murshidabad
West Bengal – 742103

Respondent: The Director of Postal Services
(Kolkata Region)
Office of the Chief Post Master General
P-36, Chittaranjan Avenue
Yogayog Bhawan, Kolkata – 700012
Email: <dpshqkolkata@indiapost.gov.in>
Tel: 033-22120139

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant Shri Dewan Harun Rashid vide complaint dated **12.04.2022** has submitted that he has been working in the Department of Posts since 13.09.1995 and has completed 20 years of regular service on 13.09.2015 but the benefit of MACP-II has not yet been paid inspite of several requests. He further submitted that no post of HSG-I, HSG I (NFG) as well as P.S.S.Gr.-B by their Department has been reserved for PwDs.

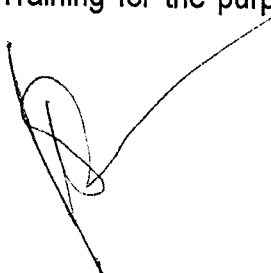
2. The matter was taken up with the Respondent vide letter dated **26.04.2022** under Section 75 of the RPwD Act, 2016 but despite reminder dated **27.05.2022** but no response has been received from the respondent. Therefore, the case was listed for personal hearing on **14.07.2022** but due to administrative exigency, the scheduled hearing is re-scheduled to **15.07.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.07.2022**. The following were present in the hearing:

- Shri Dewan Harun Rashid alongwith his representative Shri Nirmal Chandra Mandal - Complainant
- Shri Madhab Mukharjee, Assistant Director, Postal Services, Kolkata Region on behalf of respondent

Observation/Recommendations:

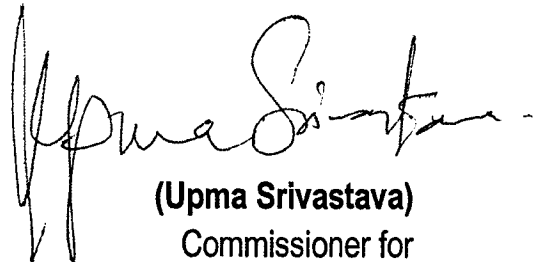
3. Both the parties were heard.
4. Unfortunately the respondent was not fully aware of the details in the matter and was unable to reply satisfactorily with the Court. However, a written reply dated 13.07.2022 was received prior to the hearing held on 15.07.2022.
5. The complainant explained that he had following three grievances for redressal:
 - (a) Benefit of MACP-2 has not been given to him despite being entitled after completed 20 years of service;
 - (b) The orders regarding his pay fixation of 3% on selection as Postmaster Grade-I were withdrawn;
 - (c) No promotion was given to Divyangjan in 2022 when the DPC was held on 24.03.2022 which considered 50 vacancies for promotion from HSG-I & HSG-II
6. This Court recommends that the respondent shall re-examine the matter of grant of MACP-II to the complainant and in case not given, shall grant the MACP-II to him. In case, the complainant cannot grant the scale, reasons shall be recorded and explained to the complainant and also communicated to this Court.
7. Regarding the grievance no.2, it is seen that vide orders of Supdt. of Post Offices, Kalyani, No. dated 10.12.2019, it was decided to withdraw the benefit of pay fixation allowed on promotion to Postmaster Grade-I in case of those persons who had availed financial upgradation in MACP. This is in accordance with the General Instructions of Department of Posts (Personal Division) to all Heads of the circles and Regions. Hence there is no discrimination on the grounds of disability.
8. The matter of reservation in promotion for Divyangjan was under scrutiny of Department of Personnel & Training for the purpose of implementation and vide its order



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dated 17.05.2022, the Department of Personal & Training has approved reservation in promotion. Prior to these orders, the provision of reservation in promotion was not been implemented by any Ministry/Department for awaiting the necessary instructions of the Department of Personnel & Training. Hence, in future Respondent shall adhere to the guidelines laid down in DoP&T's OM dated 17.05.2022.

9. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022
04



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: 13100/1023/2022

Complainant: Shri Ashish Maina
LIG-III-394, New Subhash Nagar
Raysen Road, Bhopal – 462023
Mob: 07690819314

134097

Respondent: The Divisional Railway Manager
West Central Railway
Habibganj, Bhopal, Madhya Pradesh
Email: <drm@bpl.railnet.gov.in>
Tel: 0755-2457200

134098

Complainant: 85% locomotor disability

GIST of the Complaint:

प्रार्थी श्री आशीष मैना का अपनी शिकायत दिनांक 28.01.2022 में कहना है कि उनके पिता जो इटारसी स्टेशन पर एमएस/ईटी के अधीन कार्यरत थे का देहांत दिनांक 09.04.2009 को हुआ। उसके उपरांत प्रार्थी ने पारिवारिक पेंशन हेतु अपने दिव्यांगता प्रमाण पत्र सहित (70 प्रतिशत अस्थि बाधित) रेलवे को आवेदन दिया। उसके बाद, मण्डल रेल प्रबंधक कार्यालय, भोपाल ने प्रार्थी का पुनः मेडिकल परीक्षण, रेल चिकित्सालय, निशातपुरा में करवाया जिसमें डाक्टरों ने उन्हें पारिवारिक पेंशन हेतु अपात्र घोषित कर दिया। प्रार्थी का आगे कहना है कि उनकी दिव्यांगता में सुधार न होने एवं रोग में निरंतर वृद्धि होने पर उन्होंने अपना पुनः मेडिकल परीक्षण करवाया जिसमें जिला मेडिकल बोर्ड, होशंगाबाद ने उनकी स्थायी दिव्यांगता 85 प्रतिशत अंकी। प्रार्थी ने फिर से पारिवारिक पेंशन हेतु दिनांक 06.12.2021 को आवेदन किया परन्तु कोई कार्रवाई नहीं हुई।

2. The matter was taken up with the Respondent vide letter dated 10.02.2022 under Section 75 of the RPwD Act, 2016.

3. मंडल रेल प्रबंधक (का.), भोपाल का अपने पत्र दिनांक 16.03.2022 में कहना है कि आवेदक परिवार पेंशन पाने का पात्र नहीं है क्योंकि उसकी विकलांगता उसकी जीविका कमाने में बाधक नहीं है।

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4. प्रार्थी ने अपने पत्र दिनांक 08.04.2022 में अपनी शिकायत को दोहराया।

5. After considering the respondent's reply dated 16.03.2022 & complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 31.05.2022.

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

- Shri Ashish Maina - Md. Naseem Siddiqui, Legal Guardian – complainant
- Shri M.S. Yadav, A.P.O. on behalf of respondent

Observation/Recommendations:

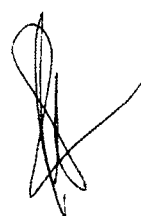
6. Father of the Complainant was employee in Respondent establishment. He died on 29.04.2009. Medical Board of Hoshangabad issued disability certificate to the Complainant on 30.06.2011. Complainant's grievance is that he applied for the disability pension. However, the Respondent rejected the same after getting him re-examined.

7. Complainant's application was received. In order to examine his ability to earn livelihood, the Complainant was re examined by the Chief Medical officer, Bhopal who made following observations -:

“In view of his sound mental status and good functional capacity of both upper limbs and ability to mobilise with walking aids it cannot be certified that he is not able to earn his livelihood”.

8. Considering the remarks of the CMO, the Complainant's application for disability pension was rejected.

9. It is pertinent to note here that, as per Rule 54 of CCS (Pension) Rules, 1972, certificate declaring that the 'divyang dependant is not able to earn livelihood' is necessary before allowing Family Pension. The same was held by CAT, Bombay Bench in matter of

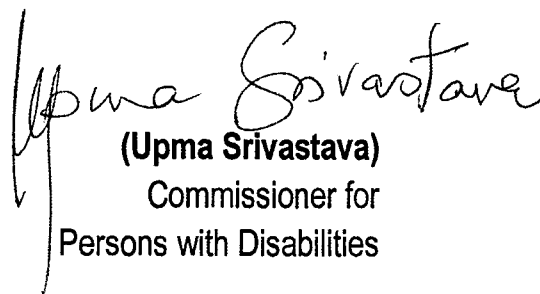


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Sri Shamson Robinson Khandagle v. Union Of India; 2013 SCC OnLine CAT 436. Tribunal held that Disability Certificate alone is not requisite certificate to make the applicant eligible for Family Pension. Applicant in this case produced certificate of 60% disability and pleaded that certification of 60% disability alone proves his inability to earn livelihood. Tribunal rejected this contention.

10. Chief Medical Officer who examined the Complainant observed that the Complainant can earn his livelihood. This Court is satisfied with the Reply of the Respondent, hence intervention of this Court is not warranted.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022

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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: 13180/1023/2022

Complainant: Shri Neka Ram Ghanchi

PGT-Chemistry

Kendriya Vidyalaya No. 02, Air Force Area

Jodhpur, Rajasthan – 342011

E-mail: <nrghanchi3@gmail.com>

134095

Respondent: The Regional Officer

Central Board of Secondary Education

Regional Office Ajmer, Todarmal Marg, Ajmer – 305030

134096

Complainant: 40% locomotor disability

GIST of the Complaint:

प्रार्थी श्री नेका राम घांची, पी.जी.टी. (रसायन), केन्द्रीय विद्यालय नं: 2, वायु सेना, जोधपुर का अपनी शिकायत दिनांक 31.03.2022 में कहना है कि प्रत्येक वर्ष उनकी सी.बी.एस. ई. परीक्षाओं में बाह्य परीक्षक की ड्यूटी लगाई जाती है जिसमें उन्हें अपने कार्यस्थल से किसी दूसरे स्कूल में जाना पड़ता है। सी.बी.एस.ई. परीक्षाओं की उत्तर पुस्तिकाओं का मूल्यांकन करने के लिए उन्हें एक दिन में 6 -- 8 घंटे तक कुर्सी पर बैठकर कार्य करना पड़ता है और ये कम से कम 10 दिनों तक लगातार करना पड़ता है, जोकि उनके लिए बहुत ही शारीरिक व मानसिक रूप से कष्टदायक है। प्रार्थी का कहना है कि उन्होंने सी.बी.एस.ई. को उन्हें परीक्षाओं में बाह्य परीक्षक/निरीक्षक की ड्यूटी से मुक्त करने हेतु कई बार निवेदन करने के उपरांत भी उन्हें मजबूरी वश जाना पड़ता है, क्योंकि सीबीएसई के द्वारा दिव्यांग कर्मचारियों के प्रति किसी भी प्रकार की सहानुभूति प्रकट नहीं की जाती हैं। ड्यूटी से इन्कार करने पर 50,000/- रुपये का जुर्माना लगाया जाता है। उन्होंने आग्रह किया है कि दिव्यांग कर्मचारी को सीबीएसई परीक्षाओं में बाह्य परीक्षक/निरीक्षक की ड्यूटी से मुक्त करने के लिये केन्द्रीय माध्यमिक शिक्षा बोर्ड, अजमेर राजस्थान को आवश्यक दिशा निर्देश/आदेश दिये जायें।

2. The matter was taken up with the Respondent vide letter dated **19.04.2022** under Section 75 of the RPwD Act, 2016.

3. सहायक सचिव (शिका.), केन्द्रीय माध्यमिक शिक्षा बोर्ड, अजमेर का अपने पत्र दिनांक **19.05.2022** में कहना है कि श्री नेका राम घांची की ड्यूटी मूल्यांकन कार्य के लिए उनके कार्यस्थल, केन्द्रीय विद्यालय नं:02, एयर फोर्स स्टेशन, जोधपुर से अन्य स्कूल सेन्ट एनीस सी. सै.स्कूल, सरस्वती नगर, जोधपुर में लगाई गई जो कि उनके कार्यस्थल से कुल 06 किमी. दूरी पर है। लेकिन जैसा की प्रार्थी 40 प्रतिशत दिव्यांग श्रेणी में है अतः बोर्ड द्वारा लगाई गई मूल्यांकन कार्य की ड्यूटी से छूट प्राप्त करने के लिए प्रार्थी द्वारा उनके कार्यालय को विद्यालय के माध्यम से आवेदन प्रस्तुत किया जा सकता है जिस पर उचित कार्यवाही की जाएगी।

4. प्रार्थी ने अपने प्रति उत्तर दिनांक **01.06.2022** द्वारा अवगत करवाया है कि सेन्ट एनीस स्कूल, जोधपुर में उनकी ड्यूटी लगा दी गई है जहाँ पर उन्हें सीढ़ियों से अंडरग्राउंड में उतना और चढ़ना पड़ा है, कोई रेम्प की व्यवस्था नहीं है।

5. After considering the respondent's reply dated **19.05.2022** and the complainant's rejoinder dated **01.06.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.06.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.06.2022**. The following were present:

- Shri Neka Ram - Complainant
- Sri Gopal Lal Yadav on behalf of respondent

Observation/Recommendations:

6. The Complainant has submitted that he is employed in Kendriya Vidyalaya School, Jodhpur. His grievance is that every year external teachers are deputed to evaluate the answer scripts. He is also deputed on such duties. In order to evaluate the answer scripts he has to sit for 6-8 hours continuously which causes physical and psychological problems for him. Further, in order to travel to the place of evaluation, he has to travel long distances. Complainant further submits that if any person refuses to attend evaluation duty, fine of Rs. 50,000 is imposed on such person. Complainant prays before this Court that he should be exempted from attending the evaluation duties.



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7. Respondent submitted that the Complainant was assigned evaluation duties in school which is situated only 6 K.Ms. away from his present place of posting. Further, Respondent submits that the Complainant can file application for exemption through his school. His application will be considered.

8. The Respondent also informed that duties are assigned as per information available. If any teacher wishes to be exempted, she/he may seek exemption through proper channel. Such teacher may write to the Principal of the school to exempt her/him who shall forward the application to the Respondent. Such exemption application can also be written to Nodal officer or Local officers.

9. This Court concludes that since the procedure to seek exemption exists, hence no case of discrimination is made out in the present Complaint. However, for effective implementation of non discrimination rules and guidelines, this Court recommends that the Complainant shall write an application to the principal of the school where he teaches to exempt the Complainant from all future evaluation duties on the ground of disability. The principal shall forward the application to CBSE to exempt the Complainant. Further, Kendriya Vidyalaya Sangathan is recommended to issue Orders to all its schools mentioning that if divyang teachers teaching in those schools want to be exempted from additional duties because of their disability, such teachers may seek exemption through proper channel.

10. The Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022
04



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: 13186/1021/2021

Complainant: Shri Sukulal
Vattavilakom Roadarikathu Veedu
Anappara, P.O. -Nedumangad
Trivandrum - 6955551, Kerala State
E-mail: <dtmahadeva@gmail.com>

134093

Respondent: The Chairman
Kerala Gramin Bank
H.O. Malappuram - 676505
E-mail: <hrwing.kgb@keralagbank.com>

134094

Complainant: 100% visual impairment

GIST of the Complaint:

Complainant Shri Sukulal is working as Office Assistant in the Respondent Bank. He vide complaint dated nil submitted that he had appeared for Examination for Scale 1 promotion 2021-2022 and attended the interview. He further submitted that when result was published, his name was not included in the list while he was the only person with visually impaired for attending promotion test.

2. The matter was taken up with the Respondent vide letter dated **19.04.2022** under Section 75 of the RPwD Act, 2016.

3. The Chairman, Kerala Gramin Bank vide letter dated **18.05.2022** has inter-alia submitted that as per the promotion rules of Regional Rural Banks the selection shall be on the basis of performance in the written test, interview and last five years performance appraisal reports which states (i) written test (50 marks), (ii) Interview (20 marks) and (iii) performance Appraisal Reports (30 marks). There shall be minimum qualifying marks of 50% in aggregate of written test, interview & performance appraisal reports for selection under Normal Channel and 60% under Fast Track Channel. Shri Sukulal had appeared under Fast Track Channel and he had not obtained the requisite minimum qualifying marks either under Normal Channel or Fast Track. As the Bank was constituted under the Regional Rural Bank Act, it is bound to abide by the above said promotion rules.

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4. Complainant vide rejoinder dated **23.05.2022** submitted that Bank is not providing reservation in promotion.

5. After considering the respondent's reply dated **18.05.2022** and the complainant's rejoinder dated **23.05.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **30.06.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.06.2022**. The following were present in the hearing:

- Sukulal - Complainant & Adv. Nandini
- Sri. Srikala Srikumar, GM (HR) on behalf of respondent

Observation/Recommendations:

6. The Complainant has submitted that he is working as Office Assistant in Respondent establishment. He joined on 17.11.2014. He submitted that he appeared in promotion examination in 2021-22 promotion cycle. The exam was conducted for promotion to the post of Office Assistant Scale - I. Complainant's grievance is that he was not promoted despite the fact that he cleared the written examination and appeared in interview. He further submitted that the Respondent has also not given the benefit of reservation in promotion.

7. The Respondent has submitted that the Complainant appeared in promotion exam. As per the promotion rules requisite minimum qualifying marks for clearing promotion exam is 50% in Normal Channel and 60% in Fast Track Channel. Complainant appeared through Fast Track Channel but he did not secure minimum qualifying marks.

8. The Respondent informed this Court that the Complainant secured total 48.47 marks out of 100. Qualifying marks in 'fast-track' channel were 60. The Respondent further informed that standards were not even relaxed for SC and ST candidates.

9. 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 Act 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.

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

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

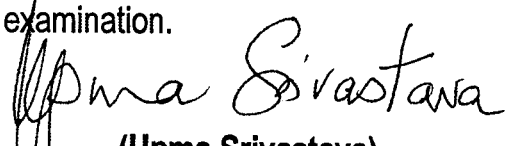
11. This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees.

12. This concept gets reflected in Para XI of DoPT O.M. dated 15.01.2018. The O.M. provides for relaxation of standards in case when sufficient divyangjan candidates are not available on the basis of general standards. The objective of this guideline is two fold. Firstly, its aim is to provide level playing field to all divyangjan. Hence, by relaxing the standards, the O.M. tries to remove disadvantage which divyangjan face vis-a-vis non-divyangjan. Secondly, it aims to provide sufficient representation to divyangjan in government establishments.

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13. This Court recommends that the Respondent shall relax the standards of suitability and shall declare the Complainant as qualified in the promotion examination.

14. The case is disposed off.


(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 02.08.2022

04



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: 13140/1023/2022

Complainant: Shri Yogeshwar Prasad
L-63/302, Mahipalpur Extension
New Delhi – 110037
E-mail: <yogeshwarprasad223@gmail.com>

Respondent: The Managing Director – HR
FedEx Express Transportation & Supply Chain Supply (India) Pvt. Ltd
Air Cago Logistic Centre-2, Unit No. 17-24, IGI Airport
Near Custom House, New Delhi – 110037
E-mail: <akhil.james@fedex.com>

Complainant: 40% locomotor disability

GIST of the Complaint:

प्रार्थी श्री योगेश्वर प्रसाद का अपनी शिकायत दिनांक 21.12.2021 में कहना है कि वह लगभग 20 वर्षों से फेडेक्स ट्रांसपोर्टेशन सर्विस एण्ड चैन सप्लाय इंडिया प्रा.लि. में कार्यरत थे। कंपनी ने अचानक दिनांक 12.08.2021 को यह कहते हुए कि कोविड 19 की वजह से कंपनी को बहुत घाटा हुआ है इसलिए कुछ समय के बाद कंपनी बंद हो जाएगी उनसे रिजार्इन/त्याग पत्र पर जबरदस्ती हस्ताक्षर करवा लिए। दिनांक 05.12.2021 से उन्हें कंपनी से यह कहते निकाल दिया गया कि अब उनको दूसरी कंपनी में स्थानांतरण किया जाता है। यह सब पुराने कर्मचारियों को नौकरी से निकालने का बहना है। प्रार्थी ने आरोप लगाया है कि कम्पनी अपने पुराने नाम के साथ अपने निर्धारित स्थान पर चल रही है और उनकी जगह दूसरी ब्रांच के कर्मचारियों एवं ठेका कर्मचारियों की भर्ती कर अपना कार्य कर रही है जो कि अनुचित है।

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

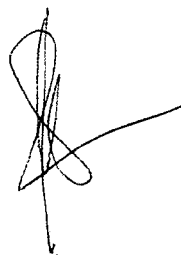
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3. The respondent vide its reply dated **12.04.2022** has submitted that the Company had entered into a strategic alliance with Delhivery Ltd, pursuant to which certain operating assets, leases and employees of the Respondent in relation to Respondent's domestic business were transferred to Delhivery and the Respondent is only focusing on International Export and Import services to and from India. As part of the strategic alliance, Delhivery had also agreed to take over the employment of the certain employees of the Respondent including the complainant herein, on and from the day immediately following the closing date of the transaction i.e. December 4, 2021.

4. The respondent further submitted that it was also brought to the knowledge of the complainant herein that if he elect to accept the offer of employment with Delhivery then he has to tender his resignation with respondent as per the terms of the letter, subject to which his employment with the Respondent shall cease as of the closing date. The complainant out of his own free will and consent accepted the offer of employment with Delhivery and tendered his resignation. Further Delhivery also issued an offer letter dated 12.08.2021 to the complainant herein and offered the employment to the complainant herein on and from the day immediately following the closing date. The said offer letter was duly accepted by the complainant.

5. The Respondent further submitted that they had already released the full and final settlement dues of the Complainant on 03.01.2022. The services of the Complainant were transferred to Delhivery on a continuity of employment basis for the purposes of gratuity benefits, provident fund and leave encashment and his services remained uninterrupted for all such purposes. The respondent had already transferred the funds with respect to the gratuity benefits and leave balances to Delhivery.

6. The complainant vide rejoinder dated **24.05.2022** inter-alia submitted that he was illegally forced and pressurised by the respondent for giving the resignation and he has requested this Court to direct to Respondent reinstate the complainant in the respondent company and to give back wages to the complainant with cost.



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7. After considering the respondent's reply dated **12.04.2022** and the complainant's rejoinder dated **24.05.22**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **30.06.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.06.2022**. The following were present in the hearing:

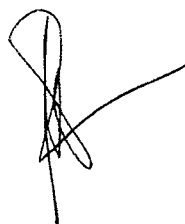
- Complainant - Yogeshwar Prasad - Adv. Yogeshwar Kumar
- Sri Akhil James, Sr. Specialist (HR), Ms. Urmimala Chaudhary, Sri Vinay Prakash Singh on behalf of respondent

Observation/Recommendations:

8. The Complainant has submitted that he was employed in the Respondent establishment for 20 years. He submits that the Respondent obtained resignation from him and his services were terminated w.e.f. 05.12.2021 and he was transferred to another company.

9. The Respondent has replied that the Complainant's service has not been terminated. Respondent entered into business agreement with another company named Delhivery. As per the agreement, Delhivery was assigned to focus on domestic business of the Respondent company and Respondent decided to focus on international business. To give effect to this agreement certain assets and employees were transferred to company named 'Delhivery'. Complainant was given letter dated 12.08.2021 whereby it was expressly mentioned that subject to acceptance of letter, company named Delhivery will take over the employment of the Complainant and employment benefits like gratuity benefits, provident fund and leave encashment shall remain uninterrupted. The said letter was duly accepted by the Complainant.

10. Thereafter procedural formalities were undertaken and on 01.12.2021 joining letter was issued by Delhivery in favour of the Complainant which was accepted by him on the same date. Complainant's service was transferred to Delhivery and his settlement dues were released on 03.01.2022. Complainant has filed the case with Labour Conciliator Officer raising the same issue.

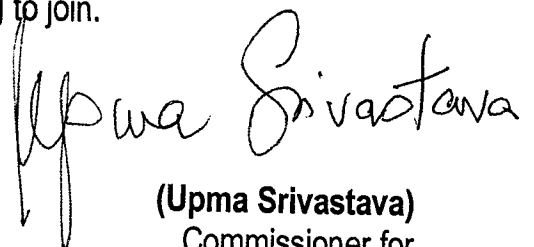


11. The Respondent has also submitted that the Complainant was not the only employee whose services were transferred. Services of 53 other employees of the same office was also transferred. Furthermore, service of the Complainant was continued with the same benefits and same pay scale. The complainant himself did not join within the stipulated time period.

12. This Court concludes that there is no cause relating to discrimination due to disability disclosed in the present complaint. Decision to transfer the services of the Complainant was based on business agreement between two private entities. Moreover, upon transfer of service all the benefits and pay scale were retained hence this Court is inclined to conclude that there is no termination of service of the complainant.

13. This Court recommends that the Respondent must take humanitarian approach and shall facilitate the Complainant in joining the company named 'Delhivery' to which his services were initially transferred, if the complainant is willing to join.

14. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022
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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: 13210/1024/2022

Complainant: Shri Pardeep Kumar Arora
C-12/511, Yamuna Vihar, Delhi – 110053
E-mail: pardeeparora4759@yahoo.com

Respondent: The Commissioner (Personnel)
Delhi Development Authority
Vikas Sadan, INA, New Delhi – 110023
Email: <personnelbranch1@ddaorg.in>

Complainant: 59% Hearing Impairment

GIST of the Complaint:

Complainant Shri Pardeep Kumar Arora vide complaint dated **07.04.2022** has submitted that DDA has published an advertisement for the post of Consultant Civil Assistant Engineers. He alleged that he was called for interview on 21.02.2022 and appeared but refused to take interview with malice intention of Shri Rakesh Kumar, Assistant Director. He was again called for interview on 22.02.2022. He appeared for the interview and his candidature was ignored.


2. The matter was taken up with the Respondent vide letter dated **27.04.2022** under Section 75 of the RPwD Act, 2016 but despite reminder dated **30.05.2022**, no response has been received from the respondent. Therefore, the case was listed for personal hearing on **14.07.2022** but due to administrative exigency, the scheduled hearing is re-scheduled to **15.07.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.07.2022**. The following were present in the hearing:

- Shri Pardeep Kumar Arora - Complainant
- Shri Amrish Kumar, Director, DDA on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. The complainant was heard on telephone, who stated that he gave interview for selection to the post of consultant Civil Assistant Engineer but he was not given any benefit of being a Divyangjan. He also stated that not a single Divyangjan was appointed.
5. During the hearing, the respondent informed to the Court that 29 vacancies of Consultant Civil Assistant Engineer were notified in 2021. All these 29 vacancies were contractual in nature and initially the contractual scale was given only for one year period. The complainant was at waitlist 7. The respondent explained to the Court that there are fair chances of the complainant getting appointment in due course of time subject to availability of vacancy.
6. As there is no provision of reservation in appointment against contractual posts, no further intervention of this Court is warranted.
7. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022
04



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: 13144/1023/2022

Complainant: Shri Amol D Kurunkar
Post – Kadgaon, Tahsil – Gadhinglaj
District-Kolhapur – 416502
Email: <amolkurunkar12@gmail.com>
<advocatemshukl@gmail.com>
Mob: 09970041741

134082

Respondent: The Chief Postmaster General
Maharashtra Circle, Mumbai GPO Building
Mumbai – 400001
Email: <apmgs.mah@gmail.com>
<cpmg_mah@indiapost.gov.in>

134088

Complainant: 40% Locomotor disability

GIST of the Complaint:

Complainant Shri Amol D Kurunkar vide complaint dated **22.02.2022** inter-alia submitted that his father was working in Group 'D' post in Gadhinglaj, Post Office and while on duty he expired on 05.07.2010 and after that he had applied for appointment on compassionate ground. He further submitted that while rejecting his application, respondent did not consider the vital facts of the case that (i) his father was working on lower post Gr. D/Class-IV with a meagre salary which was not enough even during life time (ii) respondent did not consider other accumulative factors leading which had put his family into huge debt liabilities including marriage of daughter of deceased postal employee.

2. The matter was taken up with the Respondent vide letter dated **03.03.2022** under Section 75 of the RPwD Act, 2016.

3. Asstt. Postmaster General, Maharashtra Circle vide letter dated **12.04.2022** inter-alia Shri Amol Digambar Kurunkar had applied for employment in relaxation of normal recruitment rules vide his letter dated 17.08.2011 and Circle Relaxation Committee (CRC) in its meeting held on 13.09.2012 had examined the case of Shri Amol Digambar for appointment in Postman/Mailguard cadre on compassionate ground but it was not found relatively indigent as per relative merit points earned by the applicant, the case was not recommended.

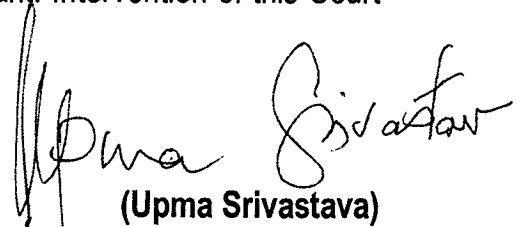
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4. Reply of the respondent was forwarded to the complainant on 22.04.2022 but till date no response/rejoinder has been received.

Observation/Recommendations:

5. Complainant's case is related to compassionate appointment. No grievance related to violation of disability rights has been made by the complainant. Intervention of this Court in this complaint is not warranted.

6. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.08.2022
04



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: 13167/1023/2022

Complainant: Ms. Harvinder Kaur
House No. 11A, Green Lehal
Passi Road, Patiala (Punjab)
Email: <singh.gagnjot11@gmail.com>

134101

Respondent: The Chief Postmaster General
Office of the Chief Postmaster General
Punjab Circle, Chandigarh – 160017
Email: <staff.pb@indiapost.gov.in>

134102

Complainant: 80% Locomotor disability

GIST of the Complaint:

Complainant Ms. Harvinder Kaur, Retd. Postal Asst. vide complaint dated **25.02.2022** inter-alia submitted that he had joined Postal Department, Patiala Division as a Postal Asst. in 1983 and during service, she became person with 80% disability in year 2014. She further submitted that in the intervention of Hon'ble CAT, Chandigarh, supernumerary post was created for her w.e.f. 15.01.2018. After that, her request of grant of Transport allowance was rejected by D.P.S., Chandgarh, vide Memo dated 20.08.2018. Now, she has requested to direct the respondent for pay protection by releasing the Transport allowance at double the rate admissible to disabled employees from the date of creation of supernumerary post.

2. The matter was taken up with the Respondent vide letter dated **29.03.2022** under Section 75 of the RPwD Act, 2016.

3. Asstt. Director Postal Service (Staff), Punjab Circle, Chandigarh vide letter dated **10.05.2022** inter-aila submitted that in the present case, the disabled employee did not commute to and fro to attend duties during the period 15.01.2018 to 31.08.2020 and never incur single penny on such expenditure. Not even a single day in the calendar month during the period, therefore, she is not entitled to Transport Allowance as claimed for.

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4. Complainant vide rejoinder dated **02.06.2022** reiterated her grievance and also requested to save from harassment and revengeful attitude.

5. After considering the respondent's reply dated **10.05.2022** and the complainant's rejoinder dated **02.06.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.06.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.06.2022**. The following were present:

- Shri Dheeru Yadav for complainant
- Shri Balbir Singh, Asstt. Director for the respondent

Observation/Recommendations:

6. The complainant has submitted that she acquired disability in 2000. In the beginning percentage of her disability was 45 %. By 2014, percentage increased to 80%. In 2018 she approached CAT. Hon'ble CAT issued Orders for creation of supernumerary post. Thereafter, from 15.01.2018 till 31.08.2020 she did not attend office and remained on supernumerary post. On 31.08.2020 the Complainant superannuated. In 2020 Complainant was also given salary increment. Grievance of the Complainant is relating to non payment of Travelling Allowance for period starting from 15.01.2018 till 31.08.2020. Complainant submits that though she did not attend office during this period, however, TA is admissible to her because it is part of the salary. Further, she submits that Section 20 of RPwD Act, 2016 and DoPT OM dated 25.02.2015 are silent on payment of TA to such divyang employee who is holding supernumerary position.

7. Respondent submits that Travelling Allowance is paid to compensate the travelling expenses incurred by the employee while travelling to and from the office. In present Complaint, the Complainant did not travel between her home and office. She was on supernumerary post for period starting from 15.01.2018 till 31.08.2020. During this period she did not travel between her home and office hence TA was denied to her.

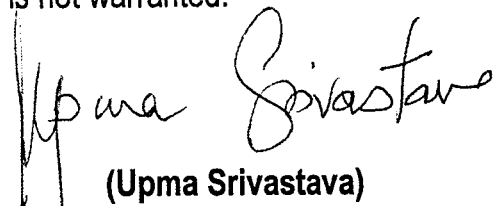


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8. This Court concludes that Respondent is right with respect to non admissibility of Travelling Allowance. Travelling Allowance is paid to compensate the travelling expenses incurred while travelling to and from office. Similar issue was resolved by O.M. dated 01.12.2020 issued by Ministry of Finance, Department of Expenditure. Question before Department of Expenditure (DoE) was whether Travelling Allowance will be admissible to those employees who were working from home during Covid period. DoE laid down in the O.M. that TA is granted to compensate the cost of travelling between office and home. Those employees who were working from home or those who were exempted, like divyang employees, were not paid Travelling Allowance for the period of exemption. Relating to increment in salary, Complainant is entitled to increased salary in terms of Section 20 of RPwD Act, 2016 and DoPT O.M. dated 25.02.2015.

9. Further intervention of this Court in the present Complaint is not warranted.

10. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 05.08.2022