(P)

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: 13191/1021/2022

Complainant: Shri J. Sathiyaraj
H.No. 38, Sardar Patel, 1st Cross Street
Kanathur, Muttukadu Post, Thiruporur Taluk
Chengalpattu District – 603112
Email: <sathya4tpgit@gmail.com>

P234304

Respondent: The Chief Post Master General
Tamilnadu Circle
Anna Road, Chennai – 600002
Email: <rectt.tn@indiapost.gov.in>
<rostaffccr@gmail.com>

P234305

Complainant: 60% locomotor disability

GIST of the Complaint:

Complainant Shri Sathiyaraj vide complaint dated **05.04.2022** submitted that he has been working as MTS in Chennai City North, Postal Circle, Tamilnadu since 19.01.2016. He further submitted that respondent had issued notification for 400 vacancies in Limited Departmental Competitive examinations for promotion of Postal Assistant & Sorting Assistant without providing reservation to PwDs. He further submitted that the final result was released on 10.02.2022 in which no PwD candidate was selected.

2. The matter was taken up with the Respondent vide letter dated **20.04.2022** under Section 75 of the RPwD Act, 2016 but despite reminder dated **23.05.222**, 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**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.07.2022**. The following were present:

- Shri J. Sathiyaraj - Complainant
- Shri Jeya Kumaravel C, Asstt. Director (Recruitment) on behalf of respondent

Observation/Recommendations:

3. Complainant submits that he is posted as MTS in Chennai office of the respondent establishments. He joined the respondent organization in 2016. In 2022 he completed more than 5 years of service; hence, he became eligible for promotion exam. Respondent issued notification for promotion to the post of postal Assistant. Total 400 vacancies were notified. However, none was received for Divyangjan. Later, result was also declared and no divyang candidate was selected.

4. Complainant submits that vacancies were notified to be filled by promotion exam. Direct recruitments were not conducted. Therefore, vacancies were not received for Divyangjan. As per 2018 notification of DoPT reservation in promotions did not exit. Complainant appeared in the exam and scored 72 marks whereas the cut of marks were 78.

5. During the hearing the respondent has submitted that there is no reservation in promotion at the time of issuing of advertisement. Recently, Department of Personnel and Training has issued the O.M. dated 17.05.2022 regarding reservation in promotion to Persons with Benchmark Disabilities. The respondent was asked if he was aware of Department of Personnel and Training's O.M. dated 20.11.1989, 29.12.2005 & 15.01.2018 and maintaining the Reservation Roster as per the instructions issued by D/o P&T vide above said OMs, he replied that he is not aware of the same.

6. The respondent's attention was drawn towards Department of Personnel's and Training's O.M. No. 36035/8/89-Estt.(SCT) dated 20.11.1989 wherein it was mentioned that when promotion are being made (i) within Group 'D', (ii) from Group 'D' to Group Ç'and (iii) Within Group Ç' reservation will be provided for the three categories of the Physically handicapped persons namely, the visually handicapped, the hearing handicapped and the orthopaedically handicapped. It was also informed the respondent that Department of Personnel and Training vide O.M. No. 36035/3/2004-Estt (Res) dated 29.12.2005 had issued the consolidated guidelines regarding the reservation for the Persons with Disabilities. The relevant paras regarding providing of reservation in promotion, maintenance of reservation roster etc., are as under :

....3....

(i) Para 2 (ii) states that three percent of the vacancies in case of promotion to Group 'D'and Group Ç'posts in which the element of direct recruitment, if any, does not exceed 75% shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

(ii) Para 13 states that all vacancies in promotion quota shall be taken into account while computing reservation in promotion in Group Ç'and Group'D'posts.

(iii) Para 15 provides effecting reservation – maintenance of rosters:

a) All establishment shall maintain separate 100 point reservation roster registers in the format given in Annexure II of the said O.M. for determining/effecting reservation for the disabled – one each for Group Á' posts filled by direct recruitment, Group 'B' posts filled by Direct Recruitment, Group Ç' posts filled by Direct Recruitment, Group Ç' posts filled by promotion, Group 'D' posts filled by Direct Recruitment and Group 'D' posts filled by promotion.

b) A separate roster shall be maintained for Group Ç' posts filled by promotion and procedure as explained above shall be followed for giving reservation to persons with disabilities. Likewise two separate rosters shall be maintained for Group 'D'posts, one for the posts filled by Direct Recruitment and another for posts filled by Promotion.

(iv) Para 18 of the said O.M is regarding consideration zone, interse exchange and carry forward of reservation in case of promotion.

(a) While filling up the reserved vacancies by promotion by selection, the disabled candidates who are within the normal zone of consideration shall be considered for promotion. Where adequate number of disabled candidates of the appropriate category of handicap are not available within the normal zone, the zone of consideration may be extended to five times the number of vacancies and the persons with disabilities falling within the extended zone may be considered.

....4....

(b) In posts filled by promotion by non-selection, the eligible candidates with disabilities shall be considered for promotion against the reserved vacancies and in case no eligible candidate of the appropriate category of disability is available, the vacancy can be exchanged with other categories of disabilities identified for it. If it is not possible to fill up the post by reservation even by exchange, the reservation shall be carried forward for upto three subsequent recruitment years whereafter it shall lapse.

Para 19 of the said O.M. is regarding Horizontality of reservation for persons with disabilities. The reservation for backward classes of citizens (SCs, STs and OBCs) is called vertical reservation and the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called inter-locking reservation) and persons selected against the quota for persons with disabilities have to be placed in the appropriate category viz. SC/ST/OBC/General candidates depending upon the category to which they belong in the roster meant for reservation of SCs/STs/OBCs.

7. Department of Personnel and Training vide its O.M. No. 36035/02/2017-Estt (Res) dated 15.01.2018 had issued the instructions regarding reservation for the Persons with Benchmark Disabilities after enactment of the Rights of Persons with Disabilities Act, 2016 and notification of the Rights of Persons with Disabilities Rules, 2017 on 15th June, 2017. The O.M also speaks about the (i) effecting reservation-maintenance of rosters and (ii) Horizontality of reservation for Persons with Benchmark Disabilities.

8. In view of the above, it is recommended that the respondent may ensure that the reservation roster for persons with disabilities has been maintained **w.e.f. 01.01.1996** as per the Department of Personnel and Training's instructions. If there appears backlog of vacancies for persons with disabilities, the respondent is directed to take action to fill the vacancies by conducting a Special Recruitment Drive duly taking into consideration the before said instructions of DoP&T in para 5 & 6 of this recommendation.

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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: 12.08.2022

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No: 13224/1023/2022

123506

Complainant: Smt. Pushpam Kumari
House No. 07, Road No. 02, Vastu Vihar
Harpur Alloth, Samastipur – 848101

123507

Respondent: The Commissioner
Office of the Commissioner, CGST & Central Excise, Patna-II
3rd, 4th & 5th Floor, CTTC Building, Sanchar Parisar
Buddh Marg, Patna – 1

Affected person: Shri Ghanshyam Kumar, 50% locomotor disability

GIST of the Complaint:

Complainant Smt. Pushpam Kumari vide complaint dated **nil** has submitted that her husband Shri Ghanshyam Kumar, Inspector is working in Central GST Division, Darbhanga with additional charge of Central GST Range, Samastipur. Her home town is at Samastipur District and a formation as Central GST range office including a post of Inspector is also available at her home town Samastipur. She also submitted that her husband was transferred from his home town Samastipur in AGT 2020 neither in public nor on any administrative grounds despite the representation requesting to stay at his home town as per DoP&T's OM dated 10.05.1990, 13.03.2002 and 31.03.2014.

2. Apart from above, the complainant submitted that she alongwith her husband Shri Ghanshyam met the Additional Commissioner, CGST, Patna – 2 on 13.09.2021, who scolded, and used rough words like resign from service and go to CAT. She also stated that though no relief was given to her husband but her husband has been given the additional charge of CGST range Samastipur with main charge of CGST, Division, Dharbhanga for harassing him. As per her the Dharbhanga office is situated at first floor with slippage tiles, general toilets and no lift facility. She further alleged that her husband's TTA (Composite Transfer Grant) has also not been paid.

3. The complainant has prayed for (i) giving only one charge of CGST and CX range, Samastipur to her husband and (ii) pay his composite transfer grant that had occurred in AGT 2020 from Samatipur to Darbhanga involving change of station and change of residence with the distance of more than 40 kilometers.

4. The matter was taken up with the Respondent vide letter dated **10.05.2022** under Section 75 of the RPwD Act, 2016.

5. The respondent has filed a detailed reply in the matter vide letter dated 03.06.2022. In its reply the respondent has submitted that as regards to complainant's prayer (i) above the respondent has inter-alia submitted that there is shortage of officers in the grade of Inspector in comparison to the sanctioned strength of Inspectors in this Commissionerate. So additional charges are assigned to the available officers in addition to their original charge as per administrative requirement. It has also been mentioned that there is only one place of posting namely CGST & CX Range, Samastipur and the complainant's husband had completed 3½ years at his home town, hence he was transferred out from the Samastipur as per Zonal Transfer Policy and posted at Darbhanga which is 40 km away from his hometown.

6. As regards prayer (ii) regarding payment of TTA bill, the respondent has submitted that on joining to Darbhanga Division the complainant's husband has submitted the TTA claim application wherein he hadn't mentioned his new residential address properly even the column 7 of the application form was also left blank. Shri Ghanshayam was informed accordingly, and requested to mentioned his complete new address at the proper place of TTA form but he refused to provide the same vide letter dated 11.08.2021. Hence, the TTA claim was disallowed and the same was informed to Shri Ghanshayam.

7. Shri Ghanshayam had suddenly submitted his revised TTA claim vide his letter dated 10.11.2021 mentioning his new residential address as C/o Late Sahdeo Singh, Near Congress Office, N.P. Mishra Road, Balbhadrapur, Laheriasarai, Darbhanga, 846001. Accordingly, a letter was sent to the said address by speed post for verification of his new

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address. But the letter was returned undelivered on 16.10.2021 bearing remarks of post office as "No Such person in the address, "Return to the sender". A letter was again sent to his new address, but the letter was again returned undelivered on 05.11.2021 bearing remarks as "Address cannot be located". Thereafter the residential address (i.e. C/o Late Sahdeo Singh, Near Congress Office, N.P. Mishra Road, Balbhadrapur, Laheriasarai, Darbhanga) was physically verified by CGST & CX Division, Darbhanga on 16.11.2021. During verification, several local people were contacted and it was observed that no person in the surrounding of the given address knew Late Sahdeo Singh. Further, to know the exact position, the designated officer met with Ward Commissioner of the said area Sri Narendra Nath Jha, who informed/said, "he doesn't know any Late Sahdeo Singh". Further, a letter dated 08.02.2022 was issued to Shri Ghanshyam Kumar to submit his explanation about fake address submitted by him and reason thereof. In response, a letter dated 16.02.2022 addressed to the Additional Commissioner, CGST & CX, Patna II with a copy of the same for information to the Commissioner, CGST & CX, Patna II has been received from Shri Ghanshyam Kumar, Inspector. In this letter, upon given an opportunity to tell his viewpoint, instead of giving specific reply he has indulged in whataboutery pointing fingers towards others. As such, his TTA claim has not been sanctioned till now.

8. Complainant vide rejoinder dated 07.06.2022 has reiterated her grievance.

9. After considering the respondent's reply dated **03.06.2022** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **26.07.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.07.2022**. The following were present in the hearing:

- Shri Ghanshyam Kumar - Complainant
- Shri Aftab Alam, Assistant Commissioner on behalf of respondent

Observation/Recommendations:

10. Complaint is filed by Ms. Pushpam Kumari, wife of Shri Ghanshyam Kumar who is employee in respondent establishment. Complainant submits that the employee was earlier posted in his hometown, Samastipur. In 2020 he was transferred to Darbhanga.

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11. Complainant claims that one of the range offices of the respondent establishment is situated in Samastipur in which the post of Inspector is available. She further, submits that when the employee met additional commissioner, CGST Patna for stay on his transfer, he was scolded and the employee was given the additional charge of CGST range of Samastipur along with main charge of CGST Darbhanga.

12. Complainant further submits that office of the employee in Darbhanga is situated on first floor and does not have any lift facility and no dedicated washroom for Divyangjan is available.

13. Complainant further, alleges that 'Composite Transfer Grant' has not been paid to the employee for which he was entitled because of the transfer. Complainant prays before this court to post the employee in his home town Samastipur; assign the employee charge of only one range and grant him Composite Transfer Grant.

14. On the issue of transfer, the Respondent submits that employee was posted in Samastipur for 3.5 years hence his transfer was necessary. Further, Respondent informed that the employee holds 'range sensitive post'. It is important to transfer the employee holding such post so that practices of corruption can be avoided. Taking into consideration the disability of the Complainant, humanitarian approach was adopted and the employee was posted to the office situated nearest to the hometown of the employee.

15. On the issue of additional charge respondent submits that there is shortage of inspectors in the Commissionerate hence, additional charge of another range was also given to the employee.

16. On the issue of Composite Transfer Grant, respondent submits that employee applied for the grant. In the application form wrong address was mentioned. Employee was asked to mention the correct address but he refused to provide the same therefore, his claim was not allowed.Later, employee informed his address. When the respondent went to the address for the verification it was found that the employee does not reside on that address. When the employee was asked to clarify his position, he refused to give clear answers.

17. During online hearing, Respondent further submitted that an arrangement has been made, whereby the employee can work in Samastipur as well as Darbhanga. The arrangement is made so that the employee does not face displacement from his hometown, Samastipur. The respondent has dealt the matter with empathy.

18. This Court is satisfied with the Reply of the Respondent. Even on the issue of 'Composite Transport Allowance' there seems some 'communication gap' between the employee and the Respondent because the employee failed to give correct address in the application form. Therefore, this Court recommends that the Complainant shall personally meet Sri Aftab Alam, Assistant Commissioner, who represented the Respondent during online hearing, and shall submit correct address. Sri Aftab Alam will also inform the employee about any other shortcoming or mistake which the employee might have committed in its application form.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 16.08.2022

(11)

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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: 13266/1023/2022

134308

Complainant: Shri S. Vineeth
Plot No. 17, A1, Manimegalai Nagar
1st Street, Karappakkam, Chennai – 600097
Email: <subramanianvineeth1988@gmail.com>
Mob: 09486101361

134309

Respondent: State Bank of India, Corporate Centre
Through the Chief General Manager (HR)
State Bank Bhawan, 16th Floor
Madam Cama Road, Mumbai – 400021
Email: <agmphr.lhoche@sbi.co.in>

Complainant: 40% Visual Impairment

GIST of the Complaint:

Complainant Shri S. Vineeth vide complaint dated **13.05.2022** submitted that he was appointed in State Bank of India on 26.02.2011 at Chennai under visual impairment (VI) quota. During 2013, he was suffering from depression for a long period and could not attend the office. He had submitted leave applications regularly till 2014 for the symptoms disease only and finally the real cause of the disease (Depression) was diagnosed at SCARF Chennai during June, 2014 only & had taking inpatient treatment from 21.06.2014 to 31.07.2014 and then had taking treatment as outpatient regularly. He further submitted that after receipt of second Notice from SBI on 13.08.2014, he alongwith his father met the SBI Officers several times in person to explain his health condition and requested more leaves which was not granted to him.

2. Finally he had received the third Notice from SBI, terminated him under voluntary cessation of Employment without conducting any enquiry in person or considering the case for medical opinion for further course of action, which is against the principle of natural justice. He also submitted that his father's letters to SBI authorities citing Central Government orders for differently abled persons and Maduria Branch of Chennai High Court order were not considered but simply ignored. As no appeal will be entertained against this order he could not appeal against his termination at that time. After the Eleventh Bipartite settlement date i.e. 01.11.2020, fresh appeals were being entertained by SBI authorities, he sent his appeal on 19.04.2021, which was subsequently rejected.

3. The matter was taken up with the Respondent vide letter dated **31.05.2022** under Section 75 of the RPwD Act, 2016.

4. Dy. General Manager & Circle Development Officer, State Bank of India vide letter dated **28.06.2022** has submitted that Shri S. Vineeth joined the Bank's service as Jr. Associate on 26.12.2011 under VI quota. He had the habit of frequently absenting from duty without proper approval of leave and without leave balance in his credit. For his unauthorized absence from duty, disciplinary proceeding was initiated against him and penalty of "Censure" was awarded to him, which was acknowledged by him on 03.06.2013. He has mentioned the dates of his unauthorise absence from duties. He further submitted that the complainant was on continuous unauthorised absence from 17.10.2013 and even after reminder letters, the complainant did not report for duty and remained on unauthorized absence. Hence, Bank had to initiate the proceeding for Voluntary cessation of service (VCS) against the complainant. 1st notice of VCS was issued on 21.08.2015, and Second notice of VCS was issued on 25.09.2015. Third and final notice was issued vide letter dated 04.05.2016 which was acknowledged by the complainant. Hence the employee was voluntarily vacated from Bank's service w.e.f 26.10.2015.

5. He further submitted that the employee vide letter dated 19.04.2021 had appealed against his Voluntry Cessation of Service. However, the provision to appeal against VCS is available only to employees who have been voluntarily vacated from service w.e.f. 01.11.2020 in terms of the 11th Bipartite settlement dated 01.11.2020. Therefore, the appeal of Shri Vineeth could not be entertained by the Bank. The rejection of appeal has been duly communicated to Shri Vineeth vide letter dated 19.07.2021. In view of the complainants long and frequent absence from duty without proper approval, Bank had proceeded against the complainant and he had been voluntarily vacated from service w.e.f. 26.10.2015 as per the extant norms of the Bank. There is no provision for reinstatement of the complainant in the Bank's service.

6. Complainant vide rejoinder dated **04.07.2022** reiterated his grievance and submitted that Voluntary cessation of service is not at all applicable in his case since the petitioner was not on unauthorised absence, but only on applied medical leave on medical ground and he has requested for reinstatement in the Bank's service since he is now fully recovered from his depressive illness.

7. After considering the respondent's reply dated **28.06.2022** & complainant's rejoinder dated **04.07.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.07.2022** but due to administrative exigency, hearing rescheduled on **29.07.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **29.07.2022**. The following were present in the hearing:

- Shri S. Vineeth - complainant
- Sri. Debashish Mishra, General Manager on behalf of respondent

Observation/Recommendations:

8. Complainant submitted that he was appointed in the respondent establishment on 26.02.2011 and joined in Chennai office. He claims that during 2013 and 2014 he was suffering from depression. Therefore, he remained absent from duties for a very long period of time. Complainant submits that the respondent initiated proceedings of cessation of service. Complainant claims that he received second notice of these proceedings on 13.08.2014. Thereafter, he met the respondent officers to explain his health condition and requested more leaves which were not granted to him. Finally, he was served the third notice and his service was terminated without continuing any enquiry.

9. Respondent submitted that complainant joined on 26.12.2011. Respondent submits that the complainant was habitual of frequently absenting from duties without approval. For his unauthorised absence, disciplinary proceeding were initiated against him and penalty of censure was imposed upon him which was acknowledged by him on 03.06.2013. Respondent submits that the complainant was on continuous unauthorised absence starting from 17.10.2013 till his date of termination, i.e., 04.05.2016. Before terminating his service, the complainant was served first a notice of Cessation of Services (CoS) proceedings on 21.08.2005, second notice was served on 25.09.2015 and third & final notice was served on 04.05.2016. All the notices were acknowledged by the complainant. His service was terminated with effect from 26.10.2015. Complainant appealed against this order on 19.04.2021 which was rejected.

10. During online hearing, Respondent informed this Court that Complainant has filed petition before Regional Labour Commissioner raising the same cause of action. Furthermore, the Complainant has also failed to explain the delay of more than 5 years in filing the present Complaint before this Court. Therefore, intervention of this Court in the Complaint is not warranted.

11. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2022

(14)

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: 13275/1022/2022

Complainant

R34368

Shri Parveen Kumar
Assistant Controller of Patents & Designs
Baudhik Sampada Bhawan
Plot No. 32, Sector-14, Dwarka
New Delhi-110076
Email:

Versus

Respondent

1. The Controller General of Patents & Designs
Trademark & Geographic Indications (CGPDTM)
Boudhik Sampada Bhavan
Antop Hill, S.M. Road, Mumbai-400037
Email: [illegible]
Contact No: 011-25300208

R34369

2. The Secretary
Department of Promotion of Industry &
Internal Trade (DPIIT)
Ministry of Commerce and Industry
Govt. of India, Udyog Bhawan, New Delhi-110117
Email:

R34370

GIST OF COMPLAINT

The complainant is a caregiver of his younger brother Pradeep, aged 32 years who is a person disability with (75% Mentally Retarded) has filed a complaint dated 24.05.2022 regarding cancellation of his transfer order from Delhi to Kolkata.

2. The complainant is working with the Indian Patents Office, Delhi, under Office of the Controller General of Patents, Designs and Trade Marks, Department of Promotion of Industries and Internal Trade (DPIIT), Ministry of Commerce and Industry, Govt. of India as an Assistant Controller of Patents and Designs. The complainant further submitted that he has been transferred from Patent Office Delhi to Kolkata vide office order no. CGPDTM-11018(11)/1/2021-CGOFFICE/80 dated 20.05.2022. The complainant has requested this Court to give direction to the respondent to reconsider their order regarding his transfer.

3. The matter was taken up with the Respondent vide letter dated 03.06.2022 under Section 75 of the RPwD Act, 2016.

4. In response, Assistant Controller of Patents and Designs, GPM Incharge, Patent Office has filed a reply on behalf of the respondent No. 1 vide letter dated 01.07.2022. In the reply the respondent has submitted that the complainant is seeking exemption from transfer on the ground that the complainant is care-giver of his disable brother and son who is suffering from Intellectual learning disability. The

respondent further submitted that the complainant is himself not a disabled employee. It is submitted that the officers working in the Indian Patent office are liable to serve in any part of India. The complainant has been posted in Patent Office, Delhi since April 2014. The complainant has been transferred on administrative ground vide office order no. CGPDTM-11018(11)/1/2021-CGOFFICE/80 dated 20.05.2022 for improving the efficiency and capacity building of patent office. Thus, the complainants request for exemption from transfer may not be considered.

5. The respondent also submitted that the complainant had filed an O.A. No. 1658/2022 before the Hon'ble Central Administrative Tribunal (CAT) Delhi which was decided by the Hon'ble CAT, Delhi vide order dated 28.06.2022.

6. The complainant has filed the rejoinder vide email dated 06.07.2022, and requested to this Court to give direction to the respondent to reconsider their order regarding his transfer.

7. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.08.2022. The following were present:

i) Shri Parveen Kumar: **Complainant**

ii) Shri Piyush Garg, Assistant Controller, Controller General of Patenets & Design: **Respondent**

Observations /Recommendations:

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

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

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

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

1. respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
2. non-discrimination;
3. full and effective participation and inclusion in society;
4. respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. equality of opportunity;
6. accessibility;
7. equality between men and women;
8. respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

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

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

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

a. Posting of Divyang employee at native place,

b. Exemption from routine transfer of Divyang employee,

c. Posting of employee who serves as care giver of Divyang dependent.

STATUTORY PROVISIONS AND GUIDELINES

14. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement.**

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to Divyang employees.

d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoPT – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government

employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to Divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of Divyang employees are laid down. Firstly, it is laid down that Divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

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

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependent daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

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

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

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

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

18. **ISSUE** – Exempting Divyang employee from transfer if Service Rules prescribe for mandatory transfer.

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

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

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

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

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

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

25. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When Divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of

international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

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

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

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

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

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

31. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

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

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

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

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

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

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

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

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

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

34. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case Divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of Divyang employees must be considered with compassion,

understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

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

PRESENT CASE

36. Grievance of the complainant is that he is caregiver of his brother who has intellectual disability. In addition, he is also care giver of his 11-year-old child with intellectual learning disability. Originally, he was posted in New Delhi. By order dated 20.05.2022 he was transferred to Kolkata. He prays before this court to quash his transfer to Kolkata.

37. Respondent submitted that the complainant is not Divyangjan himself hence, he cannot seek an exemption from transfer on the ground of disability. Complainant further submits that officers of respondent establishment are liable to all India transfer. Respondent also inform this court that the complainant approached CAT, New Delhi which has decided its petition.

38. Order issued by CAT, New Delhi was perused. CAT decided the petition in favour of the complainant and directed the respondent to consider the transfer issue in the light of DoPT O.M dated 06.06.2014. This O.M lays down that government employee who is care giver of Divyangjan dependent is exempted from transfer. However, CAT has also stayed complainant's transfer from New Delhi to Kolkata till final decision of the respondent.

39. During online hearing Respondent raised issues which have already been addressed in preceding paragraphs. In addition, Respondent also raised an issue that the Respondent is at liberty to not follow the government guidelines on the administrative grounds. This Court concludes that the contention of the Respondent is in complete violation of spirit of the government guidelines. As mentioned above, the issue of mandatory nature of government guidelines has already been dealt with by the hon'ble CAT in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018.

40. This Court is also inclined to note that 'administrative reason' does not mean an excuse to not follow the guidelines. 'Administrative reasons/grounds' does not mean petty excuses like shortage of staff lack of vacant positions etc. 'Administrative reasons/grounds' means some circumstance of exceptional nature because of which non execution of guidelines is indispensable. Respondent cannot evade the responsibility laid down in the main guidelines. Guidelines related to transfer or exemption from transfer of Divyang employees or employees who are care giver of Divyang dependents are laid down for the benefit of Divyangjan. Respondent cannot take excuse of routine problems so as to evade the main responsibility laid down in the guidelines.

41. This Court concludes that the case of the Complainant squarely falls within the ambit of O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoPT. This Court recommends that the Respondent shall exempt the Complainant from transfer to Kolkata.

42. **Respondent shall also file the implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.**

43. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.08.2022

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No: 13245/1022/2022

Complainant

Shri Suman Chatterjee
Dy. Manager
State Bank of India, ITS Department,
LHO, Kolkata
Contact No: 09674711040
Email : [illegible]

134371

Versus

Respondent

The Chairman & Managing Director
State Bank of India
Central Offices, State Bank Bhawan
Maidane Cama Road, Nariman Point
Mumbai-400021
Email: agmpar.lhokol@sbi.co.in; liaisonofficersest.lhokol@sbi.co.in

134372

GIST OF COMPLAINT

The complainant, a person with 60% Locomotor disability (Spine), has filed a complaint dated 05.05.2022 regarding cancellation of his transfer/posting order.

2. The complainant has submitted that he is working at State Bank of India, SMEC, Kolkata office, since July 2019 under region-9, Zonal Office, Kolkata module. He has received a letter by mail from Zonal Office, Kolkata for deputation at Zonal Office, Kolkata in the month of November, 2021. Since November 2021, he is continuing his job under deputation at Zonal Office, Kolkata. The complainant further submitted that after completion of 4 months deputation at Zonal Office his controller, i.e. Deputy General Manager has transferred him vide letter no. DGM/KOL/HR/738 dated 26th April, 2022 from the present place of Deputation posting to Branch office under RBO-II instead of existing practice i.e. back to his original place of posting SMEC, Kolkata.

3. The complainant after receiving the transfer / posting letter has approached concerned senior officers including DGM, for cancelling his transfer/posting order, but he received not only inhuman behaviour but many unparliamentary words were hurled at him by the reverent Deputy Manager (B&O). The complainant has stated that in Equal Opportunity Policy, 2021-2024 it is clearly mentioned that an employee with disability will normally be exempted from routine /periodically transfer/posting even on promotion, if the vacancies exist in the same place of posting. The complainant had contacted with Liaison Officer at SBI, Local Head Office, Kolkata and submitted an appeal dated 27.04.2022 for his perusal and necessary action for revoking the transfer order and posting him back to his original place of posting at SBI, SMEC, Kolkata but he avoided on the ground that he has a busy schedule.

4. The matter was taken up with the Respondent vide letter dated 31.05.2022 under Section 75 of the RPwD Act, 2016.

5. In response, General Manager (NW-1), vide letter dated 29.06.2022, has submitted that the complainant has been posted in SBI, Kolkata w.e.f 06.07.2019 and thereafter he was deputed to Zonal Office, Kolkata w.e.f 01.11.2021 due to administrative requirements of the bank which he happily joined without raising any objection/pretext. The complainant had completed a period of approx. 2 years 4 months of service at SBI, SMECC, Kolkata and his services was required in the Branch and hence, he was transferred to Branch/Office under the control of Regional Office-II, Kolkata under administrative grounds/exigency. The respondent further submitted that the bank has taken cognizance on receipt of representation from complainant regarding the difficulties that he may face if posted under control of Regional Office-II, Kolkata and transferred his services to P.B.B. Lansdowne Branch under the control of Regional Office-I, Kolkata nearer to his residence, which is located only 4.6 Kms away from his residence.

6. The complainant vide email dated 29.06.2022 has filed his rejoinder stating that the reply is misleading and try to justify their unethical and unjustified transfer order for an Locomotor disability official. The complainant stated that still they have not posted/allotted him a proper job as per maintaining the guideline of job mapping circular. Presently he has deputed at SBI, Hindustan Road Branch. One man branch and key holding is very much essential for permanent posting which job will not be supported a Divyangjan employee. The complainant is not satisfied with the comments submitted by the respondent. The complainant has once again requested to CCPD Court to pass necessary recommendations to the respondent for withdrawn or revoked of his transfer order and posted back to his original place of posting.

7. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.08.2022. The following were present in the hearing:

i) Shri Suman Chatterjee: **Complainant**

ii) Shri Arvind Kumar, General Manager, State Bank of India: **Respondent**

Observations /Recommendations:

8. Complainant submitted that he is working in State Bank of India, SMEC, Kolkata since July, 2019. In November 2021, he was sent on deputation to Zonal Office, Kolkata. Complainant submitted that even after completion of 4 months of deputation at Zonal office, Kolkata, he had not been sent back to SMEC, Kolkata. Complainant further submitted that when he approached senior officers, he received inhumane behaviour.

9. Respondent submitted that complainant was posted in SBI Kolkata. In November 2021, he was sent on deputation to Zonal Office, Kolkata. In his original place of posting SMEC Kolkata he completed 2 years and 4 months of service. Since his services were required in the branch, therefore, he was transferred to the Branch Office. After receiving the complaint, service of the complainant has been transferred to Lansdowne branch which is located at the distance of 4.6 kms from the complainant residence.

10. During online hearing, the Complainant informed this Court that the main issue is related to nature of work which is assigned to the Complainant. As far as posting is concerned, the Respondent informed this Court that the Complainant has been transferred to the branch which is situated nearest to his home on the transfer request application filed by the Complainant on 24.05.2022. Presently the Complainant is posted only at the distance of 4.5 K.Ms. from his home.

11. As far as issue of suitable job is concerned, the Complainant informed this Court that jobs in which physical movements like bending or movement of head is involved cannot be performed by the Complainant. Further, the Complainant alleged that he has to perform ATM related work and opening and closing of branch. Respondent refuted the claims and informed that the Complainant is assigned desk job. There is no involvement of physical movement. The job involves attending to the customers.

12. The issue of transfer has been resolved. As far as issue of nature of job is concerned, Complainant has not submitted any proof to substantiate the claim that his job includes intensive physical movements. However, considering the disability of the Complainant, this Court recommends that the Respondent shall assign only such job to the Complainant which can be performed without movement from one point to another.

13. The case is disposed off.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 23.08.2022

(25)

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: 13227/1023/2022

1234316

Complainant: Shri Shamsher Kumar
E-mail: <shamsherkumar555@gmail.com>

Respondent: The General Manager
East Central Railway
Hajipur, Bihar
E-mail: <gm@ecr.railnet.gov.in>

1234311

Complainant: 41% visual impairment

GIST of the Complaint:

प्रार्थी श्री शमशेर कुमार, ऑफिस एसिस्टेंट (peon) का अपनी शिकायत दिनांक 09.05.2022 में कहना है कि उनकी नियुक्ति दिनांक 19.12.2015 में पूर्व मध्य रेलवे, हाजीपुर में हुई तथा उनके साथ श्री सतीश कुमार की भी नियुक्ति एक ही ग्रेड पे पर लेवल – 01 (1800) में हुई परंतु वर्तमान में प्रार्थी का मूल वेतन रू0 21500/– है जबकि श्री सतीश कुमार का मूल वेतन रू0 22100/– है। प्रार्थी का आगे कहना है कि जब उन्होंने विसंगति को दूर करने के लिए अपने विभाग को लिखा तो विभाग ने अपने जवाब दिनांक 28.07.2016 कहा कि तीन माह के निर्धारित समय–सीमा के भीतर विकल्प नहीं दिया, जिसके कारण विकल्प का लाभ नहीं दिया जा सकता है। प्रार्थी के अनुसार उनसे किसी भी माध्यम से विकल्प मांगा ही नहीं गया।

2. The matter was taken up with the Respondent vide letter dated **12.05.022** under Section 75 of the RPwD Act, 2016 but despite reminder dated **13.06.2022**, no response has been received from the respondent. Therefore, it was decided to hold a personal hearing in the matter and the case was listed for personal hearing on **26.07.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.07.2022**. The following were present in the hearing:

- Shri Shamsher Kumar - Complainant
- Shri Suman Kumar, Asstt. Divisional Engineer on behalf of respondent

Observation/Recommendations:

3. Complainant submitted that he is posted as peon in respondent establishment and was appointed on 19.12.2015. Another employee namely Satish Kumar was also appointed on the same date in similar grade pay. However, on the date of filing complaint basic pay of the complainant is Rs. 21,500 whereas basic pay of Satish Kumar is Rs. 22,100.Complainant further submits that he made representation before the respondent, whereby he was informed that complainant was supposed to apply in writing for fixation of 9th CPC from the date of yearly increment which was not done by the complainant. Complainant alleges that he was never informed about any such option.

4. Respondent submitted in its written reply that the difference of pay between the Complainant and another employee namely Sri Satish Kumar is because while implementing 7th Pay Commission as an option was given to employees to opt for date of implementation of 7th Pay Commission. The Complainant failed to exercise the option within the requisite time, whereas another employee namely Sri Satish Kumar exercised this option on time.

5. It is important to discuss the concept of 'Reasonable Accommodation' is indispensable. 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 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.

> **SECTION 2(y) -** "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others
> **SECTION 20(2) -**Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

6. 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 divyang, affirmative conditions have to be created for facilitating the development of Divyangjan. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjan hence the state is bound to provide these facilities to its Divyangjan. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

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

7. This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to divyang employee in comparison with enabled employee. In addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of divyang employee, pre-promotion training, providing assistive aids and devices etc.

8. In the present case Respondent can opt to apply the concept of Reasonable Accommodation and make some changes to accommodate the Complainant. For a divyang employees it is tough to follow each and every procedural change. Problem like this particularly happens when the essential procedural requirements are not communicated to Divyangjan properly.

9. Taking into consideration the facts and concept of 'Reasonable Accommodation', this Court recommends that the Respondent shall adjust the date of implementation of 7th Pay Commission so that the salary of the Complainant can be brought at par with another employee namely Sri. Satish Kumar.

10. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2022

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No. 13205/1102/2022

Complainant:

R34300

Shri Rahul Bajaj,
R/o 001, Block 12, Sarvapriya Vihar Apartments,
New Delhi-110016
Email: rahul.bajaj1038@gmail.com

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

Respondents:

(1) The Director,
Practo Technologies Pvt. Ltd. [PTPL]
3rd Floor, Salarpuria Symbiosis, Arekere,
Bannerghatta Main Road, Bangalore-560076 (Karnataka)
Email: sid@practo.com

R34301

(2) Directorate General of Health Service (DGHS),
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhawan, New Delhi -110001
Email: sandhya.k@nic.in

R34302

(3) The Secretary,
Ministry of Information & Broadcasting,
Room No 552, A wing Shastri Bhawan,
New Delhi-110001
Email: secy.inb@nic.in

R34303

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 22.03.2022 regarding inaccessibility of Website, Mobile and Tablet and non-compliance with the standards of accessibility as prescribed under rules.

1.2 The Complainant submitted that he is unable to effectively access the Practo iOS application due to various accessibility barriers which inter alia include the following:

a. The home screen of the app is thoroughly unorganized and completely inaccessible with a screen reading software. Some buttons are not labelled at all. Some others have nonsensical labels such as 'tertiary half one image label' and 'secondary third subtitle label';

b. The second page is also completely unlabeled and inaccessible;

(Contd....Page-2)

c. Even if one is somehow able to indicate one's health need and find search results, the results are inaccessible. This is because all the information as to a given doctor viz. how much they charge, what their work experience is, etc., is presented in open go, rather than being presented as different data points;

d. The lab testing information is similarly provided in a jumbled up fashion in one go;

e. The app randomly crashes of its own accord from time to time; and

f. Owing to all of these barriers combined, the experience of accessing the app for the complainant is akin to a sighted person being required to access an app in a foreign language that he does not understand.

1.3 The complainant alleged that Respondent No.1 did not comply with the provisions of Section 46 of the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] even after the Act brought into force on April 19, 2017 and that the Rules were notified on June 15, 2017; and the expiry of the time period for compliance.

1.4 The complainant has stated to have addressed series of representations to Respondent No.1, urging it to remedy these accessibility barriers, but no avail.

2. Submissions made by the Respondents:

2.1 The Respondent No.1 – PTPL – filed a reply dated 14.06.2022 and inter-alia denied the allegations made by the complainant. However, the respondent Practo Technologies Private Limited expressed their willingness to make its technology platform accessible for people who are specially abled, which is in consonance with their company's objective of making the platform accessible for everyone. To achieve the above, the Respondent No.1 prayed to grant a time period of nine (9) months for making its platform accessible to visually challenged persons.

2.2 DGHS filed their reply dated 20.05.2022 and has submitted that Ministry of Information & Broadcasting would be the appropriate body to take appropriate action in this regard.

3. Hearing: The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on **19.07.2022.** The following persons were present during the hearing:

(1) Shri Rahul Bajaj, complainant in person along with Shri Amar Jain
(2) Shri Jagannath Nanda, Advocate; Shri Anshul Mittal, Legal Officer for Respondent No.1
(3) Dr. Rupali Roy, ADG for Respondent No.2

(Contd....Page-3)

4. Observations & Recommendations:

4.1 Complaint is filed against the private company which has developed an app named 'Practo'. This is an app which provides a platform on which medical services are available for anyone who intends to use the app. The private company is Respondent No. 1.

4.2 Respondent No. 2 is Directorate General of Health Services which is attached office of Department of Health & Family Welfare.

4.3 Complainant submits that the app is not accessible for person with visual impairment because of various accessibility barriers. Complainant has pointed out following accessibility barriers:

- Home screen is unorganized and inaccessible with a screen reading software.
- Second page is unlabeled and inaccessible.
- Various results obtained after providing inputs are inaccessible.

4.4 Complainant submits that the Respondent No. 1 has violated Section 46 of RPwD Act and Rule 15 of RPwD Rules.

4.5 Relief sought by the Complainant is direction to conduct an accessible audit of the app called 'Practo' and submit Accessibility Audit Report along with statement of remedial actions within 3 months. Further direction to Respondent No. 1 for time bound compliance.

4.6 Respondent No.1 submitted that they are willing to make the app accessible for all divyangjan. They sought time for 9 months to achieve the target because the task involves 'severe engineering efforts'.

4.7 Respondent No. 2, Director General of Health Services, M/o Health & Family Welfare has submitted that the issue relates to Ministry of Information & Broadcasting hence that ministry is appropriate authority to take necessary action.

4.8 During online hearing Respondent No.1, Practo Technologies Pvt Ltd. submitted that they are ready to make necessary modifications and changes in its app, however raised two issues. Firstly, it is not bound by the guidelines which require establishments to provide service in accordance with the rule on accessibility. Secondly, there are no government guidelines which can be followed on this point hence, the Respondent No.1 lacks direction in which it has to proceed.

4.9 At the very outset this Court appreciates the fact that the Respondent No.1 is ready to make necessary changes and modifications. However, this Court is not inclined to accept the arguments forwarded by the Respondent No.1.

4.10 Most relevant provision on this Section 46 of Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016) which is mentioned below -:

(Contd....Page-4)

"**SECTION 46** - **Time limit for accessibility by service providers.** - The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules."

4.11 This provision lays down time limit for accessibility for service providers. As per the provision, service providers have to provide services in accordance with government rules made under Section 40 of RPwD Act, 2016 relating to accessibility. Time limit prescribed for providing service is '2 years' from the date of notification of guidelines. The term used in Section 46 is 'service providers, whether government or private'. Mere reading of this section leaves no doubt that the provision is applicable on private establishments as well. Term 'whether government or private' leaves no room for debate whether this provision is applicable on private establishments or not.

4.12 As far as Section 40 is concerned, it provides that appropriate government shall formulate rules laying down standards of accessibility for divyangjan on various kinds of services and infrastructure which is provided to public, which is inclusive of 'information & technology including appropriate technologies and systems. Section is mentioned below -:

"**SECTION 40 – Accessibility** - The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas."

4.13 From the combined reading of Section 40 and Section 46 it becomes clear that private establishments, which are providing information & technology services are bound to make their services and infrastructure accessible for divyangjan in accordance of Section 40 and Section 46.

4.14 Another provision which is important for this discussion is Rule 15 of Rights of Persons with Disabilities Rules, 2017. This provision is relevant for private as well as the government establishments. In sub-rule (1) it imposes responsibility on 'every establishment' to comply with the standards relating to physical environment, transport and 'information & communication technology'. Further, in Clause 3 of sub-rule (1) term 'information & communication technology is further elaborated as website standard as specified in the guidelines for Indian Government websites, as adopted by Department of Administrative Reforms and Public Grievances, Government of India; (ii) documents to be placed on websites shall be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf format. Rule 15 is mention below -:

(Contd....Page-5)

"**15. Rules for Accessibility**.-

(1) Every establishment shall comply with the following standards relating to physical environment, transport and information and communication technology, namely :-

(a) standard for public buildings as specified in the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons With Disabilities and Elderly Persons as issued by the Government of India, Ministry of Urban Development in March, 2016;

(b) standard for Bus Body Code for transportation system as specified in the notification of the Government of India in the Ministry of Road Transport and Highways, vide number G.S.R. 895(E), dated the 20th September, 2016;

(c) Information and Communication Technology- (i) website standard as specified in the guidelines for Indian Government websites, as adopted by Department of Administrative Reforms and Public Grievances, Government of India; (ii) documents to be placed on websites shall be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf format: Provided that the standard of accessibility in respect of other services and facilities shall be specified by the Central Government within a period of six months from the date of notification of these rules.

(2) The respective Ministries and Departments shall ensure compliance of the standards of accessibility specified under this rule through the concerned domain regulators or otherwise."

4.15 Again in this Rule term used is 'every establishment shall comply with ...'. Hence, it is important to look into the meaning of term 'establishment'. RPwD Rules, 2017 do not define term 'establishment' separately. The term is defined in Section 2(i) of Rights of Persons with Disability Act, 2016. It is crystal clear from the reading of the section that private establishments are included in the definition of 'establishment'.

"**Section 2(i)** - "establishment" includes a Government establishment and private establishment."

Moreover, it is also noteworthy to mention that term establishment is preceded by another term 'every', which makes it certain that framers of the rule intended to bring both private as well as the government establishments under the ambit of Rule 15 of RPwD Rules, 2017.

4.16 Further, Rule 15 in sub-rule (2) entrusts 'respective ministries and departments' with responsibility to ensure that the standards of accessibility have to be complied with. Term 'respective ministries' means ministry which has been

(Contd....Page-6)

entrusted upon to look into affairs relating to particular subject. In case of Practo Technologies, Respondent No. 1, the subject Respondent No. 1 is dealing with is directly relating to 'health services'. Respondent No. 1 is using app and other information and communication technologies tools to provide health services. Director General of Health Services (Respondent No. 2) is the department which is entrusted upon to look into affairs relating to health services. Hence, it cannot shift its responsibility upon Ministry of Information & Technology. During online hearing, Respondent No. 2 shifted its stand which it took in its written reply, Respondent No. 2 submitted that it is ready to take responsibility to ensure that Rule 15 is followed by Respondent No. 1, i.e. Practo Technologies Pvt. Ltd.

4.17 Another issue which was raised by the Respondent No. 1 was relating to absence of guidelines and hence, there is no 'direction' to move forward. It is noteworthy to mention that there are various guidelines in place which have to be complied by the Respondent. For instance, Guidelines for Indian Government Websites ("GIGW") and notification issued by Bureau of Indian Standards, which has notified IS17801 Parts 1 and 2 in relation to Accessibility of Information & Communication Technology Products and Services. Hence, the contention of the Respondent No. 1 relating to guidelines is devoid of any substance.

4.18 Summarizing the observations made in preceding paragraphs, this Court concludes following -:

a) Private establishments, such as the Respondent No. 1 in the present Complaint is bound by Section 46 read with Section 40 of RPwD Act, 2016.

b) Private establishments, such as the Respondent No. 1 in the present Complaint is bound by Rule 15 of RPwD Rules, 2017.

c) There are government guidelines on the subject matter of accessibility of website, apps and other Information & Communication Technology platforms. These existing guidelines are applicable on private establishments, such as the Respondent No. 1 in the present Complaint.

d) Private establishments, such as the Respondent No. 1 in the present Complaint is bound to comply with existing government guidelines in terms of Rule 15 of RPwD Rules, 2017 and also in terms of Section 46 read with Section 40 of RPwD Act, 2016.

e) Respondent No. 2, Director General of Health Services, M/o Health & Family Welfare is the concerned ministry under Rule 15(2) of RPwD Rules, 2017.

f) Respondent No. 2, Director General of Health Services, M/o Health & Family Welfare is bound by duty entrusted under Rule 15(2) of RPwD Rules, 2017.

(Contd....Page-7)

4.19 This Court recommends that Respondent No. 1, i.e. Practo Technologies Pvt. Ltd. shall comply with the government guidelines and shall make necessary modifications within 6 months and not later than 9 months from receiving the copy of this Recommendation-Order, to its app and other Information & Communication Technology platforms to make such platforms accessible for divyangjan. Further this Court recommends that Respondent No. 2, Director General of Health Services, M/o Health & Family Welfare shall fulfill its duty under Rule 15(2) and ensure that the platforms of Respondent No. 1 are accessible for divyangjan.

4.20 Considering the wider social aspect of the issue of accessibility, this Court decides to use its powers under Section 75(1)(h) of RPwD Act, 2016 and decides to take cognizance of the issue of non-accessibility and hence it decides that this Court shall hold another hearing **on September 20, 2022 (Tuesday)** to monitor the implementation of Section 40 and 46 of RPwD Act, 2016 and Rule 15 of RPwD Rules, 2017.

Dated: 24.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra

(36)

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. 13232/1102/2022

Complainant:

Shri Vishnu Dayal Shahu,
R/o IPS Badshahpur Railway Station,
Post: Mungra Badshahpur,
District: Jaunpur (UP)
Email: vishnudayalshahu1989@gmail.com
Mobile: 8887780645

-R34397

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

Respondents:

(1) Branch Manager, Bank of Baroda,
Sahabganj, Jaunpur (UP)
Email: mungbs@bankofbaroda.com

-R34398

(2) MD & CEO
Bank of Baroda
Central Office, P.O. Box No. 10046,
9th Floor, Baroda Corporate Centre,
Bandra Kurla Complex, Bandra (East),
Mumbai-400 051
Email: md&ceo@bankofbaroda.com

-R34399

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 06.04.2022 regarding not providing the banking facilities such as ATM, Cheque Book and other associated services to him by Bank of Baroda, Sahabganj Branch, Jaunpur (UP).

1.2 The complainant alleged that the Bank is bluntly denying to provide him ATM & Cheque book and other associated services despite his several requests since he opened his bank account in December, 2019. The counter persons say that 'how a blind person can avail' 'how will you use it?'. Finally, Manager told him that he is not entitled for any online services as per their bank circular. As per the complainant, the Bank is violating RBI guidelines/circulars.

2. Submissions made by the Respondent:

The Senior Manager and Branch Head, Bank of Baroda, Mungra Badshahpur Branch, Jaunpur filed the reply dated 21.05.2022 and submitted that on 13.05.2022 their Branch Officials had visited Complainant's residence and provided him with application form for issuance of ATM cum Debit Card and Cheque Book in bank

(Contd....Page-2)

account of Complainant. On the same day, the application forms were processed in CBS System. The Branch had issued Visa Debit cum ATM Card of this Bank and a personalized Cheque Book of 15 leaves which should got delivered at Complainant address by their Bank's delivery partners in due course.

3. Submissions made in Rejoinder

The reply of the bank had been forwarded through email on 26.05.2022 to the complainant for submission of his rejoinder. No rejoinder has been found received from the complainant so far.

4. Observations and Recommendations:

4.1 Since the grievance of the complainant has been settled, there is no requirement of intervention of this Court in the complaint.

4.2 Accordingly, the case is disposed off.

Upma Srivastava

Dated: 23.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities

Extra

(38)

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. 13230/1014/2022

Complainant:

Shri Sandeep Saini,
R/o H.No.532, Shiv Nagar Gali No.10, —R 34395
Chandana Gate,
Kaithal-136027 (Haryana)
Email: deepsaini22393@gmail.com
Moble: 8708115925

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

Respondent:

The Regional Director,
Staff Selection Commission, —R 34396
Block No. 12,CGO Complex, Lodhi Road,
New Delhi-110003
Email: enquirysscnr@gmail.com; rdsscnr@gmail.com

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 25.03.2022 regarding fraud with persons with disabilities in SSC chsle-2019 Typing/Skill Test [Roll No.2201060331, Regn. No.40000049969].

1.2 The complainant submitted that at the time of filling the form he had selected the medium of typing 'Hindi' and in the Admit Card which he had been issued has also written the medium of Skill Test 'Hindi'. He had also appeared in the Skill Test / Typing (Hindi) and had finished his typing test within 6.30 Minutes without any mistake instead of 15 Minutes. The complainant further submitted that he had checked his typing test and had found no typing mistake in it; his Reader also had confirmed that there was no mistake. But in the result, SSC brought out 17 point mistakes and also disqualified his result saying that his medium of Skill Test was 'English'.

2. Submissions made by the Respondent:

2.1 SSC filed their reply dated 09.06.2022 and submitted that the result of Skill Test/Typing Test of Combined Higher Secondary (10+2) Level Examination, 2019 was declared by the Commission on 28.02.2022 for short-listing the candidates to appear for Document Verification on the website of the Commission. The Commission uploaded details of error percentage of the candidates in Typing Test on its website on 09.03.2022 for a period from 09.03.2022 to 31.03.2022.

(Contd....Page-2)

2.2 The error percentage of Shri Saini was calculated as 17.79% which was more than the cut-off (i.e. 10%) of error percentage fixed under his category i.e. VH (OBC), therefore, Shri Saini could not qualify for appearing in Document Verification and accordingly, he was not considered for further selection process of the Examination.

2.3 Subsequent to declaration of Skill Test/Typing Test result of the said examination, it was brought to the notice of the Commission that for some candidates, the medium of Typing Test had been changed i.e. English to Hindi and vice-versa. The result was examined and it was observed that there was no error/discrepancy in the evaluation of Skill Test. However, due to some clerical error, medium of the Test was changed for some candidates at the time of uploading marks module which were also rectified/corrected. In the larger public interest, a notice dated 25.03.2022 to that effect was also published on the website of the Commission. Since then the Commission did not receive any complaint regarding the said error.

2.4 The respondent further submitted that the complainant had approached this Court on 25.03.2022 at 11:17 AM through email, whereas the Commission had already rectified/corrected the display error of medium of Typing Test of some candidates including the complainant while uploading the error percentage of the candidates of CHSLE-2019 on 25.03.2022 (Afternoon). The display error of medium of Typing Test had no effect on the result of Typing Test of the candidates. The evaluation of Typing Test was done in transparent and fair manner in all respect under the supervision of Subject Expert. As per the result write-up of Typing Test declared by the Commission on 28.02.2022, category-wise cut-off on percentage of error/mistakes allowed in Typing Test are as under:

	EWS	SC	ST	OBC	ESM	OH	HH	VH	Other-PwD	UR
Cut-off on percentage of mistakes	10%	10%	10%	10%	10%	10%	10%	10%	10%	5%

2.5 The evaluation of Typing Test of Shri Saini was re-verified under the supervision of Subject-Expert and the percentage of 17.79% found to be in order. Since the error percentage of the complainant i.e. 17.79% is more than the cut-off (i.e. 10%) fixed under his category i.e. VH (OBC) category, he could not qualify for appearing in Documents Verification and accordingly, he was not considered for selection process for the examination.

3. Submissions made in Rejoinder

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

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **21.07.2022**. The following persons were present during the hearing:

(Contd….. Page-3)

(1) Shri Sandeep Saini, the complainant in person
(2) Ms. Monika Roy, for the Respondent

5. Observation/Recommendations:

5.1 Complainant submitted that he appeared in combined higher secondary level examination, 2019 conducted by SSC. After passing written examination he was called for skill test. He submits that he selected the medium of typing as Hindi. He claims that during skill test he typed at the speed of 60 words per minute and completed his test within 7 minutes without committing any mistake. Minimum requirement of typing speed was 26 words per minute and test was to be completed within maximum 15 minutes. Complainant submits that SSC has committed fraud and declared him unsuccessful and also in the result the medium is declared as English whereas he selected his medium of typing as Hindi.

5.2 Respondent submitted that the complainant was shortlisted for skill test in Combined Higher Secondary Level Examination 2019. Complainant appeared in the skill test/typing test on 28.02.2022. Error percentage of the complainant was calculated as 17.79%. Maximum error percentage fixed for VH category digvyangjan was 10% therefore, the complainant could not qualify. Respondent submits that the examination was conducted in transparent and fair manner. Verification of typing test of complainant was verified under the supervision of subject expert and the error percentage of the complainant was found 17.79% which was more than allowed error percentage of 10%. On the issue of medium of typing, respondent admitted that in some results medium was declared as English by mistake. Respondent has already rectified the error and complainant's medium has been changed to Hindi.

5.3 During online hearing, Respondent was asked by this Court if similar Complaints have been filed by any other candidate as well. Respondent replied that no other Complaint has been received from any other candidate. Furthermore, it was also informed that the evaluation of all the candidates was done by using software specially designed for this purpose and there was no human intervention. Furthermore, all the results were re-checked by the Respondent and no inconsistency was noticed during re-checking.

5.4 Respondent also submitted the transcript of Complainant's typing test. The same was perused by this Court and errors were noticed. Therefore, the claim of the Complainant that he did not commit even a single mistake and the Respondent committed fraud and intentionally failed him in typing test does not hold any ground. There this Court concludes that there is no ground to believe that fraud was committed by the respondent. Intervention of this Court in the present Complaint is not warranted.

5.5 Accordingly, the case is disposed off.

Dated: 23.08.2022

Upma Srivastava

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra (41)

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. 13233/1033/2022

Complainant:

Shri Anuj Kumar Verma, — R 34400
R/o 1/356 Kayasthvada, Old Aabkari Road,
Devband, District: Shahranpur (U.P), Pin- 247554;
Email: ak.divyadrishti@gmail.com; Mobile: 7017070625

Respondent:

The Director, — R 34401
National Institute for Empowerment of
Persons with Visual Disabilities (Divyangjan) [NIEPVD(D)],
116, Rajpur Road, Dehradun -248001, Uttrakhand;
Email: directorniepvd@gmail.com; Tel. No. 91-0135-2744491

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

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 25.04.2022 regarding not providing the Mark Sheet of J.M.M.T. Examination for the year 2017-18 and 2018-19 conducted by NIEPVD.

1.2 The complainant submitted that he had completed JMMT Course in 2019 (2017-2019) in 04 Semesters. Despite sending several letters, NIEPVD has not yet provided him the Mark Sheet of the said course.

2. Submissions made by the Respondent:

2.1 The Respondent filed their reply dated 07.06.2022 and submitted that NIEPVD was running a two years "Practitioners Course in Japanese Medical Manual Therapy" for the visually impaired persons since January, 2014 under JICA Grassroots Project on Vocational Education Support for the Visually Impaired in India" in collaboration with the Special Needs Education School for the Visually Impaired, University of Tsukuba, Japan. After successful completion of the course, certificates are awarded by the Tsukuba University, Tokyo. The examination was conducted by the Institute on behalf of the University. No mark-sheets have ever been awarded by the University to the candidates trained since 2014. NIEPVD furnished a Sample certificate which had been issued earlier to the successful candidates of the previous batches.

(Contd....Page-2)

2.2 As regards issuing mark-sheets to Shri Anuj Kumar Verma, no discrimination has been made to him on the ground of disability. No other candidate was issued mark-sheet by the NIEPVD the matter being beyond its jurisdiction. All trainees enrolled under the Vocational Training programme are persons with visual impairment, therefore, no question of discrimination arise.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 17.06.2022 submitted that there is no question of discrimination, but the mark-sheet is the only means to show what subjects one has studied. Besides, the organizing institutions have responsibility to provide mark-sheet to the student without any demand.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **29.07.2022.** The following persons were present during the hearing:

(1) Shri Anuj Kumar Verms, the complainant in person

(2) Shri Kamalbir Singh Jaggi, In-charge Deputy Director; Ms. Laxmi Pokriyal, Supervisor for the respondent

5. Observations and Recommendations:

5.1 Complainant submitted that the Respondent runs practitioners' course in Japanese Manually Therapy for Visual Impaired Divyangjan. He completed that course in 2019 and appeared in the examination. He alleged that the respondent had not provided him mark sheet of examination for the year 2017-18 and 2018-19.

5.2 Respondent submitted that it is running this course in collaboration with University of Tsukuba, Japan. Certificates are awarded by Tsukuba University, Japan to those candidates who successfully complete this course. The examination was conducted by the respondent on behalf of Tsukuba University, Japan. Respondent is running this course since 2014 and examinations are conducted regularly. Mark sheet was never provided by Tsukuba University to any candidate ever. It is beyond jurisdiction of the respondent to issue mark sheet. There is no question of discrimination because all trainees enrolled under this course are Divyangjan i.e. visually impairment. Hence there is no question of discrimination.

5.3 During online hearing, the Complainant informed this Court that the certificate which is issued to successful candidates, do not include names of the subjects which have been studied by the candidates. Therefore, if the mark-sheet will be issued, how can it would be proved which subjects have been studied by the candidates.

5.4 Since, the course is run by the respondent on behalf of university situated in Japan and examination was conducted on behalf of the university in Japan hence this cannot force the respondent to issue mark sheet. However, this Court recommends that the Respondent shall write to the Tsukuba University in Japan to modify its format of certificate and include the names of all the subjects which are studied by

(Contd....Page-3)

the candidates in Japanese Manual Therapy and also inform the Tsukuba University that the candidates who subscribe this course and qualify often ask for such details. A letter to this effect shall be sent to the University along with the desired format. The matter shall be actively pursued by the Respondent.

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

5.6 Accordingly, the case is disposed off.

Upma Srivastave

Dated: 23.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No. 13127/1011/2022

Complainant:

Shri Rahul Gupta,
S/o Shri Khemchand Gupta,
R/o Ward No.26, Sanjay Colony, – R 34417
Gangapur City-322201 (Rajasthan)
Email: rahulggc0909@gmail.com

Respondent:

The Chairman and Managing Director,
Oil and Natural Gas Corporation Limited, – R 34418
Deendayal Urja Bhawan,
Plot No.5A-5B, Nelson Mandela Road,
Vasant Kunj, New Delhi-110070
Email: grievance@ongc.co.in

Affected Person: The complainant, a person with 42% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 12.02.2022 against not considering his candidature for the post of AEE (Electronics) and Materials Management Officer pursuant to the ONGC Advt. No.2/2021 (R&P) with Registration No.202101800).

1.2 The complainant submitted that his Gate-2020 score is more than the cut-offs, declared by ONGC for PwD candidates. But he was not shortlisted by ONGC for further process of recruitment. His disability is in the left hand and left leg with an extent of only 42% naturally by birth. He does every work as a normal person. He didn't let his disability overwhelm him. His father is also a physically challenged person and he belongs to a BPL family. He performs all functionalities like "Walking, seeing, hearing, speaking, manipulation of fingers, sitting, typing, lifting, pulling, pushing" etc. He prayed to consider his candidature for the post of AEE (Electronics) and Materials Management Officer.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 04.04.2022 and submitted that the posts in the Corporation have identified suitable for recruitment of persons with benchmark disabilities and requisite reservations have been applied accordingly. The complainant suffers from disability of One Leg (OL) and One Arm (OA) which is not identified suitable for the posts of AEE (Electronics) and Materials Management Officer. The Benchmark Disabilities identified suitable for the post are given as under:

AEE (Electronics):

Category B: D, HH
Category C: OL, CP, AAV, LC, DW
Category D: ASD(M), SLD, MI
Category E: Combination of category B to D

(Contd....Page-2)

Materials Management Officer:

Category A: LV
Category B: D, HH
Category C: OA, OL, AAV, DW, LC, CP
Category D: SLD, MI
Category E: Combination of category A to D

2.2 The complainant belongs to OAL disability under category C which is not identified suitable for the posts of AEE (Electronics) as well as Materials Management Officer. The corporation cannot accede to the claims of the Complainant against the standards envisaged under ONGC Advt. No.2/2021 (R&P).

3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 07.06.2022 and reiterated his grievance.

4. 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:

(1) Shri Rahul Gupta, complainant

(2) Advocate Prakhar Bhatnagar; Shri Tejbal Baranwal, DGM (Recruitment); Shri Shiv Kumar, DGM (HR); and Shri Adeeb anjum, Legal Officer for the Respondent

5. Observations and Recommendations:

5.1 Complainant submitted that he applied for the post of AEE (Electronics) and Material Management Officer in the Respondent establishment. His GATE score, which was the selection criterion, was more than the cut off marks, however, he was not shortlisted.

5.2 Respondent submitted that the Complainant is a divyang person with Locomotor Disability - One Arm and One Leg. This subcategory of disability is not identified for the post of AEE (Electronics) and Materials Management Officer. Since it was not identified suitable hence the candidate was not shortlisted. All the criterion adopted by the Respondent establishment are in accordance with the DEPwD list of identified posts dated 04.01.2021.

5.3 DEPwD list dated 04.01.2021 was perused by this Court and Respondent's submissions are found in consonance with the list. This Court is satisfied with the Reply filed by the Respondent. Intervention of this Court is not warranted.

5.4 Accordingly the case is disposed off.

Dated: 23.08.2022

Upma Srivastava

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra
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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.13044/1011/2021

Complainant:

R34415

Shri N. Suresh,
R/o E-2, Jauhari Nagar, Type-4, OCF Estate,
Avadi, Chennai-500054 (Tamil Nadu)
Email: nsnv2010@gmail.com

Respondent:

R34416

The Chairman,
Khadi and Village Industries Commission,
Gandhi Darshan, IVIC Pavilion, Gate No.4,
Rajghat, New Delhi-110002
Email: adm.kvic@gov.in

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

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 13.12.2021 against non-inclusion of all identified sub categories of disabilities in Advt. No. KVIC/Admn./Special Recruitment/Deputy Director (PwD)(DR)/2(30)/2021-22 by KVIC for recruitment to the post of 'Deputy Director'.

1.2 The complainant alleged that in the impugned advertisement the post of 'Deputy Director' has been notified limited for the candidates OL and OA only against OH, whereas in the Gazette Notification No.38-16/2020-DD-III dated 04.01.2021 issued by Department of Empowerment of Persons with Disabilities (Divyangjan), M/o Social Justice & Empowerment the feeder grade post of "Assistant Director Grade-I (Khadi), at Sl. No.511 and for the post 'Assistant Director Grate-I (Village Industry) at Sl. No.512 have been identified for PwBD – (a) B, LV; (b) D, HH; (c) OA, BA, OL, BL, OAL, CP, LC, DW, AAV, MDy; (d) ASD, SLD, MI; and (e) MD involving (a) to (d).

1.3 The complainant submitted that he is BL but not BA. BL is identified as suitable category for feeder grade post as per the notification dated 04.01.2021. However, the same has not been included in KVIC Advertisement for recruitment to the post of Deputy Director.

1.4 The complainant prayed that - (i) left out sub-categories of disabilities are to be included through necessary corrigendum so as all eligible PwBD candidates can apply for the post of Deputy Director; and (ii) Reasonable time may be extended to left out sub-categories of PwBD candidates only by issuing corrigendum in turn of

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5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(पया भविष्य में पत्राचार के लिए उपरोक्त फाईल / केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

equal opportunity for all sub-categories of disability candidates as identified by MoSJE Gazette Notification No.38-16/2020-DD-III dated 04.01.2021.

2. Submissions made by the Respondent:

2.1 KVIC filed their reply dated 20.01.2022 and submitted that suitability of categories mentioned by the complainant are of Assistant Director Gr.I (Khadi) and Assistant Director Gr.I (Village Industries) and not of Deputy Director in Khadi and Village Industries Commission. The post of Deputy Director, KVIC is a common cadre post and the officer has to undertake field visits, Inspection of Khadi and Village Industry Institutions which involves touring in field offices. The Committee constituted for identifying suitability for the post of Deputy Director, KVIC had recommended OL, OA under OH category taking into account the nature of duties to be performed by Deputy Director.

2.2 KVIC further submitted that no sub categories were left out and that suitability was decided as per the recommendations of the Committee constituted taking into account the nature of duties to be performed by Deputy Director, KVIC.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 06.02.2022 submitted that as per Note 4 of the MoSJ&E Gazette Notification dated 04.01.2021, "If a post is identified in the feeder grade, all the posts in the promotional grade should also stand identified." The posts of Assistant Director Gr.I (Khadi) and Assistant Director Gr.I (Village Industries) are the feeder cadre post to Deputy Director, accordingly, the post of Deputy Director stands identified for PwBD for all sub-categories - (a) B, LV; (b) D, HH; (c) OA, BA, OL, BL, OAL, CP, LC, DW, AAV; (d) ASD, SLD, MI; and (e) MD involving (a) to (d).

4. Reply to Rejoinder submitted by Respondent:

The respondent, in their reply dated 28.02.2022 to the Rejoinder filed by the complainant, inter-alia submitted that KVIC had already completed the process of scrutiny of applications received and had scheduled interview for the post of Dy. Director (PwD) on 07.03.2022.

5. Hearing: The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on **09.06.2022.** The following persons were present during the hearing:

(1) Shri N. Suresh, the complainant in person
(2) Shri G. Guruprasanna, Dy. CEO (Admn. & HR); and Shri Sandip R. Kote, Director (Admin. & HR)

5. Observations and Recommendations:

5.1 Complainant submitted that the Respondent establishment issued advertisement for the post of Deputy Director. The Respondent had identified the post suitable for only two subcategories of disability, i.e. 'One Leg' and 'One Arm'. No other subcategories of Locomotor Disability were identified suitable. As per M/o SJ&E list of identified posts, dated 04.01.2021, the post is not mentioned. However, the Complainant submitted that the feeder post, i.e. Assistant Director Grade-I (Khadi) and Assistant Director Grade-II (Village Industry) are identified suitable for

subcategories of 'One Arm', 'One Leg', 'Both Arms', 'Both Legs', 'One Arm and One Leg', 'Cerebral Palsy', 'Leprosy Cured', 'Dwarf' and 'Acid Attack Victim'.

5.2 Respondent submitted that earlier CCPD recommended the Respondent to revisit the roster and reserve one vacancy for divyangjan. The same was done and one vacancy of 'Deputy Director' was advertised. Since the post of 'Deputy Director was not mentioned M/o SJE list dated 04.01.2021 hence, a committee was constituted for identifying the post for various subcategories of divyangjan. It was concluded by the committee that the post of 'Deputy Director' involves field visits and inspection of Khadi and Village Industry Institutions hence it was not identified for various subcategories of 'locomotor disability'.

5.3 Respondent in its written submissions did not reply to specific issue, whether 'Assistant Director' is feeder post of 'Deputy Director' or not. Complainant has cited OM to establish that Assistant Director is feeder post of Deputy Director. During online hearing, Respondent informed the Court that the post of Assistant Director is feeder post of 'Deputy Director'.

5.4 In the present Complaint, reply of the Respondent has been accepted. However in future instances, this Court recommends that the post of 'Deputy Director' shall be identified suitable for all such subcategories for which the post of Assistant Director is identified suitable in M/o Social Justice & Empowerment list of jobs identified suitable, dated 04.01.2021.

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

5.5 Accordingly the case is disposed off.

Upma Srivastava

Dated: 23.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra

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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. 12938/1011/2021

Complainant:

Dr. Anil Sahebrao Kuwar,
Plot No.41, Nagai Colony,
Sakri Tal, Sakri,
District-Dhule – 424204
Email: kuwaras@gmail.com

-R34413

Respondent:

The Director,
Indian Institute of Science Bangalore,
Bangalore – 560012
Email: Registrar@iisc.ac.in

-R34414

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

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 07.10.2021 against rejection of his candidature for the post of Assistant Professor in Chemical Sciences (Inorganic and Physical Chemistry) by the Respondent – Indian Institute of Science Bangalore (IIS Bangalore).

1.2 The complainant submitted that he had applied for the post of Assistant Professor in Chemical Sciences (Inorganic and Physical Chemistry) subject with Level 12 of the institute as per the advertisement notification Special Recruitment Drive for SC/ST/OBC-NCL/EWS/PWD categories dated 09.09.2021 under PWD(OBC) category, as he was fulfilling all minimum requirements asked by IIS Bangalore. He alleged that IIS Bangalore rejected his candidature without any reason informing him that they were unable to proceed with his candidature at that time. Till date the institute had not filled up any post of Assistant Professor under PWD category.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 22.11.2021 and inter-alia submitted that the Special Recruitment Drive was specifically open for SC/ST/OBC-NCL/EWS/PWD categories in order to provide equal opportunity to the special categories under the RPwD Act, 2016. In the Notification it was clearly mentioned that merely fulfilling the minimum eligibility criteria would not entitle one to be called for an interview. The Special Recruitment Drive undertaken by the IIS

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5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(पया भविष्य में पत्राचार के लिए उपरोक्त फाईल / केस संख्या अवश्य लिखें)
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Bangalore provides for eligibility criteria including qualification and experience required for the post. A candidate applying to any of the categories of post notified under the said notification had to mandatorily possess Ph.D. with first class or equivalent grade and a minimum of three years of teaching/research/ professional experience gained while pursuing his/her Ph.D. Further, the decision of selection and non-selection of the notified posts was at the sole discretion of the Evaluating Committee. The Committee had found the complainant Dr. Anil Sahebrao Kuwar unfit for the post which had been accordingly communicated to him regarding his non-selection.

2.2 IIS Bangalore had provided equal opportunity by calling for the post of Assistant Professor under the Special Recruitment Drive and had undertaken the recruitment process in order to appoint a most deserving PwD candidate to the post. The recruitment drive is still under process so as to ensure that the best and the most suitable PwD candidate is appointed. Two different recruitment committees had scrutinized his applications received from him on two occasions i.e. on 15.05.2019 and 03.09.2020; and did not shortlist his application for the post. One of the reasons being that he is specialized in the area of supramolecular chemistry and sensors and there was no vacancy for the said post as there is good strength at the Institute to work on that field of practice. Since the Special Recruitment Drive was specifically open for SC/ST/OBC-NCL/EWS/PWD categories, no other categories of persons would be appointed to the post.

3. Submissions made in Rejoinder:

3.1 The complainant filed his rejoinder dated 17.12.2021 and submitted that in the advertisement, the Respondent Institute did not mention the area of research and specialization of the subject. They had given Chemical Sciences [Inorganic and Physical Chemistry (IPC); Materials Research Center (MRC); Organic Chemistry (OC); Solid State and Structural Chemistry Unit (SSCU)] only as a discipline. Ph.D is the basic qualification and three year Post Ph.D (Post-Doctoral) experience needed in recruitment in the IISc Bangalore. He reiterated to have fulfilled that qualification and experience and alleged that Respondent Institute has been backdoor changing their criteria after publishing advertisements and receiving his application.

3.2 IIS Bangalore is a fully academic institute. Overlapping of research areas is not binding to all academic institutes. It is not mandatory for academic institutes. Some teachers at Guru Nanak Dev University, Amritsar, and other academic institute's faculties in India are working on the same research area. Number of people in India is working on the same research area.

3.4 The Indian Institute of Science Act, 1967 does not provide an Evaluation Committee, the evaluation committee is unconstitutional.

3.5 Till date, IIS Bangalore did not maintain 4% PwD reservation policy for all teacher cadres in the Institute. As per our information, the Central Educational Institutions (reservation in teachers' cadre) Ordinance, 2019 did not adopt in IIS Bangalore.

4. Hearings:

4.1 The case was firstly heard on **12.05.2022** via Video Conferencing by Commissioner for Persons with Disabilities. The following were present during the hearing:

(1) Shri Anil Sahebrao Kuwar, the complainant in person

(2) Advocate Sangeetha, Counsel for the Respondent; and Shri Vasanathan, Legal Manager, IIS Bangalore

After hearing both the parties, the Respondent was directed to provide the following information to this Court within 15 days:-

a) Total number of divyangjan employed on teaching posts in the Respondent establishment.

b) How many total number of divyangjan applied under the present Special Recruitment Drive which is impugned in the present Complaint?

c) How many applications of divyang candidates were rejected and how many applications of divyang candidates were shortlisted and are under consideration?

4.2 The next hearing in this case was conducted on **26.07.2022** via Video Conferencing by Commissioner for Persons with Disabilities. The following were present:-

(1) Dr. Anil Sahebrao Kuwar, complainant in person

(2) Ms. Sangeetha, Advocate for the Respondent

5. Observations and Recommendations:

5.1 Complainant submitted that he applied for the post of Assistant Professor in Chemical Sciences. He fulfilled minimum eligibility criterion but still his candidature was rejected without giving him opportunity for appearing in the interview.

5.2 Respondent submitted that fulfilment of minimum eligibility criterion does not make anyone eligible for the appointment. Applications of all the candidates who fulfilled minimum eligibility criterion were forwarded to Scrutiny Committee. The Committee shortlisted the candidates as per the standards of suitability. This process was adopted for all the candidates including the Complainant.

5.3 One reason for rejecting the Complainant's candidature was that he was specialized in the field of Supra-molecular chemistry, but there was no vacancy of this field. Respondent further assured that the instant Recruitment drive is specially conducted for SC/ST/OBC and PwDs and no candidate who does not belong to any of these categories shall not be appointed.

5.4 The issue which needs deliberation of this Court is whether divyang candidates are being excluded by the Respondent from the recruitment process. This Court directed the Respondent to submit further information regarding number of applications received and number of applications which are being considered by the Respondent.

(P2)

5.5 Respondent in its Reply dated 05.07.2022 submitted that total number of applications received in impugned recruitment drive was 1396 against total 81 vacant posts of Assistant Professors. Total number of vacancies reserved for divyangjan was 3. Total 48 divyangjan applied under the impugned recruitment drive. Out of 48 candidature, 07 divyangjan were rejected and candidature of 41 were under consideration. Present Complainant is one of the 07 divyang candidates, candidatures of whom were rejected.

5.6 From the Reply filed by the Respondent, it is clear that the Respondent is not rejecting the applications of divyangjan with intention of excluding divyangjan.

5.7 As far as issue of rejection of Complainant's candidature is concerned, there is nothing in record to suggest that the Respondent rejected the Complainant's candidature out of some personal or special intention of discrimination towards the Complainant. As far as issue of discrimination with other divyang candidates is concerned, the fact that out of 48 applications of divyangjan, 41 are still under consideration and only 07 have been rejected, reflects that preponderance of probabilities lies in favour of the Respondent. Hence, this Court concludes that intervention of this Court in present Complaint is not warranted.

5.8 Accordingly the case is disposed off.

Upma Srivastava

Dated: 23.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra
(13)

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. 13126/1011/2022

Complainant:
Shri Deep Chandra Pandey, -R34411
Father of Shri Prashant Pandey, a person
With 50% Autism Spectrum Disorder,
R/o Flat No.33, Indian Airlines (Cargo),
CGHS, Sector-11, Dwarka,
New Delhi – 110075; Email: dcpandey67@gmail.com

Respondent:
The Chairman,
Staff Selection Commission, -R34412
CGO Complex, Block No.12,
Lodhi Road, New Delhi-110003
Email: chairmanssc@gmail.com

Affected Person: Shri Prashant Pandey, a person with 50% Autism Spectrum Disorder

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 12.02.2022 regarding relaxation of 20% minimum qualifying marks in CGL 2020 Tier-2 and all other forthcoming Examinations for PwDs Intellectual Disability (ID) category for his son, Shri Prashant Pandey [Registration No.50001575023] , a person with 50% Autism Spectrum Disorder.

1.2 The complainant submitted that – (i) in IBPS PO pre and Mains exam extra time is given to ID category candidates; (ii) in SBI PO Pre and Mains exam, there is no sectional cut off; and (iii) in SSC CGL minimum 20% marks have been fixed for these candidates in each subject of Tier-2 and no extra time is given to these candidates. In IBPS PO Mains exam there is subject cut off (with extra time, but that subject cut off varies subject to subject as per toughness of exam and it is not 20% in each subject). This 20% is very high for the ID category candidates. In IBPS PO Mains Exam 2020, it was 6.25% in reasoning and computer aptitude.

1.3 As per the answer keys of Tier-2 CGL 2020 released by SSC on 11.02.2022, the final score of Shri Prashant Pandey in Tier-1 and Tier-2, is approximately 219 out of 600. But in QA he has 11.25% marks, so he would not qualify for Tier-3 because in each subject minimum cut off marks are 20%. For autistics candidates, it is very difficult to score such a high score in each subject. Last year the minimum cut off marks was only 120 marks (out of 600). Despite scoring 219 marks this year he would not qualify. In 2018, SSC did not fix 20% minimum qualifying marks, then why in 2019 and 2020.

(Contd….Page-2)

2. Submissions made by the Respondent:

2.1 SSC filed their reply dated 23.03.2022 and submitted that Sr.No.II of Para 1 of the 'Guidelines for conducting written examination for Persons with Benchmark Disabilities' issued by the Department of Empowerment of Persons Disabilities (Divyangjan), Ministry of Social Justice & Empowerment vide OM No.34-20/2015-DD-III dated 29.08.2018 states that "there is no need for fixing separate criteria for regular and competitive examination." Therefore, the criteria of minimum qualifying marks of 20% for all categories except UR, OBC & EWS in Tier-I, each Paper of Tier-II and Tier-III Examination of CGLE-2020 was in accordance with the aforesaid guidelines. The 20% criterion, which is applicable to PwBD candidates, is relaxed as the criteria are 30% for UR candidates and 25% for OBC/EWS candidates. 400 candidates, belonging to PwD-Others category have qualified for Tier-II & Tier-III in result of CGLE-2020 on the same criteria, which seems ample.

2.2 In context of no extra time is given to ID PwD (ASD) candidates, a compensatory time of 20 minutes per hour of examination is provided by the Commission to the persons with disabilities, who are allowed for scribe, on production of certificate as per relevant proforma, in accordance with the above mentioned guidelines dated 29.08.2018.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 08.04.2022 submitted that on page numbers-3, 4, 5, 7 and 8 of the Final Result published by SSC, the vacancies available for PwD-Other category candidates and the candidates available, it can be seen that most of the vacancies are not filled by SSC. When the qualifying norms of SSC are so high then how can SSC get the candidates? What is the use of giving reservation, if the posts have to keep vacant. The complainant prayed to reconsider the selection norms for PWD-Other candidates as Autistic children can never be compared with any other normal candidates or even some other PWD candidates.

4. 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:-

(1) Shri Deep Chandra Pandey, complainant in person

(2) Mr. Mohan Lal Hirwal, Director, SSC for the respondent

5. Observation/Recommendations:

5.1 Grievance of the Complainant is that in CGL examination there is separate cut off marks for each subject. Minimum cut off marks are 20% in each subject. Complainant submitted that 20% is very high for Intellectually Disabled candidates. Further, his son who is intellectually disabled could not qualify for Tier - 3 because his score in Tier - 2 QA subject was 11.25%. His overall score was more than 20% but in one subject he failed to secure more than 20% marks, so he failed to qualify. Complainant prayed that condition of 20% marks in each subject is too high for Intellectually Disabled candidates and it should be done away with.

(Contd....Page-3)

5.2 Respondent submitted that the minimum qualifying marks for divyangjan are already relaxed in comparison with other categories. For unreserved category, minimum qualifying marks are 30%, for OBC/EWS it is 25%, for PwBD it is 20%. Extra time is given to those who subscribe the facility of scribe.

5.3 During online hearing, Respondent submitted that the result of the examination in question was declared last week. There were total 33 vacancies which were reserved for divyangjan under 'Other' category. Against these 33 vacancies, 44 candidates have been shortlisted for document verification.

5.4 Complainant's prayer for review of cut marks would have been justified if general trend of keeping reserved vacancies as unfilled would have existed. Since in the present recruitment cycle, more number of candidates vis-à-vis vacancies reserved has been shortlisted hence, prayer for review of cut marks is not justified. Intervention of this Court in the present Complaint is not warranted.

5.5 Accordingly the case is disposed off.

Dated: 24.08.2022

Upma Srivastava

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra

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. 13231/1011/2022

Complainant: R34409

Shri Shubham Kadam,
Kailash Nagar, Shiv Mahadev Apartment,
1st Building, 3rd floor, Room No.304,
Wadavli Section, MIDC Road,
Ambernath (East)-421501 (Maharashtra)
Email: shubhamkdm67@gmail.com

Affected Person: The complainant, a person with 72% Mental Illness

Respondent:

The General Manager (HRD), R34410
IDBI Bank LTD, IDBI Towers,
WTC Complex,
Cuffe Parade, Colaba,
Mumbai –400005; Email: recruitment@idbi.co.in/rec.executive@idbi.co.in

1. Gist of Complaint:

1.1 The complainant filed complaints dated 23.03.2022 and 25.03.2022 regarding Non-issue of appointment letter on the ground of disability after verification of documents by IDBI Bank in the matter of Advt.No.4/2021-22 for recruitment of Executives on Contract – 2021.

1.2 The complainant submitted that he had applied for the post in MD/ID category and cleared the all India recruitment exam with registration no.680098098 got placed in Merit list. Verification of documents was done on 05.10.2021 and pre-recruitment medical test has also been completed but IDBI Bank did not issue appointment/joining letter whereas the other candidates have been issued appointment letters. The Bank had also issued Offer letter to waiting list candidates and they had got their joining. The complainant claimed that he fulfills all the criteria of eligibility, but the bank is discriminating his right to get appointed.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 07.06.2022 and inter-alia submitted that the process for final selection is still underway, hence, the perception of the complainant regarding discrimination is unreasonable and unwarranted. The offer of employment would be made to the successful candidates based on the marks in the online test, being found medically fit and subject to fulfillment of other eligibility criteria as stipulated in the advertisement. Therefore, the process of verification of documents and undergoing pre-recruitment medical test do not imply or infer final selection of any candidate.

2.2 The respondent further submitted that the complainant had already raised complaints under CPGRAMS bearing No.PMOPG/E/2022/0096883 dated 02.04.2022; DPG/B/2022/80730 dated 26.04.2022; and DEABD/E/2022/35316 dated 08.05.2022 which

(Contd....Page-2)

had been responded by the Bank. The complainant had already been communicated on April 06 & 28, 2022 and May 12, 2022 about the Bank's internal process and also the fact that the reserved post is not still filled in. Despite the communications of the Bank, the complainant is making false allegations of discrimination against the Bank.

2.3 The respondent also submitted that the appointment of Grievance Redressal Officer is not applicable to Bank since, it is not a Government Establishment.

3. Submissions made in Rejoinder:

3.1 The complainant filed his rejoinder dated 11.06.2022 and reiterated his grievance. He added that as per statement of the bank that the reserved post is still not filled and he fulfills all eligibility and terms and conditions/ medical standards laid down under policy and category which he had applied for why he is still waiting for.

3.2 Regarding filing grievance by him on PG Portal, he submitted that since the bank had not decided about his candidature he felt discriminated by the Bank he filed the complaints.

3.3 Further, Bank has also released new recruitment of executive and PGDBF course under Advertisement No.1/2022-23 on 01.06.2022 for recruitment of 1044 posts of executive, out of which 10 posts are reserved for MD/ID category.

4. Hearing: The case was scheduled for hearing on **19.07.2022**, but none of the parties appeared during the hearing.

5. Observations and Recommendations:

5.1 Complainant in his written complaint had submitted that the Respondent bank conducted examination for appointment to the post of executive. The Complainant appeared in the examination and qualified. Thereafter, he was called for document verification.

5.2 Complainant alleged that the Respondent had issued appointment letters to all the qualified candidates, except him because he is a divyang person.

5.3 Respondent in his written reply had submitted that it is a non-government establishment still it provides 4% reservation to divyangjan. Respondent conducted examination for appointment to the post of Executive. Selection process is still underway. Seats reserved for divyangjan have not been filled yet. The Complainant has not been discriminated against as the process is yet to be completed.

5.4 Complainant had informed this Court by email dated 19.07.2022 that the Respondent had issued appointment letter and his grievance had been settled and he did not want to follow his Complaint.

5.5 Accordingly the case is disposed off.

Upma Srivastava

Dated: 24.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra

(8)

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.13107/1040/2022

Complainant:
Shri Rajeev Kumar Garg, R34407
F/o Shri Ritik Garg, a person with 100% Hearing Impairment,
House No. 140P, Sethi Ice Factory,
Ferozepur Cantt – 152001
Email: rajeevgarg323@gmail.com; Phone : 9779544331 / 8427944331

Respondent:
The Registrar,
Panjab University, Sector-14, R34408
Chandigarh - 160014
Email: regr@pu.ac.in Phone: 0172-2541716/2534867

Affected Person: Master Ritik, a person with 100% Hearing Impairment

1. Gist of Complaint:

1.1 The complaint dated nil was received through Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment vide their letter dated 20.12.2021. The complainant has filed the complaint regarding not providing the facility of scribe, compensatory time & alternative question paper to Hearing Impaired & Visual Impaired students in exam conducted by Panjab University.

1.2 The complaint submitted that his son Shri Ritik who is a person with 100% Hearing Impairment, had cleared Class XII from Punjab School Education Board, Mohali where he had got scribe facility as per Government Guidelines. The Board also provided him with MCQ/alternative questions and short answer type question bank of each subject as per the Government Guidelines dated 29.08.2018. His son wanted to get admitted to BA stream in Panjab University (Chandigarh).

1.3 The complainant alleged that Panjab University did not follow the "Guidelines for conducting written examination for Persons with Benchmark Disabilities" issued by Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment vide Office Memorandum No.34-02/2015-DD-III dated 29.08.2018 and the 'Corrigendum' dated 08.02.2019.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 19.03.2022 and submitted that as per Rule I of (iv) SPECIAL ARRANGEMENTS FOR AMANUENSIS (writer of ANSWERS) contained at page 444 of Panjab University Calendar Volume III, 2019), a candidate may be allowed help of an amanuensis (writer) if he/she is:

(Contd....Page-2)

(i) Blind, or

(ii) Permanently disabled from writing with his/her own hands, or

(iii) Temporarily disabled from writing on account of fracture of the right or left arm forearm or dislocation of a shoulder, elbow or wrist etc. etc. The candidate shall produce a certificate from a Professor of the spciality concerned of a Medical College and where there is no Medical College from the Chief Medical Officer of the District Medical College from the Chief Medical Officer of the District concerned to the effect that the candidate is unable to write his/her answer-books because of the temporary disablement.

2.2 The University provides compensatory time of 20 minutes to persons with disabilities for an exam of one hour. If duration of exam is higher/lower, then compensatory time is adjusted proportionately.

2.3 Regarding providing of alternative Question Papers/MCQ to the persons with disabilities, presently there is no supporting rule or regulation in the University Calendar. In order to comply with the guidelines of 2018, the Vice Chancellor, Panjab University had constituted a Committee on 10.03.2022 for making recommendations in this regard and the matter is under process.

3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 15.04.2022 and prayed that the respondent may be directed to get the matter decided by the said committee in time bound manner and also prepare question bank as provided by the Punjab School Education Board for divyang students, before June, 2022 semester examinations.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.07.2022.** The following were present during the hearing:

(1) Shri Rajeev Kumar Garg, complainant in person

(2) Prof. Y.P. Verma, Registrar, Panjab University for the Respondent

5. Observation/Recommendations:

5.1 Complaint is filed on behalf of a divyang child by his father. Issue raised by the complainant is that the beneficiary wants to get admissions in Punjab University. When the University was contacted, the complainant got to know that scribe facility is not provided to divyang candidates. Moreover, extra time is also not provided. Complainant further, submits that as per government guidelines separate question papers in final exams must be provided to divyang candidate. However, the respondent does not follow this practice.

5.2 Respondent submits that scribe facility is not provided to every Divyangjan. This facility is extended only to those Divyangjan who are blind or who are disabled from writing. With respect to compensatory time, respondent submits that

(Contd….. Page-3)

compensatory time is providing to every Divyangjan. 20 minutes of time is provided for an exam of 1 hour. With respect to providing alternative question papers respondent submits that there is no such rule or regulations in the respondent establishment.

5.3 The three main grievance raised by the Complainant are related to, (a) providing scribe facility to the Complainant; (b) compensatory time; and (c) objective question paper. Legal position on all the three issues is clear vide Department of Empowerment of Persons with Disabilities O.M. dated 29.08.2018. In Para IV it is specifically laid down that scribe facility should be provided to any person with benchmark disability who has limitation in writing. Hence, it is certain that the facility to provide scribe is not connected with any particular category of disability. The only condition for availing scribe facility is 'limitation in writing'.

5.4 On the issue of compensatory time, Para XII is relevant. This para provides that compensatory time of not less than 20 minutes per hour is provided for all those person who are availing facility of scribe. Further, it is provided that minimum 30 minutes per hour of compensatory time is allowed for all divyangjan who are not availing facility of scribe. In this Para as well, compensatory time is not connected with any particular category of disability. It is allowed to all divyangjan.

5.5 On third issue, i.e. alternative question paper, Para XVI of the O.M. is relevant. It provides that alternative question paper in lieu of descriptive questions should be provided for hearing impaired persons.

5.6 During online hearing, Respondent agreed on all the three issues. Respondent informed the Court that in total there are 5 exams out of which 2 have been conducted and 3 are still to be conducted. Respondent assured this Court that all the three points raised by the Complainant shall be settled in his favour. In rest 3 exams, scribe facility, compensatory time and alternative question paper will be provided to the Complainant.

5.7 This Court expresses its satisfaction with the positive attitude of the Respondent and recommends that scribe facility, compensatory time and alternative question paper shall be provided to the Complainant in accordance with DEPwD O.M. dated 29.08.20218 and as also assured by the Respondent.

5.8 Accordingly the case is disposed off.

Upma Srivastava

Dated: 24.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra (61)

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. 13128/1011/2022

Complainant:
Dr. Shivshankar Rajput,
R/o Flat No.79, Gate No.2,
DDA MIG Flats, Madipur,
Paschim Vihar, New Delhi-110063
Email: shivshankerdr@gmail.com

-R34405

Respondent:
The Director,
Directorate of Ayush, Health
and Family Welfare Department,
Ayurvedic & Unani Tibbia College Campus,
Karol Bagh, New Delhi-110005
Email: pmstibbiacollege@rediffmail.com

-R34406

Affected Person: The complainant, a person with 52% Locomotor Disability (Post polio residual paralysis right lower limb with shortening)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 14.02.2022 against not reserving a single post for Persons with Benchmark Disabilities in the following Recruitment Advertisements published by UPSC for the post of Assistant Professor (Ayurveda) in Directorate of Ayush, Health and Family Welfare Department, Govt. of NCT of Delhi:-

Advert. No.	Sl. No.	Vacancy No.	Department	No. of Vacancy	Reservation
19/2021	7	21121907125	Rachna Sharir	01	UR-1
	8	21121908125	Maulik Siddhant Evum Samhita	01	UR-1
01/2022	11	22010111108	Bal Roga (Kaumarbhritya)	01	ST-1
	12	22010112108	Kaya Chikitsa	04	SC-1 OBC-1 EWS-1 UR-1
01/2022	13	22010113108	Kriya Sharir	02	ST-1 OBC-1
02/2022	4	22010204122	Panchkarma	01	EWS-1
	5	22010205122	Roga Nidan evum Vikriti Vigyan	01	UR-1
	6	22010206122	Shalya Tantra	01	SC-01
	7	22010207122	Swasthvritta evum Yoga	01	OBC-1

5वीं मंजिल, एनआईएसडी भवन, प्लॉट न0. जी–2, सेक्टर–10, द्वारका, नई दिल्ली–110075; दूरभाषः 011–20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(पया भविष्य में पत्राचार के लिए उपरोक्त फाईल / केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

03/2022	4	22020304112	Agad Tantra evum Vidhi Vaidyak	01	UR-1
	5	22020305112	Dravya Guna	01	UR-1
	6	22020306112	Prasuti Tantra evum Stri Roga	02	SC-1 UR-1
	7	22020307112	Rasa Shastra evum Bhaishajya Kalpana	02	OBC-1 UR-1
	8	22020308112	Shalakya Tantra	01	OBC-1
			Total	20	UR-08 OBC-05 SC-03 ST-02 EWS-02 PwBD-0

1.2 The complainant also alleged that the respondent is not maintaining vacancy based reservation roster for the PwBD candidates.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 16.03.2022 and submitted that the suitability of requisitions were worked out considering the suitability and reservation for PwBD on the basis of DoPTs OM dated 15.01.2018. The posts identified for PwBD (OL) in the Departments of Maulik Siddhant evum Samhita (Ayurveda Samhita), Dravyaguna and Ras Shastra were decided in accordance with the guidelines of Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment [DEPWD/MSJE].

2.2 It was contemplated that reservation for PwBDs may not be fixed on any one specific category or in any one specific discipline vertically; rather it is applied horizontally on all three suitable disciplines, so that maximum possible PwBDs may apply and compete and the best candidate is selected in any of the suitable disciplines.

2.3 The respondent stated to have maintained effective reservation for PwBDs candidates for Group-'A' post as Dr. Sangeeta Mishra is mentioned at Sl.No.24 in roster, has already been selected through UPSC.

2.4 The complainant has passed M.S. (Ay.) & Ph.D. in the Department of Stri Rog evum Prasuti Tantra (Ayurveda-Gynae and Obstetrics), which is not suitable for PwBD candidates as per guidelines of DEPWD/MSJE. But the complainant might have applied as General candidate against Vacancy No.22020306112 in the Advt. No.03/2022 as two vacancies for the post of Assistant Professor (Ayurveda), Prasuti Tantra evum Stri Roga under the category SC-1 & UR-1 advertised by UPSC.

3. Submissions made in Rejoinder:

3.1 The complainant in his rejoinder dated 22.04.2022 submitted that he belongs to PwBD 52% Locomotor Disability. As per the replies filed by UPSC and Directorate of Ayush, among 14 Departments, only 03 Departments have been recognized as suitable for PwBD candidates for the post of Assistant Professor (Ayurveda). The complainant further submitted that this post of Assistant Professor

(Ayurveda) must be suitable for PwBD like another Assistant Professor (Ayurveda). As per the Gazette of India Notification No.DL33004/99 published on 29th July, 2019 Regulation, 08 PwBD (between 40-80%) are eligible to do the Master Degree in all the 14 Departments of Ayurveda. He stated to have done M.S. (Ayu.) and Ph.D. degree from Prasuti Tantra evum Stri Roga Department and Subject. Every PwBD person can do the allotted work in concern subject/Department. He had achieved the Masters and post Doctorate degree in this department and he couldn't face any difficulties. If he will not be eligible for the post of his concerned Subject/Department where he has achieved the top most degree then it would be highly desperating and depressing for him. Every PwBD candidate must be suitable for the post where he got the degree. There are many of the institutions in India where PwBD are suitable for each and every post of 14 Ayurveda Department for the post of Assistant Professor Ayurveda.

3.2 The complainant further submitted that this is an important opportunity for his career and his life. But due to injustice, he is about to lose this and future opportunities. He prayed to look into this matter and help him get justice.

4. 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:

(1) Dr. Shivshankar Rajput, the complainant in person

(2) Dr. Raj Kumar Manchanda, Director, AYUSH for the Respondent

5. Observations & Recommendations:

5.1 Complainant submitted that in 2021 and 2022 several advertisements were issued for various posts. Total 20 posts were advertised, however, no reservation was given to divyangjan.

5.2 Respondent submitted that various posts were earmarked reserved for divyangjan in horizontal manner so that maximum representation can be given to various subcategories of disabilities. Complainant applied in the department of Ayurveda Gynae and Obstetrics. This post is not identified suitable for divyangjan.

5.3 During online hearing, the Complainant informed this Court that he could not fill the form when he mentioned his disability in the form. Respondent informed that this happened because the post of Ayurveda Gynae and Obstetrics is not identified suitable for divyangjan. During online hearing, Respondent relied upon a list of identified 'Group A posts' which was issued in 2013. Respondent brought to the attention of this Court, the posts of Lecturer, Reader, Professor in Dravyaguna, Ayurveda Samhita and Rasa Shastra discipline mentioned at Sr. No. 212, 213 and 216 of 2013 list. Respondent submitted that in that list these posts are identified suitable only for 'One Leg' category.

5.4 Submissions made by the Respondent were contrary to legal position. However, even if they are considered correct, they clearly fall under the category of admission of violation of disability rights. Complainant's disability is Locomotor disability in Right Lower Limb. Therefore, even as per 2013 list, on which the

Respondent wrongfully relied, the Complainant is suitable to be appointed on the post.

5.5 Respondent's reliance on 2013 list is completely against the law. DEPwD has issued latest list of posts identified suitable for divyangjan on 04.01.2021. At Sr. No. 655, 656 and 659, the posts of Lecturer, Reader, Professor in Dravyaguna, Ayurveda Samhita and Rasa Shastra discipline are identified suitable for One Arm (OA), Both Arms (BA), One Leg (OL), Leprosy Cured (LC), Dwarf (Dw), Acid Attack Victims (AAV).

5.6 Further, it is important to note that even if the vacancies are not reserved for divyangjan, government establishment cannot bar any divyangjan from applying against the unreserved post if the post is identified suitable for that particular category of disability.

5.7 In this Complaint, Respondent's act of barring the Complainant from applying for the post is a gross violation of rights of Persons with Disabilities. Respondent first failed to check the latest list of identified posts issued by DEPwD on 04.01.2021. Respondent further failed to check properly the list of 2013. Even if Respondent had checked the 2013 list, the Complainant could not have been barred from applying against the post because even as per 2013 list the posts of Lecturer, Reader, Professor in Dravyaguna, Ayurveda Samhita and Rasa Shastra discipline are identified suitable for 'One Leg' category of divyangjan.

5.8 During online hearing, Respondent further informed that the examination had not been conducted so far. This Court recommends that the Respondent shall recall the requisition which has been forwarded to UPSC and under which the examination has not been conducted yet. Further it is recommended that the Respondent shall prepare reservation roster in accordance with the guidelines laid down in DoPT O.M. dated 15.01.2018. Further, Respondent shall earmark the posts in accordance with DEPwD list of identified posts dated 04.01.2021 and then resend the requisition to UPSC after reserving the posts for divyangjan as per DoPT O.M. dated 15.01.2018.

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

5.10 Accordingly the case is disposed off.

Upma Srivastava

Dated: 24.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities

extra
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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No. 13203/1092/2022

Complainant:

Shri Githin Madhu
Meenathathil, Puthenthura PO,
Neendakara, Kollam, Kerala-691582
Email: githinmadhu@gmail.com

R34402

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

Respondent:

(1) The Chairman,
National Highways Authority of India,
G-5 & 6, Sector-10, Dwarka, New Delhi-110075
Email: tis@nhai.org

R34403

(2) The Regional Officer,
National Highways Authority of India,
Regional Office: Kerala, T C 86/1036-1,
Amby Arcade, S.N.N.R.A – 9, Pettah P.O.
Thiruvananthapuram – 695024 (Kerala)
Email: rokerala@nhai.org

R34404

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 22.02.2022 regarding denial of exempted Fast Tag to him by Regional Office, NHAI, Kerala.

1.2 NHAI has set up their website – exemptedfastag.nhai.org – for applying exempted category Fast Tag and the site asked for uploading copy of Vehicle RC, Proof of exemption, i.e. Disability Certificate ID and a form regarding exemption. But when these documents are submitted, they are rejected replying that they didn't have the facility to verify the RC ownership type as divyangjan. In a nutshell, due to lack of co-ordination or miss-governance of both NHAI and Ministry of Road Transport, the right to avail the benefit of divyangjan is being curtailed. NHAI Kerala did not value the disability certificate.

1.3 The complainant further submitted that on cancellation of his application he had contacted the Regional Office, NHAI. The Officer who had attended his call replied that they did not have the facility to verify the database of RC issued by Motor Vehicle Department (Parivahan Database). Physical RCs do not carry the information regarding ownership type.

2. Submissions made by the Respondent:

2.1 NHAI RO Kerala filed their reply dated 21.05.2022 and inter-alia submitted that as per the RC details submitted by the applicant, the vehicle belonging to the applicant

(Contd….Page-2)

was not an Invalid Carriage/Adapted Vehicle (i.e. Mechanical vehicles specially designed and constructed for use of a person suffering from physical disability). The complainant had not submitted any valid documents for verification of the ownership type of the vehicle as required as per Clause 3.5(c) of the MoRTH SoP dated 09.12.2019, as the only document submitted by the applicant was a copy of Disability Certificate, which is not considered as a valid proof of exemption as per Rule 11 of National Highways Fee (Determination of Rates and Collection) Rules, 2008.

2.2 Further, RO Kerala does not have access to the Website (http://vahan.parivahan.gov.in) and hence cannot verify the ownership type of the applicant's vehicle in the said portal. In the web portal for issuance of Exempted Fast Tag, there is no provision for RO Kerala to upload any additional document, as only provision available for RO is to approve, reject or Change RO (i.e. for transferring request to another RO). RO Kerala had strictly processed the said application in the web portal and rejected as the same was not meeting the requirement as per MoRTH SoP.

3. Submissions made in Rejoinder:

No rejoinder was received from the complainant to the reply filed by the respondent.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **21.07.2022.** The following persons were present during the hearing:

(1) Shri Githin Madhu, the complainant in person

(2) Shri Ancil Hassan, Dy. Manager, NHAI, RO Kerala

5. Observations & Recommendations:

5.1 Complainant submitted that Divyangjan whose vehicle is registered as ownership type divyanjan, are exempted from toll tax. NHAI has a separate online portal for applying for exempted category. Complainant claims that when he uploaded his registration certificate and applied for the exempted category Fast tag, his application got rejected. Complainant claimed that the reason given for rejecting his application is that NHAI does not have facility to verify the RC ownership. Due to lack of co-ordination between NHAI and Ministry of Road Transport & Highways.

5.2 Respondent No.1, National Highways Authority of India submits that as per Rule 11 of National Highway Fee (Determination of Rates and Collection) Rules, 2008, some vehicles are exempted from payment of toll fee. For this purpose exempted category Fast tags are issued in favour of those vehicles which are specially designed and constructed for use of Divyangjan.

5.3 Respondent No.1 further submitted that Complainant's application was rejected because his vehicle was neither an adapted vehicle (Specially designed for use of Divyangjan) nor the ownership type was Divyangjan.

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5.4 In its letter dated 14.01.2021, M/o Roads Transport and Highways had informed this Court that exempted category facility Fast tags are issued in case of owners who have registered their vehicle under ownership type as Divyangjan.

5.5 Another category for which exempted category Fast tags are issued is when the vehicle is specially designed or constructed for the use of Divyangjan.

5.6 During online hearing, Complainant informed that his grievance has now been settled. The Respondent had issued exempted category Fast Tag to him. However, the issue which still persists is related to trouble which divyangjan have to face in order to obtain exempted category Fast Tag. Since this Fast Tag is issued only when either of the two conditions is fulfilled. First condition is that the vehicle must be adapted vehicle and second is that the registration of the vehicle must be under 'disability ownership'. In those cases where registration of the vehicle is done under 'disability ownership', this status is not mentioned in Registration Certificate. Hence, when such owner applies for exempted category Fast Tag, the concerned office does not have any mechanism to check the ownership type of the vehicle because the status neither finds mention on the Registration Certificate, nor the concerned office has access to concerned portal of Ministry of Road Transport & Highways. Because of this drawback of the system, divyang applicants have to run from pillar to post to prove the ownership type of his vehicle.

5.7 Considering these facts and for making the system more accessible for divyangjan, this Court recommends that Ministry of Roads, Transport & Highways shall give access of concerned online portal to National Highways Authority of India so that ownership type of divyangjan's vehicle may be verified online for the purpose of issuing exempted category Fast Tags and divyangjan need not be compelled to run from one office to another to prove the ownership type of his vehicle. A copy of this Order be endorsed to the Ministry of Road Transport & Highways for necessary action.

5.8 Respondents as well as Ministry of Road Transport & Highways are directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

5.9 Accordingly, the case is disposed off.

Upma Srivastava

Dated: 24.08.2022

(Upma Srivastava)
Commissioner
for Persons with Disabilities