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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.13226/1141/2022

Suo-motu

In the matter of denial of boarding in aircraft by IndiGo Airlines at Ranchi Airport to a wheelchair bound 13 year old divyang child.

Respondents:

(1) Chief Executive Officer,
Indi Go Airlines
Level 1, Tower C, Global Business Park,
Mehrauli-Gurgaon Road, Gurgaon – 122 002 (Haryana)
Email: customer.relations@goindigo.in; rono.dutta@goindigo.in
Tel: 0124- 435 2500;

(2) Director General,
Directorate General of Civil Aviation,
Technical Centre, Opposite: Safdarjung Airport,
Aurobindo Marg, New Delhi-110003;
Email: dgoffice.dgca@nic.in;
Phone: 011-24627830, 24620784

1. Gist of Complaint:

The news clipping dated 08.05.2022 published in the daily “Times of India” reported that a divyang person was denied entry in Aircraft and the private airline company considered the presence of the divyang child as threat to fellow passengers.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 09.06.2022 and inter-alia submitted that the child, Master Arnav Kumar (hereinafter referred to as ‘child’) along with his parents, Mr. Nirmal Kumar and Ms. Aparna Sinha (hereinafter referred to as ‘Family’) were booked to travel on-board IndiGo flight 6E-214 on 07.05.2022 from Birsa Munda Airport, Ranchi to Rajiv Gandhi International Airport Hyderabad. At the time of booking the family had requested for a wheelchair which was provided to the child. During the check-in process the child appeared to be fit to travel and was, therefore, escorted through the security held Area and till the Boarding gate. Indigo offered the father of the child seats which are closure to the exit, the crew and the laboratories. The child’s father agreed to the same and seats 29D, 29E and 29F were accordingly allotted to them.

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2.2 Though the child appeared fit to travel during the time of check-in, however, post reaching the boarding area, the child was restless and unsettled and was being calmed down by his parents. Medical assistance was offered by the IndiGo employee but the same was declined by the family. The IndiGo employee also informed the family that in case the child did not settle down, it may cause inconvenience during boarding process. The child initially was calm and quiet but gradually, the child started crying, shouting and yelling.

2.3 Considering the condition of the child, it was decided by the IndiGo employee to re-accommodate the family in the next available flight via Pune, on the same day, i.e. on 07.05.2022 which was scheduled to depart at 20.45 hours. The family however did not agree for the same and preferred to travel the following day, i.e. 08.05.2022. Accordingly, IndiGo arranged for the closest available hotel keeping in mind the family's needs, as far as practicable. Food and transport were also arranged for family by IndiGo. This also gave sufficient time to the family to calm down the child before their flight. The family travelled on IndiGo Flight 6E-398 on 08.05.2022.

2.4 While the decision of re-accommodation of the family from the IndiGo flight had caused discomfort and inconvenience to the child and the family, however, such decision was only taken keeping in mind the health and safety of the child, and not on the basis of the disability of the child. IndiGo did not, at any given time, consider the presence of the child as a threat to fellow passengers. Attending to the medical needs of the child on the ground would be easier and many facilities could have been offered/arranged if required. This would have been very difficult to offer/arrange on-board. IndiGo and its employees had not caused any abuse and/or exploitation against the child or towards his family.

2.5 IndiGo stated to have been responded to the Show Cause Notice issued by the Director General of Civil Aviation (DGCA) as under:-

- (1) IndiGo has already initiated the process of identifying disabled friendly hotels/accommodations in cities where IndiGo operates, to the extent available.
- (2) IndiGo provides sensitization training to its employees and constantly upgrades such training modules, keeping it up to date with the latest requirements. IndiGo treats every customer interaction and feedback as a learning, which gets adopted as part of the curriculum and Standard Operating Procedure (SoP), which will be done for the present case, as well.



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- (3) IndiGo proposes to enhance its SoP's, such as, to include calling the airport duty doctors in case of such situations; seek assistance and guidance from the concerned Pilot of the aircraft to the extent possible.
- 2.6 IndiGo submitted that DGCA vide Order dated 28.05.2022 had held that IndiGo had violated the applicable Rules and Regulations and had further imposed a penalty of INR 5.00 Lakh, which IndiGo had complied with. DGCA proposed an amendment to CAR Section 3 Series M Part I – Carriage by Air – Persons with disability and/or Persons with reduced mobility. This would provide proper guidance to all relevant stakeholders to handle such situations better in the future. The DGCA also invited comments from stakeholders/public by 02.07.2022.
- 2.7 IndiGo has expressed their regret towards such incident and to be in the process of enhancing its SoP's to appropriately address and avoid such situations from arising in the future.
3. No reply was received from DGCA.
4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.07.2022**. The following persons were present during the hearing:
- (1) Shri Abeer Kumar, Head of Litigation with Shri Arvind, Director, Airport Operations, East Region for Respondent No.1
 - (2) Shri Amit Gupta, Director, DGCA for Respondent No.2

5. Observations & Recommendations:

5.1 This is a suo moto case. CCPD took the cognizance of the incident which had been reported in media. As per media reports, Respondent airlines stopped a divyang child from entering into an airplane.

5.2 Respondent submitted that the incident was caused while divyang child suddenly got agitated. Because of sudden agitation in the child's behaviour first, the Respondent establishment staff tried to pacify the child however when he could not be calmed down, the flight in which he was supposed to travel was allowed to carry on its journey while leaving the child behind. Respondent further submitted that it has started engaging experts who can professionally handle such situations in future. Further it is submitted that DGCA has imposed fine of Rs.5,00,000/- on the Respondent relating to same incident and the same has been paid by the Respondent.

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5.3 Furthermore, during online hearing Respondent submitted that they conduct Disability Awareness Program as per which all the ground staff undergoes sensitization training. After the incident was reported, the Respondent decided to conduct the sensitization training all over again.

5.4 It is noteworthy to mention that purpose of making rules, regulation, guidelines relating to divyangjan, is to create a society in which a conducive environment can be provided to divyangjan where they can enjoy their right to life, right to free movement and can live peacefully and with dignity. It is combined duty of all the establishments, whether private or government, to ensure that the true purpose of rules, regulation, guidelines relating to divyangjan is achieved.

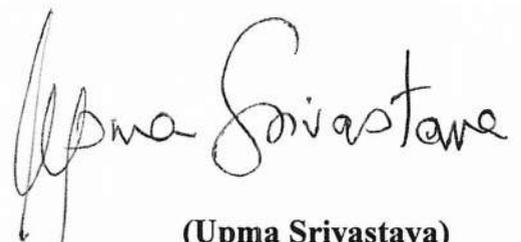
5.5 Establishments such as the Respondents in this Complaint, have to adopt a greater degree of responsibility towards discharging this duty because such establishments provide essential service of transportation, for profit. Therefore, such establishments have to ensure that similar incidences do not happen in future.

5.6 Purpose of imposing pecuniary penalties is also to create a deterrent effect. Such step has already been taken by DGCA.

5.7 This Court recommends that the Respondent shall conduct more such sensitization programs regularly so that the employees of the Respondent are able to adopt humanitarian approach while dealing with sudden untoward incidences and get more equipped in dealing with such situation).

5.8 Accordingly, the case is disposed off.

Dated: 23.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 12992/1011/2021

Complainant:

Shri N. Suresh,
R/o E-2, Jauhari Nagar,
Type-4, OCF Estage, Avadi,
Chennai-600054 (Tamil Nadu)
Email: nsv2010@gmail.com

-R34462

Respondent:

(1) The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110069
Email: secyoffice-upsc@gov.in

-R34463

(2) The Directorate General of Employment,
Ministry of Labour and Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001
Email: directoremp.dge@gov.in

-R34464

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 14.11.2021 regarding inclusion of all identified sub categories of disabilities and allocation posts suitable for Persons with Benchmark Disabilities (PwBD). The complainant alleged that the list of posts suitable for PwBD as published by Ministry of Social Justice & Empowerment vide their O.M. No.38-16/2020-DD-III dated 04.01.2021 which are not included in the UPSC Advt. No.16/2021 (Vacancy No.21111607413) published on 12.11.2021 for the post of Deputy Director of Employment.

1.2 The complainant further alleged that 4% reservation of PwBD was not included in the vacancy of Deputy Director of Employment though the reservation falls in the point of Cycle 1-6 of 100 point reservation roster wherein point No.1 is earmarked for PwBD.

2. Submissions made by the Respondents:

2.1 Respondent No.1 - UPSC filed their reply dated 30.12.2021 and inter-alia submitted that UPSC had received the requisition for six (06) vacancies [UR-05, OBC-01] of the post of Deputy Director of Employment in Directorate General of Employment, Ministry of Labour & Employment. As per the requisition, the post was not suitable for 'Both Leg Affected' sub-category of PwBD candidates and also not reserved for any PwBD category.

2.2 UPSC allows only those PwBD who are suitable for the post concerned as per the suitability and reservation position indicated by the indenting Department/Ministry in their requisition. UPSC has no role in identification of the suitability and reservation of the post

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for different sub-categories of PwBD; and the same is a subject matter of the indenting Department/Ministry.

2.3 Respondent No.2 – DGE filed their reply dated 24.03.2022 and inter-alia submitted that the Screening Committee, constituted for identification of posts suitable for all the categories of disabilities, had recommended that the post of DDE is suitable for “Low Vision (LV), Hard of Hearing (HH), One Leg affected [OL (R or L)], One Arm affected [OA (R or L)], Leprosy Cured (LC), Dwarfism (DW), Acid Attack Victims (AAV).”

3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 15.04.2022 and submitted that equal opportunity may kindly be provided to all sub categories of disabilities as identified and inclusion of the same in the present recruitment process. 01 post of DDE may be reserved for PwBD as inclusion of PwBD reservation at Point No.1 in the reservation roster will not affect the recruitment process. Reasonable time may be extended to apply through UPSC online portal.

4. Hearing:

4.1 The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on 26.05.2022. The following persons were present in the hearing:

- (1) The complainant in person
- (2) Shri Manish Kumar, Advocate for Respondent No.2

4.2 During the hearing, the representative for the respondent No.2 requested for some more time to file their reply.

4.3 Record of Proceedings dated 03.06.2022 was issued and next date of Online Hearing was fixed in this case on 16.06.2022.

5. Additional Submissions/Rejoinder filed by the complainant:

5.1 The complainant vide representation dated 01.06.2022 further submitted that at Point No.2 of Para-wise reply, respondent had committed that **“the reservation of PwBD will be included in the vacancy of DDE at Point No.7 in future vacancies of DDE on DR basis.”** In this regard, the complainant submitted that earlier 01 post of Deputy Director of Employment Exchange was filled through Direct Recruitment against UPSC Advt. No.05/2010 at Sl.No.13. Considering of this, the present vacancy of 06 number of post of Deputy Director of Employment would fall in the Reservation Roster of the Point No.2 to Point No.7 only. In view of this, the Deputy Director of Employment (06 Posts) is actually falling between the Point No.2 to Point No.7 of the roster of reservation, considering the previous DR recruitment of 01 post in the year 2010. Moreover, the present vacancy of Deputy Director of Employment (06 Posts) was published after the period of 12 years gap. The next frequency of the vacancy of Deputy Director of Employment cannot be predicted, considering various factors.

5.2 The complainant prayed that the PwBD reservation be allocated in the present recruitment process of Deputy Director of Employment (06 Posts) against UPSC Advt. o.16/2021, as per DoP&T OM dated 15.01.2018 and DGE commitment in affidavit that the inclusion of PwBD reservation at Point No.7.

6. Reply to the Rejoinder by Respondent No.2:

Respondent No.2 – M/o Labour & Employment filed their reply dated 10.06.2022 and submitted that –



(i) The Committee constituted by the DGE was an Expert Committee consisting of Senior Officers and two Members were qualified Psychologists particularly dealing in the matters of Persons with Disabilities. DGE is running 24 numbers of National Career Service Centres for Differently Abled for evaluation and counselling of persons with disabilities. The post of Deputy Director of Employment has not been included in the list of posts identified by Department of Empowerment (DDE) of Persons with Disabilities vide its Notification dated 04.01.2021. Therefore, the post was given to the PwD categories identified by the Screening Committee of the DGE.

(ii) 06 posts of DDE in the present proposal were not directly falling into Direct Recruitment category. As per the Recruitment Rules, the posts were to be filled by Deputation (ISTC) method. However, no suitable candidates were available for filling up on deputation basis despite advertising in the Employment News. Therefore, under failing clause, the posts were proposed by Direct Recruitment method in consultation with UPSC. The posts remained vacant for a long period due to time exhausted in the process by the deputation method and the posts were in urgent need of the organisation, therefore, they were advertised by Direct Recruitment.

(iii) As per Para 4 of the DoPT OM dated 15.01.2018, if for any reason the post falling at Point No.01 is not filled up by the Persons with Benchmark Disabilities, one of the vacancies falling at any of the points from 2 to 25 shall be treated as reserved for the persons with benchmark disabilities and was filled as such. As per the above guidelines, the reservation for PwBD would be provided in the vacancy of DDE at point No.07 or at any other point between 7 to 25 in future vacancies of DDE on a Direct Recruitment basis.

(iv) The first Block from Point 01 to 25 in the Roster is to be provided for first category of PwBD i.e. for (a) blindness and low vision. The applicant/complainant belongs to the (c) clause i.e. locomotor disability, therefore, the applicant had no case in the present recruitment process.

7. Hearing: The case was next heard via Video Conferencing by the Commissioner for Persons with Disabilities on **16.06.2022**. The following persons were present during the hearing:-

- (1) Shri N. Suresh, the complainant in person
- (2) Shri Manish Kumar, Advocate; and Shri G.K. Kalra, Under Secretary, DGE for respondent No.2

8. Observation/Recommendations:

8.1 Complaint was filed with respect to notification issued by UPSC. Complainant alleged that 6 vacancies for the post of 'Deputy Director of Employment', also referred as 'DDE' were notified, out of which not even 01 post was reserved for divyangjan. Complainant further alleged that the post is not identified suitable for 'Both Legs' category of divyangjan. On the other hand, post of Assistant Employment Officer, which is feeder cadre post of 'Deputy Director of Employment' is identified suitable for 'Both Legs' category of divyangjan.

8.2 Respondent submits that an O.M. was received from M/o Labour & Employment, requesting the Respondent establishment to identify various posts in the Respondent establishment for divyangjan. In compliance of the O.M. a committee was constituted to identify the posts. The committee considered the issue and recommended that the post of DDE is not identified suitable for 'Both Legs' category of divyangjan. As far as reservation of post is considered, Respondent submits that as per RRs of the establishments, post of DDE is to be filled by promotion or by way of deputation, failing which it can be filled by



way of 'direct recruitment'. It is further submitted that the Respondent attempted to fill the post by deputation. However, when no candidate was found suitable, the post was advertised to be filled by direct recruitment, hence no vacancy was reserved.

8.3 Hearing in the matter was conducted on 26.05.2022. Representative of the Respondent sought time and pleaded to reschedule hence it was rescheduled. On 01.06.2022, another reply was filed by the Respondent, whereby it is stated that reservation in promotion will be included in the vacancy of DDE at Point No.7 in future.

8.4 Both the submissions of the Respondent are wrong. Relevant guidelines on the issue are contained in M/o Social Justice & Empowerment list of identified posts, dated 04.01.2021. As per Note 4 of the list, if feeder grade post is identified suitable then promotion post automatically stands identified suitable. In the present case, since the feeder post is identified suitable hence, the promotion post automatically stands identified suitable. Moreover, list of MoSJE supersedes list of the Respondent establishment.

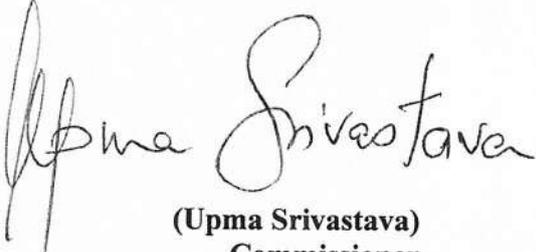
8.5 It is also important to note that irrespective of the fact that the Respondent originally tried to fill the post by way of deputation, when the post was advertised to be filled by direct recruitment, Section 34 became applicable and the Respondent was bound to reserve 4% vacancies for divyangjan.

8.6 This Court recommends that the Respondent No.1 shall identify the post of 'Deputy Director of Employment' as suitable for divyangjan of 'Both Legs' category of Locomotor Disability and shall give chance to divyangjan of 'Both Legs' category of Locomotor Disability to apply for the post.

8.7 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.

8.8 Accordingly the case is disposed off.

Dated: 23.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra

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सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No. 13079/1011/2022

Complainant:

Dr. Chinju Alias
R/o Perumbenkudy House,
Kothamangalam (PO)
Ernakulam – 686691 (Kerala)
Email: chinjualias90@gmail.com

Respondent:

The Secretary,
Union Public Service Commission (UPSC),
Dholpur House, New Delhi-110069
Email: secyoffice-upsc@gov.in

Affected Person: The complainant, a person with 55% Locomotor Disability
(Both Upper Limbs)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 06.01.2022 against rejection of her application for the post of Assistant Professor – Ayurveda Maulik Siddhanta Evum Samhita (Vacancy No.21121908125, Advt. No.19/2021) on the basis of her disability by UPSC.

1.2 The complainant submitted that as per the Notification of UPSC, One Arm (OA) and Both Arms (BA) affected candidates were excluded from this post. The complainant being both arms affected, her application was rejected. But as per the (Reference 4), job identification for person with disabilities, Notification dated 07th January, 2021, person with disabilities for OA and BA are also suitable and identified for the post of Assistant Professor. So the authorities needed to approve her application and eligibility for this post.

2. Submissions made by the Respondent:

2.1 UPSC filed their reply dated March, 2022 and submitted that vacancies for various posts are advertised as per the requisition submitted by the concerned Ministry/Department in accordance with the Recruitment Rules of the post and their requirements. As per the requisition submitted by the Govt. of NCT of Delhi, the above post is suitable for Persons with Benchmark Disability having locomotor disability with **one leg affected (R or L) (OL)** only. The application of the complainant, who is having 55% Locomotor Disability with both arms affected (BA), was rejected by online system as it was not suitable for candidates having BA.

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2. Submissions made in Rejoinder:

The complainant filed her rejoinder dated 03.05.2022 and reiterated her complaint.

3. Observations & Recommendations:

3.1 Submissions made by the Respondent that the complainant who is having 55% Locomotor Disability with both arms affected (BA) was rejected by online system as it was not suitable for candidates having BA, are contrary to legal position.

3.2 However, even if the respondent is considered correct, they clearly fall under the category of admission of violation of disability rights. Complainant's disability is Locomotor disability in both arms (BA); and DEPwD has issued latest list of posts identified suitable for divyangjan on 04.01.2021. At Sr. No. 655, 656 and 659 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).

3.3 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.

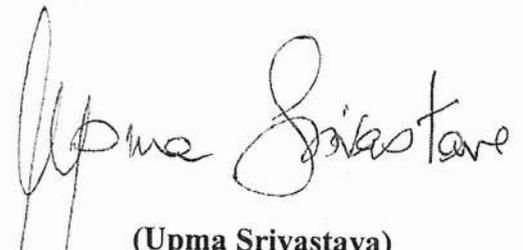
3.4 In the present Complaint, Respondent and the Govt. of NCT of Delhi's act of barring the Complainant from applying for the post is in gross violation of rights of Persons with Disabilities. Respondent / Govt. of NCT of Delhi erred in failing to check the latest list of identified posts issued by DEPwD on 04.01.2021.

3.5 This Court recommends that the Respondent shall recall and modify the requisition which has been forwarded to UPSC and under which the examination has not been conducted so far. 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. 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.

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

3.7 Accordingly the case is disposed off.

Dated: 23.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



मत्यमव 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. 13124/1041/2022

Complainant:

Ms. Shweta Awasthi, RZ-23 A, Ground Floor,
Main Sagarpur, Near Jain Mandir,
Delhi - 110046
Email: swetajnu2012@gmail.com

R34467

Respondent:

The Secretary,
Union Public Service Commission,
Shahjahan Road, New Delhi-110069;
Email: secyoffice-upsc@gov.in

R34468

Affected Person: The complainant, a person with 40% Visual Impairment

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 04.02.2022 alleging inter-alia that the UPSC CSE Notification is in contravention of the 'Guidelines for conducting written examination for Persons with Benchmark Disabilities' issued by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment [DEPWD/MSJE], vide O.M. No. F.No.34-02/2015-DD-III dated 29.08.2018.

1.2 Note 3 of Clause 5 of CSE Notification provides that –

“The qualification of the Commission’s scribe as well as own scribe will not be more than the minimum qualification criteria of the examination. However, the qualification of the scribe should always be matriculate or above.”

The complainant alleged that this condition is in contravention DEPWD/MSJE Guidelines dated 29.08.2018.

1.3 Further she quoted the Points III, VI and VII of the DEPWD/MSJE Guidelines dated 29.08.2018, which read as under:

“III. There is no need of fixing separate criteria for regular and competitive examinations.”

“VI. In case the examining body provides the scribe/reader/lab assistant, it shall be ensured that qualification of the scribe should not be more than the minimum qualification criteria of the examination. However, the qualification of the scribe/reader should always be matriculate or above.”

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In case the candidate is allowed to bring his own scribe, the qualification of the scribe should be one step below the qualification of the candidate taking examination. The persons with benchmark disabilities opting for own scribe/reader should submit details of the own scribe as per proforma at APPENDIX-II.”

“VII. There should also be flexibility in accommodating any change in scribe/reader/lab assistant in case of emergency. The candidates should also be allowed to take more than one scribe/reader for writing different papers especially for languages. However, there can be only one scribe per subject.”

1.4 The complainant submitted that she wants to keep scribe her friend who is Masters in Biotechnology and she wants to keep her optional subject as Law. Not only both are different subject but also UPSC keeps one invigilator behind scribe as well as the candidate taking the examination. In this regard UPSC cannot deviate on its own from rules made by Ministry of Social Justice & Empowerment. Central Government has framed these rules under the power given to it by statute passed by Parliament of India i.e. Rights of the Persons with Disabilities Act, 2016. In effect UPSC cannot make rule and deviate from statutory requirement of Parliament made law. It is difficult to find new scribe let alone someone who can provide services of scribe without any monetary consideration. Also, examination entails writing 5000 words in 3 hours. The process takes total 9 papers some are just qualifying and some are essential. UPSC should have not gone beyond its power to deliberately prevent blind persons from selection. UPSC often gives excuse of DoPT rules of CSE examination but these rules too are made by executive decision and they cannot override Parliament made law. Nobody argues the sanctity of exam should be preserved but in this record UPSC is free to record entire session for blind person and if found any evidence of mischief then may cancel the examination. But new rule at last moment by UPSC means that she has to find scribe who is willing to provide hard work of writing without any reward as she comes from poor background and cannot pay 10-30 thousand rupees to scribes. Further, UPSC is constitutional body not dictatorial body. It has to conform to ‘test of reasonableness’ as devised by Apex Court in catena of judgement.

1.5 In this regard it would be easy that different scribe for different papers of UPSC are allowed. The only criteria being that scribe writing Hindi qualifying paper should not be from Hindi background and scribe writing law paper should not be from law background etc. Supposedly, if she writes paper with law optional, then how can a person having Biology background can provide any unfair advantage? Also, did UPSC pay invigilators to sit behind and sleep while enjoying on People’s money? Simply, why not record by videography entire session? In this regard Point VII of DEPWD/MSJE Guidelines dated 29.08.2018 provides that – “There should also be flexibility in accommodating any change in scribe/reader/lab assistant in case of emergency. The candidates should also be allowed to take more than one scribe for writing different papers especially for languages. However, there can be only one scribe per subject.”



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1.6 UPSC is a constitutional body and it is mere a joke when it suggests that any serious aspirant would try illegal activity just to write some blind person paper that to for free. UPSC can always take civil/criminal action.

1.7 Further, UPSC says as per DoPT Civil Service Rules it will re-certify the extent of disability. She has 40% visual impairment certificate that she had obtained by applying in district of her Aadhaar address as per provisions of RPwD Act, 2016 & rules made thereunder. She has objection on following points:-

- Point 1- Re-certification of disability certificate is not permitted under RPwD Act, 2016 and hence this exercise is illegal;
- Point 2- There is no issue if Medical Board of Aadhaar district of PwBDs has given 50-100% disability but those who are given 40-50% disability certificate if on recertification they are found 39% disable then which certificate would prevail?
- Point 3- She has personally no issue with medical examination but UPSC should do this Medical re-certification before start of examination or before Mains examination. Because after lengthy exercise and hard work there is no legal provision to leave fate of disable candidate the hand of Medical Board who doesn't sit in an appellate capacity with relation to medical board of home district. If, however UPSC decided that it will accept certificate issued by certain hospitals only then also candidates are required to produce certificate for UPSC examination from said institute. If UPSC doesn't believe in honesty of Medical Board of District Hospital then how can one believe in honesty of Medical Board constituted by UPSC. This nation has seen corruption and greed of Parliamentarian/PM/MP/Collectors and professors. There is no need to deviate from provisions of RPwD Act, 2016 just because UPSC is constitutional body. Discretion and illegal act by constitutional post holders be it President or Governors doesn't go un-punished and we have seen Supreme Court has taken stern view against role of governors or how they act as agents of Centre in Dr. D.C. Wadhwa & Ors vs State Of Bihar & Ors on 20 December, 1986.

1.8 Video-recording or keeping one person as invigilator behind every blind person can solve the problem of any unfair advantage and re-certification, if legally allowed by Court of Law in contravention of RPwD Act, 2016 must be done either before preliminary examination or before Mains examination but in no case after interview as UPSC people then demand 10-20 lakh rupees or illegally they will use their power to decrease percentage of disability from 40% to 35-39%.

1.9 UPSC has shown no respect for Supreme Court even that is why while in Vikash Kumar v. Union Public Service Commission while Apex Court has ruled that a person suffering from the neurological condition, Writer's Cramp, is entitled to

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have a scribe to write the Civil Service exam UPSC in attached enclosure notification has kept condition that only person affected with both hand for more than 40% is entitled for services of scribe as if UPSC Secretary can write with his left hand while his right hand has Writer's Cramp.

2. Submissions made by the Respondent:

2.1 UPSC filed their reply dated 04.04.2022 and submitted that the UPSC is fully aware and conscious of its responsibilities under the Constitution and accordingly conducts various examinations, including Civil Services Examination strictly in accordance with the Rules of examination as notified by the Government of India in a just, fair and impartial manner. The Rules of CSE -2022 were notified by the Government in the Gazette of India dated 02.02.2022 and these Rules contain, inter-alia, the instructions for availing the benefit of Scribe.

2.2 The existing provisions of the CSE Rules-2022 provide for uniform practice to be followed in respect of 'own scribe' and 'Commission's scribe', lest there will be uneven playing fields among the PwBD candidates.

2.3 UPSC makes adequate arrangements for scribes so that the eligible PwBD candidates do not face any difficulty during the course of Examination. Candidates are allowed to change scribes even during the course of the Examination.

2.4 In the existing scheme of CSE, the candidates can opt for different scribes for different papers.

2.5 UPSC does not conduct the Medical Examination of the candidates or for that matter do not ask for any re-certification of the extent of disability. There is no provision in the Rules of the Examination as per which the Commission is required to conduct Medical Examination of the PwBD candidates to ascertain their degree of disability. However, as per CSE Rules- 2022, candidates seeking reservation/relaxation benefits available for SC/ST/OBC/EWS/PwBD/ Ex-servicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. They should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits by the closing date of the application for Civil Services (Preliminary) Examination-2022. The Commission does not ask for a PwBD certificate other than the one which is available with the candidate by the closing date of application of an Examination, provided that the same is in the prescribed format and has been issued by the Competent Authority.

2.6 Submissions made in Rejoinder:

No rejoinder was received from the complainant.

3. Observations and Recommendations:

3.1 Three main issues raised by the complainant are –



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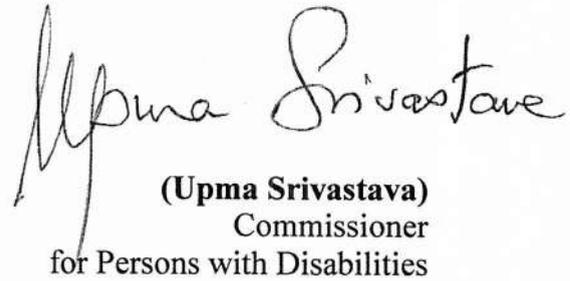
- (a) Qualification of the Scribe;
- (b) Medical Examination of Divyang Candidates; and
- (c) Availability of scribe facility to those who have disability of less than 40% and are unable to write.

3.2 With respect to issues at (a) and (b), this Court is satisfied with the reply submitted by the Respondent. On issue at (c), this Court attracts the attention of the Respondent towards judgment of Hon'ble Supreme Court in Vikash Kumar Vs UPSC. The Hon'ble Apex Court in this Judgment settled this issue and held that scribe facility is allowed for all such candidates who are not able to write, irrespective of the nature of their disability.

3.3 This Court recommends that the Respondent shall implement the directions of Hon'ble Supreme Court in Vikash Kumar Case, as mentioned above.

3.4 Accordingly the case is disposed off.

Dated: 23.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No.13202/1092/2022

Complainant:

Shri Lipin Raj M P IRPS,
Maruthickal House, Naranganam West P.O.
Pathanamthitta District – 689642 (Kerala)
Email: lipinrajmp2@gmail.com

R 34469

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

Respondent:

Central Govt. Employees Welfare Housing Organisation
(CGEWHO),
6TH Floor, 'A' Wing, Janpath Bhawan,
Janpath, New Delhi – 110001
Email: cgewho@nic.in

R 34470

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 15.03.2022 regarding refund of amount deducted as cancellation charges.

1.2 The complainant had been allotted with a Type II Flat at Greater Noida project at New Delhi - Regn. No: GNB6246 under CGEWHO at 9th floor. In his original application, he had requested for a ground floor due to his visual disability and had also enclosed a copy of his disability certificate, but the same was not allotted.

3. Due to movements restrictions and disability, he was not in a position to occupy the allotted flat and requested for cancellation of the allotment at 9th floor and refund of advance amount of Rs.1,19,900/-. His request for cancellation was rejected by CGEWHO and whole amount has been deducted as cancellation charges whereas rules do not allow this.

2. Submissions made by the Respondent:

2.1 The CGEWHO filed their reply dated 03.06.2022 and inter-alia submitted that as per existing policy reservation upto 5% has been made of ground/lowest floor dwelling unit for the persons with benchmark disabilities in CGEWHO's Housing Scheme. Accordingly, the beneficiaries were requested to submit the information regarding percentage of disability in the prescribed Performa for scrutiny by the Expert Committee of Doctor(s) headed by CMO/MS of a Govt. Hospital vide letter dated 29.05.2020. The complainant, Shri Lipin Raj M P IRPS had not submitted the required information, therefore, his case was not considered along with the cases of beneficiaries with disabilities.

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5.5 Respondent further submitted that as per policy, 5% residential units on the ground floor are reserved for Divyangjan. Accordingly, all the beneficiaries were requested to submit information relating to their disability. Complainant did not submit required information and hence his case was not considered on the basis of disability.

5.6 This Court is not inclined to interfere in the present Complaint because of the reason that from the facts disclosed by the Complainant, it seems that the Complainant himself was not vigilant about his own rights. This Court during online hearing asked the Complainant as to why he did not submit the disability certificate when the Respondent asked him to do the same. Complainant informed that he submitted disability certificate at the time of original booking in Chennai scheme. Respondent further informed that since the original booking was cancelled hence his status of disability could not get reflected when he booked under Greater Noida scheme. Complainant was given enough time to submit the disability certificate, but he failed to submit the same.

5.7 It is amply clear that the Complainant failed to comply with the essential condition of submitting disability certificate despite of the opportunity given to him. Hence, intervention of this Court is not warranted.

5.8 Accordingly, the case is disposed off.

Dated: 23.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



extra

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

Case No. 13204/1011/2022

X Complainant:

Shri Akhilesh Kumar Srivastava,
S/o Sri Girish Lal Srivastava,
R/o B-567, Barra-8,
Kanpur Nagar-208207 (UP)
Email: akhileshsri155@gmail.com

- R 34471

Affected Person: The complainant, a person with 45% Locomotor Disability (Right Upper Limb)

Respondent:

The Registrar,
Banaras Hindu University (BHU),
Banaras Hindu University Campus,
Varanasi – 221005 (U.P.)
Email: recruitment@bhu.ac.in

- R 34472

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 24.02.2022 regarding non-acceptance of medical report for appointment to the post of Junior Clerk by the Banaras Hindu University.

1.2 The complainant submitted that he had cleared the written exam conducted by BHU for recruitment to the post of Junior Clerk pursuant to their Advt. No.06/2018-2019 and secured 252 (70%) marks. Thereafter, he was called for Typing Test on 04.12.2020. Since he has disability in his Right Upper Limb, he submitted a Medical Certificate issued by CMO, Kanpur Nagar for exemption from typing test in accordance with the DoPT OM No.14020/1/2014-Estt.(D) dated 22.04.2015. But BHU did not accept the said document.

1.3 The complainant further submitted that BHU arranged his medical examination by a Medical Board which was constituted at Sir Sundarlal Chikitsalaya, BHU and he was informed to appear before the Medical Board on 05.04.2021. The complainant appeared and got his medical test done there. Thereafter, on 03.06.2021, BHU informed the complainant that some more medical tests/documents (X-ray, NCB and EMG studies) are required to be submitted. The complainant got his all requisite medical tests done at Kanpur and submitted the same to BHU.

1.4 Sir Sundarlal Chikitsalaya, BHU issued Notice dated 09.09.2021 to complainant to appear before the Medical Board on 16.09.2021 at 03 PM. The complainant appeared before the Medical Board at the fixed time and submitted original documents of Medical

(Contd....Page-2)

Tests/Documents (X-ray, NCB and EMG studies). Then again, vide notice dated 28.10.2021, he was called to appear before the Medical Board along with the EMG Test Report of Department of Neurology, IMS, BHU. The complainant vide his letter dated 21.11.2021, informed the BHU that he had already submitted the EMG Test Report before the Medical Board on 16.09.2021.

1.5 BHU did not accept the said EMG Test Report and vide Notice dated 27.11.2021 again called the complainant to appear before the Medical Board on 02.09.2021 at 12:00 PM at Department of Neurology, IMS, BHU along with the EMG Test Report. Due to severe pain during EMG Test, the complainant requested BHU to take appropriate action on the basis of all the medical test report submitted by the complainant. But no response has been received from BHU.

2. Submissions made by the Respondent

2.1 The respondent filed their reply on affidavit dated 25.05.2022 and admitted that the complainant, Shri Akhilesh Kumar Srivastava had secured 252 marks in written test and due to not qualifying in the Computer Typing Test (Skill Test) his name was not included in the Merit list of Junior Clerk.

2.2 On the request of the complaint and in the light of DoPT OM dated 22.04.2015, the case of the complainant was referred to the Medical Board, SSH, BHU. The observation of the Medical Board is reproduced as under:

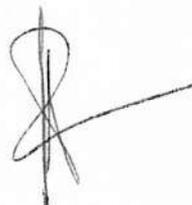
“The members thoroughly and intensively examined Mr. Akhilesh Kumar Srivastava. The candidate has had a fracture of both bones of right fore arm which has already been operated in 2018. The range of motion of adjacent joints seems to be normal and does not seem to be any sensory or motor loss. In the absence of an X-Ray, the board is unable to determine whether his non union mentioned in the Medical Certificate issued in 2018 is still persisting. The Board therefore, requires his latest fore arms X-Rays and NCV & EMG Studies before giving a final report.”

In view of the above, vide email dated 03.06.2021 the complainant was requested to submit his latest fore arm X-Rays, NCV & EMG studies for providing the same to the Medical Board.

2.3 In reply, the complainant vide letter dated 22.06.2021 sent the NCV & X-Ray report and informed that EMG test not available in Kanpur so that he was unable to send the EMG report right now. He again requested for giving exemption from Computer typing test in terms of OM dated 22.04.2015. The Medical Board examined the X-Rays and NCV test report of the complainant and resolved as under:

“The Medical Board members examined attached X-Ray and NCT report of Mr. Akhilsh Kumar Srivastava. Both the X-Rays and NCV reports are normal. The candidate has not submitted his EMG report which is also necessary to take a final report in this matter. The candidate is therefore required to present himself personally with his latest EMG Report.”

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2.4 Accordingly, the complainant was informed to appear before the Medical Board on 09.08.2021, but due to sad demise of his grandmother, his meeting with the Medical Board was scheduled on 16.09.2021. The complainant appeared on 16.09.2021 along with all his medical certificate/documents including EMG report issued by Dr. Santosh Kumar Singh (Neuro Physician, Kanpur). The Medical Board resolved as under:

“The Medical Board members examined & resolved that the EMG should be done in Department of Neurology, IMS BHU at SSH (out side report is not acceptable to us, as patient appears not to have any other clinical abnormality)”

As per the above resolution, vide letter dated 28.10.2021, the complainant was requested to be present for his medical examination and EMG Test in the Department of Neurology, IMS, BHU at the earliest. The complainant vide letter dated 22.11.2021 again submitted his same EMG report submitted on 16.09.2021 with request to take sympathetic view on his request. The complainant was again requested vide letter dated 27.11.2021 to be present before Medical Board on 02.12.2021. But the complainant vide letter dated 01.12.2021 informed that EMG test is painful investigation, hence, he did not give his consent to conduct his EMG test again and requested to consider his request by accepting his X-Rays, NCV Test & EMG report and 45% permanent disability certificate.

2.5 The complainant was again requested vide letter dated 16.04.2021 and email dated 20.04.2021 to be present before the Medical Board on 23.04.2021, but he did not present himself. The final resolution of Medical Board is as under:

“Mr. Akhilesh Kumar Srivastava was advised EMG to be done in the Deptt. of Neurology, IMS, BHU (resolved in last meeting dated 16.09.2021 but despite advice he refused and did not get his EMG done in the Dept. of Neurology, IMS, BHU. As there was discordance into complaints and clinical finding (which was completely normal), we did not find any reason/problem to exempt him from the typing test.”

2.6 In the light of the above resolution, the selection of the complainant was not considered. The selection eligible candidate in order o merit were called for document verification and subsequently given offer of appointment after completion of due process of selection. BHU has already filled up 06 out of 07 posts of Junior Clerk through PwDs candidates (03-OH, 02-HH, 01-VI). No Visually Impaired candidate found eligible in the merit list of PwDs candidates as per rules.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 07.06.2022 has requested to consider his Medical Test Report submitted by him and give him appointment.

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 Akhilesh Srivastava, complainant in person
- (2) Dr. Sunita Chandra, Jt. Registrar with Sr. Prof. Abhishek Pathak for respondent



(Contd....Page-4)

5. Observations & Recommendations:

5.1 Complainant submitted that the respondent advertised vacancies for the post of junior clerk. Total 170 posts were advertised out of which 7 were reserved for Divyangjan. Complainant appeared and qualified the written test. He scored 250 marks. Thereafter, he was called for typing test on 04.12.2020. Complainant applied for exemption for typing test on the basis of his disability. Respondent considered his application and asked the complainant to appear before medical board for examination of his disability.

5.2 On 05.04.2021 the complainant appeared before the Medical Board. Medical Board examined the complainant and asked him to produce some more medical reports. Thereafter, he submitted X-ray reports. He submits that medical board also asked him to submit EMG report. Complainant submits that he underwent EMG test and thereafter submitted EMG report as well.

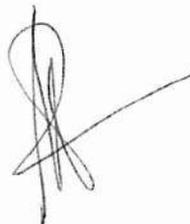
5.3 Thereafter, the respondent informed the complainant that the EMG test has to be conducted by the respondent itself and the report of outside will not be admissible.

5.4 Grievance of the complainant is that he has been asked by the respondent to undergo various tests and significant time has been spent. Therefore, on the basis of EMG report already available he must be exempted from the typing test and must be appointed.

5.5 Respondent submitted that the complainant was asked to appear in typing test on 04.12.2020. On the same date he applied for exemption on the basis of his disability. Complainant case was referred to medical board and he was asked to appear before the medical board on 05.04.2021. On the date of examination the complainant was intensively examined and it was concluded that X-ray report and NCB report and EMG report are essential to determine whether the complainant must be exempted from the typing test.

5.6 On 03.06.2021 complainant was requested to submit his latest x-ray report, NCB, EMG report. On 22.06.2021 complainant forwarded his x-ray report and NCB report. On 26.07.2021 medical board examined x-ray and NCB reports and concluded that EMG report is also necessary. Thereafter, on 27.07.2021 complainant was informed to be present before medical board on 09.08.2021. Complainant expressed his inability to be present on 09.08.2021 therefore, the meeting was postponed to 16.09.2021.

5.7 On 16.09.2021, after examining the reports concluded that EMG should be done by the concerned department of Respondent establishment because outside report was not acceptable. Hence, he was requested to appear before Medical Board for EMG test on 28.10.2021. Complainant refused to appear and submitted the same report. Another opportunity was granted to the complainant to appear for EMG test on 02.12.2021. Complainant again refused to appear. Thereafter, complainant was again granted opportunity to appear for EMG test on 23.04.2022. Complainant again refused to appear.



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5.8 Since, enough opportunities were granted to the complainant but he failed to appear for EMG test and therefore, his candidature was cancelled. Respondent further submitted that 6 out of 7 advertised posts have already been filled. The one which is not filled is earmarked for visually impaired candidate.

5.9 During online hearing, the Respondent was specifically asked as to why 'outside report' was not acceptable for the recruitment purpose. Respondent gave two reasons, firstly, the EMG report submitted by the Complainant reflected procedural discrepancies which raised doubts regarding validity of the results of the EMG test which was conducted from outside and secondly on the day of typing test, Complainant applied for exemption from typing test after appearing in typing test. On preliminary medical examination it was found that the issues relating to disability were not at all connected with typing difficulty. Hence, he was asked to undergo further tests.

5.10 The only reason given by the Complainant for not appearing in EMG test is that it is very painful.

5.11 There is settled rule that since vacancies are always limited hence only the most deserving candidates must always be given appointment. This rule is applicable in case of vacancies reserved for divyangjan as well. Hence, every government establishment is duty bound to check and verify the veracity of certificates and medical reports submitted by divyang candidates, before giving appointment or before giving exemption from any particular skill test. Applying this principle in the present case, this Court concludes that the Respondent has not committed any error in cancelling the candidature of the Complainant. Since, the Respondent had doubts relating to veracity of EMG test report, it rightfully asked the Complainant to undergo the test within its own facility. Moreover, the Respondent gave several opportunities to the Complainant to appear for the medical test, each time the Respondent failed to appear which ultimately resulted in cancelling of the Complainant's candidature.

5.12 If the Respondent had not given the opportunity to the Complainant to appear for the test after rejecting the EMG report submitted by the Complainant then the complainants' grievance was justified. However, in the present Complaint, when the Complainant did not himself appear without any reason, it is concluded that he himself did not care about the opportunity he got and/or was provided. Hence, this Court is not inclined to intervene in this Complaint.

5.13 Accordingly, the case is disposed off.

Dated: 23.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra

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

Case No. 13074/1141/2022 & 13078/1011/2022

Complainant:

(1) Shri G. Suresh Kumar,
Hony. General Secretary,
All India Sports Council of the Deaf (AISCD),
1-B, Institutional Area, Near Janta Flats,
Sarita Vihar, New Delhi – 110076
Email: aiscd1965@gmail.com

R34473

(2) Shri Tanuj Mukherjee,
Purasree, Chandan Nagar, Hooghly,
West Bengal – 712136
Email: tanujmu93@gmail.com

R34474

Respondent:

Director (Head Office)
Office of the Director General of Audit,
Finance and Communication,
Shamnath Marg (Near Old Secretariat),
Delhi – 110054
Email: pdafincom@cag.gov.in

R34475

Affected Person: Shri Tanuj Mukherjee, a person with 84% Hearing Impairment and others

1. Gist of Complaint:

1.1 The complainant No.1, Hony. General Secretary, filed his complaint dated 24.12.2021 and submitted that the applications of two International Table Tennis players, namely, Ms. Shiney Gomes (Ahmedabad, Gujarat); and Mr. Tanuj Mukherjee (Hooghly, West Bengal) were rejected by the concerned authorities that their applications to the posts of Auditor / Accountant under Meritorious Sports Quota cannot be considered as the certificates issued to them by the All India Sports Council of the Deaf (AISCD). The complainant No.1 further submitted that AISCD has been recognized as "DEAF SPORTS" by the Ministry of Youth Affairs and Sports, Department of Sports. No other Deaf Sports Organisation in India is recognized by the Government than AISCD. The complainant prayed that in the light of OM No.14034/01/2013-Estt.(D) dated 03.10.2021 issued by DoPT, the respondent be instructed to take necessary steps to give chance to aforesaid two applicants who are International Table Tennis Players.

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1.2 The complainant No.2 filed his complaint dated 02.01.2022 and submitted that he had applied for the post of Auditor/Accountant under sports quota in the Indian Audit and Accounts Department. He received a call letter from the Office of the Director General of Audit (Finance and Communication) on 16.11.2021. On 12.12.2021 his application was rejected during the document verification process due to his disability i.e. hearing impairment. He has prayed that (i) the reason for issuing the call letter; (ii) the reason for illegally and whimsically rejecting his application; and (iii) to give him a fair chance to appear in the interview and prove himself.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 24.05.2022 and submitted that an advertisement in the Employment news/Rozgar Samachar was issued on 02.10.2021, calling for applications from meritorious sportspersons in Sports Quota for the posts of Auditor/Accountant/Clerk/DEO-Grade-A in the Indian Audit and Accounts Department. The said advertisement detailed the sanctioned number of posts for the advertised vacancies with a specific bifurcation for vacancies reserved for the sports of Cricket (Men), Football (Men), Hockey (Men), Badminton (Men and Women) and Table Tennis (Men and Women).

2.2 Clause 6 of the said advertisement mandated the applicants to send copies of certificates "awarded by the authorities mentioned in Annexure-IV (Form 1, 2 and 3)", which in turn specified the Sports Authorities competent to issue certificates worth consideration by the Respondent. The cover page of Annexure-IV is as under:

S. No.	Level of Competition	Authority awarding Certificate	Forms in which certificate is to be awarded
1.	International (Senior/Junior)	Secretary of the National Federation/ Association of the concerned game	Form-1
2.	National (Senior/Junior)	Secretary of the National Federation or Secretary of the State Association of the concerned game	Form-2
3.	All India Inter-University Competition	Dean or other officer in overall charge of sports of the University Concerned	Form-3

2.3 Further more, Clause 7 of the advertisement specified that "all the applications and certificates shall be scrutinized and the list of eligible applicants shall be prepared by the Nodal Offices. Final selection will be done on the basis of field trial marks and marks awarded for sports certificates (participation and achievements). Evidently, the recruitment process qua the advertisement in question involved initiation of perusal of certificates, where after selected candidates were to be subjected to field trial.



(Contd....Page-3)

2.4 The complainant applied for the post of Auditor/Accountant by way of an application in the prescribed format as detailed in the recruitment notice. Along with the said application form, the complainant also submitted Annexure-IV (Form-1, 2 and 3) which had clearly specified the sports authorities competent to issue certificates which were worth perusal by the Respondent.

2.5 Despite clear stipulation regarding the authorities whose awarded certificates could have been relied upon by the candidates, the complainant annexed certificates issued by West Bengal Sports Association of the Deaf [WBSAD]; and All India Sports Council of the Deaf [AISCD] which do not fall either of the categories. The selection procedure, as per Clause 5(e) of the guidelines, stipulated that the certificates will have to be verified by the sports experts and only those candidates who fulfill the eligibility criteria will be called for the field trials.

2.6 Since the complainant fulfilled the age and educational qualification criteria, a call letter dated 12.11.2021 was issued to him. When his last 5 recent participation certificates were scrutinized by the Sports experts, the same were found to be issued by WBSAD and AISCD for various Deaf Tournaments. Notably, WBSAD and AISCD are not recognized by TTFI, leading to rejection of the application of the complainant. Hence, the rejection cannot be termed as arbitrary and whimsical as alleged by the complainant.

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:

- (1) Dr. Nandini Ghosh with Shri Tanuj Mukherjee; and Shri Manoj Kumar, AISCD for the Complainants
- (2) Shri Karan Gaur, Advocate with Shri A. Bandopadhyay, Sr. Audit Officer and Ms. R. Uma, Director, for the Respondent

5. Observations & Recommendations:

5.1 Present complaint comprises of two different complaints relating to same subject matter. Both the complainants applied for the post of Auditor/Accountant in CAG office. Vacancies were issued in October 2021 for recruitment under sports quota. Both the complainants are deaf and are table tennis players and applied for the post under sports quota. Both the complainant alleged that they were called for document verification and then their candidature was cancelled because of their disability.



5.2 Respondent submitted that vacancies under sports quota were notified in Oct 2021 along with notification Annexure 4 were attached. Annexure 4 contained the names of sports authorities who were competent to issue certificates of meritorious sportsmanship for employment. In Annexure 3 authorities were mentioned namely National Federation of the concerned game State Association of the concerned game and in charge sports of the University concern. Despite, clear stipulation regarding the authorities the complainant submitted certificate of meritorious sportsmanship issued by West Bengal Sport Association of the Deaf and All India Sport Council of the Deaf. Both these organisations do not fall in the category mentioned in Annexure 4.

5.3 Submissions were also made by AISCD. AISCD submitted that it is the only National Sports Federation of the Deaf which is recognised by the Government as Deaf Sports Association in India. Further, it relies on DoPT's O.M. dated 1st December, 2020 whereby DoPT has recognised games and sports players of which are qualified for consideration for appointment to Central Government service in sports quota. The O.M recognizes deaf sports as well.

5.4 During online hearing, three issues were raised by the Complainant No.2, firstly, 'sports meritorious certificate' which was produced should have been accepted and secondly, if that certificate was not acceptable then why the Complainant was even called for document verification stage. The third issue raised is related to derogatory language used by the employees who were verifying the documents.

5.5 Respondent informed this Court during online hearing that in the notification issued in which the vacancies were advertised the names of those authorities were clearly mentioned, whose certificates were acceptable. In Annexure-IV of the notification, it was clearly mentioned that certificate issued by National Federation of concerned game or State Association of concerned game and dean/in-charge of sports of the university concerned were only acceptable. Complainants submitted certificate issued by West Bengal Sports Association for Deaf and also the certificates issued by All India Sports Council of the Deaf. Since, both these organizations did not fall into the category of those organizations whose certificates were acceptable, hence Complainant's candidature was rejected.

5.6 Respondent further mentioned that the Complainants were called for document verification stage and their names were not screened out at the very first stage. The reason for the same was that at the initial stage the names were shortlisted through computer software. Names of all those applicants were shortlisted who fulfilled the age and educational criterion. At the initial stage documents are not verified. Document verification is subsequent stage process which is done physically. Therefore, the names of the Complainants were shortlisted despite the fact that their documents were not issued by the competent authority. The same criterion was adopted for all the applicants. Total 91 applicants applied, out of which 79 were called for document verification stage



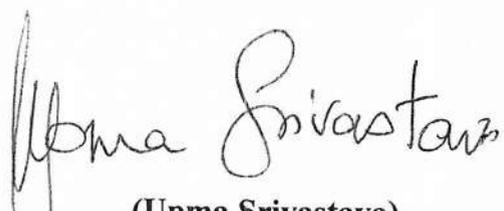
5.7 Documents submitted by the Respondent were perused. It is true that the Respondent clearly mentioned the names of the organisations whose documents were acceptable. Complainants failed to prove as to why they could not obtain and submit the certificates issued by those organizations which were mentioned in Annexure – IV of the notification issued by the Respondent.

5.8 However, it is important to mention that the Respondent must formulate selection process in such a way that minimum trouble is caused to divyang candidates. Hence, this Court recommends that the Respondent shall amend the screening process so that documents of divyang candidates can be verified at the very first stage itself and they need not face the trouble to travel to long distances only to know that their documents are not issued by the competent certifying authorities. Further, it is also recommended during any stage where interaction is done with divyangjan candidates only such employees must be posted/deputed who are sensitive towards rights and needs of divyangjan. This Court also recommends that the Respondent establishment shall conduct counselling of all the employees of the establishment so as to sensitize them towards rights of divyangjan.

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

5.10 Accordingly, the case is disposed off.

Dated: 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: 13312/1021/2022

Complainant: Shri Sunil Kumar
H.No. 9B/167, Vrindavan Colony
Raibareli Road, Distt.-Lucknow
Uttar Pradesh – 226002
Email: <sunily84@rediffmail.com>
Mob: 07458012576

R 34482

Respondent: Hindustan Petroleum Corporation Ltd (HPCL)
Through the General Manager (HR)
Petroleum House, 17 Jamshedji Tata Road
Mumbai – 400020
Email: <Careers@hpcl.in>

R 34483

Complainant: 40% locomotor disability

GIST of the Complaint:

Complainant Shri Sunil Kumar vide complaint dated **16.06.2022** has submitted that he had worked as an Officer Trainee in HPCL from 10.09.2006 to December 2007 and HPCL had not provided copy of the proper appraisal report by HPCL to him despite several requests. He further submitted that presently, he is working as Manager-BMD in NTPC, Rihand and his promotion was due in April 2022. Since HPCL didn't provided proper appraisal report, his candidature for promotion in NTPC was not considered in absence of proper appraisal report.

2. The matter was taken up with the Respondent vide letter dated **24.06.2022** under Section 75 of the RPwD Act, 2016.

3. Dy. General Manager, Talent Sourcing, Hindustan Petroleum Corporation Ltd, Mumbai vide letter dated **06.07.2022** has submitted that the complainant had joined on 10.09.2006 as Officer Trainee. He was terminated from the service of the Corporation on

27.12.2007. He further submitted that the complainant filed a complaint dated 05.02.2009 before the Chief Commissioner for Persons with Disabilities regarding termination of his services. The matter was heard by the then Dy. Chief Commissioner who concluded that there was no violation of Persons with Disabilities Act, 1995 or any Rules and Regulations. The services of the complainant was terminated as per rule on the ground of indiscipline and non-performance.

4. Shri Sunil Kumar, complainant had filed a RTI application on 12.06.20215 requesting to provide copy of his performance appraisal for the period 10.09.2006 to December 2007. The reply to RTI application was sent to the complainant. Shri Sunil Kumar filed First Appeal before the Appellate Authority which was also disposed off. Thereafter Shri Sunil Kumar filed a Second Appeal before the Central Information Commission on 28.12.2015.

5. Shri Sunil Kumar, complainant had again filed a complaint before the Chief Commissioner for Persons with Disabilities on 12.11.2018 for not providing a copy of his service Appraisal Report by the Corporation. The Chief Commissioner after hearing the matter directed the respondent (HPCL) to revisit the exercise and provide the complainant a proper Appraisal Report. As the Appraisal Report was not traceable a compliance report was submitted to the Court of Chief Commissioner for Persons with Disabilities.

6. He further submitted that in the past as per the prevailing practice all the Performance Appraisals were made in physical format and carbon copy & /or digitalization of the Performance Appraisals was not in practice. Hence, they are not in position to provide the Performance Appraisal of Shri Sunil Kumar as it is not available in the office records. Since, his appraisal is not traceable and in compliance of aforesaid CIC order they had provided him worn Affidavit towards non availability of his requisite Performance Appraisal in Corporation's records

7. Complainant vide rejoinder dated **07.07.2022** has submitted that he has joined HPCL as Officer Trainee on 10.09.2016 and worked till December 2007 and his services were terminated w.e.f. 27.12.2007. He further submitted that his performance appraisal for above said period is not in office records and hence his service was terminated without *consideration of performance appraisal, which is principle document for performance evaluation.*



8. After considering the respondent's reply dated **06.07.2022** and the complainant's rejoinder dated **07.07.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.08.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.08.2022**. The following were present in the hearing:

- Shri Sunil Kumar - complainant
- Shri Natarajan R., DGM-Talent Sourcing on behalf of respondent

Observation/Recommendations:

9. Complainant submits that he was appointed in the respondent establishment in 2006. He submits that he has not been provided the copy of 'Appraisal Report'. Further, he submits that currently he is employed in another government establishment namely NTPC. In NTPC he is not been promoted because the respondent establishment did not provide him the appraisal report

10. Respondent submits that the complainant joined the respondent establishment in 2006. His service was terminated in 2007. In 2015 he filed an RTI application asking for the copy of his 'Appraisal Report'. Reply was given to the complainant that the sought information was not readily available. Thereafter, complainant went to the court of Central Information Commissioner (CIC). An order was given by CIC asking the respondent to make fresh search of the 'Appraisal Report' and provide the Complainant copy of Appraisal Report.

11. During online hearing the Respondent reiterated its claim that at the time when the 'Appraisal Report' which is in question was made, the records were prepared manually. Sincere efforts were made by the Respondent however 'Appraisal Report' of the Complainant could not be found. Respondent further informed that the Complainant was terminated because he was continuously absconding from work during his probation period.

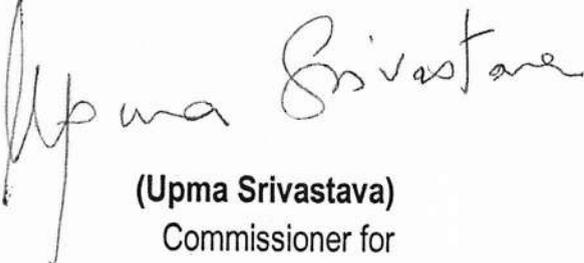


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12. Taking into consideration the factual matrix of the Complaint, this Court recommends that the Respondent shall **a)** state and give in writing, addressing to the Complainant, its inability and reason for not providing the 'Appraisal Report' and **b)** All documents/records leading to the termination of the complainant should be collected and compiled and a copy of the same shall also be provided to the complainant.

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

14. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2022



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: 13061/1023/2022

Complainant: Mrs. Romi Jaiswal
J-0001, Godrej Frontier, Sector – 80
Gurugram, Haryana
E-mail: <manish.k.jaiswal@gmail.com>

Respondent: The MD & CEO, Bank of India
Star House, C-5, "G" Block
Bandra – Kurla Complex, Bandra (East)
Mumbai – 400051
E-mail: <cmd@bankofindia.co.in>

Affected person: Master Rounak Jaiswal, a person with 70% Autism Speactrum Disorder

GIST of the Complaint:

Complainant Mrs. Romi Jaiswal, mother of Master Rounak Jaiswal who is a person with 70% Autism Speactrum Disorder vide complaint dated **24.12.2021** has requested for the following relief: (i) quashing of Charge sheet (ii) Penal action as per Statutory provisions (iii) Full back wages since the date of proceeding on leave as the purpose for moving on leave itself is hampered/lost due to acute stress imposed by the employer through systemic harassment. (iv) Instruction to employer for removing arbitrariness in granting Sabbatical leave (v) Relief from acute mental stress for next 2 years for taking care of the child as early intervention is more effective in tender age two years after first diagnosis is already lost waiting for approval from her employer (vi) Relief from treat of transfer (away from place of posting of husband) in view of to ensure availability of support of husband (posted at New Delhi).

2. The matter was taken up with the Respondent vide letter dated **07.02.2022** under Section 75 of the RPwD Act, 2016.

3. In response, Chief Manager, Bank of India vide letter dated **07.03.2022** inter-alia submitted that (i) issues raised by the complainant do not fall within the scope and ambit of any of the provisions of the RPwD Act, 2016 (ii) Charge sheet dated 07.07.2021 and the consequent action against the Complainant is concerned, the disciplinary authority has exonerated the complainant from all the allegations vide order dated 17.02.2022. (iii) as per Clause 07-iii of the Bank of India Sabbatical Leave Scheme for female employees states that an employee availing of sabbatical leave will not be entitled for salary & other allowance.(iv) Bank always considerate in accommodating her in branches of her choice.

4. Complainant vide rejoinder dated **07.04.2022** reiterated his grievance and she is not satisfied with the reply.

5. After considering the respondent's reply dated **07.03.2022** & complainant's rejoinder dated **07.04.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **14.06.2022**.

6. During online hearing, this Court inquired about certain facts which were not known to the Respondent's representative. This Court by exercising its powers under Section 77 of Rights of Persons with Disabilities Act, 2016 seeks further clarification from the Respondent on following points:-

- a) Copy of the relevant Order of the Hon'ble High Court, which was passed by the Hon'ble High Court in the writ petition filed by the Complainant.
- b) Action taken by the Respondent on the basis of Hon'ble High Court Order.
- c) Version of Ms. Raj Laxmi, AGM on the allegations of 'threatening phone call'.
- d) On what grounds Disciplinary Action was initiated against the Complainant, what Charges were levied against the Complainant and why was the Chargesheet withdrawn?
- e) Copy of the Chargesheet.

7. Considering the principles of natural justice, this Court grants 07 days time to the Respondent to file its Reply supported by requisite documents on the above points. After considering the reply dated 21.06.2022 filed by the respondent, next hearing scheduled on **16.08.2022**.



Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.08.2022**. The following were present in the hearing:

- Romi Jaiswal with Sri Manish Jaiswal, husband of the Complainant
- State Bank of India – Adv. Rajat Arora; Ms. Anita Mohanty, Zonal Manager on behalf of respondent

Observation/Recommendations:

8. Complainant is not Divyangjan. Her son is Divyangjan. To take care of her child she applied for sabbatical leave, which was not approved by the bank even after expiry of 60 days of application. Thereafter she went on leave. Respondent started disciplinary proceedings against her for taking leave without permission. She filed Complaint before this Court for quashing the disciplinary proceedings.

9. Respondent submits that issue raised by the Complainant is now resolved as she has been exonerated of all the charges by Order dated 17.02.2022. Complainant is on unpaid sabbatical leave from 06.05.2021 till 30.10.2022. Clause 7(iii) of Respondent's Sabbatical Leave Scheme lays down that any female employee who is availing sabbatical leave is not entitled for salary and allowance.

10. Hearing in this matter was conducted on 22.06.2022. During hearing following questions were asked from the Respondent –

- a) On what grounds disciplinary action was initiated against the Complainant?
- b) What charges were formed?
- c) On what grounds the charges were withdrawn?
- d) Version of Ms. Raj Laxmi relating to phone call.
- e) Copy of relevant High Court Order.

11. During online hearing conducted on 22.06.2022, Complainant also alleged that another officer namely Ms. Raj Laxmi threatened the Complainant. Respondent was also asked to submit the version of Ms. Raj Laxmi. Respondent filed its reply subsequent to hearing and submitted that Disciplinary action was initiated because the Complainant went on unauthorised leave. Charges were not withdrawn. Departmental enquiry was conducted and report was also submitted wherein charges were proved. However, lenient view was



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taken on the basis of humanitarian grounds and the Complainant was exonerated from the charges. Copy of Orders given by High Court and Labour Commissioner also filed. Both the High Court as well as the Labour Commissioner Ordered in the favour of the Complainant and asked the Respondent to give benefit of Maternity Leaves to the Complainant and held that Respondent's leave rules in this regard are inferior to the benefits under Maternity Act. Respondent also informed this Court that inconsistency between the service rules of the Respondent establishment and Maternity Act have been informed to the Ministry of Finance.

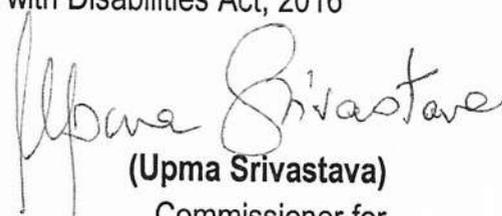
12. Further, the Respondent also filed written version of Ms. Raj Laxmi relating to threatening phone call, whereby Ms. Raj Laxmi submits that the phone call was made only to inform the Complainant about the rules of Respondent establishment relating to maternity leave. Allegations made by the Complainant relating to threatening phone call are false.

13. Hearing was again conducted on 16.08.2022, whereby the Respondent informed this Court that special leave in lieu of sabbatical leave have been granted in favour of the Complainant and payment has also been made. Complainant also expressed its satisfaction and informed this Court that the issues relating to salary and leave have been resolved.

14. This Court recommends that the Respondent shall conduct sensitization programme of senior officers in particular, so that the officers in the Respondent establishment can have proper knowledge and guidance about proper communication skills with the Divyangjan and can adopt an empathetic attitude while resolving issues related to Divyangjan. A programme should be organized at least twice a year to prevent such incidences in future.

15. Respondent shall file compliance report of this recommendation within 3 months of receiving the copy of this recommendation. 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

16. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2022



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13208/1023/2022

Complainant: Shri N. Somulu
D.No. 6-211, Padmanabha Nagar
RRV Puram Post, Visakhapatnam – 530029 (A.P.)
E-mail: <indiandivyangempowerment@gmail.com>

Respondent: E.Co. Railways, DRM Office
Through the Divisional Railway Manager
Dondaparthi, Waltair, Visakhapatnam – 530004
E-mail: <drm_wat@ecor.railnet.gov.in>

Complainant: 60% locomotor disability

GIST of the Complaint:

The complainant Shri N. Somulu vide his complaint dated **18.04.2022** submitted that his father Late Shri N. Sanyasi, retired Malaria Khalasi at CMS Main Hospital, S.E./E.Co. Railway, Waltair and retired from service on 31.12.2003 on superannuation and was expired on 09.09.2015. After death of his father, he had applied for family pension vide his letter dated 09.06.2017, but his application was rejected by the respondent vide their letter dated 28.10.2020 stating that he is not entitled to receive the family pension of his father in terms of Railway Board Circular RBE No.12/2020, wherein it was categorically mentioned that the married sons and daughters whether suffering from any disorder/disability of mind/mentally retarded or physically crippled/disabled are not eligible for family pension. The complainant had relied upon the Department of Pension & Pensioners' Welfare, M/o Personnel, P.G. & Pensions O.M. No.1/33/2012-P&PW(E) dated 16.01.2013 issued by Railway Board to all GMS/FA&CAOs of all Indian Railways/PUs vide their letter No.F(E)III/2005/PN1/32 dated 11.02.2013, wherein it is clearly stated that the Government has decided to allow continuance of family pension to mentally/physically disabled children who drew/are drawing or may draw family pension even after their marriage and has also decided to allow two family pensions where the pensioner drew, is drawing or may draw two pensions for military and/or civil employments.

2. The matter was taken up with the Respondent vide letter dated **26.04.2022** under Section 75 of the RPwD Act, 2016 but despite reminder dated **27.05.2022**, no response has been received from the respondent, therefore, hearing scheduled on **15.07.2022**.

3. The respondent submitted in the hearing that the issue of denial of family pension on the grounds of the beneficiary being married has been done away by the complainant. This aspect has also been clarified earlier vide this Court's recommendation in case of Mukesh Kumar Saxena Vs. Rifle Factory, Ishopore; Case No.12562/1023/2021 dated 25.06.2021 (Copy enclosed). The complainant stated that there are many such cases pending in Railways on the same ground. The respondent is advised to examine all such pending cases in light of the order of this Court and reassess them for eligibility of family pension irrespective of the marital status.

4. As regards the case of the complainant is concerned, the second medical certificate issued by the Railway Medical Board is still not clear in concluding whether the complainant is able to earn his livelihood or not. This Court recommends that the respondent shall send the certificate back to the Medical Board and reassess the disability status of the complainant and issue clear certificate regarding the complainant's ability to earn his livelihood or not. Next date of hearing fixed on **16.08.2022** between 4.00 p.m. to 5.30 p.m.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.08.2022**. The following were present in the hearing:

- Shri N. Somulu & Sri. N. Nagaprasad - complainant
- Sri Abani, East Coast Railways – on behalf of respondent

Observation/Recommendations:

5. Complainant submits that he applied for family pension on 09.06.2017. Respondent replied on 28.10.2020 and rejected his application giving reason that as per Railway Board Circular No.12/2010, family pension is not sanctioned in favor of married dependant. Complainant further submits that in 2013, Railway issued guidelines amending their rule. As per 2013 guidelines, family pension can now be sanctioned in favor of married dependants also.



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6. Respondent submits that the father of the Complainant was employed in the Respondent establishment and superannuated on 31.12.2003 and later expired on 09.09.2015. Respondent submits that circular issued in 2013 provides for continuance of family pension in favor of married dependants. Since the word used is 'continuance' hence, this rule is applicable only on those who were already eligible for family pension. Since, the Complainant became eligible for family pension in 2015 hence he is not covered under 2013 rules. For more clarification the application has been forwarded to Principal Chief Personnel Officer of East Coast Railway, Bhubaneswar for clarification.

7. Hearing was conducted on 15.07.2022 whereby the Respondent informed this Court that the issue related to marriage has now been resolved. Record of Proceedings was issued whereby the Respondent was asked to go through the standard order of this Court on family pension and decide the issue accordingly.

8. Thereafter, the hearing was conducted on 16.08.2022. Respondent informed this Court that the Complainant was examined by medical board on 15.07.2022. Medical board in its examination concluded that the Complainant is able to earn his livelihood hence he is not eligible for 'family pension'.

9. Since the rules prescribed for examination by medical board which has been done and the Complainant has not made any objections with respect to the procedure adopted by the medical board, hence this Court concludes that further intervention of this Court in the present Complaint is not warranted.

10. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2022



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13251/1023/2022

Complainant: Shri Suresh Chandra
D - 121, Sector - 26
Noida, G.B. Nagar, U.P. - 201301
E-mail: <sureshchandra7664@gmail.com>

—R34488

Respondent: The General Manager
Northern Railway, HQ Office
Kasturba Gandhi Marg, New Delhi
E-mail: <gm@nr.railnet.gov.in> <cpro@nr.railnet.gov.in>
Tel: 011-23387227

—R34489

Affected person: Shri Abhishek, a person with 75% mental retardation

GIST of the Complaint:

प्रार्थी श्री सुरेश चन्द्र का अपनी शिकायत दिनांक 11.05.2022 में कहना है कि उनका पुत्र श्री अभिषेक, मानसिक रूप से 75 प्रतिशत दिव्यांग होने के कारण, पूर्ण रूप से उनके ऊपर आश्रित है। उन्होंने अपने पुत्र का नाम पी.पी.ओ. में दर्ज कराने के लिए सभी आवश्यक प्रमाण पत्रों सहित दिनांक 26.02.2021 को वरिष्ठ मण्डल कार्मिक अधिकारी, उत्तर रेलवे, नई दिल्ली को आवेदन दिया था परन्तु उस पर कोई सुनवाई नहीं हुई। उन्होंने अपने पुत्र श्री अभिषेक का नाम पी.पी.ओ. में दर्ज कराने हेतु अनुरोध किया है।

2. The matter was taken up with the Respondent vide letter dated 25.05.2022 under Section 75 of the RPwD Act, 2016 but despite reminder dated 28.06.2022, no response has been received from the respondent, therefore, hearing scheduled on 16.08.2022.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 16.08.2022. The following were present in the hearing:

- Shri Suresh Chand – complainant
- Shri Mukesh Badru Singh, Sr. DPO on behalf of respondent

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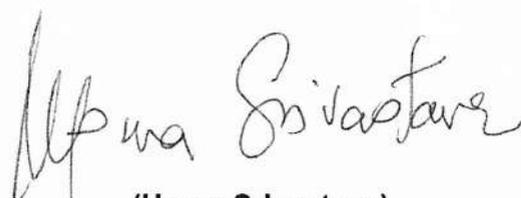
Observation/Recommendations:

3. Complainant submits that his son is intellectual disabled (75%) and he is completely dependent upon the complainant. Complainant filed the application before the respondent establishment to get the name of his son added to P.P.O. This application was filed on 26.02.2021. He submits that till date no action has been taken by respondent and name of his divyang son has not been added in P.P.O.

4. During online hearing, Respondent informed this Court that the Complainant never informed the Respondent about his divyang son. After retirement when he applied for adding name of his son in PPO, an officer of the Respondent establishment went to his home and informed him about the documents which are required for the purpose. Complainant promised the concerned officer to submit the documents within 21 days, however till date no document has been submitted by the Complainant.

5. Since, the Respondent has taken the required action and has tried to resolve grievance of the Complainant, to which the Complainant himself failed to provide the requisite document, this Court concludes that no cause remains in the present Complaint which requires intervention by this Court.

6. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2022



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

भारत सरकार / Government of India

Case No: 13206/1023/2022

Complainant: Shri Pravin Devidas Gaikwad
C/o Mukesh Timaya Koli
Railway Gate No. 20, 34 Mumbai – Pune Road
Khadki, Pune
E-mail: <haritupsamudre@gmail.com>

R34492

Respondent: The Divisional Railway Manager
DRM Office, Central Railway
Pune – 411011
Email: <adrm@pa.railnet.gov.in> <berival.lawyer@gmail.com>
Tel: 020-2659593

R34493

Complainant: 80% locomotor disability

GIST of the Complaint:

Complainant Shri Pravin Devidas Gaikwad vide complaint dated **09.03.2022** submitted that his father was working in Railway as Points Man Gd-I at Pune and he retired in the year 31.12.2012. He further submitted that after the death of father, he had applied for family pension in Feb. 2021, after that he was sent to medical board of Railway for livelihood certificate but Railway declared him that he can earn his livelihood. He has requested to direct the respondent to accept the livelihood certificate issued by the competent authorities of Government of Maharashtra for family pension.

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

3. During hearing on 15.07.2022, the counsel for the respondent requested a leave for two weeks in order to prepare their reply. The counsel for the complainant had no objection, therefore, the hearing was postponed to **04.08.2022** which was later on preponed at **02.08.2022**. During online hearing on **02.08.2022**, Respondent informed this Court that all

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the requisite documents have been received and the Reply has already been prepared and sent to concerned officers for approval. Respondent also sought last opportunity and assured to file the Reply within 1 week from the date of hearing. This Courts granted last opportunity to the Respondent to file its Reply within 1 week from the date of hearing, i.e. 02.08.2022. After examining the reply, hearing fixed on **18.08.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **18.08.2022**. The following were present in the hearing:

- Shri Vijay Prasad Rao, Advocate on behalf of Complainant
- Shri Piyush Beriwal, Advocate on behalf of respondent

Observation/Recommendations:

4. Complainant submits that his father was the employee of the Respondent establishment. He was employed as points man. He retired on 31.12.2012 and died in 2019. Complainant submits that he applied for family pension on 08.02.2021. Respondent referred the Complainant to medical board. Medical board assessed his disability and remarked was made that 'he is able to earn his livelihood'.

5. During online hearing, Respondent further submitted that the medical examination was conducted on 14.10.2021. Reason given by the medical board for certifying the Complainant as 'able to earn livelihood' was that the upper limbs and intellect of the Complainant were fit and hence he was able to earn livelihood.

6. During online hearing, Complainant attracted attention of this Court towards an important fact. Disability of the Complainant is 'Orthopedically Disabled', however, during medical examination no 'Orthopaedic' specialist was member of the examination panel.

7. This Court cannot assume the role of medical board and discharge the functions of medical board; however, this Court is bound to ensure and check that procedure adopted by the government establishments while discharging the functions relating to rights of divyangjan is fair and just. This Court agrees with the submissions made by the Complainant relating to 'medical board'. Since the nature of disability of the Complainant is 'Orthopaedic' hence, in order to make perfect conclusion, presence of 'Orthopaedic specialist' in the examination panel was imminent.

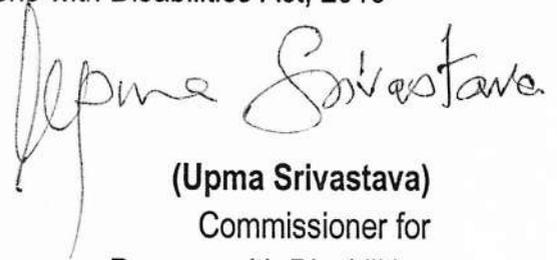


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8. Therefore, this Court recommends that the Respondent shall make re-assessment of Complainant's ability to earn livelihood and recommended that the Respondent shall conduct another medical examination and shall ensure that among others, 'Orthopaedic specialist' is a member of the examination panel which shall conduct the medical examination.

9. Respondent shall file compliance report of this recommendation within 3 months of receiving the copy of this recommendation. 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. The Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2022



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: 13190/1023/2022

Complainant: Shri Mohd Faisal Nawaz
Assistant Purchase Manager
873-A, Gali No. 30/4, Near Nikki Hotel
Jafrabad, Delhi – 110053
E-mail: <faisalngo@gmail.com>

- R34447

Respondent: The General Manager (HR)
Central Electronics Ltd
M/o Science & Technology
Site 04, Sahibabad, Uttar Pradesh – 201010
E-mail: <rajatgarg@celindia.co.in>

- R34448

Complainant: 40% locomotor disability

GIST of the Complaint:

Complainant Shri Mohd Faisal Nawaz, Assistant Purchase Manager vide complaint dated 13.03.2022 has submitted the point wise following grievance:

- Non-Receipt of TA at Double Rates
- Facilities of Infertility treatment of spouse, laparoscopy, IUI, IVF etc all are rejected with a reason on Non-coverage under CEL Attendance rules.
- Non-Coverage of Medical Reimbursement facility to dependent younger brother with disability and younger unmarried sister.
- Delayed promotion through DPC and release of the arrears including extension in probationary
- Non-receipt of Salaries of Dec. 2020 and Jan 2021
- Non-installation of CCTV
- Non coverage of Special Casual Leaves to PwDs

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

3. General Manager (HR), Central Electronics Ltd vide letter dated **19.05.2022** inter-alia submitted the following points:

- Travelling allowance will be provided to the complainant
- As per CEL Employees' Medical Attendance Rules, expenses on medical devices are not admissible, hence not been reimbursed to the complainant as per Rules.
- Complainant is not entitled to reimbursement of medical expenses of younger brother and sister as per Rules.
- There are no arrears of increment on promotion pending in case of the complainant and he has been duly provided all dues from the date of assuming charge on the promoted post.
- Complainant is not entitled to salary for unauthorized absence from duty for the period 03 December 2020 and 23 January 2021
- Installation of CCTVs is not an issue related to Rights of Persons with Disabilities under the Act of 2016.
- Complainant has never applied for Special Causal Leave, as and when he will applied alongwith the proof of his participation in activities, then the same will be given to him as per applicable rules.

4. Complainant vide rejoinder dated **05.06.2022** inter-alia submitted that to issue the directives for reimbursement of medical expenses need to be incurred on expensive life saving instruments by beneficiary, mobility needs and infertility treatment of spouse time to time and cleared all such medical bills which returned.

5. After considering the respondent's reply dated **19.05.2022** and the complainant's rejoinder dated **05.06.2022**, 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 in the hearing:

- Shri Mohd Faisal Nawaz – complainant
- Sh Rajat Garg, GM (HR), CEL on behalf of respondent



Observation/Recommendations:

6. Complainant has raised various issues in his complaint. Complainant submits that respondent does not give him transfer allowance at double rate. He further, submits that during Covid, he had to buy oxygen concentrator, cost of which was not reimbursed by the respondent. Further, respondent is not reimbursing medical expenses of dependent brother and sister. Complainant further submits that his interview was conducted by DPC for promotion in 2019 but he was not promoted. Later, in 2020 he was promoted by another DPC. He further, submits that from December 2020 till January 2021, he was availing of work from home facility. However, the respondent considered him on leave and his salary for December 2020 and January 2021 was not released. Complainant also submits that CCTV must be installed in the office premises where he is employed; however, respondent has not acceded to his request.

7. Respondent submits that the issue of TA was examined and complainant will be paid TA at double rate from 1st July 2017 onwards. On the issue of reimbursement of medical claims respondent submits that as per medical attendance rules, cost of oxygen concentrator cannot be reimbursed. Further, it is submitted that dependent brother and sister are also not covered under the definition of dependent family member. In 2019 he was denied promotion because he couldn't succeed in interview. However, in 2020 he was promoted. His salary for December 2020 and January 2021 was not paid because exemption for this period was not extended by DoPT.

8. On the issue of Travelling Allowance at double rate, Respondent submitted during online hearing that the permission to grant Travelling Allowance at double rate has been obtained and from July 2017 onwards the same shall be granted. Hence, on this issue intervention of this Court is not warranted.

9. Similarly on the issue of non-promotion in 2019, this Court concludes that there is no discrimination on this point and hence intervention on this issue is also not wanted.

10. Third issue is related to reimbursement of cost of 'Oxygen Concentrators'. Respondent submits that as per medical attendance rules, the cost cannot be reimbursed. On the other hand, Complainant submits that his disability is such that Oxygen concentrator is a necessity for him.



11. Complainant's disability is Kyphoscoliosis in which normal curvature of spine is excessively deviated because of which movement of the Complainant is restricted and in addition, extreme breathing problem is caused because of reduced lung volume, restrictive chest wall, decreased compliance, and limited diaphragm movements. There is enough scientific data to prove that Kyphoscoliosis is a thoracic cage deformity that causes extrapulmonary restriction of the lungs and gives rise to impairment of pulmonary functions and causes restrictive lung diseases. In case of the Complainant, Oxygen concentrator is an essential device to live because it will enable the Complainant to breathe properly, hence in this case qualifies as 'assistive device'.

12. Need of providing assistive devices to divyangjan gets reflected in Section 5 of RPwD Act, 2016 and DoPT O.M. dated 31.03.2014. Section 5 provides that government establishment shall make endeavors to provide divyangjan access to range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

13. Similarly, Para C of DoPT O.M. dated 31.03.2014 lays down that government establishments should assist divyang employees by providing them with latest and high-tech assistive devices which would improve their efficiency.

14. In the present case, it is obvious that if the Complainant will be provided 'oxygen concentrator' it will definitely increase the efficiency of the Complainant as he would be able to concentrate on his work.

15. Another issue raised by the Complainant is related to non-payment of salary for the months of December 2021 and January 2022. On this issue, Respondent submitted that during these two months Complainant did not attend the office and 'work from home' was not assigned to him hence, salary for these two months has not been given to the Complainant. Respondent further submitted that the Complainant submitted 'medical certificate' which declared him unfit and hence no work was assigned to him. Had the Complainant not submitted the medical certificate, Respondent could have assigned 'work from home' to the Complainant.

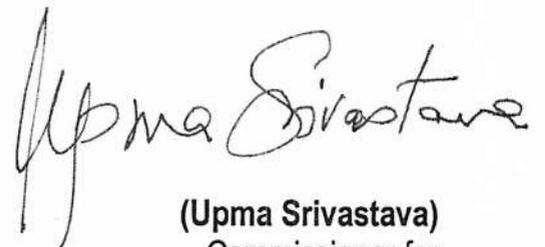
16. This Court does not agree with the submissions of the Respondent. Intent of the Complainant behind submitting 'medical certificate' was to prove that the prevailing situation at that time were not ideal for him to attend office and hence the Complainant submitted the



certificate with intention to request the Respondent to assign him 'work from home'. Respondent misunderstood the certificate and instead of assigning work from home, deducted his salary for not attending the office. Hence, this Court concludes that since the Complainant was ready to work but the Respondent failed to assign any work to the Complainant hence it is not the fault on the part of the Complainant that no work was assigned to him during December 2021 and January 2022.

17. Hence this Court recommends that the Respondent shall reimburse the cost of 'Oxygen Concentrator' purchased by him in the past and in future as an integral component of his medical expenses. Furthermore, this Court recommends that the Respondent shall issue salary for the months of December 2021 and January 2022 because the Complainant was exempted from attending office and 'work from home' could not be assigned to him because of the misunderstanding on the part of the Respondent and not on the part of the Complainant, who was ready to perform his duties.

18. The Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 30.08.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13246/1022/2022

Complainant

Shri Laxman Sankhala
Nayapura, Ramkutiya Mathaniya
Jhodhpur, Rajasthan- 342305
Email: laxmansankhala@gmail.com

-L34621

Versus

Respondent

The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi-110016
Contact No: 011-26521898
Email:

-R34622

GIST OF COMPLAINT

The complainant is a person with 100% Visually Impairment. He has filed a complaint on 05.05.2022 regarding his transfer near his native place.

2. The complainant submitted that he had joined KVS on 03.09.2019 in West Bengal, West Wardhman District. 2 years of service has been completed but this posting is like a punishment posting, as it is 2000 KM away from his native place. The complainant stated that being 100% Visually Impairment employee it is impossible for him to survive in such a hard station and his family is totally dependent on him. The complainant further submitted that KVS head promised to all Divyangjan employees to modify their posting place near their hometown in 2020, but due to the Covid-19 pandemic all kinds of transfers and modifications were stopped by KVS. The complainant also stated that from the date of joining he is suffering from anxiety and fear and eagerly waiting to be transferred near his hometown. The complainant stated that his parents are depending on him, as he is the only person in his family to earn. It is very hard experience for him to travel 2000 KM from his home town. It takes 02 days by train and he always needs someone to help him for travelling. The complainant also stated that in his native state Rajasthan there are so many clear vacancies that are vacant yet. The complainant has requested to this Court to give direction to the respondent to transfer him from West Bengal to near his i.e. native place Rajasthan.

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

3. In response, Assistant Commissioner (Estt.2) KVS Headquarter, vide email dated 22.06.2022, has submitted that as per KVS records, the complainant had joined KVS on 03.09.2019 as Primary Teacher in KV Panagarh under Kolkata Region on Direct recruitment. He was recruited under Zonal policy of KVS which was implemented in KVS since October 2017. The employees were allotted different zones on the basis of their merit-cum choice. The respondent further submitted that efforts were being made to post the new recruits of 2017, 2018, 2019 and 2020, who were Divyangjan, in their most preferred zone. However,

5वीं मंजिल, एनआईएसडी भवन, प्लॉट न०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(पया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

the allotment of zones was subject to the number of vacancies reserved for PH in a particular zone. Due to *this many PH candidates* were posted in the zone other than their hometown zone. In order to post such PH employees near their hometown, KVS had invited applications from the PH employees as well as employees who wanted to modify their place of posting on spouse ground vide letter dated 13.04.2018 and accordingly, the place of posting of employees were modified on spouse and PH ground.

4. Similarly, KVS had invited applications for modification of new recruits on spouse ground and PH-ground vide letters dated 17.10.2019 and 29.01.2020. However, due to the Covid-19 Pandemic, the applications of such employees were not processed in the year 2020. In addition the KVS transfer guidelines have been modified in the year 2021 wherein it was decided to treat the employees recruited under Zonal Policy at par with all the employees of KVS. Accordingly many recruits of 2017-2020, got their request transfers to their choice place. But, Since the complainant is posted in KV Panagarh which is a hard station, therefore, due to non-completion of his 03 years tenure at hard station, his request for transfer was not considered during annual transfer 2021 though he had applied for transfer to Tinvari and Jodhpur station on disability ground during annual transfer 2021 with 62 transfer counts.

5. The complainant has filed the rejoinder reply vide email dated 03.07.2022 and submitted that comments submitted by KVS is illogical and it is against even its own transfer policy and also against the principle of equality before law and equal protection of law as many transfer orders are issued to candidates individually and secretly after the completion of transfer process 2021. KVS had already promised modification of place of posting of PH candidate but could not kept its promise. The complainant has requested once again to this Court to give direction to the respondent to transfer him to native place Rajasthan from West Bengal.

6. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 18.08.2022. The following were present in the hearing:

- i) Shri Laxman Laxman Sankhala : **Complainant**
- ii) Shri Sri Deepak Kumar Dabral, Assistant Commissioner (Estt-II) KVS: **Respondent**

Observations /Recommendations:

7. Complainant submits that he is 100% visual impaired. He was appointed in the respondent establishment in 2019. He was posted in Vardhaman District of West Bengal where he joined on 03.09.2019. He submits that his native place is Jodhpur, Rajasthan which is 200 K.Ms. away from his place of posting. He submits that he has requested the respondent to transfer him near his home town in Rajasthan which has been denied.

8. Respondent submits that the complainant joined KVS on 03.09.2019 as per zonal policy. All the employees who were recruited along with him were allotted different zones on the basis of merit and choice. Respondent invited applications for modifications of place of posting in October 2019. However, the applications were not processed because of Covid. Application of the complainant was not considered during annual transfer 2021 because in 2021 he had not completed 3 years tenure at his present place of posting.

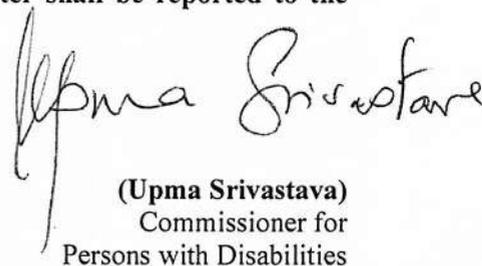
9. During online hearing, Respondent submitted that in September, the Complainant will complete his 3 years of service and will become eligible for transfer. Respondent also assured this Court that the Complainant will be transferred to his hometown. Respondent also assured that the establishment is drafting new transfer guidelines in which the directions passed by this Court in previously adjudicated Complaints will be incorporated.



10. This Court expresses its satisfaction with the assurance given by the Respondent and Respondent's positive approach. Since, the Respondent has assured the Court to transfer the Complainant to his hometown hence this Court is not inclined to interfere in the present Complaint. The present Complaint is disposed off with liberty granted to the Complainant to approach this Court again in case the Respondent does not transfer the Complainant to his hometown in the upcoming transfer cycle.

11. **Respondent shall also file the Compliance report of this Recommendation-Order within 3 months from 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.**

12. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 30.08.2022



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

Case No: 13249/1022/2022

Complainant

Shri Yogesh Golhani
Mobile No: 09827297975
Email: yogeshgolhani@gmail.com

- R24620

Versus

Respondent

The General Manager --
Central Bank of India
Chandramukhi Building
Nariman Point, Mumbai -400021
Maharashtra
Contact No: 022-66387777
Email: gmhrd@centralbank.co.in

- R24619

GIST OF COMPLAINT

The complainant, a person with 50% Locomotor disability, has filed a complaint dated 16.05.2022 regarding retaining him at Raipur.

2. The complainant has submitted that he is working under Central Bank of India and posted in Raipur region since 2006 in Raipur Chhattisgarh. Now, while taking promotion bank has transferred his service to Hoshangabadh Region, Madhya Pradesh Branch Seoni Malwa which is more than 560 KM from Raipur, Chhattisgarh, present station. The complainant further stated that it is very difficult for him to carry his day to day activities as well as job and has requested this Court to retain his service at Raipur only.

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

4. In response, Dy. General Manager, HRD, Central Bank of India, vide letter dated 08.06.2022 has submitted that the complainant's native place is Jabalpur in Madhya Pradesh, and he joined the Bank as Officer in Raipur Region under Bhopal Zone on 29.05.2006. On his promotion to Scale II in June 2012 the complainant was retained in the same region. In August, 2019 the officer opted for conversion from specialist to Mainstream and continued in the same Region. On his promotion as Senior Manager, the complainant was transferred to Seoni Branch under Hoshangabad Region on 25.04.2022 as per transfer norms. As per promotion policy, to be eligible for promotion to Senior Manager, an officer has to put in a period of 3 years service in rural and / or semi - urban branches as on Officer. However, officers who have not been offered/completed rural stint/semi urban in the past, if other eligible are permitted to participate in the promotion process and complete such/rural semi urban stint, on selection, as a post - promotion criteria, subject to their furnishing an "Undertaking" to the effect. The complainant has submitted an undertaking to complete Semi Urban stint at the time of participating in the promotion process to Scale-3.

5. The complainant has filed the rejoinder vide email dated 03.07.2022, and reiterated Govt guidelines that “a *Physically Disabled Officer as per government guidelines not be transferred even on promotion if a vacancy exists in the same station*”. He further submitted that there are many Rural/semi urban branches in Raipur Region where a Divyangjan officer conveniently accommodated and postings have been done and few vacant too. The mandatory semi urban stint of three years as per Govt. of India guidelines for which he has submitted an undertaking, states that protection under Govt. guidelines for “a Physically Handicapped Officer as per Govt. guidelines not to be transferred even on promotion if a vacancy exists in the same station strictly to be considered”. The management have not commented on this ground nor placed list of semi urban branches posting made during this period. The complainant has requested once again to this Court to give direction to the respondent to retain his service in Raipur region.

6. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 18.08.2022. The following were present in the hearing:

- i) Shri Yogesh Golhani: **Complainant**
- ii) Shri Atul Sahay, Dy. Zonal Manager, Bhopal, Central Bank of India: **Respondent**

Observations /Recommendations:

7. Complainant submits that he is working in respondent establishment since 2006. He is posted in Raipur, Chattisgarh. His grievance is that the respondent establishment has transferred him to Hoshangabad region in Madhya Pradesh. He prays before this court for retention in Raipur, Chattisgarh.

8. Respondent submits that the complainant was appointed in 2006. As per available records, his native place is Jabalpur, Madhya Pradesh. From 2006 till April 2022 the complainant was posted in Raipur Region. The complainant was always posted in Urban Centres. Even at his promotion to scale 2 in June 2012 he was retained in the same region.

9. As per promotion policy an employee has to complete minimum 3 years’ service in rural branch for promotion to the post of Senior Manager, however under special circumstances an employee can be promoted to Senior Manager post even if he has not completed 3 years’ service in rural branch, subject to the undertaking that such employee will complete his rural posting after promotion. Complainant submitted undertaking to complete his rural stint at the time of participating in the promotion process to the post of Senior Manager. Therefore, he was transferred to Seoni Branch in Hoshangabad region, Madhya Pradesh w.e.f. 25.04.2022.

10. It is worthwhile to note that the Complainant was posted in same region from 2006 till 2022. Furthermore, complainant’s home town is situated in Madhya Pradesh, his home town is not Raipur where he was posted and wants to be retained. Therefore, this Court found it necessary to conduct an inquiry and hearing was conducted.

11. During online hearing, Complainant informed this Court that his family lives with him. Distance between his place of residence and office in Hoshangabad is 2 K.Ms. only. In Hoshangabad he is assigned desk job. Complainant informed the Court that main reason because of which he wants to be retained in Raipur is that in Hoshangabd he is posted in rural area named ‘Seoni Malwa’ where because of his disability, continuous medical attention/physiotherapy. He has to travel 16 K.Ms. to urban area of Hoshangabad in order to get medical treatment/physiotherapy.



12. It is important to strike a balance between the two poles. On one hand Respondent's approach cannot be termed as negative, because the Complainant was posted in Raipur region for whole of his career starting from 2006 till 2022. However, the Complainant's ground for seeking transfer out of his present place of posting is also not bereft of reason and logic. For the Complainant, medical attention for his disability is indispensable.

13. During online hearing, Respondent understood the problems faced by the Complainant and assured this Court that endeavours shall be made by the Respondent to find a branch with such geographical location where Complainant's medical needs can be addressed as well as posting on compulsory rural stint, to which the Complainant gave an undertaking in writing, can also get fulfilled.

14. Respondent shall also file the Compliance Report of this Recommendation-Order within 3 months from 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.

15. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 30.08.2022