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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. 13002/1011/2021

### Complainant:

Shri Vijaykumar Gordhanbhai Patoliya,

Vadali Chowk, Joshipura,

Junagarh-362002 (Gujarat)

Mobile: [pateliya@asia.com](mailto:pateliya@asia.com) Mobile: 9662739806

132304

### Respondent:

The Chairman,

Railway Recruitment Board,

Opposite GCS Hospital,

Near DRM Office, Amdupura,

Ahmedabad - 382 345

Email: [as-rrbadi@nic.in](mailto:as-rrbadi@nic.in) Phone: 079-2294 0858

132305

**Affected Person:** The Complainant, a person with 50% Mental Illness (Schizophrenia)

### 1. Gist of Complaint:

The complainant filed a complaint received on 02.12.2021 regarding his non-selection to the post of Group 'D' Technical by RRB Ahmedabad.

### 2. Submissions made by the Respondent:

2.1 The Railway Recruitment Cell, Western Railway, Mumbai filed the reply dated 12.01.2022 and submitted that the candidate/complainant had initially applied under HH category for recruitment Level 1 posts in Railways against CEN 02/2018, as option to apply as MD (Multiple disability) which was not available at that time. Later on, PH candidates who belong to MD category were given option to submit their application in given time frame for Multiple Disability category.

2.2 The complainant submitted his application under MD category stating his disability as HH + Mental Disability. The complainant was called for document verification on 05.02.2020. During document verification the complainant could

(Page 1 of 2)

produce the Disability Certificate for Mental Illness only and he could not submit any disability certificate for HH category. The candidate also did not produce valid Scheduled Tribe (ST) certificate. However, he was given 15 days time to submit proper disability certificate in MD category for multiple disability and valid ST case certificate. But he could not submit the mandatory certificates/documents. The complainant was then given additional time to submit the documents within 15 days again vide letter dated 12.03.2021 and was also informed that if he fails to submit the certificate/documents, his candidature would be treated as cancelled. The applicant vide email dated 22.12.2021 had sent a disability certificate No.Gj1210819770085044 dated 12.11.2021. That certificate was not as per the format prescribed (Form VI) in RPwD Act, 2016. The format was also notified in corrigendum dated 28.02.2018 issued on CEN 02/2018. Thus, he failed to prove his physical disability in MD category with proper valid disability certificate and has also not produced a valid ST certificate. Hence he is not considered for further process of recruitment.

**3. Submissions made in Rejoinder:**

The complainant in his rejoinder dated 27.03.2022 submitted that he is a PwD candidate with ST.

**4. Observation/Recommendations:**

4.1 From the facts submitted, the reply filed by the respondent is satisfactory. Neither the complainant could submit Disability Certificate to prove his physical disability in Multiple Disable category within the stipulated time nor even in the 15 days additional time provided to him by the respondent.

4.2 Accordingly the case is disposed off.

**Dated: 20.04.2022**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities





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## न्यायालय मुख्य आयुक्त दिव्यांगजन

**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार/Government of India

**Case No: 12921/1023/2021**

Complainant: Shri Satish Chandra Sharma  
Punjab & Sind Bank, 18-A Model  
Town, Bareilly, Uttar Pradesh – 243005  
E-mail: <ssatishchandra45@gmail.com>

R32306

Respondent: The Zonal Manager  
Punjab & Sind Bank  
Gagandeep Complex, 148, Civil Lines  
Bareilly, Uttar Pradesh  
E-mail: <zo.bareilly@psb.co.in>

R32302

Complainant: 90% visual impairment

### GIST of the Complaint:

Complainant Shri Satish Chandra Sharma, Officer vide complaint dated **24.09.2021** submitted that on 24.01.2021, he had appeared for the promotional examination process 2020-2021 held at New Delhi by the Bank after taking prior permission to travel to the venue alongwith his scribe and an attendant from the Zonal Office, Bareilly. He further submitted that every year the allowances towards the scribe and attendant was always paid by the organization but this year they have just denied of the allowance. He has requested to grant him scribe allowance and attendant allowance as per appropriate policies.

2. The matter was taken up with the Respondent vide letter dated **12.10.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **21.10.2021** inter-alia submitted that as per bank norms/guidelines, employee with rank of Chief Manager and above are only eligible to travel by car but due to Covid -19, Zonal Office, Bareilly permitted Shri Satish Chandra Sharma to travel by car from Bareilly to Delhi and expenditure on travelling the car was passed and sanctioned to an amount of Rs. 7850/- and also sectioned Hotel Bill for Shri Satish Chandra Sharma to an amount of Rs. 1232/-

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4. Complainant vide rejoinder dated **18.12.2021** has requested to direct the respondent to allow the legitimate expenses of Attendant and Scribe permitted by the respondent and incurred the complainant for appearing in the promotion process for the FY 2020-21.

**Observation/Recommendations:**

5. The Complainant submitted that he appeared in promotion examination conducted by the Respondent establishment. The examination was conducted in New Delhi, whereas he is posted in Bareilly. He submits that he travelled to New Delhi along with an attendant. He further submitted that because of the nature of his disability, he took assistance of scribe. He submits that he obtained prior permission from the Respondent establishment to travel along with the attendant and scribe.

6. Respondent submits that as per Respondent's guidelines, employee with rank of 'Chief Manager' and above are only eligible to travel by car. Considering the circumstances caused by Covid pandemic the Complainant was allowed to travel by car and expenses amounting to Rs. 7850/- incurred by the Complainant were also sanctioned by the Respondent. Further, in addition to the car expenses, amount of Rs. 1232/- incurred by the Respondent towards hotel expenses were also sanctioned by the Respondent. It is further submitted that the Complainant requested for permission to travel along with scribe. The same was granted but it does not ipso facto makes him eligible to claim scribe expenses. Respondent also submits that Office Service Regulations do not carry any guidelines relating to payment of allowance to divyangjan travelling along with attendant or scribe.

7. This court is satisfied with the compassionate approach adopted by the Respondent. It is clear from the facts that the Respondent sanctioned taxi and hotel expenses even in the absence of clear rules and guidelines in this regard. This court is satisfied with the Reply filed by the Respondent and is not inclined to intervene in the present Complaint.

8. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022





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## 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: 12828/1021/2021**

Complainant: Shri R. Ravishankar

Assistant Registrar Academic

National Institute of Technology, Tiruchirappalli

Thuvakudi, Tiruchirappalli District, Tamilnadu -620015

E-mail: <rravi@nitt.edu>

1232308

Respondent: The Registrar

National Institute of Technology, Tiruchirappalli

Thuvakudi, Tiruchirappalli District, Tamilnadu - 620015

E-mail: <registrar@nitt.edu>

1232309

Complainant: 75% Visual Impairment

### GIST of the Complaint:

Complainant vide complaint dated **02.08.2021** inter-alia submitted that he had been serving the National Institute of Technology, Tiruchirappalli from 21st September 2016 to till date as a Assistant Registrar. He further submitted that as per NIT Recruitment Rules 2019 - after five years of service as Assistant Registrar with GP of Rs.5400/-, an incumbent will be assessed by the Departmental Promotion Committee (DPC) for moving to the higher GP of Rs.6600/-with the same designation but as per DoPT OM No. 22011/4/2013—Estt(D) dated 8th May 2017, para 5 (ii) stated that the crucial date of eligibility will be 1st of January of the vacancy year w.e.f. 2019. He alleged that NIT-Tiruchirappalli had conducted the DPC during July 2021 and he had given representation to consider his eligibility for as per DoPT OM but his name was missing in the eligible employees for DPC list.

2. The matter was taken up with the Respondent vide letter dated **17.08.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **16.09.2021** inter-alia submitted that in NIT promotion is given only on the norms as (a) completion of qualifying years of service (b) APARs for 05

*[Handwritten signature]*

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preceding years (c) Assessed by DPC. The first two categories only entitle the employee for the third level that is taking part in DPC. In the present case, the complainant completes his service of five years only on 20.09.2021. Secondly, the complainant should possess APARs for the years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21. Only on satisfaction of the above two conditions, the complainant would be eligible for appearing in DPC 2021. But he has not even completed five years of service as per Recruitment Rules and hence he was considered ineligible for appearing in DPC conducted on 23.07.2021.

4. Complainant vide rejoinder dated **28.09.2021** reiterated his complaint that he was eligible for the DPC 2021 conducted on 23.07.2021 as per the crucial date of eligibility for DPC norms as per DoPT OM and he has completed the required qualifying 05 years of service as on 20.09.2021.

5. After considering the respondent's reply dated **16.09.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **02.11.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.11.2021**. The following were present:

- Shri R. Ravishankar – complainant
- Dr. Hariharan, Registrar (Incharge) on behalf of respondent

**Observation/Recommendations:**

6. Complainant submits that he was appointed as Assistant Registrar in the Respondent establishment on 21.09.2016 on Grade Pay Scale of Rs. 5400/-. As per the Respondent's RRs, after 5 years of service, an incumbent who is working on Grade Pay of 5400/- will be assessed by the Departmental Promotion Committee for moving to GP of Rs. 6600/- with the same designation. As per DoPT OM, the crucial date of eligibility will be 1<sup>st</sup> of January of the vacancy year. Complainant's upgradation was due in September 2021. Hence, he submits that in his case crucial date of eligibility will be 1<sup>st</sup> January 2021, therefore, he submits that his case should have been considered by DPC which was conducted in September 2020.



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7. Respondent submits that the Complainant was appointed on 21.09.2016 on Grade Pay Scale of Rs. 5400/-. RRs prescribe for moving to Grade Pay of Rs. 6600/- on completion of 5 years of service. Respondent establishment is an autonomous establishment. Respondent does not conduct DPC in the advance year but conducts in the same year in which vacancy arose. In Respondent's establishment crucial date of eligibility is 1<sup>st</sup> January of the vacancy year. Respondent also gives relaxation up to date of interview. Complainant's 5 year of service completed on 20.09.2021. DPC was conducted on 23.07.2021. This DPC was conducted for vacancies which arose in year 2021. Crucial date of eligibility was taken as 1 January 2021. Further relaxation was given till date of interview, i.e. 23.07.2021. Meaning thereby that only those employees were considered for moving to higher Grade Pay who became eligible on or before 01.01.2021 and applying relaxation clause, who were eligible on or before 23.07.2021. Complainant became eligible on 21.09.2021 hence his name was not considered for the year 2021.

8. During online hearing, Respondent was further asked to submit the names of all Assistant Registrars who were appointed after 23.06.2016. On later date, the Respondent informed this Court that five people were appointed on the post of Assistant Registrar after 23.06.2016, namely Sri R. Ravishankar (the Complainant), whose date of joining was 21.09.2016; Sri Sathish Kumar S, whose date of joining was 11.10.2017; Sri Karthikeyan R, whose date of joining was 01.11.2017; Sri Vigneshwara Raj A.G., whose date of joining was 05.10.2017 and Sri Sivarajan A, whose date of joining was 02.08.2018.

9. Further, the Respondent was asked to inform this Court if any person who was appointed on the post of Assistant Registrar after 23.06.2016 was moved to higher grade pay scale. On a later date, the Respondent apprised this Court that one Sri Vigneshwar Raj A.G. was moved to higher grade pay scale because before joining the Respondent establishment, he joined as Assistant Registrar in NIT Surat in 2014. His name for promotion to higher grade was considered in 2020, after he completed tenure of 5 years and 11 months as Assistant Registrar both in NIT Surat and NIT Tiruchy. Apart from Sri Vigneshwar Raj A.G., no other Assistant Registrar who joined after 23.06.2016 was moved to higher grade pay.



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10. This Court concludes that the procedure adopted by the Respondent establishment relating promotion of Assistant Registrars to higher grade pay is consistent and same vis a vis divyang and non divyang employees of the Respondent establishment. In the present Complaint there is no disclosure of any issue related to discrimination with divyangjan. Intervention of this Court in the present Complaint is not warranted.

11. Case is disposed off.



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

Dated: 20.04.2022





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

भारत सरकार/Government of India

**Case No: 12922/1023/2021**

Complainant: Shri B.S. Sathish

"Shashwathi", II Main Road Vijayanagara

Shivamogga, Karnataka – 577205

E-mail: <bssathish.888@gmail.com>

Respondent: The Managing Director & CEO

Carana Bank

112, JC Road, Bangaluru -560002

E-mail: <mdceo@canarabank.com>

Complainant: 50% locomotor disability

### GIST of the Complaint:

Complainant Shri B.S. Sathish vide complaint dated **24.09.2021** submitted that he was retired from Syndicate Bank on 31.08.2019 as a Clerk and he was punished by the respondent establishment because of his disability. He has requested to revoke/quash/cancel the discriminatory order and directs the Management to restore basic salary and pension to original level and pay arrears at 10% interest till date of payment.

2. The matter was taken up with the Respondent vide letter dated **12.10.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **09.11.2021** inter-alia submitted that Shri B.S. Sathish had joined the services of the erstwhile Syndicate Bank on 29.01.1981 and he was working as a clerk/cashier at Tunganagar Branch of the Bank, Shivamogga from 22.07.2015 until his superannuation on 31.08.2019 from the service of the Bank. Certain actionable lapses were observed on the part of the petitioner in the credit irregularities and suspicious credit/debit transactions. He failed to exercise necessary caution while performing his duty, which could have exposed/avoided the fraud. He also failed to inform his higher authorities about the irregularities.

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**Observation/Recommendations:**

4. Complainant submits that he was punished by the Respondent establishment because of his disability. Misconducts for which he was punished were done by him on the instructions of the senior employees.
5. Respondent establishment replied that some irregularities in transactions were recorded and an inquiry was initiated against the Complainant and other staff members of the branch where the Complainant was posted. After inquiry was conducted, Complainant as well as other staff members of the branch, who were not divyangjan, were punished. Services of the branch manager were terminated.
6. After perusal of documents available on record this court concludes that there is no connection between the disability and punishment inflicted by the Respondent on the Complainant. Intervention of this Court in the present Complaint is not warranted.
7. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022





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

भारत सरकार/Government of India

Case No: 12896/1023/2021

Complainant: Shri Ishwar Pal Singh Gautam  
House No. 285, Sector – 2, Madhavpuram  
Meerut, Uttar Pradesh – 250002  
E-mail: <gautam.ips2@gmail.com>

132312

Respondent: Sr. Divisional Manager  
Life Insurance Corporation of India  
Divisional Office, Jeevan Prakash  
Prabhat Nagar, Meerut  
E-mail: <pir.meerut@licindia.com>

132312

Complainant: 70% Hearing Impairment

### GIST of the Complaint:

प्रार्थी श्री ईश्वर पाल सिंह गौतम, 70 प्रतिशत hearing loss both ears, प्रसाशनिक अधिकारी (पॉलिसी सेवा) का अपनी शिकायत दिनांक 21.09.2021 में कहना है कि उन्होंने दिनांक 30.01.2017 को भारतीय जीवन बीमा निगम, मेरठ को उन्हें admissibility as "PwD" under the RPWD Act, 2016 के लिए लिखित प्रार्थना की थी। जिसके उत्तर में दिनांक 30.12.2020 को मंडल कार्यालय, मेरठ ने उन्हें एक पत्र जारी किया जिसमें सी.ओ. परिपत्र दिनांक 08.07.2015 के अनुसार कहा गया कि Competent Authority has decided that you can not be admitted as a person with disability. प्रार्थी का आगे कहना है कि भारतीय जीवन बीमा निगम के अंदर कार्यरत सभी दिव्यांग कर्मचारियों को देय दोगुना परिवहन भत्ता/विशेष परिवहन भत्ता, भारत सरकार के स्पष्ट दिशा-निर्देशों के बावजूद आज भी मात्र रु. 400/- प्रतिमाह है।

2. The matter was taken up with the Respondent vide letter dated 01.10.2021 under Section 75 of the RPwD Act, 2016.

Prerna Srivastava

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3. Manager (P&IR), LIC, Meerut vide letter dated **28.10.2021** submitted that complainant is having the hearing impairment and as per circular dated 08.07.20215 of LIC, the disability allowance will be paid to only those employees who suffer from both the disabilities i.e. who are both deaf and dumb, therefore his request is not found admissible.

4. प्रार्थी का अपने प्रति उत्तर दिनांक **14.11.2021** में कहना है कि श्रीमती रंजना मेहता को **physical handicapped allowance** की मद में रु. 400/- का मासिक वेतन के साथ भुगतान किया जा रहा है जबकि वह भी केवल Deaf थीं Dumb नहीं थीं। प्रार्थी का आगे कहना है कि वह भारतीय जीवन बीमा निगम, मंडल कार्यालय, मेरठ द्वारा किए जा रहे उत्पीड़न से मानसिक रूप से आहत हो चुका है।

#### **Observation/Recommendations:**

5. The Complainant submits that he is an employee in Respondent's establishment. He claims that he is eligible for Transport Allowance at double rate but the Respondent establishment has denied him this benefit.

6. Respondent submits that demand of the Complainant cannot be acceded to because it is governed by the O.M. issued by Ministry of Finance, which allows issuance of Transport Allowance at double the normal rates only to those divyangjan who are challenged by both the disabilities, i.e. Deaf and Dumb.

7. Present Complaint is related to category of 'Hearing Impairment'. The issue in the present Complaint is whether Transport Allowance at double the normal rate is admissible to divyangjan with 'Hearing Impairment'. Complainant claims that it is admissible whereas the Respondent has cited few O.Ms. to support the contention that it is not admissible to divyangjan with 'Hearing Impairment' only. Respondent relied upon O.M. No. 21.(2)/2011-E.II (B) dated 19.02.2014 and O.M. No. 21.(2)/2011-E.II (B) (Pr) dated 16.09.2014 issued by Department of Expenditure, Ministry of Finance. The O.Ms. were perused. These O.Ms. enunciates that the benefit of Transport Allowance at double the normal rate is admissible to those employees only who suffer from both the disabilities i.e. who are both deaf and dumb.

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8. This is noteworthy to mention that the O.Ms. relied upon by the Respondent were expressly suppressed by later O.M. No. 20/2/2016-E-II (B) dated 17.01.2017. As per this O.M. earlier O.M. dated 19.02.2014 was suppressed and Transport Allowance at double the normal rate was issued in favour of divyang employees with 'Hearing Impairment' only. This O.M. further enunciates that the date of effect of O.M. dated 17.01.2017 would be 19.02.2014.

9. Rationale, behind these guidelines is simple to understand. Orthopedically Handicapped divyangjan face restriction in movement, divyangjan who belong to 'blind' category cannot easily interact with people around them and also face challenges in observing the environment and things present around them. Hence, Transport Allowance at double the normal rate is allowed for these categories of divyangjan since 1978. Similarly, divyangjan with both 'deaf & dumb' face challenge in communication with people around them. The same rationale applies to divyangjan with 'Hearing Impairment' only. They also face challenges in commutation from one place to another as it is difficult for them to listen to horns and voices of vehicles and also face challenges in interaction with people around them.

10. This Court recommends that the Respondent shall issue Transport Allowance in favour of the Complainant at double the normal rate in accordance with the guidelines laid down in O.M. dated 17.01.2017. Since, the date of effect of the O.M. dated 17.01.2017 is 19.02.2014 and in the present Complaint, it is evident from the facts that the Complainant is denied the Transport Allowance at double the normal rates because of ignorance on the part of the Respondent, without any fault on the part of the Complainant. Hence this Court further recommends that the Respondent shall pay Transport Allowance at double the normal rates to the Complainant from 19.02.2014.

11. Case is disposed off.



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022



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

भारत सरकार/Government of India

**Case No: 13022/1023/2021**

Complainant: Shri C.L. Mathews  
Flat No. 9/C, Pocket-F, Mayur Vihar  
Phase-II, East District, Delhi – 110091  
E-mail: <mathewscsl50@gmail.com>

132316

Respondent: The Chief General Manager, HRS (North)  
Bharat Petroleum Corporation Ltd  
A-5 & 6, Sector-01, Noida - 201301  
E-mail: <binamansukh@bharatpetroleum.in>

134312

Complainant: 100% hearing impairment

### GIST of the Complaint:

Complainant Shri C.L. Mathews vide complaint dated **30.11.2021** inter-alia submitted that he was not aware about the word privatization therefore, he had taken VRS on 30.09.2021. Now, he has requested for cancellation of his VRS.

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

3. GM (HRS), North, Bharat Petroleum Corporation Ltd vide letter dated **27.12.2021** inter-alia submitted that Shri C.L. Mathews was employed with BPCL under 'Workmen' cadre since 02.07.2001 as Attendant at Noida Regional Office and on 23.07.2020, BPCL announced a Voluntary Retirement Scheme (BPVRS-2020) alongwith criteria, terms and conditions in both Hindi as well as English language. Accordingly, Shri C.L. Mathews had submitted the written application for VRS on 10.08.2020 and he was released from the service of the Corporation on account of VRS on 30.09.2020 with full and final settlement including PF, Gratuity, Salary, Notice pay for 07 days, VRS compensation, LTS Arrears and

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all other benefits due to him was credited to his bank account. Besides, the superannuation monthly pension will be due to him from his notional date of retirement i.e. 30.09.2027. They further submitted that after post separation from the services of the Corporation, in the month of November 2020, Shri C.L. Mathews started requesting for re-joining and met various officials from time to time and each time he was patently explained that the reversal under VRS scheme is not permitted.

4. Complainant vide rejoinder dated **09.02.2022** reiterated his grievance and submitted that the information about VRS Scheme was not given in Sign Language, due to which he could not understand it fully.

5. After considering the respondent's reply dated **27.12.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.04.2022**.


**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.04.2022**. The following were present:

- Shri C.L. Mathews – complainant
- Adv. Ajay Kumar Jha on behalf of respondent

**Observation/Recommendations:**

6. Complainant submits that he applied for VRS because of wrong information. He prays before this Court to reinstate his services. He further submits that DoPT O.M. dated 07.09.2020 is applicable in his case and the O.M. allows the employee to withdraw his voluntary retirement proposal. Terms and Conditions which were explained to him were not in sign language hence he could not understand the same.

7. Respondent submits that Voluntary Retirement Scheme was announced by the Respondent on 23.07.2020. Complainant applied for VRS on 10.08.2020. All employees who applied for the scheme were permitted to withdraw their VRS application on or before 20.08.2020. Thereafter on 31.08.2020 the Complainant was again informed that his VRS application was pending. Finally on 08.09.2020 his VRS application was accepted and the same was confirmed to him vide letter dated 08.09.2020. Accordingly he was released w.e.f. 30.09.2020. Respondent was explained the VRS terms & conditions both in Hindi and English.





...3...

8. During online hearing, Respondent submitted that the Complainant has been given retirement benefits which include Rs. 1 Crore, post retirement medical benefits and superannuation funds. Complainant was informed about all these benefits before his date of retirement, i.e. 30.09.2020. All these benefits were credited into his account in the month of October 2020.

9. Rule position is clear. An employee can only withdraw his resignation within the validity period of VRS scheme. In the present case, validity period ended on 20.08.2020. His resignation was accepted on 08.09.2020. He applied to withdraw in the month of November 2020. Hon'ble Supreme Court in the case of Madhya Pradesh State Road Transport Corporation v. Manoj Kumar, held that VRS schemes are contractual in nature. Employee applying for VRS cannot withdraw it after expiry of validity period.

10. DoPT O.M. dated 07.09.2020 also needs to be discussed. As per the O.M. if any divyang employee applies for VRS, government establishment shall first examine the case as per Section 20(4) of RPwD Act, 2016 and shall give option to divyang employee to continue in service. Even if the employee insists on taking VRS then he can be given VRS. This OM is not applicable in the present Complaint because as per this OM, VRS can be withdrawn within the validity period.

11. Considering the fact that the Complainant has already been given all the retirement benefits and as per judgments of Hon'ble Supreme Court and guidelines issued in this respect, this Court concludes that intervention of this Court in the present Complaint is not warranted.

12. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022



## भारत सरकार/Government of India

732314

R32315

at General

(Pers./Rect.) CIL, CIL has not informed CMS, BCCL about special procedure for conducting IME for PwD MTs, in this regard, it is submitted that all the Subsidiaries are well aware of the provisions of PwD Act, 1995 and subsequent RPwD Act, 2016 w.r.t. recruitment of PwD candidates which is being duly followed across Subsidiaries in case of Non-Executives and Executives uniformly

**Observation/Recommendations:**

4. Complainant has filed two grievances. Firstly, he submits that he has qualified the appointment examination as well as the medical examination and his documents have also been verified, still he has not been issued appointment letter by the Respondent establishment. Second grievance is related to procedure of medical examination. Complainant submits that he was called twice for the medical examination which resulted in financial loss to him.

5. Respondent informed this court the appointment letter was issued to the Complainant on 22.10.2021 and he joined the Respondent establishment on the same date. With respect to procedure of medical examination, Respondent informed that reports of medical fitness of some divyang candidates were not clear hence they were called again for the medical examination.

6. Interference of this Court in the issue of 'appointment letter' is not warranted. As far as procedure of medical examination is concerned, this Court recommends that the Respondent establishment should consider the issues related to divyangjan with utmost care and sympathy so as to cause least hardships to divyang candidates.

7. Case is disposed off.

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

Dated: 20.04.2022





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: 13007/1023/2021**

Complainant: Shri Vijay Pal  
Section Officer  
Department of Personnel & Training  
North Block, New Delhi – 110001  
E-mail: <vijaypalgohar@yahoo.com>

134318

Respondent: The Secretary  
Ministry of Personnel, Public Grievance & Pension  
Department of Personnel & Training  
North Block, New Delhi – 110001  
E-mail: <diradmin@nic.in>

134319

Complainant: 75% Locomotor disability

### GIST of the Complaint:

Complainant Shri Vijay Pal, Section Officer vide complaint dated **06.12.2021** inter-alia submitted that on 1st October 2018, a charge sheet was issued to him and accordingly he had given reply. After that, four Inquiry Officers have been appointed but no Inquiry has been conducted till date. He alleged that his batch mates had got promotion in the grade of Under Secretary in December 2018 and his promotion had been kept in the sealed cover. He has requested to direct the concerned authorities that the sealed cover containing DPC proceedings held in December 2018 be opened and grant promotion, as his retirement is due in September 2022

2. The matter was taken up with the Respondent vide letter dated **08.12.2021** under Section 75 of the RPwD Act, 2016.

3. Under Secretary, DoP&T vide letter dated **17.01.2022** inter-alia submitted that the promotion of Shri Vijay Pal, Section Officer was considered by the Screening Committee in its meeting held on 24.02.2018. As he was not clear from the vigilance angle, the findings of

....2....

the Screening committee were kept in 'sealed covers'. His case was considered once again in a meeting of Screening Committee held on 04.12.2022. However, since there was no change in the vigilance status of the officer, his case was again kept in 'sealed cover' and appropriate action will be taken in terms of DOPT OM No. 22011/4/91-Estt(A) dated 14.09.1992 on finalisation of matter.

4. Complainant vide rejoinder dated **21.02.2022** submitted that following points: (i) **No progress of inquiry since last three and half years:** 5 IOs appointed since Oct 2018 (date of charge sheet), but no one has started Inquiry so far. His retirement is in Sep 2022 (ii) **DOPT not complying with ad-hoc promotion rules of sealed covered cases:** If 2 years or more has passed since the first DPC in which any individual case is kept under sealed cover, then ad hoc promotion is to be given as per DOPT OM dt 14-9-1992. In his case, charge sheet was issued in Oct 2018. The First DPC held in Dec was held in Dec 2018 and second DPC held in Dec 2020. It is more than 2 years since the first DPC kept in sealed cover and yet they are not giving him ad-hoc promotion. (iii) **No grievance officer, for persons with disability, appointment in DOPT..**

5. After considering the respondent's reply dated **17.01.2022** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.04.2022**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.04.2022**. The following were present:

- Shri Vijay Pal – complainant
- Sri Jugal Singh, Director, Shri Surya Prakash , Under Secretary, Shri Mahesh Chandra, Under Secretary; on behalf of respondent

**Observation/Recommendations:**

6. Complainant submits that in 2017 he was charged with some irregularities and was suspended from the services along with two other employees. He submits that the charges levied against him were based on false set of facts. He is completely innocent. He further



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submits that his promotion was due in 2018. His name was considered by DPC for promotion but the proceedings of the DPC were placed in 'sealed cover' and therefore he has not been promoted. He claims that proceedings relating to same facts were pending before the CBI Court, which has since 'exonerated' him. He prays before this Court to Order the concerned authorities to disclose the DPC proceedings which are closed in sealed cover. He has not prayed to set aside the disciplinary proceedings.

7. Complainant was pardoned by the CBI Court before which the matter was pending. Apart from court case, common disciplinary proceedings are also going on and are still pending. In 2018, since he did not have vigilance clearance hence DPC proceedings were kept in sealed cover.

8. After perusal of submissions made by the Complainant and the Respondent this Court concludes that there is no discrimination on the ground of disability. It is pertinent for Complainant to disclose the discrimination on the grounds of disability. Hon'ble Supreme Court laid down the importance of such disclosure in STATE BANK OF PATIALA v. VINESH KUMAR BHASIN (2010) 4 SCC 368 whereby it was held in Para 29 as under:

"29. The grievances and complaints of persons with disabilities have to be considered by courts and authorities with compassion, understanding and expedition. They seek a life with dignity. The Disabilities Act seeks to provide them a level playing field, by certain affirmative actions so that they can have adequate opportunities in matters of education and employment. The Act also seeks to ensure non-discrimination of persons with disabilities, by reason of their disabilities. But the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

Hon'ble Court further illustrated the point in following words:

"Illustration: Let us assume a case where the age of retirement in an organisation is 58 years for all Class II officers and 60 years for all Class I



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officers. When a Class II officer, who happens to be a person with disability, raises a dispute that such disparity amounts to discrimination, it has nothing to do with disabilities. Persons with disability as also persons without disability may contend in a court of law that such a provision is discriminatory. But, such a provision, even if it is discriminatory, has nothing to do with the person's disability and there is no question of a person with disability invoking the provisions of the Disabilities Act, to claim relief regarding such discrimination."

9. This Court concludes that intervention of this Court in the present Complaint is not warranted.

10. Case is disposed off.



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022



सत्यमेव जयते

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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: 12983/1021/2021**

Complainant: Sergeant Birendra Chaudhary (Retd)

R/o Maa Chandrika Vihar Colony - 2

AF Road BKT Lucknow - 226201

E-mail: <birendra7607@gmail.com>

1232320

Respondent: The Secretary

Ministry of Defence

South Block-Rajpath, E-Block

Central Secretariat, New Delhi - 110011

E-mail: <defsecy@nic.in>

123232

Complainant: 50% Locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **02.11.2021** submitted that he was enrolled in Indian Air Force in 1994 and completed his training at AF Station Bangalore w.e.f. 12.07.1994 to 31.07.1996 and after successfully completion of training, he was medically fit upto 2012 for AF duty and responsibility. Thereafter, he got the severe brain stroke on 30.11.2013 on duty and after discharge from the military hospital, Air Force Medical Board assessed his disability 30%. He further submitted that he approached to the District Medical Officer, Lucknow on 16.11.2016 where he was declared 50% locomotor disability with right limbs. He alleged that if he got the promotion from sergeant to junior warrant officer as per promotion panel 2019 - 2020 after that he would get the chance for next rank (warrant officer) in the promotion panel 2020-2021.

2. The matter was taken up with the Respondent vide letter dated **08.12.2021** under Section 75 of the RPwD Act, 2016.

3. Gp Capt, Jt JAG (Air)-I, Air HQ, New Delhi vide letter dated **17.12.2021** inter-alia submitted that crux of the complaint is that the name of the Ex-SNCO was released in the

...2.....

Promotion Panel 2019-20 for the rank of JWO. Since he was in medical category A4 G4 (P) due to 50% disability of permanent OH with right limbs, the IAF did not clear him for promotion from Sgt to JWO and he was accordingly denied promotion to the said rank. Since he did not get promotion to the rank of JWO, he was also not able to get chance for promotion to the next rank of WO in the Promotion Panel 2020-21. As per the Ex-SNCO, he was authorized to get promotion in the disability and he could not have been denied promotion merely on the ground of disability. They further submitted that as per notification dated 17.10.2018, all categories of posts of combatant personnel of Armed Forces are exempted from the provisions of the RPwD Act, 2016.

**Observation/Recommendations:**

4. Complainant submits that he joined Respondent establishment in 1994. In 2013 he met with an accident and hence acquired disability. He submits that because of his disability he was denied promotion in 2019.
5. Some provisions which are relevant for the present Complaint are Section 20(1) and 20(3) of Rights of Persons with Disabilities Act, 2016.
6. Section 20(1) declares that no divyangjan employee shall be discriminated in any matter related to government. Further, Section 20(3) enunciates that divyang employee shall not be denied promotion on the basis of disability.
7. Further Proviso to Section 20(1) enunciates that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.
8. Respondent informed this Court that by virtue of Government Notification dated 19.10.2018 issued by Ministry of Social Justice & Empowerment, all categories of posts of combatant personnel of armed forces are exempted from the provisions of Section 20 and 34(1) of Rights of PErsons with Disabilities Act, 2016.



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9. This court is satisfied with the reply of the Respondent and is not inclined to intervene in the present Complaint.

10. Case is disposed off.



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

Dated: 20.04.2022



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: 13019/1023/2021**

Complainant: Shri Raj Kumar  
PGT (Music), Adrash School  
C-12, NIVH, 116, Rajpur Road, Dehradun  
Mb: 09368553755

R32322

Shri D.S. Rathor  
PGT (Hindi), Adrash School  
C-33, NIVH, 116, Rajpur Road, Dehradun  
Mb: 09511701398

R32323

Respondent: The Director  
National Institute for the Empowerment of  
Persons with Visual Disabilities, 116, Rajpur Road  
Dehradun – 248001  
E-mail: <director@nivh.org.in>

R32324

Complainants: Persons with 100% visual impairment

### GIST of the Complaint:

शिकायतकर्ताओं का अपनी शिकायत दिनांक 01.12.2021 में कहना है कि पी.जी.टी. अध्यापकों को अभी तक पार्ट बी का लाभ नहीं मिल जबकि विद्यालय के प्रधानाचार्य, उप-प्रधानाचार्य, टी.जी.टी. और प्राथमिक अध्यापकों को दिनांक 23.05.2018 से ही प्राप्त हो चुका है।

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

3. In response, respondent vide letter dated **24.12.2021** inter-alia submitted that the status of their cases regarding upgrading of post of PGT from Grade Pay of Rs. 4600 to Rs. 4800 is pending at the level of Ministry i.e. DEPwD, M/o SJ&E.

4. Complainants vide letter dated **19.01.2022** reiterated his grievance.

5. After considering the respondent's reply dated **24.12.2021** & complainant's letter dated **19.01.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.04.2022**.





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11. Copy of this Order be also forwarded to Joint Secretary of Department of Empowerment of Persons with Disabilities.

12. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022

Copy to:

The Joint Secretary (NTS)  
Department of Empowerment of  
Persons with Disabilities  
Ministry of Social Justice & Empowerment  
5<sup>th</sup> Floor, Antyodaya Bhawan, CGO Complex  
New Delhi – 110003

: for necessary action.



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: 12935/1021/2021**

Complainant: Shri Rajendra Kumar Kushwaha  
E-mail: <rjkk12@gmail.com>

12325

Respondent: The Chairman-cum-Managing Director  
Northern Coalfields Ltd  
Singrauli, Madhya Pradesh  
E-mail: <cmd.ncl.cil@coalindia.in>

12326

Complainant: 100% visual impairment

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 06.10.2021 में कहना है कि वह कोल इंडिया लिमिटेड की सहायक कम्पनी नार्दर्न कोल फील्ड लिमिटेड में उप प्रबंधक (सचिव/ओएल) ग्रेड ई-4 के पद पर कार्यरत है कोल इण्डिया एवं उसकी सहायक कम्पनियों में कार्यरत अधिकारियों द्वारा प्रत्येक वर्ष नियत समयावधि के भीतर Performance Report for Individual Development of Executive (PRIDE) Form online माध्यम से भरे जाने का प्रावधान है Online PRIDE Form भरने में असफल रहने वाल अधिकारियों को पदोन्नति Performance Related Pay (PRP) इत्यादि से वंचित रखा जाता है। यह कम्पनी की PRIDE Policy है। प्रार्थी का आगे कहना है कि Portal Accessible न होने के कारण वह 2015-16 और 2016 - 17 Online PRIDE Form नहीं भर पाए। जिसके कारण दो बार पदोन्नति से वंचित रह गये। प्रार्थी ने निवेदन किया है कि उनको छूटा हुआ PRIDE भरवाए तथा दिनांक 30.09.2019 की तिथि से पदोन्नति/seniority दिलवाए।

2. The matter was taken up with the Respondent vide letter dated 20.10.2021 under Section 75 of the RPwD Act, 2016.

3. In response, General Manager (Personnel), NCL, HQ, Singrauli vide letter dated 04.12.2021 inter-alia submitted that the promotion of executive are exclusively based on PRIDE rating the previous 03 years from the cut-off date with clearance. Since the executive has not filled up/submitted the online PRIDE for the year 2015-16 & 2016 -17,







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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: 12994/1022/2021

Shri Inderjit Singh (LIA): **Complainant**

House No. 58, Village Bains,

Post Office Dorangla

Distt. Gurdaspur Punjab-143526

Mobile No: 08872050911

Email: [inder1660@gmail.com](mailto:inder1660@gmail.com)

123227

**Versus**

The Director : **Respondent**

Office of the JS & CAO,

Ministry of Defence

A Block, Defence Offices Complex,

Africa Avenue, New Delhi-110023

Email: [js.cao-mod@nic.in](mailto:js.cao-mod@nic.in)

123228

### GIST OF COMPLAINT

The complainant is suffering from 70% locomotor disability and recruited to the post of Library and Information Assistant for Armed Forces Headquarter Cadre by the SSC. The complainant is unable to walk and unable to perform duties in New Delhi. The complainant has requested CCPD Court to transfer him to any office located in Chandigarh under the Ministry of Defence:-

- Principal Controller of Defence Accounts, Western Command, Sector 9 Chandigarh through the Controller General of Defence Account New Delhi
- DRDO, Hem Parser Lab, Sector 37 Chandigarh through the Defence Research and Development Organisation New Delhi
- Commandant, 38 Air Force Station, Chandigarh through the Air Headquarter New Delhi
- Western Command, Command Library Chandimandir through the Integrated Headquarter Army

2. The matter was taken up with the Respondent vide letter dated 02.12.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Director General (HR), vide letter dated 28.12.2021, submitted that the complainant is working as Library and Information Assistant under the Cadre Controlling of JS & CAO, Ministry of Defence, New Delhi. In so far as request for posting of the Complainant to any of the Ministry of Defence offices located in Chandigarh is concerned, it is submitted that the civilian post of LIA which is held by the complainant is not authorised in any defence offices under the Cadre Control of JS & CAO. As such office cannot post him to any of the offices located outside Delhi on compassionate grounds. However, the complainant can be posted on permanent transfer to Chandigarh by applying for Inter Departmental Transfer to other Central Govt. Offices based on the No Objection Certificate (NOC) issued by the office.

*[Signature]*

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5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 24.02.2022. The following were present:

- Observations /Recommendations:**

6. The case is disposed off.

Dated: 20.04.2022





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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: 13040/1022/2021

Smt. Shrutika A. Vyas: **Complainant**  
W/o Shri Anupam B. Vyas  
R/o A20-21, Tirupati Abhinav Homes,  
Ayodhya Bypass Road, Bhopal  
Mobile No: 08218923876  
Email: [shrutikaavyas@gmail.com](mailto:shrutikaavyas@gmail.com)

P32329

**Versus**

The General Manager: **Respondent**  
Food Corporation of India  
Headquarter, Khadya Sadan  
6-20, Barakhamba Lane  
New Delhi  
Email: [dgme1.fci@gov.in](mailto:dgme1.fci@gov.in)  
[webmaster.fci@gov.in](mailto:webmaster.fci@gov.in)

P32330

### GIST OF COMPLAINT

The complainant filed her complaint dated 13.12.2021, submitted that her husband Shri Anupam B. Vyas was working as General Manager, Food Corporation of India in Madhya Pradesh, Bhopal with effect from 26.05.2020. However barely after 17 months of tenure, he has been transferred by FCI Headquarter to Zonal (NE), Guwahati vide transfer order dated 22.11.2021 and later modified to Zonal Office, Kolkata vide transfer order dated 23.11.2021, the transfer order has been issued without assigning any reason. The complainant further submitted that they have 15 years old daughter, who is mentally retarded and also suffering from Autism Spectrum Disorder (ASD). She is taking regular treatment form Composite Regional Centre (CRC), Bhopal. She is also undergoing a two-year course of D.ED in Special Education (ASD) from the same institution i.e CRC, Bhopal. She has already written exam for the first year of the course. However, the second year of the course is remaining. This course is related to the disorder of her daughter and it will be very much helpful in taking her care.

At this juncture, it is not possible for her husband to shift the family to all together new place and also unable to leave the family behind, as she would not be able to look after her daughter single-handedly. She is totally dependent on us even for daily routines, continuous care and attention for her basic needs. Her family is facing very difficult situation at this time and his absence will worsen the situation further. Due to adolescence, she is almost uncontrollable and prone to accidents, as she is unaware of the potential dangers in the environment, as such she needs 100% attention at all times.

The complainant further submitted that her husband has already sent a representation to the Chairman-cum-Managing Director, FCI Headquarters, New Delhi for looking into his plight sympathetically and allow him to be retained in Bhopal for another 8-10 months. However, no positive consideration has been done by him till date.

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं० जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; टेलीफोन: 011-20892275  
5<sup>th</sup> Floor, NISD Bhawan, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel. No.011-20892275

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)  
(Please quote the above file/case number in future correspondence)



The Complainant is requested to CCPD Court to intervene in the matter and give direction to the respondent party for retain her husband in Bhopal.

2. The matter was taken up with the Respondent vide letter dated 03.01.2022 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager(PE), Food Corporation of India, vide email dated 19.01.2022, submitted that the officer was working as GM (MP) since 26.05.2020 and was transferred before his completion of normal tenure of years as GM (Region) because there was serious lack of coordination with State Government and FCI on his part. Further, there was instance of lapses of supervision and control towards the functioning of subordinate officers in the State. Govt. of Madhya Pradesh has written a letter dated 31.08.2021 regarding posting of an IAS Officer. Various communications have been received from Govt. of MP regarding lapses of co-ordination with State Govt. and FCI. These communications have highlighted the various gaps in the working of FCI in the region. The respondent further informed that for retention in Madhya Pradesh region the officer filed a writ petition No 26351/2021 in the High Court of Madhya Pradesh, Jabalpur and in the hearing dated 08.12.2021, the petitioner prayed for withdrawal of writ petition with liberty to challenge order dated 07.12.2021. The writ petition was dismissed as withdrawn with aforesaid liberty.

4. In response, the complainant filed his rejoinder by e-mail dated 24.01.2022, submitted that the impugned orders are not only arbitrary, but also violative of transfer policy of the corporation itself. The said orders are against the clauses 2.2 and 11.6 of the policy. As per clause no. 2.2 of FCI transfer policy, "category-1 officer will serve for a normal tenure of 24 months and extendable up to 36 months". Whereas, her husband has been transferred out within 17 months of his posting.

The order no. 109/2021 is a common transfer order involving eight officers, most of whose normal tenures were complete. However, for those whose normal tenure was not over, no reasons whatsoever have been accorded therein. It is also to submit that no administrative or operational constraint has been demonstrated whereas the ground of the aggrieved for retention is strong medical ground of ongoing treatment of his Divyangjan daughter, which should be considered on humanitarian ground.

The complainant further submitted that a petition praying for relief purely on humanitarian medical ground for which representation dated 24.11.2021 was also submitted by her husband. However, the representation requesting for affording a little time of 8-10 months, for completion of the course being undertaken at Composite Rehabilitation Centre, Bhopal by her for better treatment and management of her Divyangjan daughter, was also not considered and no reply thereto has been given. No cognizance has been given by the management to the precarious situation; they have put the entire family by issuing such oppressive order. Neither can she handle her daughter single-handedly nor her husband can shift the family before the completion of her course.

The complainant further submitted that it is very essential to mention here that her husband has been transferred for not less than 14 times in his entire career of 21 years and every time, he was forced to shift to the new station with entire family, as the learned authority is well aware of the condition and circumstances of a family having a Divyangjan child. Upbringing and care of such children cannot be done single-handedly and both the spouses are required to share responsibilities and works to do their bounden duties towards the Divyangjan child. After



serving 14 long years in North India, her husband was transferred to Bhopal, which is near to his hometown i.e. Nagpur giving him a little opportunity to take care of his 75 years plus old parents.

The complainant once again requested and prayed to CCPD Court to intervene and grant relief, based on the genuine medial and humanitarian grounds of her Divyangjan daughter.

5. Hearing: The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 24.02.2022. The following were present:

- i) Smt. Shrutika A Vyas alongwith Shri Anupam Vyas - **Complainant**
- ii) Shri Bijay Kumar Singh, ED (Personnel) and Shri Ashwani Kumar Gupta, CGM (Personnel), Hqrs. Delhi - **Respondent**

**Observations /Recommendations:**

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

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

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

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

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;



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

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

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

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

## STATUTORY PROVISIONS AND GUIDELINES

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



- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.
- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.
- i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

#### ANALYSIS OF THE PROVISIONS & GUIDELINES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical



facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

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

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

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

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

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

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

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

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

26. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions

and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

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

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

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

#### PRESENT CASE:

29. Complaint is filed on behalf of Complainant's husband who is employee in Respondent establishment. Complainant submits that the employee's daughter is divyangjan with Autism. Employee was posted as General Manager in Bhopal w.e.f. 26.05.2020. Merely after 17 months he was transferred to Guwahati, w.e.f. 23.11.2021. It is not possible for the Complainant to take care of the daughter alone in absence of her husband (employee).

30. Respondent submits that he was transferred because he failed to establish coordination between Respondent offices situated at district level and also failed to establish coordination with the State Government.

31. During online hearing, both the Complainant and the Respondent agreed that the employee may be posted in Mumbai Zonal office. Complainant also submitted that special education and medical needs of employee's daughter can be taken care of by the Complainant and the employee in Mumbai only. Considering the nature of disability of the employee's daughter, this Court is inclined to take the same view. Complainant's transfer to Mumbai shall enable the employee to address special education and medical needs of divyang dependant daughter.

32. This Court recommends that the Respondent shall implement the guidelines issued by Government delineated above in letter and spirit and shall abide by the judgments of Hon'ble Supreme Court, Hon'ble High Courts and Hon'ble Central Administrative Tribunals mentioned in preceding paragraphs. This Court recommends that the Respondent shall transfer the Complainant from Guwahati to Mumbai so that the Complainant can take care of his autistic child.

33. 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.

34. This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022





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: 12940/1022/2021**

Smt. Rina Kumari : **Complainant**  
W/o Shri Sahendra Kumar  
RZ-415, Gali No. 03, Main Sagarpur,  
New Delhi-110046  
Mobile No: 09068795584  
Email: [rinakumar9068@gmail.com](mailto:rinakumar9068@gmail.com)

→ P32331

**Versus**

The Commanding Officer : **Respondent**  
110 Medium Regiment  
C/o 56 APO, Pin No. 921101

→ P32332

### GIST OF COMPLAINT

The complainant Smt. Rina Kumari submitted that her husband Sahendra Kumar came to 110 medium regiment Delhi on 09 December 2019 on compassionate grounds for two years posting. She has an eight year old daughter whose brain has not developed properly. She has a hole in his heart. She is 100% disabled whose treatment is going on in Army Hospital R and R Delhi with Neurologist and Cardiologist. She is unable to stand, eat drink and speak on his own. She is dependent on us for all necessary daily activities which is necessary for a human being. Because she does not tell her hunger, thirst, sorrow and pain and likes and dislikes. She is unable to take care, care and treatment of her daughter alone without the help of his husband. Therefore, the period of posting of his husband should be extended or the posting of his husband should be done in such a place where all facilities are available for the treatment of her daughter.

The complainant further stated that her husband two year posting period ended on 10<sup>th</sup> September 2021 and there is a problem in extending the posting period. The complainant further stated that first government accommodation was evacuated due to which they have a lot of problem in living with daughter in civil and now they are being pressured to go posting by (Subedar) Himasnsu Biswas, Unit 110 Medium Regiment and hindering his posting extension.

The complainant is requested to CCPD Court to stop his husband posting order with immediate effect and her husband posting period should be extended or her husband posting should be done in such a place where all facilities are available for the treatment of her daughter because there is lots of problem in traveling with her daughter.

2. The matter was taken up with the Respondent vide letter dated 20.10.2021 under Section 75 of the RPwD Act, 2016.

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3. In response, Major, Adjutant Commanding Officer dated 19.11.2021 submitted that Shri Sahendra Kumar was initially posted to 218 Medium Regiment Delhi from 288 Medium Regiment on compassionate grounds with effect from 29 April 2017. The individual was allotted married accommodation and occupied the same with effect from 16 June 2017 for treatment of his daughter. The individual was sidestepped to 110 Medium Regiment on 15 February 2021 as 218 Medium Regiment moved out from Delhi location. Further it is to mention that Sahendra Kumar has been in Delhi Station with effect from 29 April 2017 for the last four years less six months where the individual was posted to his parent unit i.e. 288 Medium Regiment. Even for that duration of six months when individual was out of Delhi station, the family continued to stay in the Govt. married accommodation.

The respondent further submitted that the unit is an executing agency to execute the posting ordered by the Records office, Artillery Records. Cancellation, extension, holding & deferment of the posting of personnel are purely governed only by Record office, Artillery Records. Further due to availability of good medical facilities like Army Hospital (research & Referral), Base Hospital Delhi Cantonment and other civil prominent medical institutions, Delhi is always an in demand station for Army Personnel having similar medical issues of their children and other medical issues of their family members. The respondent further submitted that the 288 Medium Regiment is currently located in Roorkee, Uttarakhand and having a Military Hospital with adequate paediatric medical facilities as required by the individual's child.

4. In response, the complainant vide his rejoinder dated 04.12.2021, submitted that her husband came posting in 218 medium regiment Delhi on 09<sup>th</sup> September 2019 for the treatment of her daughter on compassionate grounds for two years from 288 medium regiment in 2018 Delhi. But in January 2021, Artillery records showed her husband posting at 288 Medium Regiment Lekhapani (Assam). Her husband posting got extended till September 2021 when her husband presented his case before the Artillery Records. The complainant further submitted that her husband wrote a letter to Commanding Officer 110 Medium Regiment for extension of posting. But the commanding officer refused to proceed with the letter saying that no objection certificate is required from the first 288 Medium Regiment.

The complainant further stated that her husband then wrote a letter to 288 Medium Regiment to give NOC. But the 288 Medium Regiment placed the matter in front of the Artillery Records that Havildar Sahendra Kumar should be posted to the permanent 110 Medium Regiment Delhi and in its place some other Jawan should be given. The whole matter was pending before the Artillery Records. In September 2021, her husband was pressurized to go for posting by Subedar Himanshu Biswas. The complainant further submitted that during that time his government accommodation was vacated and forced to live in civil. The complainant further submitted that it is absolutely a lie that government accommodation is given on a one year rotation. The number of soldiers in the 110 medium regiment is permanent posting. None of them have kept family in civil.

#### **Observations /Recommendations:**

1. Complaint is filed by the spouse of the employee (hereinafter referred as 'employee') of Defendant establishment. She submits that the employee was posted at New Delhi. Their daughter is divyangjan. As per disability certificate submitted by the Complainant, nature of daughter's disability is 100% Mentally Disabled. Grievance of



the Complainant is that because of the disability she cannot take care of the daughter alone without support of the employee. Hence, prays before this court to extend the posting of her husband at New Delhi or to any other place where special medical needs of the daughter can be taken care of.

2. Respondent submits that the unit in which the employee was posted has been moved out of New Delhi hence it is not possible to post the employee in Delhi. Further, the Respondent submits that the new location of posting of the employee is Roorkee where good medical facilities are available.

3. By email dated 04.12.2021, the complainant informed this Court that just 15 days after filing the complaint the dependent left for her heavenly adobe. The cause of the complaint is no more and intervention of this Court is not warranted.

4. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022





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: 12955/1022/2021

Shri Omprakash Shivaji Kharat (PRT): **Complainant**

Primary Teacher

KVS Goalpara, Assam

Email: [kharatomkar41@gmail.com](mailto:kharatomkar41@gmail.com)

P32333

#### Versus

The Commissioner: **Respondent**

Kendriya Vidyalaya Sangathan (KVS)

18, Institutional Area,

Shaheed Jeet Singh Marg

New Delhi-110016

Email: [kvs.commissioner@gmail.com](mailto:kvs.commissioner@gmail.com)

Contact No: 011-26858570, 26857036

P32334

#### GIST OF COMPLAINT

The complainant is 40% Visually Impaired (Low Vision) person working in KVS as a Primary Teacher. He joined KVS on 16.09.2019 in Assam State, Goalpara District and completed two years of service. The complainant stated that this posting is like a punishment posting as it is 2900 KM from his native place. Being low vision physically challenged employee, it is impossible for him to survive in such a hard north east station but he joined due to his family is totally dependent on him.

The complainant further submitted that KVS had promised to all Physically Challenged 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 is suffering from BE ALT EXOTROPIA and Permanently loss of partially vision. From the date of joining he is suffering from anxiety and fear and eagerly waiting to be transferred near his home town.

The complainant further submitted that his parents are depending on him and he is the only person in his family to earn. It is a very hard experience for him to travel 2900 KM from his home town and takes 3 days by train. The complainant further submitted that in his native state Maharashtra there are so many clear vacancies that are vacant yet he was posted deliberately 2900 KM away from his hometown. The complainant is humble requested CCPD Court to give him justice and post him near about his home town so that he can do his work and duty properly.

2. The matter was taken up with the Respondent vide letter dated 02.11.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Commissioner, Kendriya Vidyalaya Sangathan (HQ), vide letter dated 17.12.2021, submitted that the transfer of employees are effected as per the KVS transfer guidelines which are well defined and transparent. In the KVS transfer guidelines, appropriate weightage has been given to each ground viz. Spouse/PH/LTR/DFP/MDG etc. being adduced by the employee concerned for transfers.

The respondent further submitted that the complainant has joined KVS on 16.09.2019 as PRT in Kendriya Vidyalaya, Goalpara, Assam on direct recruitment. He had applied online annual request transfer for the year 2021 on PH ground with 05 choice stations i.e. (i) BSF Chakur, (ii) Pune, (iii) Nanded SC Rly, (iv) Mudkhed CRPF and (v) Sholapur. Since he has not completed mandatory 03 years of tenure in North Eastern Region (NER) as per transfer guidelines and hence his request for transfer to his choice stations was considered during the annual request transfers for the year 2021 but could not be materialised because of non completion of 03 years tenure in North Eastern Region (NER).

4. In response, the complainant did not file any reply in respect of rejoinder letter issued by the Office of CCPD on 06.01.2022.

5. Hearing: The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 24.02.2022. The following were present:

- i) Shri Omprakash Shivaji Kharat - **Complainant**
- ii) Shri Dharmendra Patle, Assistant Commissioner- **Respondent**

**Observations /Recommendations:**

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

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

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





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

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

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

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

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

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

#### STATUTORY PROVISIONS AND GUIDELINES

- 7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place





employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

PRESENT CASE:

29. Complainant submits that he joined Respondent establishment on 16.09.2019. His present place of posting is Golapora, Assam. His native place is Latur Maharashtra. He prays before this Court for transfer near about his home town.

30. Respondent submits that the Complainant's transfer application was received and was rejected because the Complainant has not completed 3 years of service in North Eastern Region.

31. During online hearing this Court was apprised by the Respondent that transfer process will start in approximately 2 months. The Complainant will be eligible for transfer and he may apply for the same.

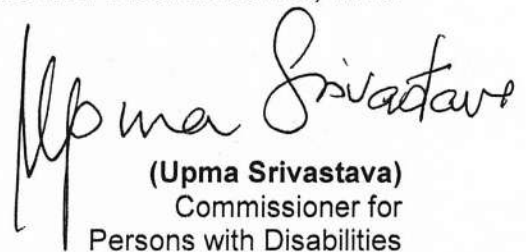
32. This Court receives number of Complaints in which the government establishments inform this Court that divyang employees cannot be transferred to their native place or to place of their choice because some mandatory posting has not been completed by such divyang employee. Though, legislature casts duty by virtue of Section 20(5) of Rights of Persons with Disabilities Act, 2016 to frame separate transfer and posting policy for divyang employees, hardly any establishment has framed such policy. Absence of separate transfer and posting policy for divyang employees and subjecting them to same mandatory postings which are applicable upon non divyang employees is act of violation of Parliament's intent enshrined in Rights of Persons with Disabilities Act, 2016.

33. This Court recommends that the Respondent shall transfer the Complainant to place which is nearest possible to his hometown at the earliest opportunity.

34. Further this Court is inclined to attract the kind attention of the Respondent to Section 20(5) of Rights of Persons with Disabilities Act, 2016. The provision casts duty on the Respondent to frame separate transfer and posting policy for divyang employees and recommend that the Respondent shall frame separate transfer and posting policy for divyangjan in accordance with the statutory provision, judgments of Hon'ble Supreme Court and High Courts and government guidelines delineated above

35. 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.

36. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 20.04.2022





सत्यमेव जयते

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Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 13005/1092/2021

### Complainant:

Shri Haresh Haridas Abhani,  
C-42-N-12, Mahatma Gandhi Complex,  
Sector 14, Vashi, Navi Mumbai-400703  
Email: [abhani.haresh@gmail.com](mailto:abhani.haresh@gmail.com)

R32403

### Respondent:

General Manager, Central Railway, Indian Railways,  
GM's Building 2nd Floor, Mumbai – CST,  
Mumbai – 400001  
Email: [gm@cr.railnet.gov.in](mailto:gm@cr.railnet.gov.in)

R32404

### 1. Gist of Complaint:

Department of Empowerment of Persons with Disabilities (Divyangjan), M/o Social Justice & Empowerment vide letter dated 15.11.2021 forwarded the complaint dated 27.08.2021 of Shri Haresh Haridas Abhani, a person with 100% Speech and Language Disability regarding denial of Railway Concession to him by Central Railway.

### 2. Submissions made by the Respondent

2.1 Divisional Office, Commercial Branch, Mumbai CST, Central Railway filed their reply dated 13.12.2021 and inter-alia submitted that the nature of disability of the complainant, as mentioned in his Disability Certificate No.MH2161519570374409 issued by Chhatrapati Shivaji Maharaj Municipal Hospital, Thane is 100% "Speech and Language Disability". There is no mention of "Speech and Language Disability" in the 'Indian Railway Conference Association, Coaching Tariff No.26 Part-I (Volume-II), hence no concession can be given. The related disability which is mentioned in the said Coaching Tariff is "totally Deaf and Dumb Persons".

2.2 Moreover, the Ministry of Railways, Railway Board issued Circular No.04 of 2018 dated 12.01.2018, where the words in Rule No.101, at Serial No.28 at Page 105 of Coaching Tariff No.26 Part-I (Volume-II) has been

(Page 1 of 2)

changed from "Deaf and Dumb" to "Person with Hearing and Speech impairment totally (Both afflictions together in the same person)". In view of the above specific provisions, since the applicant/complainant is only having "Speech and Language Disability", he is not eligible for grant of concession in Train fare.

### 3. Submissions made in Rejoinder

Complainant filed rejoinders dated 18.12.2021 and 08.02.2022 inter-alia submitting that this matter pertains to Railway Board, Ministry of Railways. The reply filed by the respondent is not in broader sense keeping in mind the welfare of Divyangjan.

### 4. Observation/Recommendations:

4.1 An Order has already been passed by this Court in a similar matter i.e. Case No.9265/1103/2018 – Shri Varun Shukla Vs Railway Board, which is reiterated in this case also.

4.2 It seems that Railways have not modified its policy relating to providing concession in railway fare for persons with disabilities in terms of the provisions of RPwD Act, 2016 and the 'Guidelines for Evaluation and Certification of Disabilities' issued by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment on 05.01.2018. It is recommended that a Committee may be formed immediately by Indian Railways to modify its concession policy in the light of RPwD Act, 2016 and the 'Guidelines for Evaluation and Certification of Disabilities' keeping in view the severity and functional limitations of all 21 disabilities as scheduled in RPWD Act, 2016."

4.3 The case is accordingly disposed off.

Dated: 27.04.2022



(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

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Case No: 12981/1023/2021

Complainant: Shri Vishal Ghadge  
Postman, Pune City H.O.  
Pune, Maharashtra - 411002

— P32379

Respondent: The Post Master General  
O/o the Post Master General  
Department of Posts, Pune Region  
Pune -411001

P32380

Complainant: 44% Locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **26.10.2021** submitted that he is working as a Postman in Pune City HO and he is unable to perform many of the tasks required as a field postman, therefore, he had requested to the competent authority to provide fixed and suitable position to work preferably as Stamp Vendor but constantly he has been shifted from one section to another. He further submitted that 12 days of casual leave which is due to all PwDs is not given to him. He alleged that he had applied for double TA, in April 2021 but no action has been taken.

2. The matter was taken up with the Respondent vide letter dated **18.11.2021** under Section 75 of the RPwD Act, 2016.

3. Assistant Director Postal Services – II, Office of the Postmaster General, Pune Region vide letter dated **15.12.2021** submitted that on enquiring, it is found that no one has harassed the complainant as alleged by him and there has been no deficiency on the part of this Department in providing him the required amenities for which he is eligible as per rules.



Dated: 29.04.2022



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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: 12989/1021/2021

Complainant: Shri Manmohan Bajpayee  
D-2158, Indira Nagar, Lucknow-226016  
E-mail: <mmbajpai2009@gmail.com>

P32382

Respondent: The Secretary  
Union Public Service Commission  
Dholpur House, Shahjahan Road, New Delhi-110069  
E-mail: <secyoffice-upse@gov.in>

P32384

Complainant: 40% visual impairment

### GIST of the Complaint:

Complainant vide complaint dated 07.11.2021 submitted that DRDO had published an advertisement for the post of Sr. Administrative Officers, SAO -II through UPSC in December 2014 and out of 23 posts, one post was reserved for visually impaired category and he appeared for the above post and got highest marks in the VH category both in the recruitment test and interview but he was denied appointment by UPSC as his merit in the interview marks was compared at par with UR candidates and the post was given to another person lower in merit because he belonged to SC category (VH). He further submitted that after a long legal struggle of 5-6 years, he was appointed in December 2020. He alleged that all his batch mates appointed through same vacancy have become senior to him therefore, he has requested to grant him seniority and notional increments in pay from the date of appointment of his batchmates under the said UPSC advertisement dated 2014.

2. The matter was taken up with the Respondent vide letter dated 24.11.2021 under Section 75 of the RPwD Act, 2016 but despite reminders dated 10.12.2021 & 30.11.2021, no response has been received from the respondent. Therefore, hearing scheduled on 15.02.2022 but hearing got interrupted because of technical difficulties, therefore, hearing re-scheduled on 19.04.2022.

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**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.04.2022**. The following were present:

- Shri Manmohan Bajpayee – complainant
- None appear on behalf of respondent

**Observation/Recommendations:**

3. Complainant submits that DRDO issued advertisement for the post of Senior Administrative Officer through UPSC in 2014. Result was declared in 2015. 1 post was reserved for a Visually Impaired candidate. On the reserved post, a Visually Impaired candidate of SC category was appointed, whereas the post was reserved for Visually Impaired Unreserved category. In 2020 Disability certificate of the candidate who was appointed was found fake and the Complainant was offered the post. Unnecessary hardship was caused to the Complainant for 5-6 years hence he seeks compensation from this court.

4. Respondent submits that the Case is not related to disability, hence it must be disposed off.

5. This Court concludes that the Respondent is right. Complainant has not disclosed any ground relating to discrimination on the basis of disability. No such right exists to compensate the person who was denied appointment, even if the certificate of the first candidate who was initially appointed was found fake. The Respondent cannot be held responsible for the same. Moreover, a PwD candidate was appointed on the reserved post. Intervention of this Court in the present Complaint is not warranted.

6. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 29.04.2022





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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: 12936/1021/2021

Complainant: Shri Manish Kumar

Q.No. LC-07, Near Bhaga Mod

MRF Baba Tyre, Front of Aqib General Store

Lucky Collection Building, Dhanbad, Jharkhand

E-mail: <manishmechanical331@gmail.com>

R32381

Respondent: The Director (Admn)

Department of Personnel & Training

Ministry of Personnel, PG & Pensions

Govt. of India, North Block, New Delhi – 110001

E-mail: <debabrata.d13@nic.in>

R32382

Complainant: 45% Locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **05.10.2021** has requested to advice the DoPT to issue an Office Memorandum for all the Central Public Sector Enterprises regarding reservation in promotion as per the Judgement of Hon'ble Supreme Court of India.

2. The matter was taken up with the Respondent vide letter dated **20.10.2021** under Section 75 of the RPwD Act, 2016 but despite reminders dated **08.11.2021 & 23.11.2021**, no response has been received from the respondent.

### Observation/Recommendations:

3. Issue raised by the Complainant is of general nature. Complainant prays before this Court to recommend the Respondent to issue guidelines related to reservations in promotion for divyangjan.

4. The same issue has been settled by the Apex Court of this country in the matter of **SIDDARAJU v. STATE OF KARNATAKA & ORS.; CIVIL APPEAL No. 1567 of 2017**, by Order dated 28.09.2021.

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5. This Court also receives similar Complaints and this Court has recommended to extend reservation in promotion in accordance with Section 34 of the Rights of Persons with Disabilities Act, 2016. Recommendations were passed by this Court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. Copy of the Orders are attached herewith.

6. Since the issue has already been decided by the Hon'ble Supreme Court hence intervention of this Court in the present Complaint is not warranted.

7. Case is disposed off.

ed.

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

Dated: 29.04.2022





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: 12980/1023/2021

Complainant: Shri Shambhu

Vill. – Dhamadha, Post – Gosalpur

Teh-Sihora, Jabalpur, Madhya Pradesh - 483222

Respondent: The Director

Director General Personnel & Services

Integrated HQ of MoD (Army), DHQ PO

Sena Bhawan, New Delhi – 110011

Complainant: 42% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **07.01.2021** has requested has requested to change his working trade because his physical condition is getting deteriorated since last few years.

2. The matter was taken up with the Respondent vide letter dated **18.11.2021** under Section 75 of the RPwD Act, 2016 but despite reminders dated **05.12.2021 & 20.12.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **15.02.2022** but hearing got interrupted because of technical difficulties, therefore, hearing re-scheduled on **19.04.2022**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.04.2022**. The following were present:

- Shri Shambhu – complainant
- Col. Srikant; Vandana Dubey, Deputy Director on behalf of respondent



...2....

**Observation/Recommendations:**

3. Complainant submits that presently he is serving as a 'Fatigue Man'. Duties which are to be discharged by him include field duties. He submits that the present duties and the post are not suitable for him because of his disability. He has prayed to this court to Order the Respondent to change his post and has made few suggestions. He requests to change his post to either of the following - Assistant Librarian, Civil Technical Instructor, Lower Division Clerk. He submits that he is ready to forgo his seniority and is ready to accept transfer at some other location.

4. During online hearing this Court was apprised that the Complainant is now also doing a sitting job. The only problem which the Complainant faces is relating to commutation. On this issue Complainant submits that the office building in which the Complainant has been assigned duties is situated approximately 1.5 K.Ms. away from the main gate of the campus. Public transport vehicles are not allowed to enter inside the campus hence the Complainant finds it difficult to cover this stretch.

5. Respondent assured this Court that it will provide facility of e-scooter to the Complainant for commutation on this 1.5 K.Ms. route. Submission made by the Respondent is in consonance with its duties laid down under Section 20 of Rights of Persons with Disabilities Act, 2016. It is obligation of the Respondent establishment to provide all such facilities to the Complainant which are essential for him to cope up with difficulties which he faces because of the nature of his disability.

6. It is indispensable to mention the concept of 'Reasonable Accommodation'. Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.



....3....

...3...

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

**SECTION 20(2)** - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

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

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

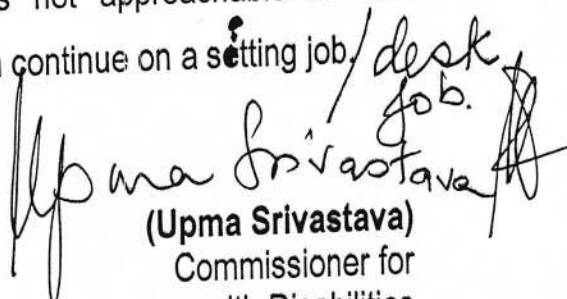
4

....4.....

*disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016."*

8. This Court expresses its satisfaction with the positive approach of the Respondent and recommends that the Respondent shall fulfill its promise to provide e-scooter facility for commutation on the 1.5 K.Ms. stretch of road which is not approachable for the Complainant because of the nature of his disability and let him continue on a ~~setting job~~ <sup>desk job.</sup>

9. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 29.04.2022





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: 12973/1024/2021

Complainant: Shri Roshan Somkumar

E-mail: <roshsom157@gmail.com>

1232387

Respondent: The Director

Directorate of Estate

Nirman Bhawan, Mandi House, New Delhi – 110018

E-mail: <doe-mohua@gov.in>

Tel: 011-23062005

1232388

Complainant: 58% Locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **01.11.2021** submitted that he is presently residing at Type IV/3, CPWD Colony, Civil Lines, Nagpur and due to covid pandemic his residence civil construction got delayed and it is in completion mode, therefore, he has requested to grant extension of time for retaining staff quarter for another six months.

2. The matter was taken up with the Respondent vide letter dated **18.11.2021** under Section 75 of the RPwD Act, 2016 but despite reminders dated **08.12.2021 & 20.12.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **15.02.2022** but hearing got interrupted because of technical difficulties, therefore, hearing re-scheduled on **19.04.2022**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.04.2022**. No one was present.

### Observation/Recommendations:

3. Complainant has submitted that he is residing in a government accommodation. He has superannuated on 31.07.2021. Due to the pandemic he was given an extension of 6 months to vacate the accommodation. He has filed this Complaint seeking extension of time to vacate the accommodation.

....2...

4. During online hearing no party appeared and presented the case.

5. However, this Court was apprised that the Complainant has already vacated the accommodation he was residing in. Since the cause of the Complaint has already been exhausted hence no further intervention of this Court is warranted.

6. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 29.04.2022





भारत सरकार / Government of India

232389

123290





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**Observation/Recommendations:**

3. Complainant submits that presently he is posted in Patna office of the Respondent establishment on the post of Stenographer. He applied for government accommodation on 02.03.2021. His application was forwarded to PWD (Public Works Department) on 18.03.2021. Till date of Complaint, i.e. 18.11.2021, accommodation was not allotted.


4. During online hearing, the Complainant further informed this Court that he applied through offline method also. Latest on 01.04.2022 he applied again, however, this time his employer organization refused to forward his application.

5. Respondent informed during online hearing that divyang applicants are given preference in allotment of accommodation. Complainant may again apply along with original documents and then he will be provided accommodation. Respondent further assured this Court that he will write a letter to the Complainant's organisation informing the organisation that the Complainant shall be provided accommodation as soon as they will receive the original documents.

6. Section 20(2) of RPwD Act 2016 provides that the employer shall provide reasonable accommodation and free and conducive environment to divyang employee. It is positive duty of the employer establishment to provide such residential accommodation to its divyang employee which is suitable as per nature of his disability.

7. This Court expresses satisfaction with the positive approach of the Respondent and further recommends that the Respondent shall adopt proactive approach to accommodate the Complainant. Such proactive approach must be adopted by the Respondent towards effective implementation of Section 16 of Rights of Persons with Disabilities Act, 2016.

8. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 29.04.2022



(Please quote the above file/case number in future correspondence)

2. During online hearing, Respondent submitted that after receiving notice of this Court, Respondent has initiated the transfer process of the Complainant. Respondent assured this Court that the Complainant will soon be transferred and NOC will soon be issued.

3. This Court expresses its satisfaction with the assurance forwarded by the Respondent and is inclined to dispose off this Complaint with liberty granted to the Complainant to approach this Court again in case the Respondent fails to adhere the assurances forwarded during online hearing.

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

5. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 29.04.2022





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: 13012/1022/2021

Shri Braj Lal: **Complainant**

D-401, Dharti Crystal

Opp. Railway Station

Tragad Road, Chandkheda,

Ahmedabad -382424

Mobile No: 09427179194

Email: [brajlal2015@gmail.com](mailto:brajlal2015@gmail.com)

#### Versus

The Commissioner: **Respondent**

Office of Principle Chief Commissioner,

Ministry of Finance, Department of Revenue,

Central GST Zone, Ahmadabad,

GST Bhavan, Revenue Marg,

Ambawadi, Ahmedabad-380015

Tele No: 079-26301540

Email: [ccu-cexamd@nic.in](mailto:ccu-cexamd@nic.in)

#### GIST OF COMPLAINT

The complainant is presently working as Intelligence Officer in Directorate General of Good and Service Tax Intelligence, Ahmadabad Zonal Unit, Ahmadabad. The complainant is 55% hearing disability. The complainant had requested for Inter Commissionerate Transfer from the Vadodara Zone, Gujarat to Jaipur Zone, Rajasthan dated 11.04.2017. The complainant stated that the policy for Inter Commissionerate Transfer (ICT) for the employees working in the grade of Inspectors has not been consistent and the same has been subjected to revisions from time to time. By order 19.02.2004, ICT officers/ staff belonging to Group B, C and D was banned. However, the ban was relaxed on spouse ground and compassionate ground vide order dated 27.03.2009 and 29.07.2009. Thereafter, by another order dated 9.2.2011, the board permitted ICT of group B, C and erstwhile group D employees from the jurisdiction of one cadre controlling authority to another one, in cases of employees from the jurisdiction of one cadre controlling authority to another one, in cases of employees appointed against the three categories of hearing, visual and physical impaired quota having disability of 40% or above subject to availability of vacancies.

The complainant further submitted that he had joined the service of the department (erstwhile CBEC and now CBIC) on 08.11.2010 after qualifying Staff Selection Commission Combined Graduate Level Examination 2008 and then he was promoted in the grade of inspector on 01.04.2017 under recruitment rules, 2002. Post his promotion to the grade of Inspector under recruitment Rules, 2002, he had applied for Inter Commissionerate Transfer from Vadodara Zone to Jaipur Zone on 11.04.2017 to the Office of the Commissioner, Service Tax Commissionerate, Ahmedabad along with his request for ICT, another inspector, namely Shri Rakesh Devathia had also applied for the same from Vadodara Zone to Jaipur Zone.

Both the applications were forwarded by the Additional Commissioner (P&V), Service Tax, Ahmedabad vide letter no. dated 11.05.2017. The complainant further stated that in Group A and C Posts, ICT is available. In case of a group 'A' officer, it takes less than a month's time to get his/her ICT order issued. In case of a group 'B' officers holding the post of inspectors who are not entitled to get this opportunity to seek ICT. Therefore, the policy of the department appears to be arbitrary, discriminatory and the same appears to be in gross violation for Articles 14, 16 and 21 of the Constitution of India. According to the department, as per the Recruitment rules of 2016, which have been notified on 26.12.2016, ICT is not available for the Inspectors. These Rules were notified on 26.12.2016. On 20.09.2018, Board had issued a Circular holding that no ICT application can be considered after coming into force of the RR of 2016. The complainant has requested CCPD Court to intervene in the matter and transfer him to his native place i.e. Jaipur.

2. The matter was taken up with the Respondent vide letter dated 22.12.2021, under Section 75 of the RPwD Act, 2016.

3. In response, Office of the Principle Chief Commissioner (PCCO), CGST & C.Ex., Ahmedabad Zone, vide email dated 23.12.2021, submitted that Shri Braj Lal joined the department on 08.11.2010 as Tax Assistant and was posted in Central Excise & service Tax Commissionerate Bhavnagar from 08.11.2010 to 15.02.2013. The officer had no physical disability at the time of his joining in this department. However, the officer was transferred and posted at Service Tax Commissionerate, Ahmedabad, at Ahmedabad station from 18.02.2013 to 13.05.2014. Subsequently, on promotion in the grade of Senior Tax Assistant, he was posted at Service Ahmedabad from 20.05.2014 to 31.03.2017. Further, the complainant was promoted in the grade of Inspector and posted in Service Tax Ahmedabad Commissionerate (Ahmedabad Station) from 01.04.2017 to 30.06.2017. As per Transfer / Rotation and posting policy, 2018, the said officer was transferred to CGST Gandhinagar and posted at Palanpur Division under CGST Ahmedabad zone which is nearest place of posting from the Applicant native place from 15.07.2019 to 25.09.2020. Further, on the basis of willingness and request representation submitted by the officer, he has been posted at Directorate General of GST Intelligence, Ahmedabad Zonal Unit, Ahmedabad from 28.09.2020 to till date.

The respondent further submitted that Shri Braj Lal was promoted from the grade of Sr. Tax Assistant to the grade of Inspector and joined as Inspector on 01.04.2017 in the department. He had applied for Inter Commissionerate Transfer from erstwhile Central Excise Vadodara Zone to Jaipur on 11.04.2017. All application received by this office to CCO Vadodara as the officers had not completed two years probation period in the grade of Inspector as prescribed under Recruitment Rule 2002 as required under recruitment rule 2002. The respondent further submitted that the ICT related issue was under examination by committee, constituted by the board vide letter no. dated 03.10.2017 at that time. Further the respondent submitted that Shri Rakesh Devathia, was a direct recruited Inspector and had joined the department on 16.11.2009 and he had completed his probation tenure at the time of applying for ICT. Accordingly, his ICT application was forwarded as per existing guidelines issued by the Board at that time.

The respondent further submitted that the allegation made by the complainant is not factual. Group 'A' officers under CBIC are all India transferable. The contention of the applicant is not related with him as he is group B non gazetted Executive officer. The respondent further



The Complainant further submitted that respondent department has also accepted the fact that he is suffering from hearing issue and his hearing disability is 55%. Department has also accepted the fact that his old aged parents are residing at his native place. The department ignores is the fact that his native village is Mandawa, district Jhunjhunu and the distance between his native village and the present place of service is about 775 kms. The complainant further submitted that ICT is available to Tax Assistants, Executive Assistants and group A officers.



Respondents have stated in their reply that group 'A' officers under CBIC are all India transferable therefore, ICT is permissible and he cannot compare his case with group A officers. However, it is clear that Tax Assistant and Executive Assistants are group C and B employees respectively, and therefore, there is no all India transfer for them. The complainant further submitted that the respondent on 23.12.2021 in his reply stated that request for transfer on loan basis was not received in the Office of Chief Commissioner CGST Ahmedabad zone. On 17.05.2018, he had submitted an application praying for a transfer to Central Goods and Service Tax, Jaipur on loan basis through proper channel and thereafter he have again submitted the said request on 16.12.2021 on the principle Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad through proper channel. Therefore, the statement made by the Assistant Commissioner (PCCO) in the reply is not at all correct. The complainant once again requested CCPD Court to consider his request for transfer

**Observations /Recommendations:**

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

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

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

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

- a. Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- b. non-discrimination;



- c. full and effective participation and inclusion in society;
  - d. respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
  - e. equality of opportunity;
  - f. accessibility;
  - g. equality between men and women;
  - h. respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.
4. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.
5. Since in this order this Court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.
6. Issues related to transfer and posting to divyang employees may be divided into three categories -:
- a. Posting of divyang employee at native place,
  - b. Exemption from routine transfer of divyang employee,
  - c. Posting of employee who serves as care giver of divyang dependant.

#### STATUTORY PROVISIONS AND GUIDELINES

7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

9. Even in case of employee who serves as care giver of divyang dependant, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine



transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

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

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

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

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

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

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

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

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

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

Courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

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


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

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

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

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

23. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred



linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

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

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

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

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

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

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

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

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

26. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018,



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27. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 –

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

29. Complaint is filed by the employee of the Respondent establishment who is presently posted at Ahmedabad and seeks Inter Commissionerate Transfer to Jaipur Zone where native place of the Respondent is situated. Respondent has submitted that the Complainants cannot be transferred to Jaipur Zone because in Respondent establishment Inter Commissionerate Transfer is banned. Native place of the Complainants is situated in zone of different cadre controlling authority. Transfer of Complainants will amount to Inter Commissionerate Transfer (ICT).

31. Under 2016 Recruitment Rules, new circular was issued on 20th September 2018. This circular expressly banned ICT and also laid down that all employees who got transferred under ICT from year 2011 till 2018, will be considered on loan till 31st March 2019 and thereafter they shall be relieved to their parent zones.

32. Respondent also contends that DoPT O.Ms. which provide for PwD employees' transfer to their native place are not mandatory in nature. These O.Ms. do not impose binding obligations.

33. It is noteworthy to mention that recently Hon'ble Supreme Court decided an identical case of transfer in case titled as **SK NAUSAD RAHMAN & ORS. v. UNION OF INDIA, Civil Appeal No. 1243 of 2022 (judgment dated 10.03.2022)**. In that case, hon'ble Supreme Court decided the validity of Order which banned the ICT. Hon'ble Court held that though Order which banned Inter Commissionerate Transfer is valid and constitutional, Union of India must revisit its policy and exception must be created in favour of a) posting of spouses, b) divyangjan and c) compassionate transfers. Court has held -

*"Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and Article 21 of the Constitution are duly protected."*

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

35. This Court concludes that though the Respondent is not bound by the DoPT guidelines delineated above, It can very well take clue from these O.Ms. to modify their policy and create exceptions for divyangjan, as also recommended by the Hon'ble Supreme Court.

36. This Court recommends that the Respondent shall create exceptions for divyangjan in its policy and shall transfer the Complainant Jaipur Zone, where native place of the Complainant is situated.

37. 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.

38. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



## भारत सरकार / Government of India



## 2. प्रतिवादी द्वारा प्रस्तुत उत्तर

2.1 इस मामले में अध्यक्ष, आर्यावर्त ग्रामीण बैंक, प्रधान कार्यालय, लखनऊ तथा शाखा प्रबन्धक, सीमरावां, जिला – बाराबंकी से टिप्पणी माँगी गई।

2.2 क्षेत्रीय कार्यालय, आर्यावर्त ग्रामीण बैंक, बाराबंकी द्वारा परिवदी को प्रेषित एक पत्र दिनांक 30.10.2021 की छायप्रति इस न्यायालय को सन्दर्भित किया। उक्त पत्र में क्षेत्रीय प्रबन्धक ने कहा है कि दिनांक 16.07.2021 को परिवदी के विड्राल खाता की पोस्टिंग 12.28 पर की गई थी तथा 01.36 बजे भुगतान हेतु पुष्टी (verify) की गई परन्तु कर्मचारी द्वारा बार-बार बुलाने पर भी परिवदी काउन्टर पर उपस्थित नहीं हुए। जिसके कारण 04.44 बजे विड्राल को निरस्त कर दिया गया।

2.3 महाप्रबन्धक, आर्यावर्त बैंक, लखनऊ ने इस न्यायालय को प्रेषित उत्तर दिनांक 20.11.2021 प्रस्तुत कर कहा कि जाँच के दौरान इस शिकायत के सम्बन्ध में कोई दृढ साक्ष्य प्राप्त नहीं हुए फिर भी उक्त शिकायत को गम्भीरता से लेते हुए बैंक द्वारा सम्बन्धित अधिकारी को स्थानांतरित कर दिया गया है। बैंक द्वारा परिवदी ग्राहक के साथ-साथ सभी दिव्यांग ग्राहक को सुविधा और सम्मान के साथ बैंकिंग सेवाएँ प्रदान की जाती है। दिव्यांगजन को सेवाओं में की गई शिथिलता के सम्बन्ध में अत्यन्त गम्भीर दृष्टिकोण अपनाया जाता है एवं तदनुसार अपेक्षित कार्यवाही भी की जाती है।

2.4 प्रतिवदी बैंक ने यह आश्वासन दिया है कि बैंक के किसी कर्मचारी द्वारा दिव्यांगजन के प्रति सेवाओं में शिथिलता एवं अभद्रता का कोई भी प्रकरण समाने आता है तो बैंक द्वारा उचित अनुशासनात्मक कार्यवाही सुनिश्चित की जाएगी।

## 3. परिवदी द्वारा प्रस्तुत प्रत्युत्तर

परिवदी ने अपने प्रत्युत्तर दिनांक 09.12.2021 में अपनी शिकायत पर दृढ़ रहते हुए अन्य बातों के साथ कहा कि सीसीटीवी फूटेज चेक करके देखा जाए कि नामित कर्मचारी काम न करके अन्यत्र लोगों से काम करवा रहा है। दिनांक 16.07.2021 को पैसा भुगतान का प्रकरण जो संज्ञान में है, परिवदी पाँच बजे तक बैंक शाखा के अन्दर बैठा रहा लेकिन परिवदी को न पुकारा गया न भुगतान कराया गया। प्रतिवदी केवल बचाव के लिए पोस्टिंग और भुगतान हेतु सत्यापन (Verify) का समय डालना बताया है।



(उपमा श्रीवास्तव)  
आयुक्त दिव्यांगजन

दिनांक - 29.04.2022

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Shri

4. इस बात का निपटारा किया जाता है।

का और हस्तक्षेप उचित नहीं है।

3. यह न्यायालय प्रतिवादी द्वारा की गई कार्रवाई से संतुष्ट है। इस प्रकार में इस न्यायालय

है।

2. प्रतिवादी ने आरोपों का खण्डन किया और प्रस्तुत किया कि प्रतिवादी द्वारा इस मामले  
की जाँच कराई गई थी। जाँच में पाया गया कि प्रतिवादी दिनांक 16.07.2021 को सीमरावाँ  
शाखा में उपस्थित था, और बार-बार बैंक कर्मचारी द्वारा पुकारने के बाद भी प्रतिवादी निपत  
काउंटर पर नहीं पहुँचे, इसलिए प्रतिवादी के बैंक दौरे का उद्देश्य निराशाजनक था। हालाँकि,  
शिकायत पर गम्भीरता से विचार किया गया और स्टाफ कर्मियों को स्थानांतरित कर दिया गया

किया कि उसके साथ अमर व्यवहार हुआ।

खाता है। शिकायत बैंक कर्मचारियों के अमर व्यवहार से सम्बन्धित है, शिकायतकर्ता ने दावा

4.1 प्रतिवादी ने प्रस्तुत किया कि प्रतिवादी प्रतिष्ठान की सीमरावाँ शाखा में उसका एक बैंक

4. अवलोकन/अनुशासन -

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## भारत सरकार / Government of India

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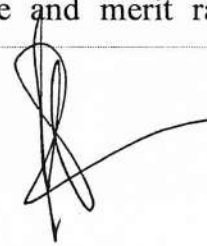
Shri Vidhu Sekhar P, submitted that he was shortlisted as one and only one candidate after the preliminary written test on 04.04.2021 for recruitment to the post of Assistant Professor by National Institute of Fashion Technology, New Delhi against its Advt. No.1202(45)/NIFT/HO/Estt.II/Rectt./ Asstt. Prof.(179 posts)/2021 dated 08.07.2021. In the Hall Ticket generated, his category was mentioned as GEN without mentioning about his disability. He pointed out the discrepancy to the NIFT through an email. He was informed to bring his Disability Certificate on the day of examination, i.e. 04.04.2021 to update the same. He attended the presentation and interview satisfactorily. On 28.09.2021, NIFT published final category-wise list in which two names were found under PwD category (Sl. No. 89 and Sl. No.90) which were not at all included in the list published after the first written test. His name supposed to be



included in the list was not at all found in the final list in spite of being the only candidate under PwD list. The complainant submitted that this was a clear violation of on reservation and injustice. He submitted that he has 11 years of PG teaching experience in University MBA Departments and 9 years of Industry experience in Airline Industry and this is his last chance in his life to get a job as he has crossed the age limit. He further submitted that apart from a person with disability he is a cancer recovered person.

**2. Submission made by Respondent:**

The matter has been taken up with the Director General, NIFT vide letter dated 12.10.2021. The Dy. Director (Establishment), NIFT vide letter No. 1202(45)/NIFT/HO/Estt.-II/Rectt./Asstt. Prof. (179 posts)2021 (PART-I) dated 22.10.2021 submitted that applications were invited through online mode against the advertisement 09/Assistant Professor/Contract/2019. In the data received, there was only one candidate under UR (PwD) category, i.e. Shri Vidhu Sekhar P. The Written Examination was conducted on 04.04.2021. Based on the cut off of the Written Examination held on 04.04.2021, candidates were provisionally shortlisted for next round of Presentation and Interview. The candidates Shri Dipraj Sinha and Dr. Tanweerul Haque Hasmi were shortlisted for Presentation and Interview under UR category and their names were listed in the same list, uploaded in the website at Serial No. 325 and 55 respectively. These two applicants informed that they are PwD candidates. After verification of applications, it was found that they are PwD candidates and hence their candidatures too were considered under PwD category. The final result was prepared and declared based on the overall performance of the candidates in Paper-II of Written Examination, Presentation and Interview. Accordingly final category-wise cut off percentages are UR (65%), EWS (55%), OBC-NC (53%), SC (52%), PwD (50%) and ST (48%). The overall percentage of Shri Vidhu Sekhar was 46.6%, whereas the overall percentage of the other two PwD candidates namely, Shri Dipraj Sinha and Dr. Tanweerul Haque Hashmi were 54.4 and 61.2 respectively. The score and merit rank of other two PwD



candidates were higher than Shri Vidhu Sekhar as can be seen above. Therefore, Shri Vidhu Sekhar P. remained ineligible for final selection.

### **3. Submission made in Rejoinder:**

3.1 The complainant vide his rejoinder dated 15.10.2021 submitted that it is clear that two new PwD candidates were qualified in the GEN category in the first written test and were included later in the PwD category. He submitted that NIFT has given enough time for grievances to ineligible candidates after the first list was published before the written examination. His candidature which was rejected was later rectified during this process and almost additional 500 people got the opportunity to write the written test. The inclusion of 2 new PwD candidates in the list after the Written Test list was published is unfair. The Respondent's reply that he fell below the cut off mark and was not considered is against the spirit of PwD reservation.

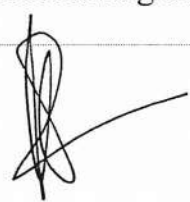
3.2 The complainant submitted that as per equal opportunity policy of Act, 2016, NIFT was supposed to recruit 6 PwD candidates out of 165 appointed. The Respondent violated 4% reservation rule while appointing 165 candidates, citing flimsy reasons for cut off marks. He had qualified in the first cut off criteria in written examinations. NIFT did not notify either the first or 2<sup>nd</sup> cut off criteria at the time of Notification. He further submitted that this was his last chance in his life to get a job as he has crossed age limit for the job.

### **3. Hearing:**

3.1 The case was heard via video conferencing by the Commissioner for Persons with Disabilities on **18.11.2021**. The following persons were present during the hearing:-

- (1) The complainant in person, Shri Vidhu Sekhar P
- (2) Shri S.G. Swamy, Registrar, for the Respondent

After hearing both the parties, the Respondent was directed to produce before this Court the following details supported by necessary documents, relating to post of Assistant Professor advertised by Advt. No. 09/Assistant Professor/Contract/2019, within 15 days of receiving this notice –



- a) How many vacancies were advertised in total?
- b) Total number of vacancies reserved for Divyangjan?
- c) Cut off marks of written examination of PwBD category and non PwBD category.
- d) Cut off marks of finally selected candidates of PwBD category and non PwBD category.
- e) Marks scored in written examination by Vidhu Shekhar, Dr.Tanweerul Haque Hashmi and Mr. Dipraj Sinha.
- f) Whether Dr.Tanweerul Haque Hashmi and Mr. Dipraj Sinha mentioned their PwBD status in application form?

3.2 Upon considering the information/documents submitted by the Respondent, another hearing was conducted on 12.04.2022. The following persons were present during the hearing:

- (1) Shri Vidhu Sekhar P, Complainant in person.
- (2) Shri Gaurav Mishra, Joint Director, NIFT, for Respondent

#### **4. Observation/Recommendations:**

4.1 Both the parties were heard.

4.2 Complainant submitted that the Respondent advertised the post of Assistant Professor. Selection process comprised three stages of written exam, presentation and interview. When result of the written exam was declared, only 01 PwD candidate, the Complainant, was mentioned as successful for next stage. When final merit list was brought out two other PwD candidates, namely Mr. Tanweerul Haque Hashmi and Ms Dipraj Sinha were declared as selected and the Complainant was declared unsuccessful. Complainant alleged that those two candidates who were declared successful were not divyang candidates.

4.3 The Respondent submitted when merit list was declared, names of the two finally selected divyang candidates were mentioned in the list. Against their names, their PwD categories were not mentioned because they qualified written exam on their own merits. Respondent further submitted that because of some technical error, PwD status of the selected candidates could not be mentioned against their names in the merit list. After written examination, qualified candidates were called for document verification. During document verification, PwD status of the two finally selected candidates came to knowledge of the Respondent. Hence in final merit list, categories of that two were mentioned as PwD.





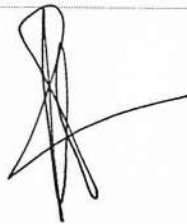
persons with disabilities the enjoyment or exercise of rights equally with others.

**SECTION 20(2)** - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

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

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

4.9 This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not



limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to divyang employee in comparison with enabled employee. In addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of divyang employee, pre-promotion training, providing assistive aids and devices etc.

4.10 In the present case Respondent can opt to apply the concept of Reasonable Accommodation and make some changes to accommodate divyang candidate who might have qualified all the stages of the recruitment process but failed to get selected because of failing to secure the cut off marks. In the present circumstances 'Reasonable Accommodation' can be applied by relaxing the criterion adopted for recruitment. Since the Respondent found no one suitable hence cut off marks can further be relaxed to accommodate any candidate who qualified all the stages of recruitment process despite of challenges she/he might have faced because of his disabilities.

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

4.12 This Court recommends that in place of keeping the vacancies unfilled, Respondent shall relax the cut off marks and shall appoint any meritorious divyang candidate of the same category for which the vacancy is reserved who might have failed to secure 'cut off marks' despite of clearing all the stages of examination.

4.13 The case is accordingly disposed off.

Dated: 29.04.2022

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities