



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: 13322/1024/2022

Complainant: Shri Shivam Sharma
E-mail: <ssh61561@gmail.com>

-P35392

Respondent: The Director General
Indian Audit and Accounts Department
Office of the Director General of Audit (Infrastructure)
3rd Floor, 'A' Wing, Indraprastha Bhawan, I.P. Estate
New Delhi – 110002

-P35391

Complainant: 100% visual impairment

GIST of the Complaint:

The complainant Shri Shivam Sharma, LDC vide complaint dated 10.06.2022 has submitted that he had applied for departmental exam for the post of Auditor and AAO on 27.12.2019 for career progression. However, his application was rejected vide letter dated 18.02.2020 wherein it was stated that the said posts were not identified for VH candidates as per the then existing rules. He further submitted that again he had sought permission from O/o the DGA (Audit) of CAG of India to appear in the departmental exam held in February 2022 through the representation dated on 24.12.2021. The O/o the DGA (Audit) didn't permit him for the same and replied vide letter dated 23.02.2022 that the application has been sent to the Head Office for the clarification on 01.02.2022. He alleged that due to delay in communication from the office, he could not appear in the departmental exam for the post of Auditor held in February 2022.

2. The matter was taken up with the Respondent vide letter dated **28.06.2022** under Section 75 of the RPwD Act, 2016

3. Respondent vide reply dated **26.07.2022** inter-alia submitted that Shri Shivam Sharma was appointed as MTS on 18.01.2017 through Special Recruitment Drive for

persons with Disabilities (PwD). As per Hqrs. Office circular dated 14.09.2018, the post of Lower Division Clerk is identified as suitable post for VH (Blind), accordingly, Sh. Shivam Sharma was promoted to Clerk w.e.f.21.06.2021 after completion of 3 years as per RR. He further submitted that as the post of Assistant Audit Officers (AAO) and Auditor was not identified suitable for VH (Blind) and (Low Vision) as per benchmark physical requirements to perform the work in IA&AD as per Headquarter office (CAG) Circular no. dated 14.09.2018, the application of Shri Shivam Sharma for appearing in the Departmental Examination for Auditors held in February, 2020 was rejected.

4. The respondent also submitted that they also had an internal meeting of their Expert Committee for identification of the recommendations of the various Group B & C posts in their Department. As per the recommendations of the Internal Expert Committee the post of Auditor and AAO are identified for Deaf & Hard of Hearing and locomotor disability.

5. The respondent further submitted that as the post of Auditor and AAO are not identified suitable for the disability of the complainant, the question of delay in communication and subsequent appearing in the examination does not arise.

6. The copy of the reply was forwarded to the complainant vide letter dated **08.08.2022** for submission of comments/rejoinder but till date no response has been received.

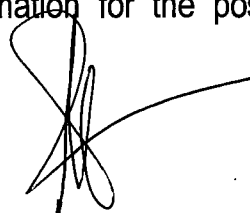
7. After considering the respondent's reply dated **26.07.2022** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **22.09.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.09.2022**. The following were present in the hearing:

- Shivam Sharma – Complainant & Adv. Shubham Jain
- Adv. S.S. Hooda along with Sri Ajay Kumar Kripashankar, Dy. Director (Admin.) on behalf of respondent

Observation/Recommendations:

8. Complainant submits that he is presently posted as LDC in the post of DGA (Audit). He submits that he applied for departmental examination for the post of Auditor and



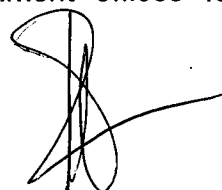
Assistant Audit officer. Respondent rejected his application saying that the post of Auditor and Assistant Audit Officer are not identified suitable for visually impaired and blind categories of Divyangjan. Complainant submits that he was not even allowed to appear in the examination. He claims that the post of LDC is identified suitable for the categories of low vision and blindness and hence the post of Auditor as well as Assistance Audit Officer stand automatically identified for blind and low vision categories.

9. Respondent has admitted all the claims made by the complainant. Complainant further submits that the posts of Auditor and Assistant Audit Officer are not identified suitable for low vision and blind categories of Divyangjan because nature of the work of these two posts is mathematical and involves scrutinising accounts, purchase files etc. Complainant further submits that this decision of not identifying these two posts suitable for low vision and blind category was taken after the recommendations of the internal meeting of expert committee. On the basis of recommendations of internal expert committee these two posts were identified suitable for deaf and hard of hearing and locomotor disability category. Low vision and blind categories were excluded.

10. Documents submitted by both the parties were perused. Respondent has not submitted any documents to support its claims that exclusion of divyangjan of blind and 'low vision' category is just and fair. Respondent submits that the posts of 'Auditor' and 'Assistant Audit Officer' are not identified for divyangjan of 'blind' and 'low vision' categories because the nature of work associated with these jobs is mathematical and involves scrutinization of accounts etc. During online hearing Respondent also informed this Court that 'Auditor' is Group C post and 'Assistant Audit Officer' is Group B post.

11. Department of Empowerment of Persons with Disabilities issued list of posts identified suitable for various categories of divyangjan on 04.01.2021. The same was also perused. The list does not contain posts named 'Auditor' or 'Assistant Audit Officer'. However, the list contains another Group B post named 'Audit Officer'. The post is identified suitable for 'Low Vision' category. Description of 'nature of work' performed by the post of 'Audit Officer' contains –

“examine account book sand records of business establishments, private institutions, Government or Quasi Government offices for accuracy and



completeness of book keeping records and financial statement. Check items of entries in Day Book or journal for correct recording Scrutinize bills, vouchers and relevant entries in cash books. Verify ledger entries against receipts for cash payment. Check totals for proper observance of accounting procedure and ensure that all revenue and Expenditure and disbursements are properly authorized, vouched and correctly classified. Report to appropriate authority irregularities in accounts and cases of improper use of Govt. Money, improper expenditure etc."

12. Similarly, another Group C post by the name of 'Auditor-II' is identified suitable for divyangjan with 'Blind' and 'Low Vision' categories. Description of 'nature of work' performed by the post of 'Auditor-II' contains –

"Auditing the expenditure & other documents of the company".

13. From the nature of work as described in the list it is clear that the nature of work of 'Audit Officer' and 'Auditor-II' is also mathematical and involves scrutinization of accounts. As per the submissions of the Respondent, nature of work of 'Assistant Audit Officer' (Group B) and 'Auditor' (Group C) is also mathematical and involves scrutinization of accounts. Further, the Respondent has also not produced any evidence to prove that the decision to exclude the two categories of divyangjan was taken on the basis of report of any committee of experts.

14. Further, the attention of the Respondent is also attracted to Para 3 of DoPT O.M. No. 36035/02/2017 dated 15.01.2018. As per the para if any ministry or department thinks it necessary to exempt divyangjan from provisions of reservation for divyangjan, such ministry/department shall make proposal justifying the necessity to exempt the divyangjan and shall forward the proposal to Department for Empowerment of Persons with Disabilities. The final decision to exempt divyangjan shall be taken by the Department of Empowerment of Persons with Disabilities after consultation with O/o Chief Commissioner for Persons with Disabilities. Respondent has failed to produce any evidence to prove that the any such proposal was forwarded to DEPwD for obtaining exemption.

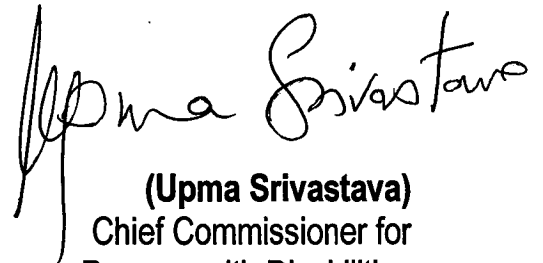
15. Hence, this Court concludes that the Respondent's decision to exclude divyangjan with 'blind' category and 'Low Vision' category is bereft of logic, reason and legality. Respondent's decision to exclude divyangjan with 'Blind' and 'Low Vision' category violates Section 3 and Section 20 of Rights of Persons with Disabilities Act, 2016 and also violates Article 14, Article 16 and Article 21 of Indian Constitution.



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16. This Court recommends that the Respondent shall not exclude the Complainant and other divyangjan of 'Blind' and 'Low Vision' categories from appearing in the examination conducted for the appointment to the post of 'Auditor' and 'Assistant Audit Officer'.

17. The case is disposed off.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 02.11.2022



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार / Government of India

Case No: 13334/1024/2022

Complainant: Ms. Akanksha Mitali

Dy. Legal Advisor

CBM Asset, Bokaro ONGC

E-mail: <Mitali_Akanksha@ongc.co.in>

135380

Respondent: The Chief General Manager (Material Management)

Asset Support Manager, ONGC, CBM Asset, Bokaro

1st Floor, HSCL Building, Near Naya More, Bokaro

Steel City – 827001 (Jharkhand)

E-mail: <chandra_aryacharu@ongc.co.in>

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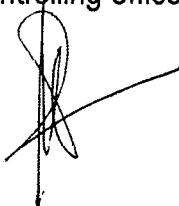
Complainant: 40% visual impairment

GIST of the Complaint:

The complainant Ms. Akanksha Mitali, Dy. Legal Advisor vide complaint dated 22.06.2022 has inter-alia submitted that she has joined the services of ONGC as Assistant Legal Advisor on 02.11.2015 against the reserved post for PwD and was initially posted at its Corporate Legal Department, New Delhi. After joining she was provided with a barrier free environment and was doing well at Delhi office. Thereafter, having some constraints, she was transferred to CBM Asset, Bokaro where she joined on 23.07.2018. She alleged that since joining ONGC, Bokaro office neither barrier free nor conducive environment was ever provided to the complainant and she had also requested for allotment of a suitable work space/cabin which has least light exposure and a desktop, so that she may work freely and comfortably, but in vain. The complainant has prayed for the following:

- To pass necessary order(s) and or directive(s) to the respondents for immediate corrective measures to address the grievance and make the existing office building PwD friendly

- ii. To pass necessary order(s) and or directive(s) to the respondent no. 1 to 3 u/s section 92 of the RPwD Act, 2016 having been committed an offence of atrocity by the respondent no. 1 to 3 under Section 92 (a) of the Act for maximum punishment
 - iii. To pass necessary order(s) and or directive(s) to the respondent no. 1 to 3 u/s 89 and 90 of the RPwD Act, 2016 for maximum punishment
 - iv. To pass necessary order(s) and or directive(s) to the respondents to the management of respondent no. 4 to forthwith initiate suitable disciplinary proceedings against respondent no. 1 to 3.
 - v. To pass any other necessary order(s) and or directive(s) as deem fit and proper in the circumstances of the case.
2. The matter was taken up with the Respondent vide letter dated **06.07.2022** under Section 75 of the RPwD Act, 2016
3. Respondent vide letter dated 02.08.2022 inter-alia submitted that the status of three issues raised by Mrs. Akanksha Mitali is mentioned below:
- a) Expediting the process of procurement of a suitable desktop
Status: Desk Top Computer having the size of 23.8 inch has been provided to Ms. Akanksha Mitali on 07.06.2022 as per her request.
 - b) Other low vision adaptable screen and magnifiers
Status: The said equipment are marketed in India by one vendor. Hence, it is qualified case of PAC procurement. Necessary approvals/sanctions have been obtained immediately after following laid down procedure. The user/complainant and the Medical Section confirmed the suitability of both the items on 17.06.2022. RFQ'S have been sent to respective vendor on 07.07.2022 with tender bid opening date 28.07.2022. In the meantime RFQ copies have been received from vendors via e-mail 19.07.2022. Subsequently, after CS vetting process, Technical comments etc. Purchase orders have been placed on 20.07.2022 with Bid validity by 27.09.2022.
 - c) A closed room/cabin/des arrangement so that the sensitivity towards light may decrease.
Status: The Estate Section had allotted her a separate room on 21.06.2022 and now, the room allotted to her is shared with her controlling officer.



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4. The respondent further submitted that the allegation made by the complainant is not in farness but to tarnish the image of the senior officers. He has requested that the complaint may be closed as the allegation made by the complainant are baseless and not as per record and devoid of any merit.

5. Complainant vide rejoinder dated 25.08.2022 has requested to direct the respondent to make the existing office building PwD friendly and take action against the respondent.

6. After considering the respondent's reply dated **02.08.2022** and the complainant's rejoinder dated 25.08.2022, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **27.09.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **27.09.2022**. The following were present in the hearing:

- Ms. Akanksha Mitali – Complainant
- Shri Arun Chandra Arya, DGM (Support Manager), Shri G.B.Kishore, CGM & Shri R.S. Rama Rao, GM (HR) on behalf of respondent

Observation/Recommendations:

7. Complaint is filed against the Respondent establishment and three other employees of the Respondent establishment. Complainant submits that she is Divyangjan with Visual Impairment. Her disability is such that she has sensitivity towards light. Complainant requested the Respondent to allot a suitable work space/cabin in which the light exposure is the least. Complainant further requested for a large screen desktop. Complainant further submits that the Respondents have installed large screen desktops for themselves however she has not been allotted the same. After her repeated requests she was allotted a cabin in which there is high exposure of light which will deteriorate her situation.

8. Respondent denies the allegations against the three employees because Respondent submits that there is no personal interaction between the employees and the Complainant. Respondent further submits that the office of the Respondent establishment is on rent and there is space crunch in the office. As per the established procedure junior level officers are allotted cluster space and senior officers are allotted separate cabins. Due to

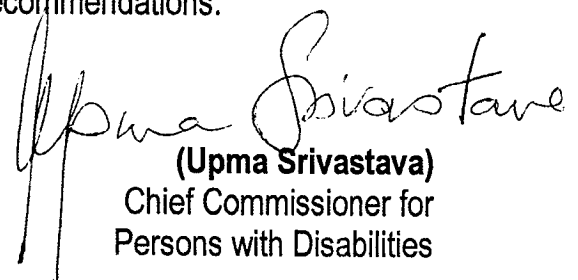


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space crunch some senior level officers are also sharing office space with the junior officers. Further the Respondent submitted that the Complainant forwarded request for allotment on 20.05.2022. Thereafter, on 30.05.2022 she was allotted a cabin after considering the Complainant's disability and problems faced by her. However, the Complainant was not satisfied with the space allotted to her. Thereafter, she was allotted another cabin which was allotted to her exclusively. On the issue of large screen desktop, the Respondent submits that steps to allot her large screen desktop were initiated as soon as 2020, however due to covid and other reasons delay was caused. Finally, on 07.06.2022 the Complainant was given 24-inch display desktop. Complainant has expressed her satisfaction on this point

9. During online hearing complainant submitted that she has been allotted office of her choice. She has been given a personal computer but it is not compatible for the use of the complainant. Respondent submitted that it is trying to resolve all the issues raised by the complainant. On 10th August 2022 disabled friendly software has also been given to the complainant. Complainant made demand of 27 inch screen desktop. After receiving the request order for the same has been placed and it is expected that the same will be received by the end of 2 weeks. Complainant also asked for magnifier, which has been purchased and given to the complainant.

10. This court concludes that intent to harass Divyangjan does not appear from the facts and circumstances submitted by the parties. Respondent resolved problems faced by the complainant except the one related to desktop, which is also expected to be resolved soon. However, this court recommends that for maintaining good relationship and friendly environment in the office, respondent shall conduct meeting with all divyang employees workings in the respondent establishment so that the employees can discuss the problems and other solutions with the concerned officers of the respondent establishment. Further, this court recommends that respondent's issue related to desktop shall be resolved by the respondent within 2 weeks of receiving the copy of these recommendations.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 02.11.2022



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 13103/1092/2022

Complainant:

Shri Ajendra Singh Ghura,
R/o 278/48, Rajendra Nagar,
Lucknow-226004 (UP)
Email: ajendrasinghghura@gmail.com

— R35408

Respondents:

- (1) The Managing Director & CEO,
Indian Bank,
PB No.5555, 254-260,
Avvai Shanmugam Salai, Royapettah,
Chennai-600014 (Tamil Nadu)
Email: cmdsec@indian-bank.com; indmail@indianbank.co.in
- (2) Managing Director & CEO,
Universal Sompo General Insurance,
Plot No – EL-94,KLS Tower, TTC Industrial Area,
MIDC, Mahape, Navi Mumbai-400710
Email: sharad.mathur@universalsompo.com; contactus@universalsompo.com
- (3) The Chairman,
Insurance Regulatory and Development Authority of India,
SY No.115/1, Financial District,
Nanakramguda, Gachibowli, Hyderabad-500032
Email: irda@irdai.gov.in

— R35409

— R35410

— R35411

Affected Person: The complainant, a person with 60% Locomotor Disability (Left Lower Limb)

1. Gist of Complaint:

1.1 The State Commissioner for Persons with Disabilities, Government of Uttar Pradesh had forwarded this complaint vide their letter dated 05.01.2022. The Complainant had filed his complaint regarding non-payment of Accidental Insurance payment under Pradhan Mantri Suraksha Beema Yojna [PMSBY] by the Indian Bank, Lucknow [IFSE Code IDIB000a544, MICR 226019238].

1.2 The complainant submitted that in the year 2017 on 04th September, Monday, at about 11:30 Hrs. the lift of OPDJ Court Building broke and fell down from seventh floor. He was in that lift and had sustained injuries. He has a Bank Account in the respondent Bank at Lucknow and he had submitted all the requisite documents pertaining to the claim under PMSBY. The complainant stated to have been depositing the premium regularly and alleged that he did not get any response from the bank.

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2. Submissions made by the Respondent:

2.1 The Branch Manager, Indian Bank, Aish Bagh Branch, Lucknow filed their reply vide affidavit dated 05.03.2022 and confirmed that the complainant is maintaining a Saving Bank Account No.20840268644 in the bank.

2.2 The Bank informed about PMSBY that the scheme is for creating a universal social security system for targeting poor and under-privileged people. The period of coverage of the scheme is for one year renewable from year to year up to the age of 70 years. Under the said Scheme, Insurance facility is offered for accidental death and disability, which covers for death or disability on account of an accident. The scheme is to be offered/administered through Public Sector General Insurance Companies (PSGICs) and other General Insurance companies willing to offer the product on similar terms with necessary approvals and tie up with Banks for this purpose. The petitioner/complainant is enrolled under the said scheme with the Universal Sompo General Insurance Company (USGIC) through Aish Bagh, Lucknow Branch of the respondent bank. The role of the respondent bank is only as a facilitator/intermediary between the petitioner and the Insurance Company USGIC. As per the scheme, the insurer has to submit his claim application to the insurance company through the bank for settlement of benefits for which he was insured.

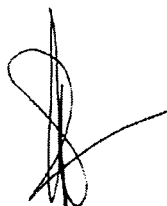
2.3 In the instant matter, the Bank has submitted the claim application along with all necessary documents as received from the petitioner, to the concerned Insurance Company, USGIC. It is the responsibility of the concerned Insurance Company to process the documents submitted by the claimant and settlement of the claim accordingly. The Bank has no role in processing of documents submitted by the claimant.

2.4 While filing the petition, the petitioner/complainant has not chosen to implead the Insurance Company USGIC as a party to the case, who is a necessary party and non-joinder of necessary party tantamount to mis-joinder of parties/non-joinder party and the petition is bad for non-joinder of party and accordingly, the same is liable to be dismissed as the petitioner/complainant is well aware of the fact.

2.5 Further, the Claim No.CL21280868 submitted by the petitioner and forwarded by the respondent bank to USGIC who have rejected the claim of the petitioner on the ground of following reasons:

- (i) PPRG (Post-Polio Residual Paralysis) is the cause of disability of the left leg of the plaintiff as per the disability certificate.
- (ii) As per the discharge card issued by Balrampur Hospital, the cause of disability is due to complications arising out of PPRP and any previous surgery on the plaintiff.
- (iii) Presently, as per the discharge summary issued by King George Hospital, the patient has been "operated for fracture proximal tibia left with ipsilateral old fracture of patella".

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(iv) As per the OPD advisory dated 02.10.2017 issued by King George Medical University, Lucknow, the plaintiff had walked himself with the help of walker.

2.6 The Respondent Bank prayed to dismissed the complaint against the Respondent Bank as –

- (i) the Respondent Bank had acted as facilitator/intermediary only between the petitioner and the Insurance Company USGIC and the Respondent Bank has no role; and
- (ii) not maintainable for non-joinder of necessary party in limini.

3. Submissions made in Rejoinder:

The complainant filed his rejoinder on affidavit dated 11.04.2022 and reiterated his complaint. However, he added that his claim cannot be denied on the basis of PPRG being the cause of his disability.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.09.2022**. The following persons were present during the hearing:

- (1) Shri Ajendra Singh Ghura, Complainant in person
- (2) Ms. B. Geetha, Chief Managar; Shri Ravi Singh, Branch Manager; and Shri Anurag Srivastava, Advocate; for Respondent No.1
- (3) Ms. Nidhi Singh. Advocate for the Respondent No.2

5. Observation/Recommendations:

5.1 Complainant submits that on 04.09.2017 he met an accident because of which his left leg got fracture and he reacquired disability. He submits that he claimed for insurance money under Pradhan Mantri Suraksha BimaYojna ('PMSJY' for short). His application was rejected. He submits that he enquired in the bank multiple times but no suitable response was given to him.

5.2 Respondent No. 1 submits that the Complainant enrolled under the said scheme. The insurance company in which the Complainant enrolled is 'Universal SOMPO General Insurance Company'. Complainant is maintaining an account with the respondent bank. However, the respondent bank has no role to play, it is only a facilitator/ intermediary between the complainant and the insurance company. As per scheme the complainant has submitted his claim through the bank. After, receiving the claim application from the complainant, the respondent bank has forwarded it to the insurance company. The insurance company rejected the claim of the complainant on the ground that cause of complainant's disability is 'post polio residual paralyses' and not the accident. As per scheme claim is given only in case of death or disability caused because of an accident.

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5.3 Thereafter, the hearing was conducted and Universal SOMPO General Insurance Company was impleaded as party (Respondent No. 2) in the case.

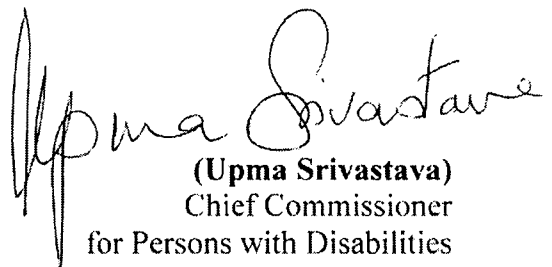
5.4 Respondent No. 2 also filed its reply whereby the Respondent has admitted that the Complainant purchased insurance policy under Pradhan Mantri Suraksha Beema Yojana (PMSBY). Further, Respondent No. 2 also admitted facts regarding the Complainant's accident. Furthermore, the Respondent submits that the requisite documents, for instance the discharge summary issued by the hospital, was submitted by the Complainant and the claim was made by the Complainant under PMSBY. Respondent No. 2 submits that the Complainant cannot be given insurance claim because the Complainant was disabled even before meeting the accident. The insurance scheme the Complainant has purchased, i.e. PMSBY, only provides claims in case of death or disability which is caused in result of an accident. In case of the Complainant, the disability existed even before the accident took place. As per the documents submitted by the Complainant, it is evident that the disability was not the caused in result of the accident met by the Complainant, hence, the Complainant cannot be issued insurance claim. The position has also been informed to the Complainant.

5.5 During online hearing the Respondent No.2 mostly reiterated its submissions made in its written reply and submitted that as per PMSBY insurance claim can only be given in case of total disablement. In his complaint the complainant himself admitted that even after he met an accident he continued to work along with his brother. Hence, his disability cannot be considered as total disablement. During online hearing complainant submitted that his main grievance is that neither the bank nor the insurance company explained properly the terms and continuous relating to the insurance policy at the time he was subscribing the policy. Furthermore, he was forced to run from pillar to post to make his claim under insurance policy.

5.6 This Court cannot meddle with the examination made by the insurance company until and unless discrimination on the ground of disability is proved. This court is satisfied with the reply of the respondent. However, this Court recommends that the insurance company and the bank must always explain the terms and conditions as well as the drawbacks and the benefit of the insurance policy to the satisfaction of the Divyangjan before selling their policy to Divyangjan. Further, the insurance company as well as the bank concerned must also explain such drawbacks of the policy which are specifically connected with the fact of disability and may cause hindrance in making claims later on.

5.7 Accordingly the case is disposed off.

Dated: 02.11.2022


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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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. 13329/1141/2022

Complainant:

Shri Attar Singh,
S/o Shri Karan Singh,
R/o B-29, L-2, Mohan Garden,
Uttam Nagar, Delhi-110059, Mobile: 9899581197

235404

Respondent:

Chairperson & Member,
New Delhi Municipal Council,
3rd Floor, Palika Kendra,
New Delhi-11001, Phone: 23743579(O), 23742269(Fax),
Email: chairperson@ndmc.gov.in

235405

Affected Person: The complainant, a person with 79% Locomotor Disability (Both Upper Limbs)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 02.05.2022 regarding permission of place of vending spot being a person with disability at Footpath Patri at Palika Bazar Gate No.3, New Delhi Municipal Council.

1.2 The complainant submitted that he is selling readymade garments on footpath near Palika Bazar gate No. 3. Last year on 14.10.2021, NDMC had removed his shop. Now, he is unable to earn his livelihood for his family as this shop is the only source of his earning. He is a vendor and since 1998 continuously he had been selling readymade garments at Palika Bazar Gate No.3. He is listed as divyang vendor in NDMC record, and his name is at Serial Number 36 out of 100. In the List of Draw conducted by NDMC his name appears at Sl. No.254 out of 628. He requested for permission of vending from his earlier place.

2. Submissions made by the Respondent:

The respondent filed their reply dated 15.07.2022 and inter-alia submitted that the Hon'ble High Court vide its Order dated 11.10.2021, in the matter of New Delhi Traders Association Vs New Delhi Municipal Council and Ors [W.P.(C) No.11669/2021] had directed for removal of all unauthorized hawkers and street vendors from the non-vending areas of Indira Chowk and Rajiv Chowk. The respondent further stated that vendors from the list of 628 are not tolerated in non-vending zones. Hence, in pursuance, NDMC undertook removal drive(s) on 13.10.2021 and 14.10.2021 and removed all the vendors except authorized vendors from these areas and the removal of applicant has covered in these removal

(Page 1 of 2)

drives. The complainant, Shri Attar Singh had challenged his removal with other before the Hon'ble High Court of Delhi in W.P.(C) No.2877/2022 titled as Raju Shahu & Ors. Vs NDMC, but Hon'ble High Court had not granted relief to them as of now and the matter is pending for adjudication. Hence, it is not possible for NDMC to consider the request of the applicant, even temporarily, as the appropriate authority is the TVC (Trade Vending Committee), which will be constituted as and when survey is completed by the present TVC under the Scheme 2019. At this stage, the request of applicant for vending permission would be placed before the competent/Permanent TVC as and when it is duly constituted once the survey process is completed by the present TVC in accordance with the Street Vendor Scheme 2019.

3. Submissions made in Rejoinder:

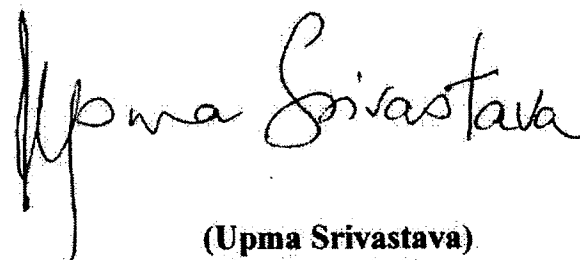
No rejoinder was received from the complainant to the reply filed by NDMC.

4. Observations & Recommendations:

4.1 Since this matter is subjudice before the Hon'ble High Court of Delhi, no further intervention is required in this case.

4.2 Accordingly the case is closed.

Dated: 02.11.2022



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 13279/1040/2022

Complainant:

Shri Ajeet Kumar Patel
R/o H.N.82, Sudama Sun City,
Near Atal Bihari Sabji Mandi,
Ayodhya Bypass Road,
Bhopal – 462022 (Madhya Pradesh)
Email: ajeetraaz1991@gmail.com

135400

Respondent:

Managing Director,
National Fertilizers Limited,
A-11, Sector-24, Noida,
District-Gautam Buddh Nagar
Pin – 201301 (UP)
Email: dsood@nfl.co.in

135401

1. Gist of Complaint:

1.1 The complainant, a person with 50% locomotor disability (one arm) filed a complaint dated 22.04.2022 regarding not providing compensatory time and harassment during the exam conducted by National Fertilizers Limited for recruitment of HR and Marketing, Management Trainee position under Advt. No.04/2021.

1.2 The complainant submitted that he had applied for HR Post, Post Code 02, in OBC (PwBD) category. As per the NFL advertisement, he was eligible for compensatory time (40 minutes) in exam and he had applied for the compensatory time while filling online application form. It was also mentioned on the issued Admit Card to give compensatory time in examination.

1.3 At examination centre he was confident that he will be allowed for compensatory time but he noticed that the extra time was not added. He waited till 12.55 Hrs and then he asked to invigilator for extra time. The invigilator informed the exam head office (control room) immediately and after some time he came back in anger and started asking illegitimate questions. The complainant further submitted that the invigilator checked his disabled body part and also threw his admit card and ID proof and made him feel embarrassed among of all examinee. This all was happened under CCTV surveillance.

1.4 The complainant has requested for the following relief(s):-

(a) In spite of his disability confirmation they harassed him so much so that he lost his confidence and self-esteem, so he want defamation case on NFL and concerned officers and agency;

(Page 1 of 3)

(b) After applying and being eligible he was not provided the compensatory time, so proper legal action must be taken against the NFL exam representative, NFL HR Officers and test conducting agency;

(c) He really studied hard through day and night for the exam but due to their mismanagement, he could not perform and score at his most in the exam, so he must be provided employment in NFL according to his qualifications and they should compensate him for their mistake; and

(d) Check the exam CCTV recordings and college exam centre CCTV footage for the reference.

2. Submissions made by the Respondent:

2.1 The Respondent filed their reply dated 20.07.2022 and submitted that Shri Ajeet Kumar Patel had applied for the post of Management Trainee (HR) in NFL as well as in RFCL. In his online application for the post of Management Trainee (HR) at NFL he had mentioned his category as OBC (NCL) and PwBD (OH), however, in the online application for the post of Management Trainee (HR) in RFCL he had mentioned his category as UR and PwBD (OH). In addition, it is also submitted that one advertised post of Management Trainee (HR), NFL was reserved for PwBD (HH) and Shri Ajeet Kumar Patel belongs to PwBD (OH) category.

2.2 The respondent further submitted that the complaint was referred to the test conducted agency for detailed information. The agency has informed that all PwBD candidates, who had opted for the compensatory time in their online application form which was mentioned on their Admit Card, were allowed compensatory time subject to production of disability certificate at the time of examination. Since Shri Ajeet Kumar Patel did not submit the disability certificate, he was not considered for compensatory time for online examination for the post of Management Trainee (HR) NFL on 18.12.2021.

3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 19.07.2022 and submitted that the reply of the respondent is neither satisfactory nor acceptable.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.09.2022**. The following persons were present during the hearing:

- (1) Ajeet Kumar Patel, the complainant in Person
- (2) Shri S.K. Tyagi, Chief Manager, H.R. for the Respondent

5. Observations & Recommendations:

5.1 Complaint is related to not providing compensatory time during examination. Complainant submits that the Respondent establishment issued notification advertising the vacancies of 'Management Trainee'. In the application form Complainant mentioned his category as PwBD. In the admit card issued to the Complainant, the category was mentioned as PwBD and it was mentioned in the admit card that the Complainant is allowed to avail compensatory time. However, on the day of examination, i.e. 18.12.2021, he was not given compensatory time. When he objected, the invigilator misbehaved with him and denied him to provide compensatory time because he was not carrying his disability certificate.



5.2 Respondent submitted that the examination was conducted through the government agency which conducts online examination on behalf of the government establishments. Respondent asked the examination conducting agency to submit its report regarding the incident alleged. On the basis of the report, the Respondent submits that the Complainant opted for compensatory time in the online application form. The same was also mentioned on the admit card which was allotted. Respondent further submits that the compensatory time was allowed subject to production of disability certificate on the day of examination. Since the Complainant failed to produce his disability certificate, hence compensatory time was denied to him. Respondent further submits that it has checked the CCTV footage of the examination and no incidence of misbehaving was noticed.

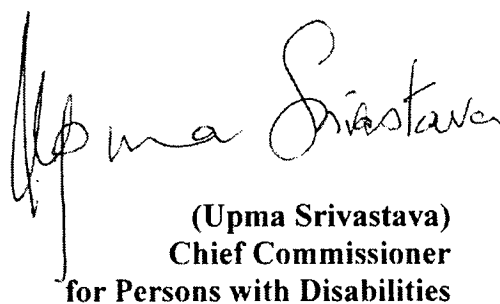
5.3 During online hearing this Court asked the respondent if the complainant was informed that he had to produce disability certificate to avail compensatory time. Respondent informed that no such information was given before the day of exam. Respondent admitted the fact that the mistake has been committed by not allowing the Complainant to avail compensatory time and promised that sufficient care shall be taken in future so that no such instance happens again. Respondent further informed that the complainant also participated in recruitment examination conducted by the sister company of the respondent establishment, which was conducted on later date. In that exam compensatory time was given to the complainant which was also availed of by him. Further, the respondent informed that vacancies in the impugned exam were reserved for Hard of Hearing category of Divyangjan and appointment has been made against the reserved vacancy.

5.4 This Court will preclude from making interference in the present complaint because the reserved vacancy has now been filled and intervention at this stage shall cause injustice with the candidate who has been appointed. However, this court recommends that the Respondent must ensure in future that no similar instance happened ever again.

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

5.6 Accordingly the case is disposed off.

Dated: 02.11.2022



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13284/1023/2022

Complainant: Shri Tushar Singhal
Opposite Laxmi Palace
Mandawara Road, Hindaun City - 322230
Email: <singhals1997@gmail.com>

135295

Respondent: The General Manager (HR)
State Bank of India
Local Head Office, Chennai -- 600006
Email: <agmphr.lhoche@sbi.co.in>

135296

Complainant 70% hearing impairment

GIST of the Complaint:

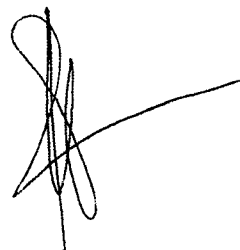
Complainant Shri Tushar Singhal, Assistant Manager vide complaint dated 01.06.2022 has submitted that he was selected as a Probationary Officer in State Bank of India on 18.10.2019 from the UR category and joined the Bank on 06.01.2020 in Chennai Circle. He was transferred to many branches in the Coimbatore region of Chennai Circle. He was confirmed in Bank's services as an Assistant Manager on 09.01.2022 vide letter dated 27.01.2022. He further submitted that presently he is posted at the Administrative Office, Coimbatore. The complainant has submitted that his hearing loss is increasing day by day and that is Sensori Neural Hearing Loss (SNHL) which is a permanent kind of hearing loss which cannot be reversed in future. The only solution is wearing hearing aids and getting a Cochlear Implant surgery. He has requested the Bank many times to provide him a reasonable accommodation which suits him, his disability and where he can work without any hindrance and contribute his 100% to the bank but in spite of several reminders, Bank did not provide him any such post, where his disability would not be an issue and he could work without any worry and would not have to communicate more frequently.

2. He has requested for the following relief(s):

- Change his category without any further delay and he need posting according to his disability as per post identified according to RPWD Act, 2016 read with PwD Act, 1995 and various circulars of the Bank.

....2....

- Refer him to any Medical Board or any other Hospitals which Bank may consider appropriate to verify the genuineness.
 - Credit all dues from the day he got certificate as per various circulars issued by the Bank and Government of India.
3. The matter was taken up with the Respondent vide letter dated **10.06.2022** under Section 75 of the RPwD Act, 2016.
4. In response, Chief Manager (L&D), State Bank of India vide letter dated **07.07.2022** has submitted that complainant, Shri. Tushar Singhal joined the services of the Bank as Probationary Officer on 06.01.2020 in General Category. After completing his training at various branches/offices like LHO Chennai, TNAU Branch Coimbatore, Coimbatore City Branch, Commercial Branch Coimbatore he was confirmed in the service of the Bank on 09.01.2022. After confirmation, he was posted at Administrative Office, Coimbatore as support officer. The complainant had applied for the post of Probationary Officer after satisfying himself about the eligibility criteria for the post including the medical fitness required for the candidates and submitted his application under General Category.
5. In the personal statement of the candidate dated 22.11.2019 submitted to the Medical Officer at the time of his recruitment, Shri. Tushar Singhal had declared that he is not suffering from any defects in hearing. In column 'G' of the declaration sheet to the question "have you suffered from defect in hearing or eyesight? Give details the candidate submitted as "No". He has not declared any history of the treatments undergone/undergoing for hearing impairment in column 'J' of the declaration form. Considering the declaration submitted by the candidate and the medical reports submitted, he has been selected for the post of Probationary Officer.
6. The official had never declared his hearing impairment or disability to the Bank at the time of his recruitment or after selection and joining the Bank. He further submitted that Shri Tushar Singhal had submitted a representation dated 16.07.2021 requesting change of his category from General to PwD under Right of Persons with Disability Act, 2016. In the said



....3...

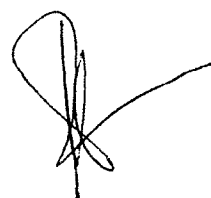
representation he had mentioned that he was having hearing loss of 50 dB at the time of joining Bank which got aggravated after joining the Bank. Therefore, he requested for change of his category to PwD and sought exemption from attending office as permitted to the PwD employees in view of the restrictions imposed by the Govt during COVID. The medical report dated 28.07.2021 of Kovai Medical Centre and Hospital Ltd, Coimbatore shows that the officer is having hearing loss of 71.6 dB for right ear and 66.6 dB for left ear and he has been advised to have hearing aid. Considering the medical report, the official has been posted to SME section of the Administrative Office w.e.f 14.03.2022, where there is no customer interaction required.

7. Further, the medical reports submitted by the official in his representation has been referred to Bank's Medical Officer for verification and report. The Medical report dated 11.02.2022 of Bank's Medical Officer certify that, Shri Tushar Singhal was having moderate to severe sensori-neutral hearing loss from as early as 11.07.2015. Subsequent annual reports mention further deterioration in the hearing loss. Hence, Bank's medical Officer had certified that the employee was NOT MEDICALLY FIT under the general category at the time of joining Bank.

8. He alleged that official intentionally concealed the material information regarding his hearing impairment at the time of making application to the Bank and submitted false declaration regarding his medical fitness which tantamount to suppression of material fact regarding his eligibility .The aforesaid act of the official render him ineligible for the post, and he is also liable to be proceeded under the Service Rules.

9. It is relevant to state that the official has not acquired this disability during his service in the Bank and he has intentionally concealed his disability to join Bank as Probationary Officer. Had he declared his disability, his application would have been rejected as he was ineligible for the post for PO.

10. Complainant vide rejoinder dated **27.08.2022** reiterated his request and submitted that the issue is not even regarding changing of his category main issue is harassment by Managers due to his hearing disability.



11. After considering the respondent's reply dated **07.07.2022** and the complainant's rejoinder dated **27.08.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **27.09.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **27.09.2022**. The following were present in the hearing:

- Shri Tushar Singhal - Complainant
- Shri Vijay Kumar, AGM (HR) on behalf of respondent

Observation/Recommendations:

12. Complainant submits that he is employed as Assistant Manager in the Respondent establishment. He submits that he was selected on the post of Probationary Officer under Unreserved Category. At the time of selection his disability was less than 40%. Later his disability increased to more than 40%. Thereafter the Complainant requested to change his category from Unreserved to PwD. After repeated request he was sent for medical examination, whereby the medical authorities certified that his disability is of more than 40%. However, the Respondent is not changing his category to PwD.

13. Respondent submits that it was also found that as on the date of appointment, the Complainant did not reveal the fact of his disability, had he revealed his fact of disability, he would have become ineligible.

14. Both the Complainant as well as the Respondent agreed that the Complainant was appointed against the unreserved post. At the time of the appointment the percentage of his disability was less than 40%, however the percentage increased to more than 40% after the Complainant was appointed. Respondent submits that the category was not changed because the Complainant did not inform the Respondent about his disability at the time of appointment. Under the light of these facts, this Court concludes that the submissions of the Respondent are bereft of logic and reason. At the time of appointment Complainant's disability percentage was less than 40% hence, he did not fall into the definition of 'Person with Benchmark Disability', as defined in Section 2(r) of Rights of Persons with Disabilities Act, 2016. Hence, this Court does not find merit in the Respondent's submission that the Complainant failed to inform the Respondent about his disability.




15. Case of the Complainant is covered by Section 20(4) of Rights of Persons with Disabilities Act, 2016 which provides that employer cannot dispense with or reduce the rank of the employee who has acquired disability during his service. The objective of the O.M. is to provide protection to the employee from dispensation from service in case he is not able to perform the job because of his disability. Further when the provision is read with Section 20(2) of Rights of Persons with Disabilities Act, 2016, it becomes necessary for the employer to provide conducive environment to employees with disabilities.

16. If the Complainant has produced genuine Disability Certificate then the Respondent is bound to change the category of the Complainant to 'Person with Benchmark Disability' and give all the benefits which are given to divyang employees in accordance with law. Not doing so amounts to harassment of the divyang employee and denial of benefits for which divyang employees are entitled.

17. Another submission of the Respondent is that if the Complainant had informed the disability status at the time of appointment, he would not have been appointed. This submission is also bereft of any reason. At the time of appointment, the Complainant underwent medical examination which he had passed in order to get selected. If the Complainant was medically fit to perform the job he was appointed on, then the Respondent's submission at later stage holds no merit.

18. This Court recommends that the Respondent shall change the category of the Complainant to 'Person with Benchmark Disability'. Respondent shall file compliance report of this recommendation within 3 months of receiving the copy of this Recommendation Order. In case the compliance report shall not be filed, it shall be presumed that the Respondent is intentionally avoiding the implementation of this recommendation without any reason and the issue shall also be reported to the Parliament.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 02.11.2022



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13346/1021/2022

- Complainant: 1. Shri Rajesh Singh Jamaliya
Qtr. No. 36, Ground Floor, Jawahar Navodaya Vidyalaya
Sub District Narela, District North West, Delhi -110039
E-mail: <allindiapwbds@gmail.com>
2. Shri Yaduvendra Pandit, JSA
3. Shri Lal Kumar Longwani, JSA

Respondent: The Commissioner
Navodaya Vidyalaya Samiti (NVS)
B -- 15, Institutional Area, Sector 62
Noida, Uttar Pradesh - 201307
Tel: 0120-2405969

Complainant: 40% locomotor

GIST of the Complaint:

The complainants Shri Rajesh Singh Jamaliya, a person with 40% locomotor disability, Shri Yaduvendra Pandit, a person with 75% locomotor disability & Shri Lal Kumar Longwani, a person with 74% locomotor disability vide complaint dated 29.06.2022 has submitted that Navodaya Vidyalaya Samiti had published a notification dated 27.01.2022 notified tentative vacancies for promotion to the post of SSA (UDC) through Limited Departmental Competitive Examination (LDCE). The complainants alleged that no details of candidates belonging to persons with disabilities was asked by NVS in application. They also stated that provision of reservation was made by NVS for SC & ST candidates. They had requested to direct the respondent to provide reservation as per prescribed norms of Govt. of India to the persons with benchmark disabilities in the current LDCE conducted on 11.05.2022 by Navodaya Vidyalaya Samiti.

2. The matter was taken up with the Respondent vide letter dated 14.07.2022 under Section 75 of the RPwD Act, 2016

3. In response, Assistant Commissioner (E-1), Navodaya Vidyalaya Samiti vide letter dated **03.08.2022** has inter-alia submitted that Notifications for promotion through LDCE to various Non-Teaching posts was issued on 27.01.2022 and later, DOPT vide its latest OM dated 17.05.2022 had recently issued instructions for grant of reservation in promotion to Persons with Benchmark Disabilities (PwBDs) in the posts and services of Central Government. The LDCE (CBT) exam was already over on 11.05.2022 before present instructions dated 17.05.2022 were issued by DOPT, which was forwarded by MoE to NVS, vide letter dated 30.05.2022. Presently, the result of CBT is under preparation by recruitment agency and is expected to be ready soon. Hence, the relief sought by the complainants to include reservation for PwBDs may not be tenable at this stage. He further submitted that NVS by taking into account the instructions of DOPT OM dated 17.05.2022 has included the reservation of PwBDs as applicable, in promotion through LDE/LDCE for various teaching posts, which was issued on 29.06.2022.

4. A copy of the above reply was sent to the complainant on **17.08.2022** for submission of his comments but till date no response has been received.

5. After considering the respondent's reply dated **03.08.2022** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **27.09.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **27.09.2022**. The following were present in the hearing:

- Shri Rajesh Singh Jamaliya & Ors. - Complainant
- Shri Vikram Joshi, Dy. Commissioner (Pers.) along with Shri Kishan Gaur, Asst. Commissioner on behalf of respondent

Observation/Recommendations:

6. Complainant submits that the Respondent issued vacancies for promotion to the post of Senior Secretariat Assistant in Headquarter cadre and JNV cadre, to be filled by Limited Departmental Competitive Examination. No reservation in promotion was extended. Complainant submits that the examination was conducted on 11.05.2022 and result has not been declared yet. Complainant submits that guidelines on the issue of reservation in



promotion were issued on 17.05.2022. Since the result of the examination has not been declared yet hence, the Respondent may decide to implement the same. Complainant further submits that the posts of Headquarter cadre and JNV cadre are same but examination syllabus and criterion were different.

7. Respondent submits that reservation in promotion was not extended because the vacancies were calculated and advertisement was issued before the date of latest guidelines on the point, i.e. 17.05.2022.

8. This is undisputed fact that the impugned notification was issued before the date on which DoPT issued notification relating to reservation in promotion, i.e. 17.05.2022. Hence, this Court is not inclined to conclude that the Respondent must implement the latest DoPT O.M., dated 17.05.2022, relating reservation in promotion. However, legal position which existed before 17.05.2022 must be considered while deciding the present Complaint.

9. On the issue of reservation in promotion, it is indispensable to note that RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that ones the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision.

10. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities, vis-a-vis 1995 Act. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way



...4....

reflects that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).

11. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of hon'ble Supreme Court and High Court.

12. This court receives similar complaints regularly. Recommendation-Orders have been passed by this court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. Copy of the Orders are attached herewith.

13. In view of the clear directions of the hon'ble Supreme Court and as fully detailed in the enclosed Orders, this court recommends that the Respondent shall pursue the Orders attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 and judgments of hon'ble Supreme Court delineated in the Orders attached.

Encl: As above


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 02.11.2022



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: 13380/1022/2022

Dated: 03.11.2022

Dispatch No

Complainant:

Shri Shrikanta Mishra
Union Bank of India
Email: shrikanta.mishra38@gmail.com
Mobile No: 09090006263

- R35379

Vs

Respondent:

The Chairman/Managing Director
Union Bank of India
Human Resource department, Central Office,
239, Union Bank Bhavan, Vidhan Bhavan Marg,
Nariman Point Mumbai-400021
E-mail: gm.hrm@unionbankofindia.com

- R35378

Sub: Complaint dated 12.07.2022 of Shri Shrikanta Mishra, a person with 40% Visual Impairment, requesting for transferring him to his native place-regarding

Madam/Sir,

Please refer to the above-mentioned complaint received from Shri Shrikanta Mishra requesting for his transfer to his native place.

2. The Dy. General Manager-HR, Union Bank of India, vide letter dated 23.08.2022 has submitted that the transfer order of the complainant to Regional Office Rayagada was erroneously issued since the disability of complainant was not updated in the system. Hence, transfer order of the complainant to Regional Office Rayagada dated 13.06.2022 has been cancelled by the competent authority vide letter no. FGMO: BBSR:492/2022 dated 20.07.2022.

3. The copy of the Respondent's reply was sent to the complainant vide this court's letter dated 29.08.2022 for filing the rejoinder. The complainant has not filed the rejoinder in the matter.

4. In view of the above, as the complainant's complaint has been redressed, no further intervention of this Court is felt appropriate in the matter and the complaint is disposed off.

(Upma Srivastava)

Chief Commissioner for Persons with Disabilities



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: 13381/1022/2022

Dated: 04.11.2022.

Dispatch No:

Complainant:

Shri Rajesh Garg
Manager-IT
Central Bank of India
Regional Office, Kota, Rajasthan
Email: rajesh89564@gmail.com

235268

Versus

Respondent:

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

235269

Subject: Complaint of Shri Rajesh Garg, Manager IT, working in the Central Bank of India, requesting for cancellation of his transfer order from Kota to Mumbai as he is care giver to his daughter a person with 100% hearing impairment-regarding

Madam/Sir,

Please refer to the above-mentioned complaint, this Court's Notice dated 12.08.2022 and the reply dated 26.08.2022 filed by the DGM (HRD), Central Bank of India.

2. In this regard the complainant with his email dated 13.10.2022 has attached a copy of letter dated 16.09.2022 wherein he has requested for withdrawing the said case.
3. In view of the above, no further intervention is required in the matter. The case is closed as withdrawn.
4. This issues with the approval of the Competent Authority.

Yours faithfully,

(Rajeev Malhotra)
Desk Officer



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भारत सरकार / Government of India

Case No: 13298/1022/2022

Complainant :

Smt. Sunita Yadav
Sr. Acc/Vapi, Western Railway
Email: sy201680@gmail.com
Mobile No: 07990171186

- R35582

Vs

Respondent:

The Divisional Railway Manager
Mumbai Central Division
Western Railway Head Quarters Office
Churchgate, Mumbai-400020
Email: gm@wr.railnet.gov.in; drm@bct.railnet.gov.in

- R35383

GIST OF COMPLAINT

The complainant, a person with 40% Locomotor Disability, has filed a complaint dated 08.06.2022 regarding transferring her back at Valsad Station, Western Railway Mumbai from Vapi Station.

2. The complainant has submitted that she was posted as SR AGC/Valsad Western Railway and now recently transferred to Sr. ACC/Vapi and due to her adverse condition, it was difficult for her to go daily by train. The periodical transfer always aggravates her genuine problem to struggle with pain. The complainant had requested with her letter before her transfer letter of Vapi station was dispatched, then too no one responded and on 17th February 2022 she was handed over the order letter for Vapi station. Since now she has joined Vapi Station and also performed her duty and slipped on staircase at Vapi platform. She had injury on her knee and as her calipers were unstable on the spot and due to this reason she had to run for her doctor at Valsad Railways. She had to report sick for 27.05.2022. She has restrictions for commuting from one Station to another, that too more than 30 km away from her home town and daily use of staircase. The complainant has requested for posting nearby her home station where she was doing her sincere work at Valsad Station. She also met DRM on 17.05.2022 and cleared all her discussion with the DRM, but still the position remained same. She also again visited the DRM on 24.05.2022 but no one met and none others gave her any assurance to help her. She again sent a letter dated 08.05.2022 to the Sr. DCM through F.S. followed by her request application dated 27.05.2022 sent by speed post to the DRM but no reply was received. The complainant further submitted that she met with DCM (FM) and informed her about her problem, but he didn't try to understand her genuine problem and scolded her.

3. The matter was taken up with the Respondent vide letter dated 08.07.2022 under Section 75 of the RPwD Act, 2016.

4. In response, DRM/Estt/MMCT, Western Railway, vide letter dated 05.08.2022, has inter alia submitted that it is, however, left to the competent authority to decide whether such an exemption is required to be given to an employee with disability and is the prerogative of the competent authority to decide the transfer of the employee. In the instant case the complainant was issued transfer orders under periodical transfer policy from Valsad to Vapi in terms of Railway Board's letters dated 03.04.2012 and 28.11.2018. The employee is currently working as CBC/VAPI, on being promoted. She has now requested for transfer to Valsad & Atul vide her application dated 01.07.2022. Her application was put up to the competent authority, who has advised that her request has been noted and her case will be considered as per extant rule.

5. The complainant has filed her rejoinder dated 05.09.2022, submitted that she is not satisfied with the comments submitted by the respondent. The complainant has once again requested to this Court to give directive to the respondent for send her back to her home town station Valsad as early as possible. She also requested that the Liaison Officer for PwDs of Western Railway may also be directed to ensure that the instructions issued by Railway Board and DoP&T for Divyangjan are fully followed in all the Departments of Western Railway.

6. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **06.10.2022**. The following were present:

- i) Smt. Sunita Yadav along with Shri Omprakash: **Complainant**
- ii) Shri Saurabh, DCM, Mumbai Division, Western Railway: **Respondent**

Observations /Recommendations:

7. Complainant submits that she was posted at Valsad Station, Western Railway Mumbai. Later, she was transferred to Vapi Station. Complainant submits that because of her disability she faces difficulty in reaching her new place of posting because she has to change platforms and climb number of stairs. She further, submits that her new place of posting is situated at a distance of 30 K.Ms. from her home town.

8. Complainant has mentioned letter issued by Railway Headquarter dated 30.07.2014 and issued to DRM Western Railways, whereby the Railway Headquarter enclosed DoPT O.M. relating to exemption of divyang employees from rotational transfer and asked DRM office to take necessary action.

9. Respondent submits that the complainant was transferred from Valsad to Vapi as per periodical transfer. On 09.06.2022 she filed an application to transfer her back to Valsad. Further, on the issue of applicability of railway head quarter letter dated 30.07.2014, respondent submits that the final authority to decide whether exemption from transfer should be given rests with the competent authority. Complainant's transfer was necessary because of promotion. Her request to transfer her back to Valsad has been put up before the competent authority and it will be considered as per extant rule.

10. During online hearing Respondent further submitted that the Complainant was posted at Vapi station because it is a disabled friendly station and it is very well connected by train. Furthermore, the Complainant cannot be assigned duties during night shift therefore, taking into consideration timing preferences of the Complainant, Vapi station was the most suitable for her. Respondent also assured this Court that in order to resolve the mobility issues faced by the Complainant due to her disability, Respondent is ready to allot staff quarters to the Complainant near Vapi station, on priority basis, so that she need not face problems relating to travelling between her place of residence and place of work at Vapi station.

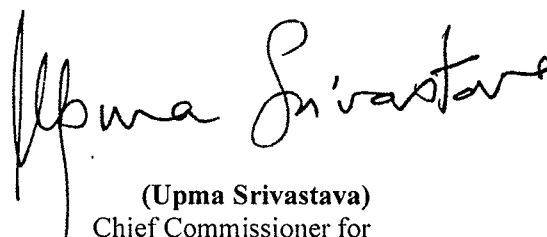


11. This Court is satisfied with the fact that the Respondent is ready to allot the Complainant staff quarters in order to resolve her transportation problems. However, the case of the Complainant can also be considered as per DoPT O.M. O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. 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. Movement between two locations is not the only challenge faced by Divyangjan. In order to live life with dignity, Divyangjan also need necessary infrastructure and support which is sometimes available at native place only. The same is the objective of the DoPT O.M., mentioned in preceding paragraph.

12. Therefore, this Court recommends that the Complainant shall be given option to either remain posted at Vapi station, subject to the condition that she will be allotted staff quarters nearest to her place of work. Moreover this Court recommends that if the Complainant does not agree to remain posted at Vapi station, then the Respondent shall transfer her back to Valsad in accordance with rules and guidelines delineated above.

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

14. This case is disposed off.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 10.11.2022



मत्यमव 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: 13315/1023/2022

Complainant: Dr. Shihabudeen Sainudeen
Sr. Statistical Officer
Email: <shihabudheen.s@gov.in>

235387

Respondent: The Secretary
Ministry of Statistics & Programme Implementation
Sardar Patel Bhawan, Sansad Marg, New Delhi
Email: <fodhq.courtcase@gmail.com>

235386

Complainant: 80% locomotor disability

GIST of the Complaint:

Shri Shihabudeen S., Senior Statistical Officer vide complaint dated **08.06.2022** has submitted that while performing official duty he met with an accident on 07.12.2017. The Medical Board of General Hospital, Pattanamthitta declared him a person with disability on 07.05.2019. He has disability due to optic atrophy and hearing loss.

2. He further submitted that post on which he was presently posted is identified for employee with disability but his office is not allocating him any work. They even once cancelled his work by office order after submitting the tour programme for the same work thus forcing him to sit in office. The Office is not giving him proper seating arrangement on certain days and forced him to sit outside the office. Repeatedly harassing him by not allocating any work and denial of a chair forcing him to leave the job. He has requested for allocating him the work for which he was posted in the office and provide proper seating arrangement may provide as per the direction of DoP&T for Group 'B' and not force him to sit outside the office in future

3. The matter was taken up with the Respondent vide letter dated **28.06.2022** under Section 75 of the RPwD Act, 2016 followed by reminders dated 08.08.2022.

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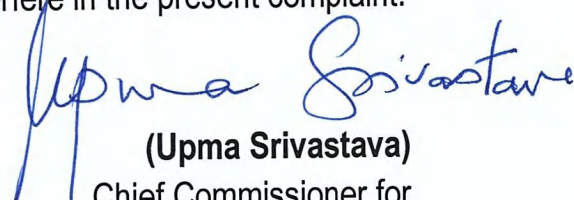
4. The Respondent vide letter dated 23.08.2022 has submitted that the matter inter-alia pertains to complaint dated 04.12.2019. A similar notice was earlier received on 14.02.2020 in Case No. 11739/1024/2020 with regard to complaint dated 04.12.2019. The said matter (Case No. 11739/1024/2020) of Shri Shihabudeen Sainudeen was heard by CCPD. The hearing was attended by DDG, Regional Office (Thiruvananthapuram) and the complainant was absent. The complaint was disposed off by order dated 15.12.2020. It was noted by this Court that the complainant was transferred to NSO (FoD), Tirunelveli, Tamil Nadu.

5. He further submitted that the complainant was holding the post of Jr. Statistical Officer at NSO (FOD), RO, Trivandrum as on the date of filing the complaint (04.12.2019). He was promoted as Sr. Statistical Officer and posted at NSO (FOD), Tirunelveli vide order dated 21.07.2020. Accordingly, the complainant was assigned duties and responsibilities attached to the post of SSO along with adequate seating arrangement without any discrimination within available resources. The Respondent also submitted that the complaint was filed on 08.06.2022 but the date of complaint is 04.12.2019 and the purpose of retaining the complaint with him for two years and filing on 08.06.2022 is not clear.

6. Complainant vide rejoinder dated 05.09.2022 has submitted that he had filed a complaint with CCPD Office dated 04.12.2019 while working as Jr. Statistical Officer in National Statistical Office, Regional Office, Thiruvananthapuram and he didn't receive any communication for hearing. He alleged that he is being continually harassed by the Controlling Officer of NSO Thiruvananthapuram for quitting the job and prevent him in getting his due promotion. He further submitted that to prevent him from another promotion, NSO, Thiruvananthapuram initiated a Charge Sheet for his earlier affairs in NSO, Thiruvananthapuram. He has requested for quashing the Disciplinary Proceedings and to comply with the DoP&T's OM dated 17.05.2022.

Observation/Recommendations:

7. Since the issue has already been decided hence it is against principles of Law to consider this complaint again. This Court is not inclined to interfere in the present complaint.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 10.11.2022



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

भारत सरकार / Government of India

Case No: 13347/1024/2022

Complainant: Shri C. Rajendra
62/2, Dashongdi Street
Dharampur, Valsad, Gujarat
E-mail: <rajendrachirag2112@gmail.com>

Respondent: The Chairman
Airport Authority of India
Rajiv Gandhi Bhawan, New Delhi - 110003
E-mail: <chairman@aai.aero><edhr@aai.aero>

The Under Secretary
Ministry of Civil Aviation, Rajiv Gandhi Bhawan, Block B
Safdarjung Airport Area, New Delhi
E-mail: <shankra.bharti@nic.in>

Complainant: 55% locomotor

GIST of the Complaint:

The complainant Shri C. Rajendra, a person with 55% locomotor disability vide complaint dated 02.07.2022 has submitted that he is an advocate by profession and has filed case on behalf of his 57 divyang clients who all are working in Airports Authority of India. He further submitted that he had filed grievance through CPGRAMS portal on 07.04.2022 regarding the implementation of double transport allowance to PwBD employees based on DPE memorandum dated 21.02.2022 and violation of DoPT guidelines and forcing divyang employees to work during the COVID pandemic period..

2. He alleged that there is no proper supervision while implementing the benefit of work from home facility to divyang employees and there are many divyang employees who worked during the pandemic period. He further submitted that the management has not taken any action even after reminders on the issue of double transport allowance to divyang employees. Simply the management use to reply that the proposal is considered and is under process.

3. The matter was taken up with the Respondent vide letter dated **14.07.2022** under Section 75 of the RPwD Act, 2016

4. In response, Jt. General Manager (HR), Airport Authority of India vide letter dated **08.08.2022** has inter-alia submitted that the matter regarding double transport allowance has been sent to concerned Ministry ie., Ministry of Civil Aviation vide letter dated 06.07.2022 for according approval of the following:

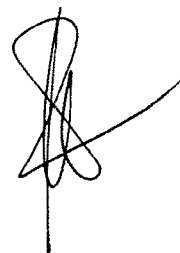
"The PwD employees of AAI to be paid double the conveyance/transport allowance based on the percentage selected in the perks under cafeteria approach (L%-4%1, ONLY IF the said allowance has been selected by the concerned PWD employee as Part of 35% perks under Cafeteria Approach for a given Financial Year. As per DPE guidelines, the amount of additional transport allowance to be kept outside the ceiling of 35% perks." The matter is presently under consideration of Ministry of Civil Aviation.

He further submitted that as far as exemption to PwD employees to attend office during COVID-19 Pandemic period is concerned, the exemption was granted to PwD employees as per Govt' Directions. The same was issued in Airports Authority of India vide various circulars.

5. Complainant vide rejoinder dated 04.09.2022 has submitted that double transport allowance to the disabled employees is approved from the implementation of 7th pay commission, i.e. from 2016 onwards. Likewise, for the CPSE employees, 3rd pay revision was implemented from 1-1-2017 onwards, if the recommendation from the O/o CCPD to all the CPSE to implement the double transport allowance benefit with arrears, it will be beneficial for all the disabled employees equally.

6. After considering the respondent's reply dated **08.08.2022** & complainant's rejoinder dated **04.09.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for hearing on **27.09.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **27.09.2022**. The following were present in the hearing:



...3....

- Shri C. Rajendra – complainant
- Sri Kapil, Joint GM (HR), Sri H.S. Rawat, Joint GM, Sri Vivek Gupta, Sr. Manager (Law) on behalf of respondent No. 01 & Sri Narendra Singh Deputy Secretary on behalf of respondent No. 02

Observation/Recommendations:

7. Complainant is filed on behalf of divyang employees of the Respondent establishment. Complainant submits that the Respondent is not paying transport allowance at double the normal rates to its divyang employees. Furthermore, during Covid pandemic period, divyang employees were forced to attend the office. No specific instance has been quoted though.

8. On the issue of transport allowance at double the normal rates, Respondent submits that earlier Rs. 2400/- per month was paid to divyang employees. Thereafter, Department of Expenditure issued another O.M. dated 21.02.2022, whereby it is directed that transport allowance at double the normal rates is to be kept outside maximum 50% ceiling. On the basis of latest DPE OM proposal has been prepared and has been sent to M/o Civil Aviation for approval. On the issue of attendance during Covid lockdown, Respondent submits that related guidelines were followed by the Respondent.

9. During online hearing Respondent No. 2 informed this court that it is in consultation with IFD on the issue of double transportation allowance and further agreed to resolve this issue in positive way as soon as possible. Since the respondent has already taken steps to resolve the issue therefore, intervention of this court is not required.

10. 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

11. The Case is disposed off.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 10.11.2022