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# न्यायालय मुख्ये 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### Case No. 13526/1011/2022

#### In the matter of —

Shri P. D. Harinarayanan, R/o C-88, East II Lane, ITI Township, Dooravaninagar, Bangaluru 560016, Mobile: 8105453255; 147629372,

Email: harisdraj@bel.co.in

... Complainant

#### **Versus**

The Chairman & Managing Director, Bharat Electronics Limited (BEL), Outer Ring Road, Nagavara, Bangalore 560045 (Karnataka),

Email: cmd@bel.co.in ... Respondent

#### 1. **Gist of Complaint:**

- Shri P.D. Harinarayanan, a person with 40% Specific Learning Disability filed a complaint dated 27.07.2021 (received in this Office in September, 2022 through SCPD, Karnataka) regarding denial of appointment to the post of Engineering Assistant Trainee (EAT) by Bharat Electronic Ltd. even after having sufficient grounds to consider his candidature under the relevant provisions of the guidelines exists and also holding a valid medical certificate from NIMHANS.
- 1.2 The Complainant in his complaint dated 27.07.2021 submitted before the SCPD, Karnataka, that while applying for the post he had faced some practical technical difficulties as the online portal is designed to consider applicants having

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the desired percentage of qualification and there was no specific code or provision for enrolling General (SLD) category candidates. However, he approached the BEL authorities and as directed by them over phone, submitted his application under multiple disabilities column.

1.3 He appeared for the Written Test on 28.03.2021 at BEL School, Bengaluru. There was display of the Roll Numbers of all the candidates indicating the Room Number for attending the Exam. Accordingly, as indicated, he occupied his seat in the Room where other candidates were also available. His roll number 011089 was clearly indicated in the display board as well as in the Bench allotted for the purpose. The Complainant alleged that the invigilator was in a dilemma to consider him for compensatory time or not, he had explained the position and wasted his allotted time to clarify their doubts. After convincing the authorities he was not allotted extra time in Part-1 exam, but he was allotted compensatory time for Part-2 only. When the result was announced he had been declared failed in Part-1 and passed in Part-2 exam.

## 2. Submissions made by the Respondent:

- 2.1 The Respondent filed their reply vide email dated 26.11.2022 and submitted that in response to the advertisement for EAT on 20.01.2021, 4998 applications were received. After scrutiny of the applications, admission cards were issued to 4632 candidates out of which 3049 candidates appeared for written exam conducted on 28.03.2021. Consequently, 50 candidates were recruited to the post, out of which one was PwD candidate.
- 2.2 The Complainant had sought clarification with respect to claiming of multiple disabilities in the application for the post of EAT for which he was eligible for claiming multiple disabilities only if he suffered from multiple disabilities. The cut off marks and the eligibility for the post of EAT had been clearly specified in the advertisement. The contention of the Complainant that there was no specific code/provision for enrolling General (SLD) category candidates is false and incorrect.
- 2.3 The PwD Certificate submitted by the Complainant was not in prescribed format, hence his candidature was not considered initially. However, after Complainant's plea, he was provisionally permitted to take the written exam subject to submission of PwD Certificate in prescribed format later. Admission card was sent to complainant for sitting in written exam.

2.4 BEL had sent up a display with roll numbers of all candidates and indicating the room number for attending the exam with a separate room for PwD candidates in which the complainant's roll number existed. The complainant instead of sitting in the room allotted to him as per his roll number, he sat in some other room (Class room No.18) and as a result of the change in classroom, the attendance sheet did not contain his name as the said room was not allotted to PwD candidate. However, in his best interest and to avoid wastage of time, he was allowed to manually enter his roll number and name on the attendance sheet.

2.5 BEL further submitted that the Complainant's failing the exam is a matter of record and also the Complainant's claim of being a PwD candidate is also a matter of record; and prayed that this Court may call for relevant records.

### 3. Submissions made in Rejoinder:

The Complainant in his rejoinder dated 10.12.2022 reiterated his complaint stating that his complaint holds good and binding.

## 4. Hearing (1):

- 4.1 An online hearing was conducted by the Chief Commissioner for persons with disabilities on **25.04.2023**. The following persons were present during the hearing:-
  - (1) No one appeared for Complainant
  - (2) Ms. Vidya Gowda, Adv. for Respondent
- 4.2 The Court granted two weeks' time and parties were advised to attend the Online hearing accordingly in person or through a representative (not below the level of Group 'A'/Class-I Officer well versed with the case in case of respondent) or a counsel at the time and date of hearing to present their case. Next date was fixed for 16.05.2023.

#### 5. **Hearing (2):**

- 5.1 Second online hearing was conducted on **16.05.2023**, the following persons were present:
  - (1) Shri P.D. Harinarayanan, the Complainant

## (2) Adv. G.B. Sharad Gowda, for the respondent

5.2 The Respondent submitted that the result had been declared and 1 PwBD candidate already appointed. Respondent also furnished the document relied upon. However, after perusal of the documents, the Court took notice of the fact that the reply was not filed by the Respondent on affidavit. This Court granted time to file submissions and supporting documents on affidavit within 1 week from the date of the Order issued vide RoP dated 30.05.2023.

## 6. Compliance filed by the Respondent (Heard on 16.05.2023):

The Senior Deputy General Manager (HR/Employee Relations, Welfare & Legal), Bharat Electronics Ltd. submitted an affidavit dated 30.06.2023 and interalia reiterated their reply already filed.

## 7. Rejoinder filed by the Complainant:

- 7.1 The Complainant in his Rejoinder dated 05.07.2023 submitted that Respondent cited an offer letter issued to one Mr. Sharanu, PwBD candidate pertaining to the recruitment process done in 2022, subsequent to the advertisement which was released in 2021 and completed the process. He too had applied against the said advertisement and received a call letter for attending the test. But he could not utilize that opportunity, as a case was registered with the State Commissioner for Disabilities, Karnataka State regarding the denial of his employment pertaining to the advertisement of 2021. He reiterated that the Respondent Company committed a mistake by not reserving the post in the captioned advertisement released during 2021.
- 7.2 The Complainant prayed not to accept such a statement as his claim is valid and binding. The Respondent Company is bound to keep the posting pending till the outcome of the decision on the case.

## 8. **Hearing (3):**

- 8.1 Third online hearing through video conferencing was conducted on **20.10.2023.** The following parties/representatives were present during the hearing:
  - (1) Shri P.D. Harinarayanan, the Complainant
  - (2) Advocate G.B. Sharad Gowda for the Respondent

- 8.2 **Record of Proceedings:** During the hearing the Court observed that the Counsel engaged for the matter was not well versed with the case and that no senior officer appeared from the office of the Respondent despite the fact it was duly communicated at Para 4 of the Notice of Hearing dated 16.10.2023 that the Respondent be represented by a Group A/Class-1 Officer who is well versed with the case or by a counsel at the time and date of hearing to present the case. The Court viewed this as deeply insensitivity on the part of the management and noted with due concerns.
- 8.3 The Court directed the Respondent to revisit their reply and submit any supplementary reply on affidavit as deemed appropriate and to ensure that a senior officer not below the rank of Director (HR) appears in person on the next date of hearing, if any.

### 9. Compliance filed by the Respondent (Heard on 20.10.2023):

9.1 The Senior Deputy General Manager (HR/Employee Relations, Welfare & Legal), BEL filed its reply on affidavit dated 29.11.2023 and submitted that the advertisement dated 20.01.2021 was released for recruitment on 25 posts of EAT out of which 01 post was reserved for PwBD in terms of DoPT OM dated 15.01.2018. The Complainant had applied for the said post. On the date of examination, a notice board was placed in front of examination center displaying the exam halls assigned to each candidate wherein the Complainant's Roll Number was allotted in Room No.6. The Room No.6 was the first room on the ground floor of the building specifically allotted to PwBD candidates. 15 minutes after the examination had begun, the Complainant instead of sitting in Room No.6 came to Room No.18 which was on the first floor. The answer sheet was given to the Complainant but at the time of taking attendance, the examiner did not find the name of the Complainant in the attendance sheet as he was sitting in the wrong room. The Complainant had not with him his disability certificate on the date of examination. The another examiner directed the Complainant to go to Room No.6. But since then a lot of examination time was elapsed, the examiner took a sympathetic approach being a PwBD candidate and permitted the Complainant to take the examination from Room No.18 allowing the Complainant to write his details in the attendance sheet. The Complainant was also allowed compensatory time both for Part-I and Part-II exams. The successful candidates were provisionally shortlisted for document verification and one Mr. Chandrashekar M.S., a PwBD candidate with 40% partially blind was appointed to the post of EAT vide appointment letter dated 02.07.2021.

9.2 The Respondent further submitted that in its affidavit dated 30.06.2023, it was inadvertently stated that Shri Sharanu was appointed to the post of EAT vide appointment letter dated 04.08.2022. In fact, Shri Saranu was appointed against a subsequent advertisement in 2022 for which the Complainant had also submitted application and not attended the written test. The Respondent apologized that the averments made were not intentional.

### 10. Hearing (4):

10.1 Another hearing was conducted in Hybrid mode on **15 March 2024.** The following parties/representatives were present during the hearing:

SI. No.	Name of the parties/Representatives	For Complainant/Respondent	Mode of attendance
1.	Shri P.D. Harinarayanan	Complainant	Online
2.	Advocate G.B. Sharad Gowda	Respondent	Online
3.	Shri Vikraman N, Director HR, BEL	Respondent	Online

- 10.1 During the hearing, the learned Counsel appearing for the Respondent read out the reply filed by the Respondent and reiterated that on the date of examination, a notice board was placed in front of examination center displaying the exam halls assigned to each candidate wherein the Complainant's Roll Number was allotted in Room No.6. The Room No.6 was the first room on the ground floor of the building specifically allotted to PwBD candidates. 15 minutes after the examination had begun, the Complainant instead of sitting in Room No.6 came to Room No.18 which was on the first floor. The answer sheet was given to the Complainant but at the time of taking attendance, the examiner did not find the name of the Complainant in the attendance sheet as he was sitting in the wrong room. But since then a lot of examination time was elapsed and it was too late to change the room, the examiner took a sympathetic approach being a PwBD candidate, although he was not carrying with him his disability certificate, and yet permitted the Complainant to take the examination from Room No.18. Complainant signed in the attendance sheet in his own handwriting. He was also allowed compensatory time in both the parts of the exam.
- 10.2 Further, the Complainant could secure 11 marks out of 50 marks in Part-1 and 41.5 marks out of 100 marks in Part-1 i.e. only 52.5 marks out of 150 marks, whereas the PwBD candidate who has been selected had secured 19.50 marks in Part-1 and 60.25 marks in Part-2, total 79.75 out of 150 marks.

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10.3 The Complainant affirmed the submissions made by the representative of the Respondent that he had definitely seen the seat allotment on the notice board placed in front of the examination center. But he also said that since he was general category candidate, he entered Room No.18 instead of Room No.6.

#### 11. Observations & Recommendations:

- 11.1 After hearing the parties and perusing the documents on record, this court comes to a conclusion that the Complainant has not been able to prima facie establish a case of deprivation of his rights or of any discrimination on the grounds of disabilities. It is evident that the Complainant could not score the qualifying marks. The written examination was conducted on 28 March 2021 in two parts., namely Part-1 for 50 Marks & Part-2 for 100 marks, i.e. for a total of 150 marks. The duration of Part-1 exam was of 01 hours wherein 20 minutes' Compensatory time was provided, and the duration of Part-2 exam was of 02 hours wherein 40 minutes' Compensatory time was provided. Even if the marks obtained by him in Part-1 are extrapolated in accordance with providing 20 minutes' Compensatory time, the Complainant would get only 3.6 marks more i.e. the total marks in Part-1 exam would be 11 + 3.6 = 14.6 marks. Therefore, the total marks would be 56.1 marks out of 150 marks, which would still be less than the candidate selected under PwBD category.
- 11.2 The documents have also established without doubt that the Complainant sat in a room different than the one where he was marked to sit. This mistake cannot be attributed to the Respondent.
- 11.3 No further intervention is warranted in this case and the case is accordingly disposed of.

Signed by Rajesh Aggarwal Date: 12-04-2024 18:20:36

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities

**27/23/45%/H20REXID/RA-SOTPO**H 1/2959/2024



# 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### In the matter of —

#### Complainants:

SI. No.	Case No.	Name and Disability	Date of Notice
140.			
1.	13716/1011/2023	Shri Harendra Singh, 75% Locomotor (BL)	02.02.2023
2.	13717/1011/2023	Shri Rajaselvam R., 60% Locomotor (OA)	02.02.2023
3.	13723/1011/2023	Ms Sandhya Singh, 50% Locomotor (RLL)	02.02.2023
4.	13727/1011/2023	Ms. Sangeeta, 80% Locomotor (BL)	06.02.2023
5.	13745/1011/2023	Shri Amit Yadav, 60% Mental Illness (MI)	15.02.2023
6.	13762/1011/2023	Shri Pradeep Kumar, 100% Visual Impaired (B)	21.02.2023
7.	13783/1011/2023	Shri Bhawani Shankar, 41% Hearing Impaired (HI)	28.02.2023

#### Versus

(1) The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110016
Email – commissioner-kvs@gov.in,
kvs.commissioner@gmail.com

... Respondent No.1

(2) The Secretary,
Department of School Education & Literacy,
Ministry of Education,
Room No. 124-C,
Shastri Bhawan,
New Delhi – 110001

... Respondent No.2

#### 1. Gist of Complaints:

Email: secy.sel@nic.in

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1.1 The afore-mentioned complainants filed their respective complaints against the Respondent pursuant to its advertisements No.15/2022, 16/2022 published for direct recruitment to various teaching and non-teaching posts in its establishments/schools whereas these posts are identified as suitable for Persons with Benchmark Disabilities (PwBDs] as per the Gazette Notification dated 04.01.2021 issued by the Department of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD, MSJE].

- 1.2 The grievances raised by the complainants against the Respondent No. 1 mainly pertained to -1) arbitrarily reducing the quantum of reservation from 4% as provided under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the Act"; and 2) not implementing the list of jobs suitable for various types of disabilities issued by the central government from time to time and ignoring certain posts or subcategories of disabilities from the said list in the recruitments in their establishment.
- 1 . 3 The complaints were taken up with the respondents under the mandate and power of this Court as per sections 75 and 77 of the Act by issue of individual notices in each complaint on the dates mentioned in the table at the details of the parties above. The Respondent No.1 filed various replies to the notices. It is mentioned here that no reply or response, whatsoever, to any notice of this Court was received from the Respondent No. 2 in the above cases. The common premise on which the Respondent No.1 based their reply to the notice can be summed up as under:
  - (a) As per the Notification No. 16-15/2010-DD-III dated 29.07.2013 of MSJ&E issuing the list of identified jobs in groups A, B and C, the KVS had constituted a Committee to settle pending court cases/grievances pertaining to reservation and identification of posts suitable for persons with disabilities.
  - (b) The Committee having taken note of KVS being an All India level organization and that its schools are also situated in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018.
  - (c) Therefore, the Committee recommended that KVS should seek exemption from providing this 1% reservation as per the options available under Para 3 of the OM dated 15.01.2018. The Committee observed that KVS should refer the matter to the DEPwD for exemption of 1% enhancement in reservation for persons with Benchmark Disabilities i.e. autism, intellectual disability, specific learning disability and mental illness.
  - (d) However, KVS had identified the post of Trained Graduate Teacher (Art Education) against which this 1% reservation can be granted to the persons with multiple disabilities in the direct recruitment, i.e. for a person who is Hard of Hearing (HH) and Orthopedically disabled (One Leg). This 1% reservation was already advertised by the KVS in Advertisement No.14. This 1% reservation was already advertised by the KVS in Advertisement No.14.
  - (e) Accordingly, a detailed letter was sent to the Director, DEPWD.
  - (f) The impugned notification for the KVS Direct Recruitment was made taking all the above into consideration.
- 1.4 The details of the grievances raised by each of these complainants and specific

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response of the Respondent No. 1 in respect of those have been shown in the table below. The details are as under:

SI	Name of the	Issues Raised	Date of Reply and the
No.	Complainant		Response of Respondent No. 1
	(Shri/Smt./Km.),		
	Details of disability,		
	Case No. and date of		
	Complaint		
1	Harendra Singh, 75%	The Respondent did not	20.03.2023 & 10.05.2023
	Locomotor Disability-	include the PwBD Both	
	Both Legs [LD-BL]	Legs (BL) in OH	
		category for recruitment	1. As per the minutes of the
	13716/1011/2023	to the posts of TGT and	
		PGT	disability in both legs in OH
	07.12.2022		category are not suitable for the
2	Sangeeta		post of Principal, Vice-Principal,
	80% Locomotor	reservation for PwBD-BL	` · ·
	Disability-Both Leg	to the post of Principal,	Chemistry/Biology/Bio-Tech/
	[LD-BL]	Vice-Principal, Primary	Computer Science) and TGT
			(Science), Primary Teacher,
	13727/1011/2023	•	Librarian, Finance Officer,
	05.40.0000	,	Assistant Section Officer, Hindi
	05.12.2022	Section Officer, Hindi	
			Assistant and Stenographer
		Secretarial Assistant and	Grade-II, on the grounds of the
		Stenographer Grade-II.	nature of duties involved in these
			posts.
			2. In the drop-down box under PH
			category, however, candidates
			could have submitted their
			category by putting OH in the
			drop-down box. The sub-
			category under OH was not asked
			from the candidates at that stage.
			If the complainants, were
			shortlisted for interview, they
			would not have been declared
			ineligible, and their selection
			would have been as per the
			marks obtained by them in the
			written test and the interview.
			The Respondent No.1 also
			submitted that the KVS has to
			review their reservation policy for
			divyangjan on all posts as per the
			latest instructions/notification
			issued by the Government of
			India and that the Committee
			consisting of officials from KVS
1			

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			would hold a meeting in this regard very soon.
3	60% Locomotor		
4	50% Locomotor	submitted that KVS vide advertisement number 16/2022 had advertised 6414 vacancies of Primary Teacher in KVS but only 3% seats have been reserved for	
5		PwBD Others category in its advertisement 15/2022 for recruitment to the various teaching and non-teaching posts. He further submitted that Specific Learning Disability, Mental Illness and Autism all come under PwBD Others category, and out of total 4% reservation for PwBDs, 1% seats are reserved for PwBD Others category. He requested this Court that KVS be directed to	India level organization its Kendriya Vidyalayas are in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018. Therefore, the Committee recommended that KVS should seek exemption from the DEPwD from providing this 1% reservation for PwBDs having autism, intellectual disability, specific learning disability and mental illness made in addition of the existing reservation in terms Para 3 of the above said OM. Accordingly, a detailed letter was sent to the Director, DEPWD.

**27/23/45-7-12/0REMO/POA-SOPPOH** 1/2959/2024

		advertisement and	
		reserve 1% seats for PwBD-Others category.	
		g ,	
6	100% Visual	non-compliance with the Rights of Persons with	
	Impairment (Blind)	Disabilities Act, 2016 [hereinafter "the Act"] by	As per the minutes of the Committee, visually impaired
	13762/1011/2023	the Respondent by denying reservation to	persons are suitable for the post of Administrative Officer,
	10.12.2022	PwBD-VI in its Recruitment Notice No.15/2022 for filling of various posts of Assistant Commissioner, Principal, PGT (Physics, Chemistry, Maths, Biology, Commerce and Computer Science),	PGT(English), PGT(Hindi), PGT(Geog.), PGT(Hindi), PGT(Eco.), TGT(English), TGT(Hindi), TGT(Sanskrit), TGT(Social Studies), Primary Teacher, PRT(Music), TGT(Work Experience), Assistant Section Officer, Hindi Translator, Senior Secretariat Assistant, Junior Secretariat Assistant and Stenographer Grade-II, but not for the post of Deputy Commissioner, Assistant Commissioner, PGT (Biology/ Commerce/ Bio.Tech/Computer Science), TGT(Maths/Science/Art Education/P&HE) and Librarian as per their nature of job.
7		denial of 4% reservation to PwBDs by KVS in its	
	Impairment (HI)	advertisement for	As per the recommendation of the Committee, persons with
	13783/1011/2023	various teaching and	hearing impairment are not suitable for the post of Post
	30.12.2022	Advt. No.15/2022 online applications were invited	Graduate Teacher (Computer Science) in view of the nature of duties required to be performed in the said post.

# 2. Rejoinders filed by the Complainants:

2.1 All the Complainants in respective rejoinders refuted the reply filed by the Respondent and reiterated their complaints.

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#### 3. **Hearing (1):**

3.1 As the grievances in all the above mentioned seven cases arose from the same process of recruitment in the Respondent establishment through Advertisements No.15/2022 and No.16/2022, it was decided to club them for the purpose of a joint hearing, Hence, the cases were heard online through video conferencing on **09.10.2023.** The following parties/representatives were present during the hearing:

#### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

#### **Respondent:**

- 1. Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- 2. Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- 3. Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 3 . 2 **Record of Proceedings:** During the online hearing, the complainants challenged the recruitment process on the grounds that
  - i. The Respondent allowed 3% reservation for persons with benchmark disability as against the statutory provisions of 4%
  - ii. The Respondent arbitrarily altered the identification of posts notified by the Central Government vide Ministry of Social Justice & Empowerment Notification dated 04.01.2021 and deleted certain categories of disabilities, particularly the Visual Impairment and locomotor disability in both legs, as being a suitable category for the posts of Asstt. Commissioner, Principal, Vice Principal, TGT and PGT.
  - iii. In another comparable establishment, namely the Navodaya Vidyalaya Samiti, the post of Principal is suitable for these categories of disabilities.
  - iv. The Respondent had several cases where persons with visual impairment were appointed in the teaching posts and to the post of Principal through promotions.
- 3.3 The Respondent No.1 did not deny the aforesaid facts, but submitted that on account of functional requirements in KVS, certain categories have not been found suitable for the teaching posts. The Court sought to know if they have got the posts exempted through the procedure laid down in the Notification dated 04.01.2021 and the DoPT OM dated 15.01.2018 on the subject. The Respondents confirmed that such a process was not undertaken and an internal decision has been taken in this regard by the KVS.
- 3.4 The Respondent No.1 further submitted that the result of the impugned

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examination was already finalized and that they will follow the 4% reservation and the Notification of 04.01.2021 from the next recruitment exercise.

- 3.5 This Court was shocked at the arbitrariness and casual approach of the Respondent No.1 in undertaking this recruitment process for a total of 6990 posts across various teaching and non-teaching posts. Ignorance of the law cannot be an excuse to deny the rightful claim of persons with disabilities. In this recruitment process, ignorance also cannot be pretended as the law position was made very clear to the Respondents vide Notices in the above cases issued by this Court in February 2023. The Respondent No.1 instead of making course correction appeared to have gone ahead with the faulty process of the recruitment. Such disregard of the law passed by the Parliament and instructions issued by the competent authorities cannot be permitted.
- 3.6 Accordingly, this Court in exercise of its powers under Section 77 of the RPwD Act, 2016, directed the Commissioner of KVS to appear in person on the next date of the hearing, i.e., Friday, 13.10.2023, through online mode. The Respondent was permitted to file written explanation/submission, if any, by 12.10.2023.

#### 4. Hearing (2):

4.1 The case was next heard online through video conferencing on **13.10.2023**. The following parties/representatives were present during the hearing:

#### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

### **Respondents:**

- 1. Smt. Ajeeta Longjam, Joint Commissioner (Admn.I), KVS
- 4 . 2 **Record of Proceedings:** Vide Record of Proceeding dated 10.10.2023, the Commissioner, Kendriya Vidyalaya Sangathan (KVS) was asked to be present in the next hearing on 13.10.2023. In the meanwhile, the respondent requested for the exemption from personal appearance of the Commissioner, KVS on the ground of his pre-occupation elsewhere. It was also submitted that the Joint Commissioner concerned whould appear for the Respondent. The request was accepted.
- 4.3 At the outset of the hearing on 13.10.2023, the Court asked the representative of KVS whether she is conversant with the facts of the case. To which, she replied in affirmative. The Court then asked the representative of the KVS for its comments on the ongoing recruitment process which has been apparently carried on in complete disregard of the prevailing laws and instructions on the subject on the issue both suitability of the posts for various categories of disabilities as well as on the quantum of reservation.
- 4.4 The Joint Commissioner, KVS submitted that this is the first recruitment exercise

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after the Pandemic and that a large number of vacancies arose during the period, which are being filled through the current process. Being an academic establishment, the KVS relied on the experts from academic background for the purpose of identification of suitability of the posts. They have now realized that exemption of any post or any category of disabilities was required to be obtained from the D/o Empowerment of Persons with Disabilities, M/o SJ&E. The matter has now been discussed and it is being proposed to calculate the total 1% backlog vacancies and open it for the candidates across the country in their next recruitment exercise.

- 4.5 The Court sought to know when the next recruitment process shall begin. The respondent submitted that the current recruitment process shall be completed by the end of this year and the next process will commence sometimes in the next year. On this, the Court expressed its dissatisfaction observing that the present case started almost a year back. But, the respondent despite knowing the law position on the subject, acted in a very casual manner. The Court further asked as to how the pay, seniority and issues relating to candidates becoming overage are proposed to be resolved. The Court also observed that saying that the loss will be made up in the next recruitment year does not make any sense as the next recruitment year may happen after four years. The Court also sought to know as to how the respondent proposes to protect with the right of a candidate who was not allowed to compete in the current recruitment process for all vacancies, i.e., on the basis of reservation as well on their own merit only because some internal expert Committee recommended that they were not suitable for the job by now asking them to compete for only 1% backlog reservation. The total number of vacancies in the current recruitment process being on a rather higher side at approximately 7000, this fact cannot be overlooked.
- 4.6 Shri Rajaselvan R, in Case No.13717/1011/2023 submitted that he has already appeared in the examination but has not been selected because the post of Physical Education Teacher (PET) has not been declared suitable by the respondent whereas the same figures in the MSJE's Notification for locomotor disability and also that 16 persons suffering from locomotor disability are working as PET in Navodaya Vidyalaya which is a comparable establishment.
- 4.7 Shri Pradeep Kumar, in Case No. 13762/1011/2023 submitted that the post of the Principal has been suitable in the last 03 lists issued by the MSJ&E in 2007, 2013 and 2021. There are persons with visual impairment working as the Principal in Navodaya Schools and in schools under the Govt. of NCT of Delhi. So, the action of KVS is arbitrary and forcing us to wait for another recruitment process is basically harassment. Shri Pradeep also mentioned the names of the following persons with visual impairment who are appointed as Principal by KVS itself:
  - i. Shri Devinder Kumar Tiwari
  - ii. Shri N. K. Yadav
  - iii. Shri Rajguru
  - iv. Shri Balasaheb
  - v. Shri M. L. Mishra (Assistant Commissioner)
- 4.8 The representative of the Respondent No.1 submitted that it was based on the recommendation of an Expert Committee. On this the Court desired that the names of the Committee members also be furnished to the Court. The Court observed that the Committee's recommendations cannot be put on a higher pedestal than the provisions of the Act passed by the Parliament.

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4.9 Shri Pradeep Kumar further submitted that instead of including vacancies in the next recruitment process/year, the respondent should be asked to publish the corrigendum and consider the candidates who have already applied during the current process and bring the recruitment process in line with the Rights of Persons with Disabilities Act, 2016. He also requested that the Court should nominate a representative from the O/o CCPD to scrutinize the reservation rosters of the respondent organization.

4.10 The Court sought clarification from the Respondent on affidavit by an officer not below the level of Group 'A' officer as to why they cannot put the current recruitment process on hold and resolve the issue by way of appropriate corrigendum. If this is not found to be a practicable option, then how the Respondent should inform how does it propose to resolve the issues raised by this Court and the Complainants as have been mentioned in the preceding paragraphs. The Respondent shall also inform as to what action it proposes to initiate against its officials and members of the "Expert Committee" who were responsible for the illegality of the current recruitment. The reply of the Respondent shall be submitted to this Court via email at ccpd@nic.in within 03 days from the issue of this Record of Proceedings.

### 5. Compliance filed by the Respondents:

- 5.1 The Respondent No.1 filed its letter dated 19.10.2023 addressed to the Ministry of Education and endorsed to this Court inter-alia submitted that only 3% vacancies were reserved in their advertisements No.15/2022, and 16/2022. They submitted their tentative action plan for filling remaining 1% posts for Persons with Disabilities subject to the approval of the Respondent No. 2, the Department of School Education and Literacy, Ministry of Education:—
  - (a) For identification and approval of the Recruiting Agency, matter will be taken up with the Respondent No. 2 for filling up backlog vacancies.
  - (b) After approval of the Recruiting Agency with signing of MoU, after one month exam centres will be finalized.
  - (c) 15 days after the signing of MoU advertisement for Employment News and other print media.
  - (d) Approx. 45 days after the last date of submission of online applications or as decided by the Recruiting agency, written exam (CBT) will be conducted.
  - (e) After 15 days from the date of CBT candidates will be shortlisted for interview.
  - (f) Within one month after the display of the list of shortlisted candidates, the interview would be conducted.
  - (g) 15 days from the receipt of result from Recruitment Agency Select Panels will be prepared.
  - (h) After one month, appointment letters will be issued.

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#### 6. **Hearing (3):**

6.1 An online hearing through video conferencing was conducted on **13.02.2024.** The following parties/representatives were present during the hearing:

## **Complainants:**

- (1) Shri Harendra Singh, 75% Locomotor (BL)
- (2) Shri Rajaselvam R., 60% Locomotor (OA)
- (3) Ms Sandhya, 50% Locomotor (RLL)
- (4) Ms. Sangeeta, 80% Locomotor (BL)
- (5) Shri Amit Yadav, 60% Mental Illness [MI]
- (6) Shri Pradeep Kumar, 100% Visual Impaired (B)
- (7) Shri Bhawani Shankar, 41% Hearing Impaired [HI]

## **Respondents:**

- (1) Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- (2) Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- (3) Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 6 . 2 **Record of Proceedings:** During the hearing, the Court observed that the representatives appearing on behalf of the Respondent No.1 have appeared unprepared not well versed with the case. And also, the Commissioner, KVS who was summoned to appear before the Court did not appear during the hearing. Further, no reply to the notices issued to the Department of School Education & Literacy, Ministry of Education [Respondent No.2] has been received in this matter. Therefore, the hearing was adjourned for half an hour and the representatives of the Respondent No.1 was directed that the Commissioner, KVS be informed to appear personally before the Court. The CCPD also directed that Office of the Respondent No.2 be also contacted to explore the feasibility of an officer at the level of Joint Secretary or Director who are well versed in the matter could appear in the next session of hearing.
- 6.3 During the next session of hearing which was conducted at about 16:57 hrs. neither the Commissioner, KVS nor any officer from the Respondent No.2 could appear during the hearing.

#### 7. Observations & Recommendations:

- 7.1 From the records of the case and submissions made by the parties, it is very clear that the Respondent No. 2 has violated the statutory provisions of sections 33 and 34 of the Act. For the purpose of understanding the nature of the violation, it will be appropriate to quote the said provisions of the Act here, which are as under:
  - 33. Identification of posts for reservation.—The appropriate Government shall—
    - (i) identify posts in the **establishments** which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
    - (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

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(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

- **34. Reservation**.—(1) Every appropriate Government shall appoint in every Government establishment, **not less than four per cent.** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—
  - (a) blindness and low vision;
  - (b) deaf and hard of hearing;
  - (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
  - (d) autism, intellectual disability, specific learning disability and mental illness:
  - (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

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7.2 In so far as the identification of posts is concerned the Act, mandates the appropriate government to identify posts in establishments. The term "appropriate government" has been defined in section 2 (b) as under:

#### (b) "appropriate Government" means,—

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.
- 7.3 Since, the KVS is a central establishment, it is the Central Government, which is the appropriate government in the instant case. From the language of Section 33, it is clear that the identification of post in all establishments under its control is required to be done by the nodal department of the Central Government and not the establishments concerned themselves. A quick look at the relevant extracts of the Allocation of Business Rules, 1961 (Item No. 4 under the allocation of subjects of the DEPwD at The Second Schedule) makes it clear that the DEPwD is the nodal department in this regard. The extracts are as under:
  - 4. To act as the nodal Department for matters pertaining to Disability and Persons with Disabilities.

Note: The Department of Empowerment of Persons with Disabilities (Divyangjan) shall be the nodal Department for the overall policy, planning and coordination of programmes for Persons with Disabilities. However, overall management and monitoring etc. of the sectoral programmes in respect of this group shall be the responsibility of the concerned Central Ministries, State Governments and Union territory Administrations. Each Central Ministry or Department shall discharge nodal responsibility concerning its sector.

- Accordingly, in fulfilment of the above obligation, the DEPwD has been publishing the list of jobs suitable for various kinds of disability through gazette notifications. The existing gazette notifications were issued vide Notification No. 38-16/2020-DD-III dated 04.01.2021. The previous list was also issued by the MSJE vide Notification No. 16-15/2010-DD-III dated 29.07.2013 as per the provisions of Section 32 of the PwD Act, 1995 (now repealed). These lists are not exhaustive as mentioned under Note 2 of the Gist of Recommendations by the Expert Committee constituted by the DEPwD/MSJE. Note 2 is being reproduced as under:
  - "Note 2: The list of posts being notified is only indicative and not an exhaustive list. If a post is not mentioned in the list, it is not to be construed that it has been exempted. Central Ministries, Departments, Autonomous Bodies, Public Sector Undertakings may further supplement the list by adding to the list of posts identified for respective category of disability."
- 7.5 It is therefore evident that it was not open for the Respondent No. 2 to reduce or delete certain posts or certain categories/sub-categories of disabilities from the list

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issued by the nodal department of the central government.

- 7.6 In OA No. 692/2023, Shri Raj Kumar and Shri Awadhesh Kumar Kaushal Vs The KVS and Ors before the Central Administrative Tribunal (PB), a matter similar in facts with that of Case No. 13762/1011/2023 before this Court, the Respondent No. 1 has filed a communication made to the applicants therein, who are both visually impaired persons working as PGTs in the KVS, expressing its willingness to appoint them as Principal. The extracts of the same communication dated 13.12.2023 are being quoted as under:
  - ".. (2) KVS is in a position to make appointment of two applicants for the Post of Principal under the UR category as approx. 150 post of Principals are still available in addition to 239 posts."
- 7.7 The Hon'ble CAT (PB) disposed of the above matter by its Order dated 05.01.2024 with the following direction:
  - 7. On hearing learned counsel for both the parties, we hereby direct the competent authority amongst the respondents to take further action for implementing their decision dated 13.12.2023, as quoted above, in respect of the applicants in the present O.A., within a span of eight weeks from the date of receipt of a certified copy of this order.
- 7.8 Strangely, in Case No. 13762/1011/2023 before this Court, the Respondent has been denying grant of same relief to the applicant on the grounds that the post of Principal in their establishment is not suitable for persons with visual impairment.
- 7.9 In so far as the decision of the Respondent No. 2 to reduce the reservation for PwBDs from 4% to 3% is concerned, that is also in complete violation of section 33 of the Act, which clearly mentions that every appropriate Government shall appoint in every Government establishment, **not less than four per cent** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. The proviso to Sub-Section 2 of Section 34 makes provisions for a situation where if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government. Hence, there was no grounds, no justification and no legal way for the Respondent No.2 for reducing the reservation from 4% to 3%.
- 7.10 This Court also wishes to draw attention to Judgements dated 01.11.2023 of the Hon'ble Delhi High Court in similar matters against the Respondent No.1 KVS, in W.P. (C) 17460/2022 Court in its own motion Vs KVS and Ors; and in W.P.(C) 665/2023 and CM APPL. 2585/2023 National Association of the Deaf Vs Union of India & Ors., wherein the Hon'ble Court observed and issued directions as under:
  - "30. In the considered opinion of this Court, the KVS has violated the statutory provisions as contained under the RPwD Act. The advertisements in question on this count alone, deserve to be quashed. The KVS has assumed a power which never vested in it. The task of identification as well as of exemption of posts falls in the domain of the appropriate government. However, when the matter was being argued, it was brought to the notice of this Court by learned counsel for the KVS that the process of recruitment was already over, and at this

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juncture, by quashing the advertisements, the Court shall be discontinuing the services of the persons who have been duly selected on various posts in terms of the advertisements.

- 31. In the considered opinion of this Court, if the process of recruitment is already over, the KVS in respect of the identified posts, shall provide 1% reservation against the total vacancies notified vide the impugned advertisements to deaf and hard of hearing persons, and shall initiate a drive of special recruitment for filling up the vacancies reserved for various categories of disabled persons, including 1% identified persons who are deaf and hard of hearing. To reiterate, the reservation must be calculated on the total number of vacancies and ultimate appointment shall take place on the posts identified in the 2021 notification. The exercise of issuing a fresh advertisement for disabled category of total 4% of posts in the entire organization be concluded within a period of three months from the date of receipt of certified copy of this order.
- 32. It is unfortunate that disabled persons are being compelled to file writ petitions and are being compelled to run from pillar to post by an organization like KVS. They are not claiming any charity, and they are claiming their rights as guaranteed to them under the RPwD Act. The legislature has laid down a noble vision of providing "reasonable accommodation" to persons with disabilities so as to ensure that all possible special measures are adopted to enable the PwDs to perform to the best of their ability. Despite so, instead of creating such reasonable accommodation, the respondent has looked down upon the PwDs from the lens of inconvenience.
- 33. In a recent judgment in the case of **National Federation of the Blind Vs. Kendriya Vidvalaya Sangthan & Ors.**, 2023:DHC:7551-DB, which was in respect of persons with disabilities (blind or low vision), this Court relying upon the same notification dated 04.01.2021, has directed the KVS to provide 1% reservation to the blind and low vision persons in respect of the total identified posts in the organization keeping in view the notification dated 04.01.2021.
- 34. Similarly, in the present case also, the KVS in respect of the identified posts as per the notification dated 04.01.2021, shall issue an advertisement and shall clear the backlog of vacancies within a period of six months from the date of receipt of certified copy of this judgment.
- 35. The posts of Principal and the Vice-Principal find place in the notification dated 04.01.2021 issued by the Government of India. The posts of Post Graduate Teacher (PGT), TGT (Trained Graduate Teacher), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II also find place in the notification dated 04.01.2021, and therefore, the KVS is directed to appoint deaf and hard of hearing persons by providing them 1% reservation against the total number of vacancies in the organization. Not only this, the KVS shall provide 4% reservation to the disabled persons in respect of total vacancies in the organization which is the mandate of law. The exercise of appointing disabled persons, including deaf and hard of hearing persons be concluded within a period of six months from the date of receipt of certified copy of this judgment.
- 36. Before parting, we feel constrained to observe that there appears to be a mismatch in the understanding of different departments regarding the mandate

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> under RPwD Act. Whereas the Ministry of Social Justice and Empowerment (Nodal Ministry under the RPwD Act) has upgraded the list of posts suitable for the PwDs, the thought has not percolated to the departments which conduct recruitment. A similar "policy disconnect" was noted by the Hon'ble Supreme Court in Vikash Kumar v. Union Public Service Commission and Others, (2021) 5 SCC 370, wherein the stand taken by the Nodal Ministry was found to be in contrast with the stand taken by the recruiting agency - UPSC. This policy disconnect had led to a situation wherein different departments are made to learn the same lesson after individual cases travel to the constitutional Courts. The direct impact of this practice is to compel the PwDs to assert their basic rights before judicial fora, something that cannot be termed as desirable. In this regard, we direct the concerned Secretary, Ministry of Social Justice and Empowerment to issue suitable guidelines for the implementation of reservation policy by all departments in a uniform manner. One step may go far in the fulfilment of our promise to the PwDs.

> 37. The petitions, including applications (if any), stand disposed of in the aforesaid terms. No order as to costs.

> > SD/-

(SATISH CHANDRA SHARMA) **CHIEF JUSTICE** 

Sd/-

(SANJEEV NARULA) **JUDGE** 

#### **NOVEMBER 01, 2023"**

- In the matter of the National Federation of the Blind Vs the KVS, in WP(C) No.9520/2018, the Hon'ble High Court of Delhi at New Delhi vide Judgment dated 16 October 2023 held as under:-
  - "43. The impugned advertisement distinguishes the persons with disabilities from others, and puts a restriction on their potential to participate in the recruitment process to their full ability. The distinction is purely on the basis of disability. The advertisement has the effect of excluding the persons with disabilities from the race of recruitment, in complete violation of the mandatory reservation provision. It may be noted that an act of discrimination is not only a denial of the promise of equal protection before the law. Rather, every act of exclusion is an assault on the dignity of a person. More so, when the exclusion has the effect of compelling the persons with disabilities out of a race for gaining employment, without any fault of theirs. Instead of providing an equal space to grow, we have been compelling the persons with disabilities to prove, time and again, that they are capable of a lot more than we think.
  - 44. In light of the above discussion, we find the advertisement to be unsustainable. It is discriminatory and violative of the 2016 Act read with 2017 Rules. Accordingly, we issue the following directions:
    - i. The respondent shall conduct an audit of the total number of vacancies in the establishment and shall prepare a vacancy based roster as per Rule-11 of the 2017 Rules within 3 months from the date of this order. The respondent shall

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file an affidavit of the same along with a timeline of recruitment for filling the said vacancies;

- ii. If any vacancy, which ought to have been reserved in accordance with the 2016 Act, has already been filled by any person not falling in the reserved category due to failure of the respondent to reserve the same, the respondent shall adjust those vacancies from the unreserved pool of the available vacancies. Such vacancies shall be deemed to be unfilled and accordingly, shall be considered to have been carried forward from the vacancies notified in the impugned advertisement;
- iii. The respondent shall implement the 4 percent reservation strictly in accordance with Section-34, with minimum one percent to be earmarked for the categories listed at clauses (a), (b), (c), (d) and (e) in Section-34;
- iv. The respondent shall compute the number of vacancies to be reserved for the persons with disabilities against the total number of vacancies in the cadre strength in each group, inclusive of both identified and unidentified posts;
- v. The final appointment shall be made against the identified posts, even if the actual number of persons with disabilities appointed at a given post exceeds four percent;
- vi. The respondent shall not create sub-categories subject-wise within a cadre. The vacancies shall be calculated on the total number of vacancies in a particular cadre and not on posts;
- vii. The respondent shall reserve the post of Principal for persons with benchmark disabilities in blind or low vision category at a minimum of one percent for that particular category;
- viii. No deviation from the statutory rule or exclusion of any post shall be made, except in accordance with the exemption clause and after proper notification by the appropriate government;
- 45. In light of these directions, we dispose of the petition. No order as tocosts.
- 46. We express our thanks to Ld. Counsels for the parties for their ableassistance in the matter.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

> (SANJEEV NARULA) JUDGE

OCTOBER 16, 2023"

7.12 The provisions and policies related to the identification of posts and reservation for PwBDs were made clear to the Respondent through notices in the month of February 2023 and subsequently during the hearings in the matter. They still chose to go ahead with the recruitment process and then on finding that there was no way, they could justify

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their brazenness, they accepted their mistakes in bringing out the impugned advertisements. In fact, the Respondent No. 2, in pursuance to the hearing dated 13<sup>th</sup> October, 2023 submitted an Action Plan vide their letter dated 19.10.2023 for filling up the remaining 1% vacancies. As per the Action Plan, they committed to fill the remaining vacancies in 5 months after identification of the Recruiting Agency and approval of the same by the Respondent No. 2, i.e. Department of School Education and Literacy, Ministry of Education. There has been no update on the same from the Respondents despite lapse of approximately 6 months.

- 7.13 The respondents are directed to consider that claims of the above mentioned Complainants in the light and within the timeline given by the Hon'ble High Court as quoted in para 7.10 above and forward action taken report along with a proof of depositing the fine as mentioned in pre para to this Court within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.
- 7.14 Accordingly, these cases are disposed of.

Signed by Rajesh Aggarwal Date: 18-04-2024 10:15:49

(Rajesh Aggarwal) Chief Commissioner for Persons with Disabilities **27/23/5/7-}20REXIDENA-SOPPOH** 1/2959/2024



# 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### In the matter of —

#### Complainants:

SI. No.	Case No.	Name and Disability	Date of Notice
140.			
1.	13716/1011/2023	Shri Harendra Singh, 75% Locomotor (BL)	02.02.2023
2.	13717/1011/2023	Shri Rajaselvam R., 60% Locomotor (OA)	02.02.2023
3.	13723/1011/2023	Ms Sandhya Singh, 50% Locomotor (RLL)	02.02.2023
4.	13727/1011/2023	Ms. Sangeeta, 80% Locomotor (BL)	06.02.2023
5.	13745/1011/2023	Shri Amit Yadav, 60% Mental Illness (MI)	15.02.2023
6.	13762/1011/2023	Shri Pradeep Kumar, 100% Visual Impaired (B)	21.02.2023
7.	13783/1011/2023	Shri Bhawani Shankar, 41% Hearing Impaired (HI)	28.02.2023

#### Versus

(1) The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110016
Email – commissioner-kvs@gov.in,
kvs.commissioner@gmail.com

... Respondent No.1

(2) The Secretary,
Department of School Education & Literacy,
Ministry of Education,
Room No. 124-C,
Shastri Bhawan,
New Delhi – 110001

... Respondent No.2

#### 1. Gist of Complaints:

Email: secy.sel@nic.in

**27/43/47/-H20REWID/PA-SOPPOH** 1/2959/2024

1.1 The afore-mentioned complainants filed their respective complaints against the Respondent pursuant to its advertisements No.15/2022, 16/2022 published for direct recruitment to various teaching and non-teaching posts in its establishments/schools whereas these posts are identified as suitable for Persons with Benchmark Disabilities (PwBDs] as per the Gazette Notification dated 04.01.2021 issued by the Department of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD, MSJE].

- 1.2 The grievances raised by the complainants against the Respondent No. 1 mainly pertained to -1) arbitrarily reducing the quantum of reservation from 4% as provided under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the Act"; and 2) not implementing the list of jobs suitable for various types of disabilities issued by the central government from time to time and ignoring certain posts or subcategories of disabilities from the said list in the recruitments in their establishment.
- 1 . 3 The complaints were taken up with the respondents under the mandate and power of this Court as per sections 75 and 77 of the Act by issue of individual notices in each complaint on the dates mentioned in the table at the details of the parties above. The Respondent No.1 filed various replies to the notices. It is mentioned here that no reply or response, whatsoever, to any notice of this Court was received from the Respondent No. 2 in the above cases. The common premise on which the Respondent No.1 based their reply to the notice can be summed up as under:
  - (a) As per the Notification No. 16-15/2010-DD-III dated 29.07.2013 of MSJ&E issuing the list of identified jobs in groups A, B and C, the KVS had constituted a Committee to settle pending court cases/grievances pertaining to reservation and identification of posts suitable for persons with disabilities.
  - (b) The Committee having taken note of KVS being an All India level organization and that its schools are also situated in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018.
  - (c) Therefore, the Committee recommended that KVS should seek exemption from providing this 1% reservation as per the options available under Para 3 of the OM dated 15.01.2018. The Committee observed that KVS should refer the matter to the DEPwD for exemption of 1% enhancement in reservation for persons with Benchmark Disabilities i.e. autism, intellectual disability, specific learning disability and mental illness.
  - (d) However, KVS had identified the post of Trained Graduate Teacher (Art Education) against which this 1% reservation can be granted to the persons with multiple disabilities in the direct recruitment, i.e. for a person who is Hard of Hearing (HH) and Orthopedically disabled (One Leg). This 1% reservation was already advertised by the KVS in Advertisement No.14. This 1% reservation was already advertised by the KVS in Advertisement No.14.
  - (e) Accordingly, a detailed letter was sent to the Director, DEPWD.
  - (f) The impugned notification for the KVS Direct Recruitment was made taking all the above into consideration.
- 1.4 The details of the grievances raised by each of these complainants and specific

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response of the Respondent No. 1 in respect of those have been shown in the table below. The details are as under:

SI	Name of the	Issues Raised	Date of Reply and the
No.	Complainant		Response of Respondent No. 1
	(Shri/Smt./Km.),		
	Details of disability,		
	Case No. and date of		
	Complaint		
1	Harendra Singh, 75%	The Respondent did not	20.03.2023 & 10.05.2023
	Locomotor Disability-	include the PwBD Both	
	Both Legs [LD-BL]	Legs (BL) in OH	
			1. As per the minutes of the
	13716/1011/2023	•	Committee, persons having
		PGT	disability in both legs in OH
	07.12.2022		category are not suitable for the
2	Sangeeta		post of Principal, Vice-Principal,
	80% Locomotor	reservation for PwBD-BL	PGT(Physics/
	Disability-Both Leg		Chemistry/Biology/Bio-Tech/
	[LD-BL]	Vice-Principal, Primary	Computer Science) and TGT
		Teacher, TGT, PGT,	(Science), Primary Teacher,
	13727/1011/2023		Librarian, Finance Officer,
		•	Assistant Section Officer, Hindi
	05.12.2022	Section Officer, Hindi	
		Translator, Junior	Assistant and Stenographer
		Secretarial Assistant and	Grade-II, on the grounds of the
		Stenographer Grade-II.	nature of duties involved in these
			posts.
			2. In the drop-down box under PH
			category, however, candidates
			could have submitted their
			category by putting OH in the
			drop-down box. The sub-
			category under OH was not asked
			from the candidates at that stage.
			If the complainants, were
			shortlisted for interview, they
			would not have been declared
			ineligible, and their selection
			would have been as per the
			marks obtained by them in the
			written test and the interview.
			The Respondent No.1 also
			submitted that the KVS has to
			review their reservation policy for
			divyangjan on all posts as per the
			latest instructions/notification
			issued by the Government of
			India and that the Committee
			consisting of officials from KVS
	l		l l

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			would hold a meeting in this regard very soon.
3	60% Locomotor		
4	50% Locomotor	submitted that KVS vide advertisement number 16/2022 had advertised 6414 vacancies of Primary Teacher in KVS but only 3% seats have been reserved for	
5		PwBD Others category in its advertisement 15/2022 for recruitment to the various teaching and non-teaching posts. He further submitted that Specific Learning Disability, Mental Illness and Autism all come under PwBD Others category, and out of total 4% reservation for PwBDs, 1% seats are reserved for PwBD Others category. He requested this Court that KVS be directed to	India level organization its Kendriya Vidyalayas are in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018. Therefore, the Committee recommended that KVS should seek exemption from the DEPwD from providing this 1% reservation for PwBDs having autism, intellectual disability, specific learning disability and mental illness made in addition of the existing reservation in terms Para 3 of the above said OM. Accordingly, a detailed letter was sent to the Director, DEPWD.

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		advertisement and	
		reserve 1% seats for PwBD-Others category.	
		g ,	
6	100% Visual	non-compliance with the Rights of Persons with	
	Impairment (Blind)	Disabilities Act, 2016 [hereinafter "the Act"] by	As per the minutes of the Committee, visually impaired
	13762/1011/2023	the Respondent by denying reservation to	persons are suitable for the post of Administrative Officer,
	10.12.2022	PwBD-VI in its Recruitment Notice No.15/2022 for filling of various posts of Assistant Commissioner, Principal, PGT (Physics, Chemistry, Maths, Biology, Commerce and Computer Science),	PGT(English), PGT(Hindi), PGT(Geog.), PGT(Hindi), PGT(Eco.), TGT(English), TGT(Hindi), TGT(Sanskrit), TGT(Social Studies), Primary Teacher, PRT(Music), TGT(Work Experience), Assistant Section Officer, Hindi Translator, Senior Secretariat Assistant, Junior Secretariat Assistant and Stenographer Grade-II, but not for the post of Deputy Commissioner, Assistant Commissioner, PGT (Biology/ Commerce/ Bio.Tech/Computer Science), TGT(Maths/Science/Art Education/P&HE) and Librarian as per their nature of job.
7		denial of 4% reservation to PwBDs by KVS in its	
	Impairment (HI)	advertisement for	As per the recommendation of the Committee, persons with
	13783/1011/2023	various teaching and	hearing impairment are not suitable for the post of Post
	30.12.2022	Advt. No.15/2022 online applications were invited	Graduate Teacher (Computer Science) in view of the nature of duties required to be performed in the said post.

# 2. Rejoinders filed by the Complainants:

2.1 All the Complainants in respective rejoinders refuted the reply filed by the Respondent and reiterated their complaints.

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#### 3. **Hearing (1):**

3.1 As the grievances in all the above mentioned seven cases arose from the same process of recruitment in the Respondent establishment through Advertisements No.15/2022 and No.16/2022, it was decided to club them for the purpose of a joint hearing, Hence, the cases were heard online through video conferencing on **09.10.2023.** The following parties/representatives were present during the hearing:

#### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

#### **Respondent:**

- 1. Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- 2. Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- 3. Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 3 . 2 **Record of Proceedings:** During the online hearing, the complainants challenged the recruitment process on the grounds that
  - i. The Respondent allowed 3% reservation for persons with benchmark disability as against the statutory provisions of 4%
  - ii. The Respondent arbitrarily altered the identification of posts notified by the Central Government vide Ministry of Social Justice & Empowerment Notification dated 04.01.2021 and deleted certain categories of disabilities, particularly the Visual Impairment and locomotor disability in both legs, as being a suitable category for the posts of Asstt. Commissioner, Principal, Vice Principal, TGT and PGT.
  - iii. In another comparable establishment, namely the Navodaya Vidyalaya Samiti, the post of Principal is suitable for these categories of disabilities.
  - iv. The Respondent had several cases where persons with visual impairment were appointed in the teaching posts and to the post of Principal through promotions.
- 3.3 The Respondent No.1 did not deny the aforesaid facts, but submitted that on account of functional requirements in KVS, certain categories have not been found suitable for the teaching posts. The Court sought to know if they have got the posts exempted through the procedure laid down in the Notification dated 04.01.2021 and the DoPT OM dated 15.01.2018 on the subject. The Respondents confirmed that such a process was not undertaken and an internal decision has been taken in this regard by the KVS.
- 3.4 The Respondent No.1 further submitted that the result of the impugned

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examination was already finalized and that they will follow the 4% reservation and the Notification of 04.01.2021 from the next recruitment exercise.

- 3.5 This Court was shocked at the arbitrariness and casual approach of the Respondent No.1 in undertaking this recruitment process for a total of 6990 posts across various teaching and non-teaching posts. Ignorance of the law cannot be an excuse to deny the rightful claim of persons with disabilities. In this recruitment process, ignorance also cannot be pretended as the law position was made very clear to the Respondents vide Notices in the above cases issued by this Court in February 2023. The Respondent No.1 instead of making course correction appeared to have gone ahead with the faulty process of the recruitment. Such disregard of the law passed by the Parliament and instructions issued by the competent authorities cannot be permitted.
- 3.6 Accordingly, this Court in exercise of its powers under Section 77 of the RPwD Act, 2016, directed the Commissioner of KVS to appear in person on the next date of the hearing, i.e., Friday, 13.10.2023, through online mode. The Respondent was permitted to file written explanation/submission, if any, by 12.10.2023.

#### 4. Hearing (2):

4.1 The case was next heard online through video conferencing on **13.10.2023**. The following parties/representatives were present during the hearing:

#### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

### **Respondents:**

- 1. Smt. Ajeeta Longjam, Joint Commissioner (Admn.I), KVS
- 4 . 2 **Record of Proceedings:** Vide Record of Proceeding dated 10.10.2023, the Commissioner, Kendriya Vidyalaya Sangathan (KVS) was asked to be present in the next hearing on 13.10.2023. In the meanwhile, the respondent requested for the exemption from personal appearance of the Commissioner, KVS on the ground of his pre-occupation elsewhere. It was also submitted that the Joint Commissioner concerned whould appear for the Respondent. The request was accepted.
- 4.3 At the outset of the hearing on 13.10.2023, the Court asked the representative of KVS whether she is conversant with the facts of the case. To which, she replied in affirmative. The Court then asked the representative of the KVS for its comments on the ongoing recruitment process which has been apparently carried on in complete disregard of the prevailing laws and instructions on the subject on the issue both suitability of the posts for various categories of disabilities as well as on the quantum of reservation.
- 4.4 The Joint Commissioner, KVS submitted that this is the first recruitment exercise

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after the Pandemic and that a large number of vacancies arose during the period, which are being filled through the current process. Being an academic establishment, the KVS relied on the experts from academic background for the purpose of identification of suitability of the posts. They have now realized that exemption of any post or any category of disabilities was required to be obtained from the D/o Empowerment of Persons with Disabilities, M/o SJ&E. The matter has now been discussed and it is being proposed to calculate the total 1% backlog vacancies and open it for the candidates across the country in their next recruitment exercise.

- 4.5 The Court sought to know when the next recruitment process shall begin. The respondent submitted that the current recruitment process shall be completed by the end of this year and the next process will commence sometimes in the next year. On this, the Court expressed its dissatisfaction observing that the present case started almost a year back. But, the respondent despite knowing the law position on the subject, acted in a very casual manner. The Court further asked as to how the pay, seniority and issues relating to candidates becoming overage are proposed to be resolved. The Court also observed that saying that the loss will be made up in the next recruitment year does not make any sense as the next recruitment year may happen after four years. The Court also sought to know as to how the respondent proposes to protect with the right of a candidate who was not allowed to compete in the current recruitment process for all vacancies, i.e., on the basis of reservation as well on their own merit only because some internal expert Committee recommended that they were not suitable for the job by now asking them to compete for only 1% backlog reservation. The total number of vacancies in the current recruitment process being on a rather higher side at approximately 7000, this fact cannot be overlooked.
- 4.6 Shri Rajaselvan R, in Case No.13717/1011/2023 submitted that he has already appeared in the examination but has not been selected because the post of Physical Education Teacher (PET) has not been declared suitable by the respondent whereas the same figures in the MSJE's Notification for locomotor disability and also that 16 persons suffering from locomotor disability are working as PET in Navodaya Vidyalaya which is a comparable establishment.
- 4.7 Shri Pradeep Kumar, in Case No. 13762/1011/2023 submitted that the post of the Principal has been suitable in the last 03 lists issued by the MSJ&E in 2007, 2013 and 2021. There are persons with visual impairment working as the Principal in Navodaya Schools and in schools under the Govt. of NCT of Delhi. So, the action of KVS is arbitrary and forcing us to wait for another recruitment process is basically harassment. Shri Pradeep also mentioned the names of the following persons with visual impairment who are appointed as Principal by KVS itself:
  - i. Shri Devinder Kumar Tiwari
  - ii. Shri N. K. Yadav
  - iii. Shri Rajguru
  - iv. Shri Balasaheb
  - v. Shri M. L. Mishra (Assistant Commissioner)
- 4.8 The representative of the Respondent No.1 submitted that it was based on the recommendation of an Expert Committee. On this the Court desired that the names of the Committee members also be furnished to the Court. The Court observed that the Committee's recommendations cannot be put on a higher pedestal than the provisions of the Act passed by the Parliament.

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4.9 Shri Pradeep Kumar further submitted that instead of including vacancies in the next recruitment process/year, the respondent should be asked to publish the corrigendum and consider the candidates who have already applied during the current process and bring the recruitment process in line with the Rights of Persons with Disabilities Act, 2016. He also requested that the Court should nominate a representative from the O/o CCPD to scrutinize the reservation rosters of the respondent organization.

4.10 The Court sought clarification from the Respondent on affidavit by an officer not below the level of Group 'A' officer as to why they cannot put the current recruitment process on hold and resolve the issue by way of appropriate corrigendum. If this is not found to be a practicable option, then how the Respondent should inform how does it propose to resolve the issues raised by this Court and the Complainants as have been mentioned in the preceding paragraphs. The Respondent shall also inform as to what action it proposes to initiate against its officials and members of the "Expert Committee" who were responsible for the illegality of the current recruitment. The reply of the Respondent shall be submitted to this Court via email at ccpd@nic.in within 03 days from the issue of this Record of Proceedings.

### 5. Compliance filed by the Respondents:

- 5.1 The Respondent No.1 filed its letter dated 19.10.2023 addressed to the Ministry of Education and endorsed to this Court inter-alia submitted that only 3% vacancies were reserved in their advertisements No.15/2022, and 16/2022. They submitted their tentative action plan for filling remaining 1% posts for Persons with Disabilities subject to the approval of the Respondent No. 2, the Department of School Education and Literacy, Ministry of Education:—
  - (a) For identification and approval of the Recruiting Agency, matter will be taken up with the Respondent No. 2 for filling up backlog vacancies.
  - (b) After approval of the Recruiting Agency with signing of MoU, after one month exam centres will be finalized.
  - (c) 15 days after the signing of MoU advertisement for Employment News and other print media.
  - (d) Approx. 45 days after the last date of submission of online applications or as decided by the Recruiting agency, written exam (CBT) will be conducted.
  - (e) After 15 days from the date of CBT candidates will be shortlisted for interview.
  - (f) Within one month after the display of the list of shortlisted candidates, the interview would be conducted.
  - (g) 15 days from the receipt of result from Recruitment Agency Select Panels will be prepared.
  - (h) After one month, appointment letters will be issued.

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## 6. Hearing (3):

6.1 An online hearing through video conferencing was conducted on **13.02.2024.** The following parties/representatives were present during the hearing:

#### **Complainants:**

- (1) Shri Harendra Singh, 75% Locomotor (BL)
- (2) Shri Rajaselvam R., 60% Locomotor (OA)
- (3) Ms Sandhya, 50% Locomotor (RLL)
- (4) Ms. Sangeeta, 80% Locomotor (BL)
- (5) Shri Amit Yadav, 60% Mental Illness [MI]
- (6) Shri Pradeep Kumar, 100% Visual Impaired (B)
- (7) Shri Bhawani Shankar, 41% Hearing Impaired [HI]

## **Respondents:**

- (1) Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- (2) Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- (3) Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 6 . 2 **Record of Proceedings:** During the hearing, the Court observed that the representatives appearing on behalf of the Respondent No.1 have appeared unprepared not well versed with the case. And also, the Commissioner, KVS who was summoned to appear before the Court did not appear during the hearing. Further, no reply to the notices issued to the Department of School Education & Literacy, Ministry of Education [Respondent No.2] has been received in this matter. Therefore, the hearing was adjourned for half an hour and the representatives of the Respondent No.1 was directed that the Commissioner, KVS be informed to appear personally before the Court. The CCPD also directed that Office of the Respondent No.2 be also contacted to explore the feasibility of an officer at the level of Joint Secretary or Director who are well versed in the matter could appear in the next session of hearing.
- 6.3 During the next session of hearing which was conducted at about 16:57 hrs. neither the Commissioner, KVS nor any officer from the Respondent No.2 could appear during the hearing.

#### 7. Observations & Recommendations:

- 7.1 From the records of the case and submissions made by the parties, it is very clear that the Respondent No. 2 has violated the statutory provisions of sections 33 and 34 of the Act. For the purpose of understanding the nature of the violation, it will be appropriate to quote the said provisions of the Act here, which are as under:
  - 33. Identification of posts for reservation.—The appropriate Government shall—
    - (i) identify posts in the **establishments** which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
    - (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

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(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

- **34. Reservation**.—(1) Every appropriate Government shall appoint in every Government establishment, **not less than four per cent.** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—
  - (a) blindness and low vision;
  - (b) deaf and hard of hearing;
  - (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
  - (d) autism, intellectual disability, specific learning disability and mental illness:
  - (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

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7.2 In so far as the identification of posts is concerned the Act, mandates the appropriate government to identify posts in establishments. The term "appropriate government" has been defined in section 2 (b) as under:

#### (b) "appropriate Government" means,—

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.
- 7.3 Since, the KVS is a central establishment, it is the Central Government, which is the appropriate government in the instant case. From the language of Section 33, it is clear that the identification of post in all establishments under its control is required to be done by the nodal department of the Central Government and not the establishments concerned themselves. A quick look at the relevant extracts of the Allocation of Business Rules, 1961 (Item No. 4 under the allocation of subjects of the DEPwD at The Second Schedule) makes it clear that the DEPwD is the nodal department in this regard. The extracts are as under:
  - 4. To act as the nodal Department for matters pertaining to Disability and Persons with Disabilities.

Note: The Department of Empowerment of Persons with Disabilities (Divyangjan) shall be the nodal Department for the overall policy, planning and coordination of programmes for Persons with Disabilities. However, overall management and monitoring etc. of the sectoral programmes in respect of this group shall be the responsibility of the concerned Central Ministries, State Governments and Union territory Administrations. Each Central Ministry or Department shall discharge nodal responsibility concerning its sector.

- Accordingly, in fulfilment of the above obligation, the DEPwD has been publishing the list of jobs suitable for various kinds of disability through gazette notifications. The existing gazette notifications were issued vide Notification No. 38-16/2020-DD-III dated 04.01.2021. The previous list was also issued by the MSJE vide Notification No. 16-15/2010-DD-III dated 29.07.2013 as per the provisions of Section 32 of the PwD Act, 1995 (now repealed). These lists are not exhaustive as mentioned under Note 2 of the Gist of Recommendations by the Expert Committee constituted by the DEPwD/MSJE. Note 2 is being reproduced as under:
  - "Note 2: The list of posts being notified is only indicative and not an exhaustive list. If a post is not mentioned in the list, it is not to be construed that it has been exempted. Central Ministries, Departments, Autonomous Bodies, Public Sector Undertakings may further supplement the list by adding to the list of posts identified for respective category of disability."
- 7.5 It is therefore evident that it was not open for the Respondent No. 2 to reduce or delete certain posts or certain categories/sub-categories of disabilities from the list

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issued by the nodal department of the central government.

- 7.6 In OA No. 692/2023, Shri Raj Kumar and Shri Awadhesh Kumar Kaushal Vs The KVS and Ors before the Central Administrative Tribunal (PB), a matter similar in facts with that of Case No. 13762/1011/2023 before this Court, the Respondent No. 1 has filed a communication made to the applicants therein, who are both visually impaired persons working as PGTs in the KVS, expressing its willingness to appoint them as Principal. The extracts of the same communication dated 13.12.2023 are being quoted as under:
  - ".. (2) KVS is in a position to make appointment of two applicants for the Post of Principal under the UR category as approx. 150 post of Principals are still available in addition to 239 posts."
- 7.7 The Hon'ble CAT (PB) disposed of the above matter by its Order dated 05.01.2024 with the following direction:
  - 7. On hearing learned counsel for both the parties, we hereby direct the competent authority amongst the respondents to take further action for implementing their decision dated 13.12.2023, as quoted above, in respect of the applicants in the present O.A., within a span of eight weeks from the date of receipt of a certified copy of this order.
- 7.8 Strangely, in Case No. 13762/1011/2023 before this Court, the Respondent has been denying grant of same relief to the applicant on the grounds that the post of Principal in their establishment is not suitable for persons with visual impairment.
- 7.9 In so far as the decision of the Respondent No. 2 to reduce the reservation for PwBDs from 4% to 3% is concerned, that is also in complete violation of section 33 of the Act, which clearly mentions that every appropriate Government shall appoint in every Government establishment, **not less than four per cent** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. The proviso to Sub-Section 2 of Section 34 makes provisions for a situation where if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government. Hence, there was no grounds, no justification and no legal way for the Respondent No.2 for reducing the reservation from 4% to 3%.
- 7.10 This Court also wishes to draw attention to Judgements dated 01.11.2023 of the Hon'ble Delhi High Court in similar matters against the Respondent No.1 KVS, in W.P. (C) 17460/2022 Court in its own motion Vs KVS and Ors; and in W.P.(C) 665/2023 and CM APPL. 2585/2023 National Association of the Deaf Vs Union of India & Ors., wherein the Hon'ble Court observed and issued directions as under:
  - "30. In the considered opinion of this Court, the KVS has violated the statutory provisions as contained under the RPwD Act. The advertisements in question on this count alone, deserve to be quashed. The KVS has assumed a power which never vested in it. The task of identification as well as of exemption of posts falls in the domain of the appropriate government. However, when the matter was being argued, it was brought to the notice of this Court by learned counsel for the KVS that the process of recruitment was already over, and at this

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juncture, by quashing the advertisements, the Court shall be discontinuing the services of the persons who have been duly selected on various posts in terms of the advertisements.

- 31. In the considered opinion of this Court, if the process of recruitment is already over, the KVS in respect of the identified posts, shall provide 1% reservation against the total vacancies notified vide the impugned advertisements to deaf and hard of hearing persons, and shall initiate a drive of special recruitment for filling up the vacancies reserved for various categories of disabled persons, including 1% identified persons who are deaf and hard of hearing. To reiterate, the reservation must be calculated on the total number of vacancies and ultimate appointment shall take place on the posts identified in the 2021 notification. The exercise of issuing a fresh advertisement for disabled category of total 4% of posts in the entire organization be concluded within a period of three months from the date of receipt of certified copy of this order.
- 32. It is unfortunate that disabled persons are being compelled to file writ petitions and are being compelled to run from pillar to post by an organization like KVS. They are not claiming any charity, and they are claiming their rights as guaranteed to them under the RPwD Act. The legislature has laid down a noble vision of providing "reasonable accommodation" to persons with disabilities so as to ensure that all possible special measures are adopted to enable the PwDs to perform to the best of their ability. Despite so, instead of creating such reasonable accommodation, the respondent has looked down upon the PwDs from the lens of inconvenience.
- 33. In a recent judgment in the case of **National Federation of the Blind Vs. Kendriya Vidvalaya Sangthan & Ors.**, 2023:DHC:7551-DB, which was in respect of persons with disabilities (blind or low vision), this Court relying upon the same notification dated 04.01.2021, has directed the KVS to provide 1% reservation to the blind and low vision persons in respect of the total identified posts in the organization keeping in view the notification dated 04.01.2021.
- 34. Similarly, in the present case also, the KVS in respect of the identified posts as per the notification dated 04.01.2021, shall issue an advertisement and shall clear the backlog of vacancies within a period of six months from the date of receipt of certified copy of this judgment.
- 35. The posts of Principal and the Vice-Principal find place in the notification dated 04.01.2021 issued by the Government of India. The posts of Post Graduate Teacher (PGT), TGT (Trained Graduate Teacher), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II also find place in the notification dated 04.01.2021, and therefore, the KVS is directed to appoint deaf and hard of hearing persons by providing them 1% reservation against the total number of vacancies in the organization. Not only this, the KVS shall provide 4% reservation to the disabled persons in respect of total vacancies in the organization which is the mandate of law. The exercise of appointing disabled persons, including deaf and hard of hearing persons be concluded within a period of six months from the date of receipt of certified copy of this judgment.
- 36. Before parting, we feel constrained to observe that there appears to be a mismatch in the understanding of different departments regarding the mandate

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under RPwD Act. Whereas the Ministry of Social Justice and Empowerment (Nodal Ministry under the RPwD Act) has upgraded the list of posts suitable for the PwDs, the thought has not percolated to the departments which conduct recruitment. A similar "policy disconnect" was noted by the Hon'ble Supreme Court in Vikash Kumar v. Union Public Service Commission and Others, (2021) 5 SCC 370, wherein the stand taken by the Nodal Ministry was found to be in contrast with the stand taken by the recruiting agency — UPSC. This policy disconnect had led to a situation wherein different departments are made to learn the same lesson after individual cases travel to the constitutional Courts. The direct impact of this practice is to compel the PwDs to assert their basic rights before judicial fora, something that cannot be termed as desirable. In this regard, we direct the concerned Secretary, Ministry of Social Justice and Empowerment to issue suitable guidelines for the implementation of reservation policy by all departments in a uniform manner. One step may go far in the fulfilment of our promise to the PwDs.

37. The petitions, including applications (if any), stand disposed of in the aforesaid terms. No order as to costs.

SD/-

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

Sd/-

(SANJEEV NARULA) JUDGE

### NOVEMBER 01, 2023"

- 7.11 In the matter of the National Federation of the Blind Vs the KVS, in WP(C) No.9520/2018, the Hon'ble High Court of Delhi at New Delhi vide Judgment dated 16 October 2023 held as under:-
  - "43. The impugned advertisement distinguishes the persons with disabilities from others, and puts a restriction on their potential to participate in the recruitment process to their full ability. The distinction is purely on the basis of disability. The advertisement has the effect of excluding the persons with disabilities from the race of recruitment, in complete violation of the mandatory reservation provision. It may be noted that an act of discrimination is not only a denial of the promise of equal protection before the law. Rather, every act of exclusion is an assault on the dignity of a person. More so, when the exclusion has the effect of compelling the persons with disabilities out of a race for gaining employment, without any fault of theirs. Instead of providing an equal space to grow, we have been compelling the persons with disabilities to prove, time and again, that they are capable of a lot more than we think.
  - 44. In light of the above discussion, we find the advertisement to be unsustainable. It is discriminatory and violative of the 2016 Act read with 2017 Rules. Accordingly, we issue the following directions:
    - i. The respondent shall conduct an audit of the total number of vacancies in the establishment and shall prepare a vacancy based roster as per Rule-11 of the 2017 Rules within 3 months from the date of this order. The respondent shall

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file an affidavit of the same along with a timeline of recruitment for filling the said vacancies;

- ii. If any vacancy, which ought to have been reserved in accordance with the 2016 Act, has already been filled by any person not falling in the reserved category due to failure of the respondent to reserve the same, the respondent shall adjust those vacancies from the unreserved pool of the available vacancies. Such vacancies shall be deemed to be unfilled and accordingly, shall be considered to have been carried forward from the vacancies notified in the impugned advertisement;
- iii. The respondent shall implement the 4 percent reservation strictly in accordance with Section-34, with minimum one percent to be earmarked for the categories listed at clauses (a), (b), (c), (d) and (e) in Section-34;
- iv. The respondent shall compute the number of vacancies to be reserved for the persons with disabilities against the total number of vacancies in the cadre strength in each group, inclusive of both identified and unidentified posts;
- v. The final appointment shall be made against the identified posts, even if the actual number of persons with disabilities appointed at a given post exceeds four percent;
- vi. The respondent shall not create sub-categories subject-wise within a cadre. The vacancies shall be calculated on the total number of vacancies in a particular cadre and not on posts;
- vii. The respondent shall reserve the post of Principal for persons with benchmark disabilities in blind or low vision category at a minimum of one percent for that particular category;
- viii. No deviation from the statutory rule or exclusion of any post shall be made, except in accordance with the exemption clause and after proper notification by the appropriate government;
- 45. In light of these directions, we dispose of the petition. No order as tocosts.
- 46. We express our thanks to Ld. Counsels for the parties for their ableassistance in the matter.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

> (SANJEEV NARULA) JUDGE

OCTOBER 16, 2023"

7.12 The provisions and policies related to the identification of posts and reservation for PwBDs were made clear to the Respondent through notices in the month of February 2023 and subsequently during the hearings in the matter. They still chose to go ahead with the recruitment process and then on finding that there was no way, they could justify

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their brazenness, they accepted their mistakes in bringing out the impugned advertisements. In fact, the Respondent No. 2, in pursuance to the hearing dated 13<sup>th</sup> October, 2023 submitted an Action Plan vide their letter dated 19.10.2023 for filling up the remaining 1% vacancies. As per the Action Plan, they committed to fill the remaining vacancies in 5 months after identification of the Recruiting Agency and approval of the same by the Respondent No. 2, i.e. Department of School Education and Literacy, Ministry of Education. There has been no update on the same from the Respondents despite lapse of approximately 6 months.

- 7.13 The respondents are directed to consider that claims of the above mentioned Complainants in the light and within the timeline given by the Hon'ble High Court as quoted in para 7.10 above and forward action taken report along with a proof of depositing the fine as mentioned in pre para to this Court within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.
- 7.14 Accordingly, these cases are disposed of.

Signed by Rajesh Aggarwal Date: 18-04-2024 10:15:49

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities

27437488/H20REXIDARA-SOIPOH 1/2959/2024



# 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

### In the matter of —

### Complainants:

SI.	Case No.	Name and Disability	Date of
No.			Notice
1.	13716/1011/2023	Shri Harendra Singh, 75% Locomotor (BL)	02.02.2023
2.	13717/1011/2023	Shri Rajaselvam R., 60% Locomotor (OA)	02.02.2023
3.	13723/1011/2023	Ms Sandhya Singh, 50% Locomotor (RLL)	02.02.2023
4.	13727/1011/2023	Ms. Sangeeta, 80% Locomotor (BL)	06.02.2023
5.	13745/1011/2023	Shri Amit Yadav, 60% Mental Illness (MI)	15.02.2023
6.	13762/1011/2023	Shri Pradeep Kumar, 100% Visual Impaired (B)	21.02.2023
7.	13783/1011/2023	Shri Bhawani Shankar, 41% Hearing Impaired (HI)	28.02.2023

### Versus

(1) The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110016
Email – commissioner-kvs@gov.in,
kvs.commissioner@gmail.com

... Respondent No.1

(2) The Secretary,
Department of School Education & Literacy,
Ministry of Education,
Room No. 124-C,
Shastri Bhawan,
New Delhi – 110001

... Respondent No.2

### 1. Gist of Complaints:

Email: secy.sel@nic.in

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1.1 The afore-mentioned complainants filed their respective complaints against the Respondent pursuant to its advertisements No.15/2022, 16/2022 published for direct recruitment to various teaching and non-teaching posts in its establishments/schools whereas these posts are identified as suitable for Persons with Benchmark Disabilities (PwBDs] as per the Gazette Notification dated 04.01.2021 issued by the Department of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD, MSJE].

- 1.2 The grievances raised by the complainants against the Respondent No. 1 mainly pertained to -1) arbitrarily reducing the quantum of reservation from 4% as provided under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the Act"; and 2) not implementing the list of jobs suitable for various types of disabilities issued by the central government from time to time and ignoring certain posts or subcategories of disabilities from the said list in the recruitments in their establishment.
- 1 . 3 The complaints were taken up with the respondents under the mandate and power of this Court as per sections 75 and 77 of the Act by issue of individual notices in each complaint on the dates mentioned in the table at the details of the parties above. The Respondent No.1 filed various replies to the notices. It is mentioned here that no reply or response, whatsoever, to any notice of this Court was received from the Respondent No. 2 in the above cases. The common premise on which the Respondent No.1 based their reply to the notice can be summed up as under:
  - (a) As per the Notification No. 16-15/2010-DD-III dated 29.07.2013 of MSJ&E issuing the list of identified jobs in groups A, B and C, the KVS had constituted a Committee to settle pending court cases/grievances pertaining to reservation and identification of posts suitable for persons with disabilities.
  - (b) The Committee having taken note of KVS being an All India level organization and that its schools are also situated in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018.
  - (c) Therefore, the Committee recommended that KVS should seek exemption from providing this 1% reservation as per the options available under Para 3 of the OM dated 15.01.2018. The Committee observed that KVS should refer the matter to the DEPwD for exemption of 1% enhancement in reservation for persons with Benchmark Disabilities i.e. autism, intellectual disability, specific learning disability and mental illness.
  - (d) However, KVS had identified the post of Trained Graduate Teacher (Art Education) against which this 1% reservation can be granted to the persons with multiple disabilities in the direct recruitment, i.e. for a person who is Hard of Hearing (HH) and Orthopedically disabled (One Leg). This 1% reservation was already advertised by the KVS in Advertisement No.14. This 1% reservation was already advertised by the KVS in Advertisement No.14.
  - (e) Accordingly, a detailed letter was sent to the Director, DEPWD.
  - (f) The impugned notification for the KVS Direct Recruitment was made taking all the above into consideration.
- 1.4 The details of the grievances raised by each of these complainants and specific

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response of the Respondent No. 1 in respect of those have been shown in the table below. The details are as under:

SI	Name of the	Issues Raised	Date of Reply and the
No.	Complainant		Response of Respondent No. 1
	(Shri/Smt./Km.),		
	Details of disability,		
	Case No. and date of		
	Complaint		
1	Harendra Singh, 75%	The Respondent did not	20.03.2023 & 10.05.2023
	Locomotor Disability-	include the PwBD Both	
	Both Legs [LD-BL]	Legs (BL) in OH	
		category for recruitment	1. As per the minutes of the
	13716/1011/2023	to the posts of TGT and	
		PGT	disability in both legs in OH
	07.12.2022		category are not suitable for the
2	Sangeeta		post of Principal, Vice-Principal,
	80% Locomotor	reservation for PwBD-BL	` · ·
	Disability-Both Leg	to the post of Principal,	Chemistry/Biology/Bio-Tech/
	[LD-BL]	Vice-Principal, Primary	Computer Science) and TGT
			(Science), Primary Teacher,
	13727/1011/2023	•	Librarian, Finance Officer,
	05.40.0000	,	Assistant Section Officer, Hindi
	05.12.2022	Section Officer, Hindi	
			Assistant and Stenographer
		Secretarial Assistant and	Grade-II, on the grounds of the
		Stenographer Grade-II.	nature of duties involved in these
			posts.
			2. In the drop-down box under PH
			category, however, candidates
			could have submitted their
			category by putting OH in the
			drop-down box. The sub-
			category under OH was not asked
			from the candidates at that stage.
			If the complainants, were
			shortlisted for interview, they
			would not have been declared
			ineligible, and their selection
			would have been as per the
			marks obtained by them in the
			written test and the interview.
			The Respondent No.1 also
			submitted that the KVS has to
			review their reservation policy for
			divyangjan on all posts as per the
			latest instructions/notification
			issued by the Government of
			India and that the Committee
			consisting of officials from KVS
1			

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			would hold a meeting in this regard very soon.
3	60% Locomotor Disability-One Arm	· · · · · · · · · · · · · · · · · · ·	
4	50% Locomotor Disability-One Leg [LD-OL] 13723/1011/2023 26.12.2022	Primary Teachers. She submitted that KVS vide advertisement number 16/2022 had advertised 6414 vacancies of Primary Teacher in KVS but only 3% seats have been reserved for PwBDs.	The Committee examined the feasibility of enhancement of reservation for PwBDs from 3% to 4% in view of the DoPT OM No.35035/ 02/2017-Estt(Res) dated 15.01.2018 in the context of type of work being carried out in the KVS. The Committee was of the view that the KVS being all
5	60% Mental Illness [MI] 13745/1011/2023 17.12.2022	Denial of reservation for PwBD Others category in its advertisement 15/2022 for recruitment to the various teaching and non-teaching posts. He further submitted that Specific Learning Disability, Mental Illness and Autism all come under PwBD Others category, and out of total 4% reservation for PwBDs, 1% seats are reserved for PwBD Others category. He requested this Court that KVS be directed to	India level organization its Kendriya Vidyalayas are in very remote and far off places, the work being carried out would not suit to the persons who are

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		advertisement and	
		reserve 1% seats for PwBD-Others category.	
		9 ,	
6	100% Visual	non-compliance with the Rights of Persons with	
	Impairment (Blind)	Disabilities Act, 2016 [hereinafter "the Act"] by	As per the minutes of the Committee, visually impaired
	13762/1011/2023	the Respondent by denying reservation to	persons are suitable for the post of Administrative Officer,
	10.12.2022	PwBD-VI in its Recruitment Notice No.15/2022 for filling of various posts of Assistant Commissioner, Principal, PGT (Physics, Chemistry, Maths, Biology, Commerce and Computer Science),	PGT(English), PGT(Hindi), PGT(Geog.), PGT(Hindi), PGT(Eco.), TGT(English), TGT(Hindi), TGT(Sanskrit), TGT(Social Studies), Primary Teacher, PRT(Music), TGT(Work Experience), Assistant Section Officer, Hindi Translator, Senior Secretariat Assistant, Junior Secretariat Assistant and Stenographer Grade-II, but not for the post of Deputy Commissioner, Assistant Commissioner, PGT (Biology/ Commerce/ Bio.Tech/Computer Science), TGT(Maths/Science/Art Education/P&HE) and Librarian as per their nature of job.
7		denial of 4% reservation to PwBDs by KVS in its	
	Impairment (HI)	advertisement for	As per the recommendation of the Committee, persons with
	13783/1011/2023	various teaching and	hearing impairment are not suitable for the post of Post
	30.12.2022	Advt. No.15/2022 online applications were invited	Graduate Teacher (Computer Science) in view of the nature of duties required to be performed in the said post.

# 2. Rejoinders filed by the Complainants:

2.1 All the Complainants in respective rejoinders refuted the reply filed by the Respondent and reiterated their complaints.

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# 3. **Hearing (1):**

3.1 As the grievances in all the above mentioned seven cases arose from the same process of recruitment in the Respondent establishment through Advertisements No.15/2022 and No.16/2022, it was decided to club them for the purpose of a joint hearing, Hence, the cases were heard online through video conferencing on **09.10.2023.** The following parties/representatives were present during the hearing:

# **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

# **Respondent:**

- 1. Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- 2. Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- 3. Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 3 . 2 **Record of Proceedings:** During the online hearing, the complainants challenged the recruitment process on the grounds that
  - i. The Respondent allowed 3% reservation for persons with benchmark disability as against the statutory provisions of 4%
  - ii. The Respondent arbitrarily altered the identification of posts notified by the Central Government vide Ministry of Social Justice & Empowerment Notification dated 04.01.2021 and deleted certain categories of disabilities, particularly the Visual Impairment and locomotor disability in both legs, as being a suitable category for the posts of Asstt. Commissioner, Principal, Vice Principal, TGT and PGT.
  - iii. In another comparable establishment, namely the Navodaya Vidyalaya Samiti, the post of Principal is suitable for these categories of disabilities.
  - iv. The Respondent had several cases where persons with visual impairment were appointed in the teaching posts and to the post of Principal through promotions.
- 3.3 The Respondent No.1 did not deny the aforesaid facts, but submitted that on account of functional requirements in KVS, certain categories have not been found suitable for the teaching posts. The Court sought to know if they have got the posts exempted through the procedure laid down in the Notification dated 04.01.2021 and the DoPT OM dated 15.01.2018 on the subject. The Respondents confirmed that such a process was not undertaken and an internal decision has been taken in this regard by the KVS.
- 3.4 The Respondent No.1 further submitted that the result of the impugned

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examination was already finalized and that they will follow the 4% reservation and the Notification of 04.01.2021 from the next recruitment exercise.

- 3.5 This Court was shocked at the arbitrariness and casual approach of the Respondent No.1 in undertaking this recruitment process for a total of 6990 posts across various teaching and non-teaching posts. Ignorance of the law cannot be an excuse to deny the rightful claim of persons with disabilities. In this recruitment process, ignorance also cannot be pretended as the law position was made very clear to the Respondents vide Notices in the above cases issued by this Court in February 2023. The Respondent No.1 instead of making course correction appeared to have gone ahead with the faulty process of the recruitment. Such disregard of the law passed by the Parliament and instructions issued by the competent authorities cannot be permitted.
- 3.6 Accordingly, this Court in exercise of its powers under Section 77 of the RPwD Act, 2016, directed the Commissioner of KVS to appear in person on the next date of the hearing, i.e., Friday, 13.10.2023, through online mode. The Respondent was permitted to file written explanation/submission, if any, by 12.10.2023.

# 4. Hearing (2):

4.1 The case was next heard online through video conferencing on **13.10.2023**. The following parties/representatives were present during the hearing:

# **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

# **Respondents:**

- 1. Smt. Ajeeta Longjam, Joint Commissioner (Admn.I), KVS
- 4 . 2 **Record of Proceedings:** Vide Record of Proceeding dated 10.10.2023, the Commissioner, Kendriya Vidyalaya Sangathan (KVS) was asked to be present in the next hearing on 13.10.2023. In the meanwhile, the respondent requested for the exemption from personal appearance of the Commissioner, KVS on the ground of his pre-occupation elsewhere. It was also submitted that the Joint Commissioner concerned whould appear for the Respondent. The request was accepted.
- 4.3 At the outset of the hearing on 13.10.2023, the Court asked the representative of KVS whether she is conversant with the facts of the case. To which, she replied in affirmative. The Court then asked the representative of the KVS for its comments on the ongoing recruitment process which has been apparently carried on in complete disregard of the prevailing laws and instructions on the subject on the issue both suitability of the posts for various categories of disabilities as well as on the quantum of reservation.
- 4.4 The Joint Commissioner, KVS submitted that this is the first recruitment exercise

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after the Pandemic and that a large number of vacancies arose during the period, which are being filled through the current process. Being an academic establishment, the KVS relied on the experts from academic background for the purpose of identification of suitability of the posts. They have now realized that exemption of any post or any category of disabilities was required to be obtained from the D/o Empowerment of Persons with Disabilities, M/o SJ&E. The matter has now been discussed and it is being proposed to calculate the total 1% backlog vacancies and open it for the candidates across the country in their next recruitment exercise.

- 4.5 The Court sought to know when the next recruitment process shall begin. The respondent submitted that the current recruitment process shall be completed by the end of this year and the next process will commence sometimes in the next year. On this, the Court expressed its dissatisfaction observing that the present case started almost a year back. But, the respondent despite knowing the law position on the subject, acted in a very casual manner. The Court further asked as to how the pay, seniority and issues relating to candidates becoming overage are proposed to be resolved. The Court also observed that saying that the loss will be made up in the next recruitment year does not make any sense as the next recruitment year may happen after four years. The Court also sought to know as to how the respondent proposes to protect with the right of a candidate who was not allowed to compete in the current recruitment process for all vacancies, i.e., on the basis of reservation as well on their own merit only because some internal expert Committee recommended that they were not suitable for the job by now asking them to compete for only 1% backlog reservation. The total number of vacancies in the current recruitment process being on a rather higher side at approximately 7000, this fact cannot be overlooked.
- 4.6 Shri Rajaselvan R, in Case No.13717/1011/2023 submitted that he has already appeared in the examination but has not been selected because the post of Physical Education Teacher (PET) has not been declared suitable by the respondent whereas the same figures in the MSJE's Notification for locomotor disability and also that 16 persons suffering from locomotor disability are working as PET in Navodaya Vidyalaya which is a comparable establishment.
- 4.7 Shri Pradeep Kumar, in Case No. 13762/1011/2023 submitted that the post of the Principal has been suitable in the last 03 lists issued by the MSJ&E in 2007, 2013 and 2021. There are persons with visual impairment working as the Principal in Navodaya Schools and in schools under the Govt. of NCT of Delhi. So, the action of KVS is arbitrary and forcing us to wait for another recruitment process is basically harassment. Shri Pradeep also mentioned the names of the following persons with visual impairment who are appointed as Principal by KVS itself:
  - i. Shri Devinder Kumar Tiwari
  - ii. Shri N. K. Yadav
  - iii. Shri Rajguru
  - iv. Shri Balasaheb
  - v. Shri M. L. Mishra (Assistant Commissioner)
- 4.8 The representative of the Respondent No.1 submitted that it was based on the recommendation of an Expert Committee. On this the Court desired that the names of the Committee members also be furnished to the Court. The Court observed that the Committee's recommendations cannot be put on a higher pedestal than the provisions of the Act passed by the Parliament.

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4.9 Shri Pradeep Kumar further submitted that instead of including vacancies in the next recruitment process/year, the respondent should be asked to publish the corrigendum and consider the candidates who have already applied during the current process and bring the recruitment process in line with the Rights of Persons with Disabilities Act, 2016. He also requested that the Court should nominate a representative from the O/o CCPD to scrutinize the reservation rosters of the respondent organization.

4.10 The Court sought clarification from the Respondent on affidavit by an officer not below the level of Group 'A' officer as to why they cannot put the current recruitment process on hold and resolve the issue by way of appropriate corrigendum. If this is not found to be a practicable option, then how the Respondent should inform how does it propose to resolve the issues raised by this Court and the Complainants as have been mentioned in the preceding paragraphs. The Respondent shall also inform as to what action it proposes to initiate against its officials and members of the "Expert Committee" who were responsible for the illegality of the current recruitment. The reply of the Respondent shall be submitted to this Court via email at ccpd@nic.in within 03 days from the issue of this Record of Proceedings.

# 5. Compliance filed by the Respondents:

- 5.1 The Respondent No.1 filed its letter dated 19.10.2023 addressed to the Ministry of Education and endorsed to this Court inter-alia submitted that only 3% vacancies were reserved in their advertisements No.15/2022, and 16/2022. They submitted their tentative action plan for filling remaining 1% posts for Persons with Disabilities subject to the approval of the Respondent No. 2, the Department of School Education and Literacy, Ministry of Education:—
  - (a) For identification and approval of the Recruiting Agency, matter will be taken up with the Respondent No. 2 for filling up backlog vacancies.
  - (b) After approval of the Recruiting Agency with signing of MoU, after one month exam centres will be finalized.
  - (c) 15 days after the signing of MoU advertisement for Employment News and other print media.
  - (d) Approx. 45 days after the last date of submission of online applications or as decided by the Recruiting agency, written exam (CBT) will be conducted.
  - (e) After 15 days from the date of CBT candidates will be shortlisted for interview.
  - (f) Within one month after the display of the list of shortlisted candidates, the interview would be conducted.
  - (g) 15 days from the receipt of result from Recruitment Agency Select Panels will be prepared.
  - (h) After one month, appointment letters will be issued.

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### 6. **Hearing (3):**

6.1 An online hearing through video conferencing was conducted on **13.02.2024.** The following parties/representatives were present during the hearing:

# **Complainants:**

- (1) Shri Harendra Singh, 75% Locomotor (BL)
- (2) Shri Rajaselvam R., 60% Locomotor (OA)
- (3) Ms Sandhya, 50% Locomotor (RLL)
- (4) Ms. Sangeeta, 80% Locomotor (BL)
- (5) Shri Amit Yadav, 60% Mental Illness [MI]
- (6) Shri Pradeep Kumar, 100% Visual Impaired (B)
- (7) Shri Bhawani Shankar, 41% Hearing Impaired [HI]

### **Respondents:**

- (1) Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- (2) Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- (3) Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 6 . 2 **Record of Proceedings:** During the hearing, the Court observed that the representatives appearing on behalf of the Respondent No.1 have appeared unprepared not well versed with the case. And also, the Commissioner, KVS who was summoned to appear before the Court did not appear during the hearing. Further, no reply to the notices issued to the Department of School Education & Literacy, Ministry of Education [Respondent No.2] has been received in this matter. Therefore, the hearing was adjourned for half an hour and the representatives of the Respondent No.1 was directed that the Commissioner, KVS be informed to appear personally before the Court. The CCPD also directed that Office of the Respondent No.2 be also contacted to explore the feasibility of an officer at the level of Joint Secretary or Director who are well versed in the matter could appear in the next session of hearing.
- 6.3 During the next session of hearing which was conducted at about 16:57 hrs. neither the Commissioner, KVS nor any officer from the Respondent No.2 could appear during the hearing.

### 7. Observations & Recommendations:

- 7.1 From the records of the case and submissions made by the parties, it is very clear that the Respondent No. 2 has violated the statutory provisions of sections 33 and 34 of the Act. For the purpose of understanding the nature of the violation, it will be appropriate to quote the said provisions of the Act here, which are as under:
  - 33. Identification of posts for reservation.—The appropriate Government shall—
    - (i) identify posts in the **establishments** which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
    - (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

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(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

- **34. Reservation**.—(1) Every appropriate Government shall appoint in every Government establishment, **not less than four per cent.** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—
  - (a) blindness and low vision;
  - (b) deaf and hard of hearing;
  - (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
  - (d) autism, intellectual disability, specific learning disability and mental illness:
  - (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

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7.2 In so far as the identification of posts is concerned the Act, mandates the appropriate government to identify posts in establishments. The term "appropriate government" has been defined in section 2 (b) as under:

### (b) "appropriate Government" means,—

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.
- 7.3 Since, the KVS is a central establishment, it is the Central Government, which is the appropriate government in the instant case. From the language of Section 33, it is clear that the identification of post in all establishments under its control is required to be done by the nodal department of the Central Government and not the establishments concerned themselves. A quick look at the relevant extracts of the Allocation of Business Rules, 1961 (Item No. 4 under the allocation of subjects of the DEPwD at The Second Schedule) makes it clear that the DEPwD is the nodal department in this regard. The extracts are as under:
  - 4. To act as the nodal Department for matters pertaining to Disability and Persons with Disabilities.

Note: The Department of Empowerment of Persons with Disabilities (Divyangjan) shall be the nodal Department for the overall policy, planning and coordination of programmes for Persons with Disabilities. However, overall management and monitoring etc. of the sectoral programmes in respect of this group shall be the responsibility of the concerned Central Ministries, State Governments and Union territory Administrations. Each Central Ministry or Department shall discharge nodal responsibility concerning its sector.

- Accordingly, in fulfilment of the above obligation, the DEPwD has been publishing the list of jobs suitable for various kinds of disability through gazette notifications. The existing gazette notifications were issued vide Notification No. 38-16/2020-DD-III dated 04.01.2021. The previous list was also issued by the MSJE vide Notification No. 16-15/2010-DD-III dated 29.07.2013 as per the provisions of Section 32 of the PwD Act, 1995 (now repealed). These lists are not exhaustive as mentioned under Note 2 of the Gist of Recommendations by the Expert Committee constituted by the DEPwD/MSJE. Note 2 is being reproduced as under:
  - "Note 2: The list of posts being notified is only indicative and not an exhaustive list. If a post is not mentioned in the list, it is not to be construed that it has been exempted. Central Ministries, Departments, Autonomous Bodies, Public Sector Undertakings may further supplement the list by adding to the list of posts identified for respective category of disability."
- 7.5 It is therefore evident that it was not open for the Respondent No. 2 to reduce or delete certain posts or certain categories/sub-categories of disabilities from the list

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issued by the nodal department of the central government.

- 7.6 In OA No. 692/2023, Shri Raj Kumar and Shri Awadhesh Kumar Kaushal Vs The KVS and Ors before the Central Administrative Tribunal (PB), a matter similar in facts with that of Case No. 13762/1011/2023 before this Court, the Respondent No. 1 has filed a communication made to the applicants therein, who are both visually impaired persons working as PGTs in the KVS, expressing its willingness to appoint them as Principal. The extracts of the same communication dated 13.12.2023 are being quoted as under:
  - ".. (2) KVS is in a position to make appointment of two applicants for the Post of Principal under the UR category as approx. 150 post of Principals are still available in addition to 239 posts."
- 7.7 The Hon'ble CAT (PB) disposed of the above matter by its Order dated 05.01.2024 with the following direction:
  - 7. On hearing learned counsel for both the parties, we hereby direct the competent authority amongst the respondents to take further action for implementing their decision dated 13.12.2023, as quoted above, in respect of the applicants in the present O.A., within a span of eight weeks from the date of receipt of a certified copy of this order.
- 7.8 Strangely, in Case No. 13762/1011/2023 before this Court, the Respondent has been denying grant of same relief to the applicant on the grounds that the post of Principal in their establishment is not suitable for persons with visual impairment.
- 7.9 In so far as the decision of the Respondent No. 2 to reduce the reservation for PwBDs from 4% to 3% is concerned, that is also in complete violation of section 33 of the Act, which clearly mentions that every appropriate Government shall appoint in every Government establishment, **not less than four per cent** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. The proviso to Sub-Section 2 of Section 34 makes provisions for a situation where if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government. Hence, there was no grounds, no justification and no legal way for the Respondent No.2 for reducing the reservation from 4% to 3%.
- 7.10 This Court also wishes to draw attention to Judgements dated 01.11.2023 of the Hon'ble Delhi High Court in similar matters against the Respondent No.1 KVS, in W.P. (C) 17460/2022 Court in its own motion Vs KVS and Ors; and in W.P.(C) 665/2023 and CM APPL. 2585/2023 National Association of the Deaf Vs Union of India & Ors., wherein the Hon'ble Court observed and issued directions as under:
  - "30. In the considered opinion of this Court, the KVS has violated the statutory provisions as contained under the RPwD Act. The advertisements in question on this count alone, deserve to be quashed. The KVS has assumed a power which never vested in it. The task of identification as well as of exemption of posts falls in the domain of the appropriate government. However, when the matter was being argued, it was brought to the notice of this Court by learned counsel for the KVS that the process of recruitment was already over, and at this

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juncture, by quashing the advertisements, the Court shall be discontinuing the services of the persons who have been duly selected on various posts in terms of the advertisements.

- 31. In the considered opinion of this Court, if the process of recruitment is already over, the KVS in respect of the identified posts, shall provide 1% reservation against the total vacancies notified vide the impugned advertisements to deaf and hard of hearing persons, and shall initiate a drive of special recruitment for filling up the vacancies reserved for various categories of disabled persons, including 1% identified persons who are deaf and hard of hearing. To reiterate, the reservation must be calculated on the total number of vacancies and ultimate appointment shall take place on the posts identified in the 2021 notification. The exercise of issuing a fresh advertisement for disabled category of total 4% of posts in the entire organization be concluded within a period of three months from the date of receipt of certified copy of this order.
- 32. It is unfortunate that disabled persons are being compelled to file writ petitions and are being compelled to run from pillar to post by an organization like KVS. They are not claiming any charity, and they are claiming their rights as guaranteed to them under the RPwD Act. The legislature has laid down a noble vision of providing "reasonable accommodation" to persons with disabilities so as to ensure that all possible special measures are adopted to enable the PwDs to perform to the best of their ability. Despite so, instead of creating such reasonable accommodation, the respondent has looked down upon the PwDs from the lens of inconvenience.
- 33. In a recent judgment in the case of **National Federation of the Blind Vs. Kendriya Vidvalaya Sangthan & Ors.**, 2023:DHC:7551-DB, which was in respect of persons with disabilities (blind or low vision), this Court relying upon the same notification dated 04.01.2021, has directed the KVS to provide 1% reservation to the blind and low vision persons in respect of the total identified posts in the organization keeping in view the notification dated 04.01.2021.
- 34. Similarly, in the present case also, the KVS in respect of the identified posts as per the notification dated 04.01.2021, shall issue an advertisement and shall clear the backlog of vacancies within a period of six months from the date of receipt of certified copy of this judgment.
- 35. The posts of Principal and the Vice-Principal find place in the notification dated 04.01.2021 issued by the Government of India. The posts of Post Graduate Teacher (PGT), TGT (Trained Graduate Teacher), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II also find place in the notification dated 04.01.2021, and therefore, the KVS is directed to appoint deaf and hard of hearing persons by providing them 1% reservation against the total number of vacancies in the organization. Not only this, the KVS shall provide 4% reservation to the disabled persons in respect of total vacancies in the organization which is the mandate of law. The exercise of appointing disabled persons, including deaf and hard of hearing persons be concluded within a period of six months from the date of receipt of certified copy of this judgment.
- 36. Before parting, we feel constrained to observe that there appears to be a mismatch in the understanding of different departments regarding the mandate

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under RPwD Act. Whereas the Ministry of Social Justice and Empowerment (Nodal Ministry under the RPwD Act) has upgraded the list of posts suitable for the PwDs, the thought has not percolated to the departments which conduct recruitment. A similar "policy disconnect" was noted by the Hon'ble Supreme Court in Vikash Kumar v. Union Public Service Commission and Others, (2021) 5 SCC 370, wherein the stand taken by the Nodal Ministry was found to be in contrast with the stand taken by the recruiting agency — UPSC. This policy disconnect had led to a situation wherein different departments are made to learn the same lesson after individual cases travel to the constitutional Courts. The direct impact of this practice is to compel the PwDs to assert their basic rights before judicial fora, something that cannot be termed as desirable. In this regard, we direct the concerned Secretary, Ministry of Social Justice and Empowerment to issue suitable guidelines for the implementation of reservation policy by all departments in a uniform manner. One step may go far in the fulfilment of our promise to the PwDs.

37. The petitions, including applications (if any), stand disposed of in the aforesaid terms. No order as to costs.

SD/-

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

Sd/-

(SANJEEV NARULA) JUDGE

### NOVEMBER 01, 2023"

- 7.11 In the matter of the National Federation of the Blind Vs the KVS, in WP(C) No.9520/2018, the Hon'ble High Court of Delhi at New Delhi vide Judgment dated 16 October 2023 held as under:-
  - "43. The impugned advertisement distinguishes the persons with disabilities from others, and puts a restriction on their potential to participate in the recruitment process to their full ability. The distinction is purely on the basis of disability. The advertisement has the effect of excluding the persons with disabilities from the race of recruitment, in complete violation of the mandatory reservation provision. It may be noted that an act of discrimination is not only a denial of the promise of equal protection before the law. Rather, every act of exclusion is an assault on the dignity of a person. More so, when the exclusion has the effect of compelling the persons with disabilities out of a race for gaining employment, without any fault of theirs. Instead of providing an equal space to grow, we have been compelling the persons with disabilities to prove, time and again, that they are capable of a lot more than we think.
  - 44. In light of the above discussion, we find the advertisement to be unsustainable. It is discriminatory and violative of the 2016 Act read with 2017 Rules. Accordingly, we issue the following directions:
    - i. The respondent shall conduct an audit of the total number of vacancies in the establishment and shall prepare a vacancy based roster as per Rule-11 of the 2017 Rules within 3 months from the date of this order. The respondent shall

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file an affidavit of the same along with a timeline of recruitment for filling the said vacancies;

- ii. If any vacancy, which ought to have been reserved in accordance with the 2016 Act, has already been filled by any person not falling in the reserved category due to failure of the respondent to reserve the same, the respondent shall adjust those vacancies from the unreserved pool of the available vacancies. Such vacancies shall be deemed to be unfilled and accordingly, shall be considered to have been carried forward from the vacancies notified in the impugned advertisement;
- iii. The respondent shall implement the 4 percent reservation strictly in accordance with Section-34, with minimum one percent to be earmarked for the categories listed at clauses (a), (b), (c), (d) and (e) in Section-34;
- iv. The respondent shall compute the number of vacancies to be reserved for the persons with disabilities against the total number of vacancies in the cadre strength in each group, inclusive of both identified and unidentified posts;
- v. The final appointment shall be made against the identified posts, even if the actual number of persons with disabilities appointed at a given post exceeds four percent;
- vi. The respondent shall not create sub-categories subject-wise within a cadre. The vacancies shall be calculated on the total number of vacancies in a particular cadre and not on posts;
- vii. The respondent shall reserve the post of Principal for persons with benchmark disabilities in blind or low vision category at a minimum of one percent for that particular category;
- viii. No deviation from the statutory rule or exclusion of any post shall be made, except in accordance with the exemption clause and after proper notification by the appropriate government;
- 45. In light of these directions, we dispose of the petition. No order as tocosts.
- 46. We express our thanks to Ld. Counsels for the parties for their ableassistance in the matter.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

> (SANJEEV NARULA) JUDGE

OCTOBER 16, 2023"

7.12 The provisions and policies related to the identification of posts and reservation for PwBDs were made clear to the Respondent through notices in the month of February 2023 and subsequently during the hearings in the matter. They still chose to go ahead with the recruitment process and then on finding that there was no way, they could justify

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their brazenness, they accepted their mistakes in bringing out the impugned advertisements. In fact, the Respondent No. 2, in pursuance to the hearing dated 13<sup>th</sup> October, 2023 submitted an Action Plan vide their letter dated 19.10.2023 for filling up the remaining 1% vacancies. As per the Action Plan, they committed to fill the remaining vacancies in 5 months after identification of the Recruiting Agency and approval of the same by the Respondent No. 2, i.e. Department of School Education and Literacy, Ministry of Education. There has been no update on the same from the Respondents despite lapse of approximately 6 months.

- 7.13 The respondents are directed to consider that claims of the above mentioned Complainants in the light and within the timeline given by the Hon'ble High Court as quoted in para 7.10 above and forward action taken report along with a proof of depositing the fine as mentioned in pre para to this Court within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.
- 7.14 Accordingly, these cases are disposed of.

Signed by Rajesh Aggarwal Date: 18-04-2024 10:15:49

(Rajesh Aggarwal)
Chief 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

### In the matter of —

### Complainants:

SI. No.	Case No.	Name and Disability	Date of Notice
140.			
1.	13716/1011/2023	Shri Harendra Singh, 75% Locomotor (BL)	02.02.2023
2.	13717/1011/2023	Shri Rajaselvam R., 60% Locomotor (OA)	02.02.2023
3.	13723/1011/2023	Ms Sandhya Singh, 50% Locomotor (RLL)	02.02.2023
4.	13727/1011/2023	Ms. Sangeeta, 80% Locomotor (BL)	06.02.2023
5.	13745/1011/2023	Shri Amit Yadav, 60% Mental Illness (MI)	15.02.2023
6.	13762/1011/2023	Shri Pradeep Kumar, 100% Visual Impaired (B)	21.02.2023
7.	13783/1011/2023	Shri Bhawani Shankar, 41% Hearing Impaired (HI)	28.02.2023

### Versus

(1) The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110016
Email – commissioner-kvs@gov.in,
kvs.commissioner@gmail.com

... Respondent No.1

(2) The Secretary,
Department of School Education & Literacy,
Ministry of Education,
Room No. 124-C,
Shastri Bhawan,
New Delhi – 110001

... Respondent No.2

### 1. Gist of Complaints:

Email: secy.sel@nic.in

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1.1 The afore-mentioned complainants filed their respective complaints against the Respondent pursuant to its advertisements No.15/2022, 16/2022 published for direct recruitment to various teaching and non-teaching posts in its establishments/schools whereas these posts are identified as suitable for Persons with Benchmark Disabilities (PwBDs] as per the Gazette Notification dated 04.01.2021 issued by the Department of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD, MSJE].

- 1.2 The grievances raised by the complainants against the Respondent No. 1 mainly pertained to -1) arbitrarily reducing the quantum of reservation from 4% as provided under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the Act"; and 2) not implementing the list of jobs suitable for various types of disabilities issued by the central government from time to time and ignoring certain posts or subcategories of disabilities from the said list in the recruitments in their establishment.
- 1 . 3 The complaints were taken up with the respondents under the mandate and power of this Court as per sections 75 and 77 of the Act by issue of individual notices in each complaint on the dates mentioned in the table at the details of the parties above. The Respondent No.1 filed various replies to the notices. It is mentioned here that no reply or response, whatsoever, to any notice of this Court was received from the Respondent No. 2 in the above cases. The common premise on which the Respondent No.1 based their reply to the notice can be summed up as under:
  - (a) As per the Notification No. 16-15/2010-DD-III dated 29.07.2013 of MSJ&E issuing the list of identified jobs in groups A, B and C, the KVS had constituted a Committee to settle pending court cases/grievances pertaining to reservation and identification of posts suitable for persons with disabilities.
  - (b) The Committee having taken note of KVS being an All India level organization and that its schools are also situated in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018.
  - (c) Therefore, the Committee recommended that KVS should seek exemption from providing this 1% reservation as per the options available under Para 3 of the OM dated 15.01.2018. The Committee observed that KVS should refer the matter to the DEPwD for exemption of 1% enhancement in reservation for persons with Benchmark Disabilities i.e. autism, intellectual disability, specific learning disability and mental illness.
  - (d) However, KVS had identified the post of Trained Graduate Teacher (Art Education) against which this 1% reservation can be granted to the persons with multiple disabilities in the direct recruitment, i.e. for a person who is Hard of Hearing (HH) and Orthopedically disabled (One Leg). This 1% reservation was already advertised by the KVS in Advertisement No.14. This 1% reservation was already advertised by the KVS in Advertisement No.14.
  - (e) Accordingly, a detailed letter was sent to the Director, DEPWD.
  - (f) The impugned notification for the KVS Direct Recruitment was made taking all the above into consideration.
- 1.4 The details of the grievances raised by each of these complainants and specific

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response of the Respondent No. 1 in respect of those have been shown in the table below. The details are as under:

SI	Name of the	Issues Raised	Date of Reply and the
No.	Complainant		Response of Respondent No. 1
	(Shri/Smt./Km.),		
	Details of disability,		
	Case No. and date of		
	Complaint		
1	Harendra Singh, 75%	The Respondent did not	20.03.2023 & 10.05.2023
	Locomotor Disability-	include the PwBD Both	
	Both Legs [LD-BL]	Legs (BL) in OH	
		category for recruitment	1. As per the minutes of the
	13716/1011/2023	to the posts of TGT and	Committee, persons having
		PGT	disability in both legs in OH
	07.12.2022		category are not suitable for the
2	Sangeeta	Regarding denial of	post of Principal, Vice-Principal,
	80% Locomotor	reservation for PwBD-BL	PGT(Physics/
	Disability-Both Leg	to the post of Principal,	Chemistry/Biology/Bio-Tech/
	[LD-BL]		Computer Science) and TGT
			(Science), Primary Teacher,
	13727/1011/2023	,	Librarian, Finance Officer,
			Assistant Section Officer, Hindi
	05.12.2022	The state of the s	Translator, Junior Secretarial
			Assistant and Stenographer
		Secretarial Assistant and	Grade-II, on the grounds of the
		Stenographer Grade-II.	nature of duties involved in these
			posts.
			2. In the drop-down box under PH
			category, however, candidates
			could have submitted their
			category by putting OH in the
			drop-down box. The sub-
			category under OH was not asked
			from the candidates at that stage.
			If the complainants, were
			shortlisted for interview, they
			would not have been declared
			ineligible, and their selection
			I
			written test and the interview.
			submitted that the KVS has to
			review their reservation policy for
			latest instructions/notification
			issued by the Government of
			India and that the Committee
			consisting of officials from KVS
			The Respondent No.1 also submitted that the KVS has to review their reservation policy for divyangjan on all posts as per the latest instructions/notification issued by the Government of India and that the Committee

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			would hold a meeting in this regard very soon.
3	60% Locomotor Disability-One Arm	· · · · · · · · · · · · · · · · · · ·	
4	50% Locomotor Disability-One Leg [LD-OL] 13723/1011/2023 26.12.2022	Primary Teachers. She submitted that KVS vide advertisement number 16/2022 had advertised 6414 vacancies of Primary Teacher in KVS but only 3% seats have been reserved for PwBDs.	The Committee examined the feasibility of enhancement of reservation for PwBDs from 3% to 4% in view of the DoPT OM No.35035/ 02/2017-Estt(Res) dated 15.01.2018 in the context of type of work being carried out in the KVS. The Committee was of the view that the KVS being all
5	60% Mental Illness [MI] 13745/1011/2023 17.12.2022	Denial of reservation for PwBD Others category in its advertisement 15/2022 for recruitment to the various teaching and non-teaching posts. He further submitted that Specific Learning Disability, Mental Illness and Autism all come under PwBD Others category, and out of total 4% reservation for PwBDs, 1% seats are reserved for PwBD Others category. He requested this Court that KVS be directed to	India level organization its Kendriya Vidyalayas are in very remote and far off places, the work being carried out would not suit to the persons who are

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		advertisement and	
		reserve 1% seats for PwBD-Others category.	
		9 ,	
6	100% Visual	non-compliance with the Rights of Persons with	
	Impairment (Blind)	Disabilities Act, 2016 [hereinafter "the Act"] by	As per the minutes of the Committee, visually impaired
	13762/1011/2023	the Respondent by denying reservation to	persons are suitable for the post of Administrative Officer,
	10.12.2022	PwBD-VI in its Recruitment Notice No.15/2022 for filling of various posts of Assistant Commissioner, Principal, PGT (Physics, Chemistry, Maths, Biology, Commerce and Computer Science),	PGT(English), PGT(Hindi), PGT(Geog.), PGT(Hindi), PGT(Eco.), TGT(English), TGT(Hindi), TGT(Sanskrit), TGT(Social Studies), Primary Teacher, PRT(Music), TGT(Work Experience), Assistant Section Officer, Hindi Translator, Senior Secretariat Assistant, Junior Secretariat Assistant and Stenographer Grade-II, but not for the post of Deputy Commissioner, Assistant Commissioner, PGT (Biology/ Commerce/ Bio.Tech/Computer Science), TGT(Maths/Science/Art Education/P&HE) and Librarian as per their nature of job.
7		denial of 4% reservation to PwBDs by KVS in its	
	Impairment (HI)	advertisement for	As per the recommendation of the Committee, persons with
	13783/1011/2023	various teaching and	hearing impairment are not suitable for the post of Post
	30.12.2022	Advt. No.15/2022 online applications were invited	Graduate Teacher (Computer Science) in view of the nature of duties required to be performed in the said post.

# 2. Rejoinders filed by the Complainants:

2.1 All the Complainants in respective rejoinders refuted the reply filed by the Respondent and reiterated their complaints.

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# 3. **Hearing (1):**

3.1 As the grievances in all the above mentioned seven cases arose from the same process of recruitment in the Respondent establishment through Advertisements No.15/2022 and No.16/2022, it was decided to club them for the purpose of a joint hearing, Hence, the cases were heard online through video conferencing on **09.10.2023.** The following parties/representatives were present during the hearing:

### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

### **Respondent:**

- 1. Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- 2. Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- 3. Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 3 . 2 **Record of Proceedings:** During the online hearing, the complainants challenged the recruitment process on the grounds that
  - i. The Respondent allowed 3% reservation for persons with benchmark disability as against the statutory provisions of 4%
  - ii. The Respondent arbitrarily altered the identification of posts notified by the Central Government vide Ministry of Social Justice & Empowerment Notification dated 04.01.2021 and deleted certain categories of disabilities, particularly the Visual Impairment and locomotor disability in both legs, as being a suitable category for the posts of Asstt. Commissioner, Principal, Vice Principal, TGT and PGT.
  - iii. In another comparable establishment, namely the Navodaya Vidyalaya Samiti, the post of Principal is suitable for these categories of disabilities.
  - iv. The Respondent had several cases where persons with visual impairment were appointed in the teaching posts and to the post of Principal through promotions.
- 3.3 The Respondent No.1 did not deny the aforesaid facts, but submitted that on account of functional requirements in KVS, certain categories have not been found suitable for the teaching posts. The Court sought to know if they have got the posts exempted through the procedure laid down in the Notification dated 04.01.2021 and the DoPT OM dated 15.01.2018 on the subject. The Respondents confirmed that such a process was not undertaken and an internal decision has been taken in this regard by the KVS.
- 3.4 The Respondent No.1 further submitted that the result of the impugned

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examination was already finalized and that they will follow the 4% reservation and the Notification of 04.01.2021 from the next recruitment exercise.

- 3.5 This Court was shocked at the arbitrariness and casual approach of the Respondent No.1 in undertaking this recruitment process for a total of 6990 posts across various teaching and non-teaching posts. Ignorance of the law cannot be an excuse to deny the rightful claim of persons with disabilities. In this recruitment process, ignorance also cannot be pretended as the law position was made very clear to the Respondents vide Notices in the above cases issued by this Court in February 2023. The Respondent No.1 instead of making course correction appeared to have gone ahead with the faulty process of the recruitment. Such disregard of the law passed by the Parliament and instructions issued by the competent authorities cannot be permitted.
- 3.6 Accordingly, this Court in exercise of its powers under Section 77 of the RPwD Act, 2016, directed the Commissioner of KVS to appear in person on the next date of the hearing, i.e., Friday, 13.10.2023, through online mode. The Respondent was permitted to file written explanation/submission, if any, by 12.10.2023.

# 4. Hearing (2):

4.1 The case was next heard online through video conferencing on **13.10.2023**. The following parties/representatives were present during the hearing:

### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

# **Respondents:**

- 1. Smt. Ajeeta Longjam, Joint Commissioner (Admn.I), KVS
- 4 . 2 **Record of Proceedings:** Vide Record of Proceeding dated 10.10.2023, the Commissioner, Kendriya Vidyalaya Sangathan (KVS) was asked to be present in the next hearing on 13.10.2023. In the meanwhile, the respondent requested for the exemption from personal appearance of the Commissioner, KVS on the ground of his pre-occupation elsewhere. It was also submitted that the Joint Commissioner concerned whould appear for the Respondent. The request was accepted.
- 4.3 At the outset of the hearing on 13.10.2023, the Court asked the representative of KVS whether she is conversant with the facts of the case. To which, she replied in affirmative. The Court then asked the representative of the KVS for its comments on the ongoing recruitment process which has been apparently carried on in complete disregard of the prevailing laws and instructions on the subject on the issue both suitability of the posts for various categories of disabilities as well as on the quantum of reservation.
- 4.4 The Joint Commissioner, KVS submitted that this is the first recruitment exercise

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after the Pandemic and that a large number of vacancies arose during the period, which are being filled through the current process. Being an academic establishment, the KVS relied on the experts from academic background for the purpose of identification of suitability of the posts. They have now realized that exemption of any post or any category of disabilities was required to be obtained from the D/o Empowerment of Persons with Disabilities, M/o SJ&E. The matter has now been discussed and it is being proposed to calculate the total 1% backlog vacancies and open it for the candidates across the country in their next recruitment exercise.

- 4.5 The Court sought to know when the next recruitment process shall begin. The respondent submitted that the current recruitment process shall be completed by the end of this year and the next process will commence sometimes in the next year. On this, the Court expressed its dissatisfaction observing that the present case started almost a year back. But, the respondent despite knowing the law position on the subject, acted in a very casual manner. The Court further asked as to how the pay, seniority and issues relating to candidates becoming overage are proposed to be resolved. The Court also observed that saying that the loss will be made up in the next recruitment year does not make any sense as the next recruitment year may happen after four years. The Court also sought to know as to how the respondent proposes to protect with the right of a candidate who was not allowed to compete in the current recruitment process for all vacancies, i.e., on the basis of reservation as well on their own merit only because some internal expert Committee recommended that they were not suitable for the job by now asking them to compete for only 1% backlog reservation. The total number of vacancies in the current recruitment process being on a rather higher side at approximately 7000, this fact cannot be overlooked.
- 4.6 Shri Rajaselvan R, in Case No.13717/1011/2023 submitted that he has already appeared in the examination but has not been selected because the post of Physical Education Teacher (PET) has not been declared suitable by the respondent whereas the same figures in the MSJE's Notification for locomotor disability and also that 16 persons suffering from locomotor disability are working as PET in Navodaya Vidyalaya which is a comparable establishment.
- 4.7 Shri Pradeep Kumar, in Case No. 13762/1011/2023 submitted that the post of the Principal has been suitable in the last 03 lists issued by the MSJ&E in 2007, 2013 and 2021. There are persons with visual impairment working as the Principal in Navodaya Schools and in schools under the Govt. of NCT of Delhi. So, the action of KVS is arbitrary and forcing us to wait for another recruitment process is basically harassment. Shri Pradeep also mentioned the names of the following persons with visual impairment who are appointed as Principal by KVS itself:
  - i. Shri Devinder Kumar Tiwari
  - ii. Shri N. K. Yadav
  - iii. Shri Rajguru
  - iv. Shri Balasaheb
  - v. Shri M. L. Mishra (Assistant Commissioner)
- 4.8 The representative of the Respondent No.1 submitted that it was based on the recommendation of an Expert Committee. On this the Court desired that the names of the Committee members also be furnished to the Court. The Court observed that the Committee's recommendations cannot be put on a higher pedestal than the provisions of the Act passed by the Parliament.

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4.9 Shri Pradeep Kumar further submitted that instead of including vacancies in the next recruitment process/year, the respondent should be asked to publish the corrigendum and consider the candidates who have already applied during the current process and bring the recruitment process in line with the Rights of Persons with Disabilities Act, 2016. He also requested that the Court should nominate a representative from the O/o CCPD to scrutinize the reservation rosters of the respondent organization.

4.10 The Court sought clarification from the Respondent on affidavit by an officer not below the level of Group 'A' officer as to why they cannot put the current recruitment process on hold and resolve the issue by way of appropriate corrigendum. If this is not found to be a practicable option, then how the Respondent should inform how does it propose to resolve the issues raised by this Court and the Complainants as have been mentioned in the preceding paragraphs. The Respondent shall also inform as to what action it proposes to initiate against its officials and members of the "Expert Committee" who were responsible for the illegality of the current recruitment. The reply of the Respondent shall be submitted to this Court via email at ccpd@nic.in within 03 days from the issue of this Record of Proceedings.

# 5. Compliance filed by the Respondents:

- 5.1 The Respondent No.1 filed its letter dated 19.10.2023 addressed to the Ministry of Education and endorsed to this Court inter-alia submitted that only 3% vacancies were reserved in their advertisements No.15/2022, and 16/2022. They submitted their tentative action plan for filling remaining 1% posts for Persons with Disabilities subject to the approval of the Respondent No. 2, the Department of School Education and Literacy, Ministry of Education:—
  - (a) For identification and approval of the Recruiting Agency, matter will be taken up with the Respondent No. 2 for filling up backlog vacancies.
  - (b) After approval of the Recruiting Agency with signing of MoU, after one month exam centres will be finalized.
  - (c) 15 days after the signing of MoU advertisement for Employment News and other print media.
  - (d) Approx. 45 days after the last date of submission of online applications or as decided by the Recruiting agency, written exam (CBT) will be conducted.
  - (e) After 15 days from the date of CBT candidates will be shortlisted for interview.
  - (f) Within one month after the display of the list of shortlisted candidates, the interview would be conducted.
  - (g) 15 days from the receipt of result from Recruitment Agency Select Panels will be prepared.
  - (h) After one month, appointment letters will be issued.

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### 6. **Hearing (3):**

6.1 An online hearing through video conferencing was conducted on **13.02.2024.** The following parties/representatives were present during the hearing:

# **Complainants:**

- (1) Shri Harendra Singh, 75% Locomotor (BL)
- (2) Shri Rajaselvam R., 60% Locomotor (OA)
- (3) Ms Sandhya, 50% Locomotor (RLL)
- (4) Ms. Sangeeta, 80% Locomotor (BL)
- (5) Shri Amit Yadav, 60% Mental Illness [MI]
- (6) Shri Pradeep Kumar, 100% Visual Impaired (B)
- (7) Shri Bhawani Shankar, 41% Hearing Impaired [HI]

### **Respondents:**

- (1) Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- (2) Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- (3) Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 6 . 2 **Record of Proceedings:** During the hearing, the Court observed that the representatives appearing on behalf of the Respondent No.1 have appeared unprepared not well versed with the case. And also, the Commissioner, KVS who was summoned to appear before the Court did not appear during the hearing. Further, no reply to the notices issued to the Department of School Education & Literacy, Ministry of Education [Respondent No.2] has been received in this matter. Therefore, the hearing was adjourned for half an hour and the representatives of the Respondent No.1 was directed that the Commissioner, KVS be informed to appear personally before the Court. The CCPD also directed that Office of the Respondent No.2 be also contacted to explore the feasibility of an officer at the level of Joint Secretary or Director who are well versed in the matter could appear in the next session of hearing.
- 6.3 During the next session of hearing which was conducted at about 16:57 hrs. neither the Commissioner, KVS nor any officer from the Respondent No.2 could appear during the hearing.

### 7. Observations & Recommendations:

- 7.1 From the records of the case and submissions made by the parties, it is very clear that the Respondent No. 2 has violated the statutory provisions of sections 33 and 34 of the Act. For the purpose of understanding the nature of the violation, it will be appropriate to quote the said provisions of the Act here, which are as under:
  - 33. Identification of posts for reservation.—The appropriate Government shall—
    - (i) identify posts in the **establishments** which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
    - (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

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(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

- **34.** Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—
  - (a) blindness and low vision;
  - (b) deaf and hard of hearing;
  - (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
  - (d) autism, intellectual disability, specific learning disability and mental illness:
  - (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

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7.2 In so far as the identification of posts is concerned the Act, mandates the appropriate government to identify posts in establishments. The term "appropriate government" has been defined in section 2 (b) as under:

### (b) "appropriate Government" means,—

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.
- 7.3 Since, the KVS is a central establishment, it is the Central Government, which is the appropriate government in the instant case. From the language of Section 33, it is clear that the identification of post in all establishments under its control is required to be done by the nodal department of the Central Government and not the establishments concerned themselves. A quick look at the relevant extracts of the Allocation of Business Rules, 1961 (Item No. 4 under the allocation of subjects of the DEPwD at The Second Schedule) makes it clear that the DEPwD is the nodal department in this regard. The extracts are as under:
  - 4. To act as the nodal Department for matters pertaining to Disability and Persons with Disabilities.

Note: The Department of Empowerment of Persons with Disabilities (Divyangjan) shall be the nodal Department for the overall policy, planning and coordination of programmes for Persons with Disabilities. However, overall management and monitoring etc. of the sectoral programmes in respect of this group shall be the responsibility of the concerned Central Ministries, State Governments and Union territory Administrations. Each Central Ministry or Department shall discharge nodal responsibility concerning its sector.

- Accordingly, in fulfilment of the above obligation, the DEPwD has been publishing the list of jobs suitable for various kinds of disability through gazette notifications. The existing gazette notifications were issued vide Notification No. 38-16/2020-DD-III dated 04.01.2021. The previous list was also issued by the MSJE vide Notification No. 16-15/2010-DD-III dated 29.07.2013 as per the provisions of Section 32 of the PwD Act, 1995 (now repealed). These lists are not exhaustive as mentioned under Note 2 of the Gist of Recommendations by the Expert Committee constituted by the DEPwD/MSJE. Note 2 is being reproduced as under:
  - "Note 2: The list of posts being notified is only indicative and not an exhaustive list. If a post is not mentioned in the list, it is not to be construed that it has been exempted. Central Ministries, Departments, Autonomous Bodies, Public Sector Undertakings may further supplement the list by adding to the list of posts identified for respective category of disability."
- 7.5 It is therefore evident that it was not open for the Respondent No. 2 to reduce or delete certain posts or certain categories/sub-categories of disabilities from the list

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issued by the nodal department of the central government.

- 7.6 In OA No. 692/2023, Shri Raj Kumar and Shri Awadhesh Kumar Kaushal Vs The KVS and Ors before the Central Administrative Tribunal (PB), a matter similar in facts with that of Case No. 13762/1011/2023 before this Court, the Respondent No. 1 has filed a communication made to the applicants therein, who are both visually impaired persons working as PGTs in the KVS, expressing its willingness to appoint them as Principal. The extracts of the same communication dated 13.12.2023 are being quoted as under:
  - ".. (2) KVS is in a position to make appointment of two applicants for the Post of Principal under the UR category as approx. 150 post of Principals are still available in addition to 239 posts."
- 7.7 The Hon'ble CAT (PB) disposed of the above matter by its Order dated 05.01.2024 with the following direction:
  - 7. On hearing learned counsel for both the parties, we hereby direct the competent authority amongst the respondents to take further action for implementing their decision dated 13.12.2023, as quoted above, in respect of the applicants in the present O.A., within a span of eight weeks from the date of receipt of a certified copy of this order.
- 7.8 Strangely, in Case No. 13762/1011/2023 before this Court, the Respondent has been denying grant of same relief to the applicant on the grounds that the post of Principal in their establishment is not suitable for persons with visual impairment.
- 7.9 In so far as the decision of the Respondent No. 2 to reduce the reservation for PwBDs from 4% to 3% is concerned, that is also in complete violation of section 33 of the Act, which clearly mentions that every appropriate Government shall appoint in every Government establishment, **not less than four per cent** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. The proviso to Sub-Section 2 of Section 34 makes provisions for a situation where if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government. Hence, there was no grounds, no justification and no legal way for the Respondent No.2 for reducing the reservation from 4% to 3%.
- 7.10 This Court also wishes to draw attention to Judgements dated 01.11.2023 of the Hon'ble Delhi High Court in similar matters against the Respondent No.1 KVS, in W.P. (C) 17460/2022 Court in its own motion Vs KVS and Ors; and in W.P.(C) 665/2023 and CM APPL. 2585/2023 National Association of the Deaf Vs Union of India & Ors., wherein the Hon'ble Court observed and issued directions as under:
  - "30. In the considered opinion of this Court, the KVS has violated the statutory provisions as contained under the RPwD Act. The advertisements in question on this count alone, deserve to be quashed. The KVS has assumed a power which never vested in it. The task of identification as well as of exemption of posts falls in the domain of the appropriate government. However, when the matter was being argued, it was brought to the notice of this Court by learned counsel for the KVS that the process of recruitment was already over, and at this

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juncture, by quashing the advertisements, the Court shall be discontinuing the services of the persons who have been duly selected on various posts in terms of the advertisements.

- 31. In the considered opinion of this Court, if the process of recruitment is already over, the KVS in respect of the identified posts, shall provide 1% reservation against the total vacancies notified vide the impugned advertisements to deaf and hard of hearing persons, and shall initiate a drive of special recruitment for filling up the vacancies reserved for various categories of disabled persons, including 1% identified persons who are deaf and hard of hearing. To reiterate, the reservation must be calculated on the total number of vacancies and ultimate appointment shall take place on the posts identified in the 2021 notification. The exercise of issuing a fresh advertisement for disabled category of total 4% of posts in the entire organization be concluded within a period of three months from the date of receipt of certified copy of this order.
- 32. It is unfortunate that disabled persons are being compelled to file writ petitions and are being compelled to run from pillar to post by an organization like KVS. They are not claiming any charity, and they are claiming their rights as guaranteed to them under the RPwD Act. The legislature has laid down a noble vision of providing "reasonable accommodation" to persons with disabilities so as to ensure that all possible special measures are adopted to enable the PwDs to perform to the best of their ability. Despite so, instead of creating such reasonable accommodation, the respondent has looked down upon the PwDs from the lens of inconvenience.
- 33. In a recent judgment in the case of **National Federation of the Blind Vs. Kendriya Vidvalaya Sangthan & Ors.**, 2023:DHC:7551-DB, which was in respect of persons with disabilities (blind or low vision), this Court relying upon the same notification dated 04.01.2021, has directed the KVS to provide 1% reservation to the blind and low vision persons in respect of the total identified posts in the organization keeping in view the notification dated 04.01.2021.
- 34. Similarly, in the present case also, the KVS in respect of the identified posts as per the notification dated 04.01.2021, shall issue an advertisement and shall clear the backlog of vacancies within a period of six months from the date of receipt of certified copy of this judgment.
- 35. The posts of Principal and the Vice-Principal find place in the notification dated 04.01.2021 issued by the Government of India. The posts of Post Graduate Teacher (PGT), TGT (Trained Graduate Teacher), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II also find place in the notification dated 04.01.2021, and therefore, the KVS is directed to appoint deaf and hard of hearing persons by providing them 1% reservation against the total number of vacancies in the organization. Not only this, the KVS shall provide 4% reservation to the disabled persons in respect of total vacancies in the organization which is the mandate of law. The exercise of appointing disabled persons, including deaf and hard of hearing persons be concluded within a period of six months from the date of receipt of certified copy of this judgment.
- 36. Before parting, we feel constrained to observe that there appears to be a mismatch in the understanding of different departments regarding the mandate

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under RPwD Act. Whereas the Ministry of Social Justice and Empowerment (Nodal Ministry under the RPwD Act) has upgraded the list of posts suitable for the PwDs, the thought has not percolated to the departments which conduct recruitment. A similar "policy disconnect" was noted by the Hon'ble Supreme Court in Vikash Kumar v. Union Public Service Commission and Others, (2021) 5 SCC 370, wherein the stand taken by the Nodal Ministry was found to be in contrast with the stand taken by the recruiting agency — UPSC. This policy disconnect had led to a situation wherein different departments are made to learn the same lesson after individual cases travel to the constitutional Courts. The direct impact of this practice is to compel the PwDs to assert their basic rights before judicial fora, something that cannot be termed as desirable. In this regard, we direct the concerned Secretary, Ministry of Social Justice and Empowerment to issue suitable guidelines for the implementation of reservation policy by all departments in a uniform manner. One step may go far in the fulfilment of our promise to the PwDs.

37. The petitions, including applications (if any), stand disposed of in the aforesaid terms. No order as to costs.

SD/-

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

Sd/-

(SANJEEV NARULA) JUDGE

#### NOVEMBER 01, 2023"

- 7.11 In the matter of the National Federation of the Blind Vs the KVS, in WP(C) No.9520/2018, the Hon'ble High Court of Delhi at New Delhi vide Judgment dated 16 October 2023 held as under:-
  - "43. The impugned advertisement distinguishes the persons with disabilities from others, and puts a restriction on their potential to participate in the recruitment process to their full ability. The distinction is purely on the basis of disability. The advertisement has the effect of excluding the persons with disabilities from the race of recruitment, in complete violation of the mandatory reservation provision. It may be noted that an act of discrimination is not only a denial of the promise of equal protection before the law. Rather, every act of exclusion is an assault on the dignity of a person. More so, when the exclusion has the effect of compelling the persons with disabilities out of a race for gaining employment, without any fault of theirs. Instead of providing an equal space to grow, we have been compelling the persons with disabilities to prove, time and again, that they are capable of a lot more than we think.
  - 44. In light of the above discussion, we find the advertisement to be unsustainable. It is discriminatory and violative of the 2016 Act read with 2017 Rules. Accordingly, we issue the following directions:
    - i. The respondent shall conduct an audit of the total number of vacancies in the establishment and shall prepare a vacancy based roster as per Rule-11 of the 2017 Rules within 3 months from the date of this order. The respondent shall

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file an affidavit of the same along with a timeline of recruitment for filling the said vacancies;

- ii. If any vacancy, which ought to have been reserved in accordance with the 2016 Act, has already been filled by any person not falling in the reserved category due to failure of the respondent to reserve the same, the respondent shall adjust those vacancies from the unreserved pool of the available vacancies. Such vacancies shall be deemed to be unfilled and accordingly, shall be considered to have been carried forward from the vacancies notified in the impugned advertisement;
- iii. The respondent shall implement the 4 percent reservation strictly in accordance with Section-34, with minimum one percent to be earmarked for the categories listed at clauses (a), (b), (c), (d) and (e) in Section-34;
- iv. The respondent shall compute the number of vacancies to be reserved for the persons with disabilities against the total number of vacancies in the cadre strength in each group, inclusive of both identified and unidentified posts;
- v. The final appointment shall be made against the identified posts, even if the actual number of persons with disabilities appointed at a given post exceeds four percent;
- vi. The respondent shall not create sub-categories subject-wise within a cadre. The vacancies shall be calculated on the total number of vacancies in a particular cadre and not on posts;
- vii. The respondent shall reserve the post of Principal for persons with benchmark disabilities in blind or low vision category at a minimum of one percent for that particular category;
- viii. No deviation from the statutory rule or exclusion of any post shall be made, except in accordance with the exemption clause and after proper notification by the appropriate government;
- 45. In light of these directions, we dispose of the petition. No order as tocosts.
- 46. We express our thanks to Ld. Counsels for the parties for their ableassistance in the matter.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

> (SANJEEV NARULA) JUDGE

OCTOBER 16, 2023"

7.12 The provisions and policies related to the identification of posts and reservation for PwBDs were made clear to the Respondent through notices in the month of February 2023 and subsequently during the hearings in the matter. They still chose to go ahead with the recruitment process and then on finding that there was no way, they could justify

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their brazenness, they accepted their mistakes in bringing out the impugned advertisements. In fact, the Respondent No. 2, in pursuance to the hearing dated 13<sup>th</sup> October, 2023 submitted an Action Plan vide their letter dated 19.10.2023 for filling up the remaining 1% vacancies. As per the Action Plan, they committed to fill the remaining vacancies in 5 months after identification of the Recruiting Agency and approval of the same by the Respondent No. 2, i.e. Department of School Education and Literacy, Ministry of Education. There has been no update on the same from the Respondents despite lapse of approximately 6 months.

- 7.13 The respondents are directed to consider that claims of the above mentioned Complainants in the light and within the timeline given by the Hon'ble High Court as quoted in para 7.10 above and forward action taken report along with a proof of depositing the fine as mentioned in pre para to this Court within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.
- 7.14 Accordingly, these cases are disposed of.

Signed by Rajesh Aggarwal Date: 18-04-2024 10:15:49

(Rajesh Aggarwal) Chief Commissioner for Persons with Disabilities 28/49/566/12/0E-E.POK/dM/CAPPD 1/2969/2024



## 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 13741/1014/2023

#### In the matter of—

Shri Dileep Kumar, R/o Vasant Vihar, Road No.2, New Jaganpura, Near Bishop Scott Girls School, Patna – 800027 (Bihar) Email: diliprockingpcs@gmail.com

... Complainant

#### Versus

The Principal Commissioner of Customs (General),
Office of The Principal Commissioner of Customs,
New Custom House, Ballard Estate,
Mumbai-400001;
Email: p.estt-mum-cus-zonel@gov.in /
pr.cc-general@gov.in ... Respondent

## 1. Gist of Complaint:

- 1.1 Shri Dileep Kumar, a person with 88% Locomotor Disability filed a complaint dated 10.01.2023 against the Respondent regarding denial of appointment to the post of Preventive Officer on the ground of the height of his body.
- 1.2 The Complainant submitted that he lost both his legs in a train accident and now uses artificial legs for his living. He had cleared SSC CGLE 2020 and was selected for the post of Preventive Officer. He claimed that as per the SSC Notification, he fulfills all the functional criteria for appointment to the above-said post. But the Customs Department has been denying it based on a deficiency in height. His artificial legs are variable in height but still, they are not considering

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him for the post and declared him unfit by just 0.5 cm.

## 2. Submissions made by the Respondent:

2.1 The Respondent filed their reply dated 05.04.2023 on affidavit and inter-alia submitted that in the Medical Report of the Complainant received from Sir J.J. Group of Hospitals dated 02.01.2023 the height was mentioned as 157 cm with prosthetic legs as both the legs of the candidate were amputated. The physical standards for the post of Inspector (Preventive Office) for male candidates are mentioned as under:

#### "Male Candidates:

## (i) Physical Standards:

Height 157 cm.	Height	is	relaxable	by	5 (	cm	in	the
			Garhwa					ese,
Chest 81 cm (fully expanded with	Gorkha	as,	and	me	emb	oers	;	of
a minimum expansion of 5 cm.)	Sched	uled	d Tribes.					

## (ii) Physical Test:

Walking: 1600 meters in 15 minutes.

Cycling: 8 Km in 30 minutes.

**NOTE:** For the post of Inspector (Central Excise/ Examiner/Preventive Officer), persons with disabilities will have to meet the physical standards i.e. height, chest, and weight as prescribed for the relevant post. However, for orthopedically disabled candidates, the following relaxation in Physical Tests is allowed:

- (a) The test of "Walking" shall not be insisted in the case of OL and OAL categories.
- (b) The test of "Cycling" shall not be insisted in the case of OA, OL, and OAL categories.
- 2.2 Further, in terms of the SSC's Notice for CGLE 2O2O dated 29.12.2020, the nature of physical disabilities permissible for the post of Inspector (PO), were OA (One Arm), OL (One Leg), OAL (One Arm and One Leg) and HH (Hard of Hearing). However, vide Corrigendum-IV issued on 12.08.2022 some amendments

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in the permissible benchmark disabilities as—

- B(Blind), LV(Low Vision); (a)
- (b) D (Deaf), HH (Hard of Hearing);
- (c) OA (One Arm), BA (Both Arms), OL (One Leg), BL (Both Legs), OAL (One Arm and One Leg), CP (Cerebral Palsy), LC (Leprosy Cured), Dw (Dwarfism), AAV (Acid Attack Victims);
- (d) ASD (M), (Autism Spectrum Disorder (M=Mild), SLD (Specific Learning Disability), MI (Mental illness);
- (e) MD(Multiple Disabilities) including (a) to (d) above.

with "S (Sitting), ST (Standing), MF (Manipulation with fingers), RW (Reading & Writing), SE (Seeing), H (Hearing), C (Communication) as Functional Requirements" were made.

2.3 In the instant case, the Complainant has both legs amputated (BL). Therefore, he could not meet the functional requirements without appropriate aids and appliances. Though some amendments in the permissible benchmark disabilities made vide Corrigendum-IV dated 12.08.20222, were exemptions/instructions/clarifications concerning the physical standard i.e. height, chest, and weight as prescribed for the relevant posts, were issued by the SSC/DoPT/CBIC in respect of the persons with disabilities.

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

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

#### 4. **Hearing:**

File No. 184756-DILEEP-KUMAR (Computer No. 25143)

- 4.1 A hearing was conducted in hybrid mode on 15 April 2024. No one appeared for the Complainant. The following representatives were present through video conferencing on behalf of the Respondent:
  - 1. Dr. Kundan Yadav, Additional Commissioner (Custom)
  - 2. Shri Siddhartha Sinha, Advocate
  - 3. Shri Pankaj Kumar Rai, Superintendent, Custom House, Mumbai

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4.2 The Advocate for the Respondent submitted that the candidature of the Complainant has not been rejected. Simultaneously, as submitted in the written reply also, this fact has been noted that the Complainant is missing just by 0.5 cm, but the guidelines in vogue do not provide for any specific relaxation in the case of both leg amputations. Relaxation is there for One Leg and One Arm & One Leg. Moreover, the Board and the DoPT have already been positively apprised and their approval/clarification in writing is awaited.

#### 5. Observations & Recommendations:

- 5.1 Upon considering the facts of the case and after hearing the representatives of the Respondent, it was observed that the Complainant, who uses artificial limbs, has not been selected for missing the benchmark by just 0.5 Cm. In the absence of an enabling provision, the Respondent is waiting for clarification from the administrative/nodal department of the central government. However, this Court is of the view that under the circumstances, no clarification is needed to appoint the Complainant if he is otherwise eligible for the same. As per the Notification of the SSC, a relaxation by 5 cm in height is available in the case of candidates who are Garhwalis, Assamese, Gorkhas, or members of the Scheduled Tribes. This implies that candidates with 152 Cm height are functionally eligible for appointment to the same post. In other words, if the Complainant, in this case, belonged to any of these communities, then he would easily have been selected. The Hon'ble Supreme Court has, in Civil Appeal Nos. 3984-86 of 2007, Mahesh Gupta & Ors vs Yashwant Kumar Ahirwar & Ors, held that PwD is a special class and their further classification into SC, ST, etc. is not permissible. As such, the relaxation available to any other category should be made available to a person with disabilities. As an aside, if the Complainant used another longer prosthetic, he might have qualified the criteria. This Court believes that such a harsh and unreasonable condition should not have been imposed by the Respondent in this case.
- 5.2 Hence, it is strongly recommended that the request of the Complainant be considered by extending the maximum relaxation available to any other category/community. A copy of this order may also be forwarded to the DoPT and the SSC for carrying out necessary amendments in the selection process in similar cases in the future.

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5.3 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 the stipulated time, 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.

5.4 Accordingly the case is disposed of.

Signed by Rajesh Aggarwal Date: 24-04-2024 08:59:38

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities

27437450/H20REXIXDRA-SOPPOH 1/2959/2024



# 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### In the matter of —

## Complainants:

SI.	Case No.	Name and Disability	Date of
No.			Notice
1.	13716/1011/2023	Shri Harendra Singh, 75% Locomotor (BL)	02.02.2023
2.	13717/1011/2023	Shri Rajaselvam R., 60% Locomotor (OA)	02.02.2023
3.	13723/1011/2023	Ms Sandhya Singh, 50% Locomotor (RLL)	02.02.2023
4.	13727/1011/2023	Ms. Sangeeta, 80% Locomotor (BL)	06.02.2023
5.	13745/1011/2023	Shri Amit Yadav, 60% Mental Illness (MI)	15.02.2023
6.	13762/1011/2023	Shri Pradeep Kumar, 100% Visual Impaired (B)	21.02.2023
7.	13783/1011/2023	Shri Bhawani Shankar, 41% Hearing Impaired (HI)	28.02.2023

#### **Versus**

The Commissioner,
 Kendriya Vidyalaya Sangathan,
 18, Institutional Area,
 Shaheed Jeet Singh Marg,
 New Delhi – 110016
 Email – commissioner-kvs@gov.in,
 kvs.commissioner@gmail.com

... Respondent No.1

(2) The Secretary,
Department of School Education & Literacy,
Ministry of Education,
Room No. 124-C,
Shastri Bhawan,
New Delhi – 110001

... Respondent No.2

#### 1. Gist of Complaints:

Email: secy.sel@nic.in

**27/43/45)-H20/18 EMD/PA-SOPPOH** 1/2959/2024

1.1 The afore-mentioned complainants filed their respective complaints against the Respondent pursuant to its advertisements No.15/2022, 16/2022 published for direct recruitment to various teaching and non-teaching posts in its establishments/schools whereas these posts are identified as suitable for Persons with Benchmark Disabilities (PwBDs] as per the Gazette Notification dated 04.01.2021 issued by the Department of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD, MSJE].

- 1.2 The grievances raised by the complainants against the Respondent No. 1 mainly pertained to -1) arbitrarily reducing the quantum of reservation from 4% as provided under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the Act"; and 2) not implementing the list of jobs suitable for various types of disabilities issued by the central government from time to time and ignoring certain posts or subcategories of disabilities from the said list in the recruitments in their establishment.
- 1 . 3 The complaints were taken up with the respondents under the mandate and power of this Court as per sections 75 and 77 of the Act by issue of individual notices in each complaint on the dates mentioned in the table at the details of the parties above. The Respondent No.1 filed various replies to the notices. It is mentioned here that no reply or response, whatsoever, to any notice of this Court was received from the Respondent No. 2 in the above cases. The common premise on which the Respondent No.1 based their reply to the notice can be summed up as under:
  - (a) As per the Notification No. 16-15/2010-DD-III dated 29.07.2013 of MSJ&E issuing the list of identified jobs in groups A, B and C, the KVS had constituted a Committee to settle pending court cases/grievances pertaining to reservation and identification of posts suitable for persons with disabilities.
  - (b) The Committee having taken note of KVS being an All India level organization and that its schools are also situated in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018.
  - (c) Therefore, the Committee recommended that KVS should seek exemption from providing this 1% reservation as per the options available under Para 3 of the OM dated 15.01.2018. The Committee observed that KVS should refer the matter to the DEPwD for exemption of 1% enhancement in reservation for persons with Benchmark Disabilities i.e. autism, intellectual disability, specific learning disability and mental illness.
  - (d) However, KVS had identified the post of Trained Graduate Teacher (Art Education) against which this 1% reservation can be granted to the persons with multiple disabilities in the direct recruitment, i.e. for a person who is Hard of Hearing (HH) and Orthopedically disabled (One Leg). This 1% reservation was already advertised by the KVS in Advertisement No.14. This 1% reservation was already advertised by the KVS in Advertisement No.14.
  - (e) Accordingly, a detailed letter was sent to the Director, DEPWD.
  - (f) The impugned notification for the KVS Direct Recruitment was made taking all the above into consideration.
- 1.4 The details of the grievances raised by each of these complainants and specific

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response of the Respondent No. 1 in respect of those have been shown in the table below. The details are as under:

SI	Name of the	Issues Raised	Date of Reply and the
No.	Complainant		Response of Respondent No. 1
	(Shri/Smt./Km.),		
	Details of disability,		
	Case No. and date of		
	Complaint		
1	Harendra Singh, 75%	The Respondent did not	20.03.2023 & 10.05.2023
	Locomotor Disability-	include the PwBD Both	
	Both Legs [LD-BL]	Legs (BL) in OH	
		category for recruitment	1. As per the minutes of the
	13716/1011/2023	to the posts of TGT and	
		PGT	disability in both legs in OH
	07.12.2022		category are not suitable for the
2	Sangeeta		post of Principal, Vice-Principal,
	80% Locomotor	reservation for PwBD-BL	` · ·
	Disability-Both Leg	to the post of Principal,	Chemistry/Biology/Bio-Tech/
	[LD-BL]	Vice-Principal, Primary	Computer Science) and TGT
			(Science), Primary Teacher,
	13727/1011/2023	•	Librarian, Finance Officer,
	05.40.0000	,	Assistant Section Officer, Hindi
	05.12.2022	Section Officer, Hindi	
			Assistant and Stenographer
		Secretarial Assistant and	Grade-II, on the grounds of the
		Stenographer Grade-II.	nature of duties involved in these
			posts.
			2. In the drop-down box under PH
			category, however, candidates
			could have submitted their
			category by putting OH in the
			drop-down box. The sub-
			category under OH was not asked
			from the candidates at that stage.
			If the complainants, were
			shortlisted for interview, they
			would not have been declared
			ineligible, and their selection
			would have been as per the
			marks obtained by them in the
			written test and the interview.
			The Respondent No.1 also
			submitted that the KVS has to
			review their reservation policy for
			divyangjan on all posts as per the
			latest instructions/notification
			issued by the Government of
			India and that the Committee
			consisting of officials from KVS
1			

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			would hold a meeting in this regard very soon.
3	60% Locomotor Disability-One Arm	•	
4	50% Locomotor Disability-One Leg [LD-OL] 13723/1011/2023 26.12.2022	Primary Teachers. She submitted that KVS vide advertisement number 16/2022 had advertised 6414 vacancies of Primary Teacher in KVS but only 3% seats have been reserved for PwBDs.	The Committee examined the feasibility of enhancement of reservation for PwBDs from 3% to 4% in view of the DoPT OM No.35035/ 02/2017-Estt(Res) dated 15.01.2018 in the context of type of work being carried out in the KVS. The Committee was of the view that the KVS being all
5	60% Mental Illness [MI] 13745/1011/2023 17.12.2022	Denial of reservation for PwBD Others category in its advertisement 15/2022 for recruitment to the various teaching and non-teaching posts. He further submitted that Specific Learning Disability, Mental Illness and Autism all come under PwBD Others category, and out of total 4% reservation for PwBDs, 1% seats are reserved for PwBD Others category. He requested this Court that KVS be directed to	India level organization its Kendriya Vidyalayas are in very remote and far off places, the work being carried out would not suit to the persons who are

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		advertisement and	
		reserve 1% seats for PwBD-Others category.	
		g ,	
6	100% Visual	non-compliance with the Rights of Persons with	
	Impairment (Blind)	Disabilities Act, 2016 [hereinafter "the Act"] by	As per the minutes of the Committee, visually impaired
	13762/1011/2023	the Respondent by denying reservation to	persons are suitable for the post of Administrative Officer,
	10.12.2022	PwBD-VI in its Recruitment Notice No.15/2022 for filling of various posts of Assistant Commissioner, Principal, PGT (Physics, Chemistry, Maths, Biology, Commerce and Computer Science),	PGT(English), PGT(Hindi), PGT(Geog.), PGT(Hindi), PGT(Eco.), TGT(English), TGT(Hindi), TGT(Sanskrit), TGT(Social Studies), Primary Teacher, PRT(Music), TGT(Work Experience), Assistant Section Officer, Hindi Translator, Senior Secretariat Assistant, Junior Secretariat Assistant and Stenographer Grade-II, but not for the post of Deputy Commissioner, Assistant Commissioner, PGT (Biology/ Commerce/ Bio.Tech/Computer Science), TGT(Maths/Science/Art Education/P&HE) and Librarian as per their nature of job.
7		denial of 4% reservation to PwBDs by KVS in its	
	Impairment (HI)	advertisement for	As per the recommendation of the Committee, persons with
	13783/1011/2023	various teaching and	hearing impairment are not suitable for the post of Post
	30.12.2022	Advt. No.15/2022 online applications were invited	Graduate Teacher (Computer Science) in view of the nature of duties required to be performed in the said post.

## 2. Rejoinders filed by the Complainants:

2.1 All the Complainants in respective rejoinders refuted the reply filed by the Respondent and reiterated their complaints.

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## 3. **Hearing (1):**

3.1 As the grievances in all the above mentioned seven cases arose from the same process of recruitment in the Respondent establishment through Advertisements No.15/2022 and No.16/2022, it was decided to club them for the purpose of a joint hearing, Hence, the cases were heard online through video conferencing on **09.10.2023.** The following parties/representatives were present during the hearing:

### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

## **Respondent:**

- 1. Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- 2. Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- 3. Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 3 . 2 **Record of Proceedings:** During the online hearing, the complainants challenged the recruitment process on the grounds that
  - i. The Respondent allowed 3% reservation for persons with benchmark disability as against the statutory provisions of 4%
  - ii. The Respondent arbitrarily altered the identification of posts notified by the Central Government vide Ministry of Social Justice & Empowerment Notification dated 04.01.2021 and deleted certain categories of disabilities, particularly the Visual Impairment and locomotor disability in both legs, as being a suitable category for the posts of Asstt. Commissioner, Principal, Vice Principal, TGT and PGT.
  - iii. In another comparable establishment, namely the Navodaya Vidyalaya Samiti, the post of Principal is suitable for these categories of disabilities.
  - iv. The Respondent had several cases where persons with visual impairment were appointed in the teaching posts and to the post of Principal through promotions.
- 3.3 The Respondent No.1 did not deny the aforesaid facts, but submitted that on account of functional requirements in KVS, certain categories have not been found suitable for the teaching posts. The Court sought to know if they have got the posts exempted through the procedure laid down in the Notification dated 04.01.2021 and the DoPT OM dated 15.01.2018 on the subject. The Respondents confirmed that such a process was not undertaken and an internal decision has been taken in this regard by the KVS.
- 3.4 The Respondent No.1 further submitted that the result of the impugned

examination was already finalized and that they will follow the 4% reservation and the Notification of 04.01.2021 from the next recruitment exercise.

- 3.5 This Court was shocked at the arbitrariness and casual approach of the Respondent No.1 in undertaking this recruitment process for a total of 6990 posts across various teaching and non-teaching posts. Ignorance of the law cannot be an excuse to deny the rightful claim of persons with disabilities. In this recruitment process, ignorance also cannot be pretended as the law position was made very clear to the Respondents vide Notices in the above cases issued by this Court in February 2023. The Respondent No.1 instead of making course correction appeared to have gone ahead with the faulty process of the recruitment. Such disregard of the law passed by the Parliament and instructions issued by the competent authorities cannot be permitted.
- 3.6 Accordingly, this Court in exercise of its powers under Section 77 of the RPwD Act, 2016, directed the Commissioner of KVS to appear in person on the next date of the hearing, i.e., Friday, 13.10.2023, through online mode. The Respondent was permitted to file written explanation/submission, if any, by 12.10.2023.

## 4. Hearing (2):

4.1 The case was next heard online through video conferencing on **13.10.2023**. The following parties/representatives were present during the hearing:

## **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

## **Respondents:**

- 1. Smt. Ajeeta Longjam, Joint Commissioner (Admn.I), KVS
- 4 . 2 **Record of Proceedings:** Vide Record of Proceeding dated 10.10.2023, the Commissioner, Kendriya Vidyalaya Sangathan (KVS) was asked to be present in the next hearing on 13.10.2023. In the meanwhile, the respondent requested for the exemption from personal appearance of the Commissioner, KVS on the ground of his pre-occupation elsewhere. It was also submitted that the Joint Commissioner concerned whould appear for the Respondent. The request was accepted.
- 4.3 At the outset of the hearing on 13.10.2023, the Court asked the representative of KVS whether she is conversant with the facts of the case. To which, she replied in affirmative. The Court then asked the representative of the KVS for its comments on the ongoing recruitment process which has been apparently carried on in complete disregard of the prevailing laws and instructions on the subject on the issue both suitability of the posts for various categories of disabilities as well as on the quantum of reservation.
- 4.4 The Joint Commissioner, KVS submitted that this is the first recruitment exercise

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after the Pandemic and that a large number of vacancies arose during the period, which are being filled through the current process. Being an academic establishment, the KVS relied on the experts from academic background for the purpose of identification of suitability of the posts. They have now realized that exemption of any post or any category of disabilities was required to be obtained from the D/o Empowerment of Persons with Disabilities, M/o SJ&E. The matter has now been discussed and it is being proposed to calculate the total 1% backlog vacancies and open it for the candidates across the country in their next recruitment exercise.

- 4.5 The Court sought to know when the next recruitment process shall begin. The respondent submitted that the current recruitment process shall be completed by the end of this year and the next process will commence sometimes in the next year. On this, the Court expressed its dissatisfaction observing that the present case started almost a year back. But, the respondent despite knowing the law position on the subject, acted in a very casual manner. The Court further asked as to how the pay, seniority and issues relating to candidates becoming overage are proposed to be resolved. The Court also observed that saying that the loss will be made up in the next recruitment year does not make any sense as the next recruitment year may happen after four years. The Court also sought to know as to how the respondent proposes to protect with the right of a candidate who was not allowed to compete in the current recruitment process for all vacancies, i.e., on the basis of reservation as well on their own merit only because some internal expert Committee recommended that they were not suitable for the job by now asking them to compete for only 1% backlog reservation. The total number of vacancies in the current recruitment process being on a rather higher side at approximately 7000, this fact cannot be overlooked.
- 4.6 Shri Rajaselvan R, in Case No.13717/1011/2023 submitted that he has already appeared in the examination but has not been selected because the post of Physical Education Teacher (PET) has not been declared suitable by the respondent whereas the same figures in the MSJE's Notification for locomotor disability and also that 16 persons suffering from locomotor disability are working as PET in Navodaya Vidyalaya which is a comparable establishment.
- 4.7 Shri Pradeep Kumar, in Case No. 13762/1011/2023 submitted that the post of the Principal has been suitable in the last 03 lists issued by the MSJ&E in 2007, 2013 and 2021. There are persons with visual impairment working as the Principal in Navodaya Schools and in schools under the Govt. of NCT of Delhi. So, the action of KVS is arbitrary and forcing us to wait for another recruitment process is basically harassment. Shri Pradeep also mentioned the names of the following persons with visual impairment who are appointed as Principal by KVS itself:
  - i. Shri Devinder Kumar Tiwari
  - ii. Shri N. K. Yadav
  - iii. Shri Rajguru
  - iv. Shri Balasaheb
  - v. Shri M. L. Mishra (Assistant Commissioner)
- 4.8 The representative of the Respondent No.1 submitted that it was based on the recommendation of an Expert Committee. On this the Court desired that the names of the Committee members also be furnished to the Court. The Court observed that the Committee's recommendations cannot be put on a higher pedestal than the provisions of the Act passed by the Parliament.

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4.9 Shri Pradeep Kumar further submitted that instead of including vacancies in the next recruitment process/year, the respondent should be asked to publish the corrigendum and consider the candidates who have already applied during the current process and bring the recruitment process in line with the Rights of Persons with Disabilities Act, 2016. He also requested that the Court should nominate a representative from the O/o CCPD to scrutinize the reservation rosters of the respondent organization.

4.10 The Court sought clarification from the Respondent on affidavit by an officer not below the level of Group 'A' officer as to why they cannot put the current recruitment process on hold and resolve the issue by way of appropriate corrigendum. If this is not found to be a practicable option, then how the Respondent should inform how does it propose to resolve the issues raised by this Court and the Complainants as have been mentioned in the preceding paragraphs. The Respondent shall also inform as to what action it proposes to initiate against its officials and members of the "Expert Committee" who were responsible for the illegality of the current recruitment. The reply of the Respondent shall be submitted to this Court via email at ccpd@nic.in within 03 days from the issue of this Record of Proceedings.

## 5. Compliance filed by the Respondents:

- 5.1 The Respondent No.1 filed its letter dated 19.10.2023 addressed to the Ministry of Education and endorsed to this Court inter-alia submitted that only 3% vacancies were reserved in their advertisements No.15/2022, and 16/2022. They submitted their tentative action plan for filling remaining 1% posts for Persons with Disabilities subject to the approval of the Respondent No. 2, the Department of School Education and Literacy, Ministry of Education:—
  - (a) For identification and approval of the Recruiting Agency, matter will be taken up with the Respondent No. 2 for filling up backlog vacancies.
  - (b) After approval of the Recruiting Agency with signing of MoU, after one month exam centres will be finalized.
  - (c) 15 days after the signing of MoU advertisement for Employment News and other print media.
  - (d) Approx. 45 days after the last date of submission of online applications or as decided by the Recruiting agency, written exam (CBT) will be conducted.
  - (e) After 15 days from the date of CBT candidates will be shortlisted for interview.
  - (f) Within one month after the display of the list of shortlisted candidates, the interview would be conducted.
  - (g) 15 days from the receipt of result from Recruitment Agency Select Panels will be prepared.
  - (h) After one month, appointment letters will be issued.

2743-60-X-2016-0-1/2019-0-1 1/201

### 6. **Hearing (3):**

6.1 An online hearing through video conferencing was conducted on **13.02.2024.** The following parties/representatives were present during the hearing:

## **Complainants:**

- (1) Shri Harendra Singh, 75% Locomotor (BL)
- (2) Shri Rajaselvam R., 60% Locomotor (OA)
- (3) Ms Sandhya, 50% Locomotor (RLL)
- (4) Ms. Sangeeta, 80% Locomotor (BL)
- (5) Shri Amit Yadav, 60% Mental Illness [MI]
- (6) Shri Pradeep Kumar, 100% Visual Impaired (B)
- (7) Shri Bhawani Shankar, 41% Hearing Impaired [HI]

## **Respondents:**

- (1) Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- (2) Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- (3) Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 6 . 2 **Record of Proceedings:** During the hearing, the Court observed that the representatives appearing on behalf of the Respondent No.1 have appeared unprepared not well versed with the case. And also, the Commissioner, KVS who was summoned to appear before the Court did not appear during the hearing. Further, no reply to the notices issued to the Department of School Education & Literacy, Ministry of Education [Respondent No.2] has been received in this matter. Therefore, the hearing was adjourned for half an hour and the representatives of the Respondent No.1 was directed that the Commissioner, KVS be informed to appear personally before the Court. The CCPD also directed that Office of the Respondent No.2 be also contacted to explore the feasibility of an officer at the level of Joint Secretary or Director who are well versed in the matter could appear in the next session of hearing.
- 6.3 During the next session of hearing which was conducted at about 16:57 hrs. neither the Commissioner, KVS nor any officer from the Respondent No.2 could appear during the hearing.

#### 7. Observations & Recommendations:

- 7.1 From the records of the case and submissions made by the parties, it is very clear that the Respondent No. 2 has violated the statutory provisions of sections 33 and 34 of the Act. For the purpose of understanding the nature of the violation, it will be appropriate to quote the said provisions of the Act here, which are as under:
  - 33. Identification of posts for reservation.—The appropriate Government shall—
    - (i) identify posts in the **establishments** which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
    - (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

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(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

- **34. Reservation**.—(1) Every appropriate Government shall appoint in every Government establishment, **not less than four per cent.** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—
  - (a) blindness and low vision;
  - (b) deaf and hard of hearing;
  - (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
  - (d) autism, intellectual disability, specific learning disability and mental illness:
  - (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

7.2 In so far as the identification of posts is concerned the Act, mandates the appropriate government to identify posts in establishments. The term "appropriate government" has been defined in section 2 (b) as under:

### (b) "appropriate Government" means,—

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.
- 7.3 Since, the KVS is a central establishment, it is the Central Government, which is the appropriate government in the instant case. From the language of Section 33, it is clear that the identification of post in all establishments under its control is required to be done by the nodal department of the Central Government and not the establishments concerned themselves. A quick look at the relevant extracts of the Allocation of Business Rules, 1961 (Item No. 4 under the allocation of subjects of the DEPwD at The Second Schedule) makes it clear that the DEPwD is the nodal department in this regard. The extracts are as under:
  - 4. To act as the nodal Department for matters pertaining to Disability and Persons with Disabilities.

Note: The Department of Empowerment of Persons with Disabilities (Divyangjan) shall be the nodal Department for the overall policy, planning and coordination of programmes for Persons with Disabilities. However, overall management and monitoring etc. of the sectoral programmes in respect of this group shall be the responsibility of the concerned Central Ministries, State Governments and Union territory Administrations. Each Central Ministry or Department shall discharge nodal responsibility concerning its sector.

- Accordingly, in fulfilment of the above obligation, the DEPwD has been publishing the list of jobs suitable for various kinds of disability through gazette notifications. The existing gazette notifications were issued vide Notification No. 38-16/2020-DD-III dated 04.01.2021. The previous list was also issued by the MSJE vide Notification No. 16-15/2010-DD-III dated 29.07.2013 as per the provisions of Section 32 of the PwD Act, 1995 (now repealed). These lists are not exhaustive as mentioned under Note 2 of the Gist of Recommendations by the Expert Committee constituted by the DEPwD/MSJE. Note 2 is being reproduced as under:
  - "Note 2: The list of posts being notified is only indicative and not an exhaustive list. If a post is not mentioned in the list, it is not to be construed that it has been exempted. Central Ministries, Departments, Autonomous Bodies, Public Sector Undertakings may further supplement the list by adding to the list of posts identified for respective category of disability."
- 7.5 It is therefore evident that it was not open for the Respondent No. 2 to reduce or delete certain posts or certain categories/sub-categories of disabilities from the list

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issued by the nodal department of the central government.

- 7.6 In OA No. 692/2023, Shri Raj Kumar and Shri Awadhesh Kumar Kaushal Vs The KVS and Ors before the Central Administrative Tribunal (PB), a matter similar in facts with that of Case No. 13762/1011/2023 before this Court, the Respondent No. 1 has filed a communication made to the applicants therein, who are both visually impaired persons working as PGTs in the KVS, expressing its willingness to appoint them as Principal. The extracts of the same communication dated 13.12.2023 are being quoted as under:
  - ".. (2) KVS is in a position to make appointment of two applicants for the Post of Principal under the UR category as approx. 150 post of Principals are still available in addition to 239 posts."
- 7.7 The Hon'ble CAT (PB) disposed of the above matter by its Order dated 05.01.2024 with the following direction:
  - 7. On hearing learned counsel for both the parties, we hereby direct the competent authority amongst the respondents to take further action for implementing their decision dated 13.12.2023, as quoted above, in respect of the applicants in the present O.A., within a span of eight weeks from the date of receipt of a certified copy of this order.
- 7.8 Strangely, in Case No. 13762/1011/2023 before this Court, the Respondent has been denying grant of same relief to the applicant on the grounds that the post of Principal in their establishment is not suitable for persons with visual impairment.
- 7.9 In so far as the decision of the Respondent No. 2 to reduce the reservation for PwBDs from 4% to 3% is concerned, that is also in complete violation of section 33 of the Act, which clearly mentions that every appropriate Government shall appoint in every Government establishment, **not less than four per cent** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. The proviso to Sub-Section 2 of Section 34 makes provisions for a situation where if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government. Hence, there was no grounds, no justification and no legal way for the Respondent No.2 for reducing the reservation from 4% to 3%.
- 7.10 This Court also wishes to draw attention to Judgements dated 01.11.2023 of the Hon'ble Delhi High Court in similar matters against the Respondent No.1 KVS, in W.P. (C) 17460/2022 Court in its own motion Vs KVS and Ors; and in W.P.(C) 665/2023 and CM APPL. 2585/2023 National Association of the Deaf Vs Union of India & Ors., wherein the Hon'ble Court observed and issued directions as under:
  - "30. In the considered opinion of this Court, the KVS has violated the statutory provisions as contained under the RPwD Act. The advertisements in question on this count alone, deserve to be quashed. The KVS has assumed a power which never vested in it. The task of identification as well as of exemption of posts falls in the domain of the appropriate government. However, when the matter was being argued, it was brought to the notice of this Court by learned counsel for the KVS that the process of recruitment was already over, and at this

juncture, by quashing the advertisements, the Court shall be discontinuing the services of the persons who have been duly selected on various posts in terms of the advertisements.

- 31. In the considered opinion of this Court, if the process of recruitment is already over, the KVS in respect of the identified posts, shall provide 1% reservation against the total vacancies notified vide the impugned advertisements to deaf and hard of hearing persons, and shall initiate a drive of special recruitment for filling up the vacancies reserved for various categories of disabled persons, including 1% identified persons who are deaf and hard of hearing. To reiterate, the reservation must be calculated on the total number of vacancies and ultimate appointment shall take place on the posts identified in the 2021 notification. The exercise of issuing a fresh advertisement for disabled category of total 4% of posts in the entire organization be concluded within a period of three months from the date of receipt of certified copy of this order.
- 32. It is unfortunate that disabled persons are being compelled to file writ petitions and are being compelled to run from pillar to post by an organization like KVS. They are not claiming any charity, and they are claiming their rights as guaranteed to them under the RPwD Act. The legislature has laid down a noble vision of providing "reasonable accommodation" to persons with disabilities so as to ensure that all possible special measures are adopted to enable the PwDs to perform to the best of their ability. Despite so, instead of creating such reasonable accommodation, the respondent has looked down upon the PwDs from the lens of inconvenience.
- 33. In a recent judgment in the case of **National Federation of the Blind Vs. Kendriya Vidvalaya Sangthan & Ors.**, 2023:DHC:7551-DB, which was in respect of persons with disabilities (blind or low vision), this Court relying upon the same notification dated 04.01.2021, has directed the KVS to provide 1% reservation to the blind and low vision persons in respect of the total identified posts in the organization keeping in view the notification dated 04.01.2021.
- 34. Similarly, in the present case also, the KVS in respect of the identified posts as per the notification dated 04.01.2021, shall issue an advertisement and shall clear the backlog of vacancies within a period of six months from the date of receipt of certified copy of this judgment.
- 35. The posts of Principal and the Vice-Principal find place in the notification dated 04.01.2021 issued by the Government of India. The posts of Post Graduate Teacher (PGT), TGT (Trained Graduate Teacher), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II also find place in the notification dated 04.01.2021, and therefore, the KVS is directed to appoint deaf and hard of hearing persons by providing them 1% reservation against the total number of vacancies in the organization. Not only this, the KVS shall provide 4% reservation to the disabled persons in respect of total vacancies in the organization which is the mandate of law. The exercise of appointing disabled persons, including deaf and hard of hearing persons be concluded within a period of six months from the date of receipt of certified copy of this judgment.
- 36. Before parting, we feel constrained to observe that there appears to be a mismatch in the understanding of different departments regarding the mandate

under RPwD Act. Whereas the Ministry of Social Justice and Empowerment (Nodal Ministry under the RPwD Act) has upgraded the list of posts suitable for the PwDs, the thought has not percolated to the departments which conduct recruitment. A similar "policy disconnect" was noted by the Hon'ble Supreme Court in Vikash Kumar v. Union Public Service Commission and Others, (2021) 5 SCC 370, wherein the stand taken by the Nodal Ministry was found to be in contrast with the stand taken by the recruiting agency – UPSC. This policy disconnect had led to a situation wherein different departments are made to learn the same lesson after individual cases travel to the constitutional Courts. The direct impact of this practice is to compel the PwDs to assert their basic rights before judicial fora, something that cannot be termed as desirable. In this regard, we direct the concerned Secretary, Ministry of Social Justice and Empowerment to issue suitable guidelines for the implementation of reservation policy by all departments in a uniform manner. One step may go far in the fulfilment of our promise to the PwDs.

37. The petitions, including applications (if any), stand disposed of in the aforesaid terms. No order as to costs.

SD/-

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

Sd/-

(SANJEEV NARULA) JUDGE

#### NOVEMBER 01, 2023"

- 7.11 In the matter of the National Federation of the Blind Vs the KVS, in WP(C) No.9520/2018, the Hon'ble High Court of Delhi at New Delhi vide Judgment dated 16 October 2023 held as under:-
  - "43. The impugned advertisement distinguishes the persons with disabilities from others, and puts a restriction on their potential to participate in the recruitment process to their full ability. The distinction is purely on the basis of disability. The advertisement has the effect of excluding the persons with disabilities from the race of recruitment, in complete violation of the mandatory reservation provision. It may be noted that an act of discrimination is not only a denial of the promise of equal protection before the law. Rather, every act of exclusion is an assault on the dignity of a person. More so, when the exclusion has the effect of compelling the persons with disabilities out of a race for gaining employment, without any fault of theirs. Instead of providing an equal space to grow, we have been compelling the persons with disabilities to prove, time and again, that they are capable of a lot more than we think.
  - 44. In light of the above discussion, we find the advertisement to be unsustainable. It is discriminatory and violative of the 2016 Act read with 2017 Rules. Accordingly, we issue the following directions:
    - i. The respondent shall conduct an audit of the total number of vacancies in the establishment and shall prepare a vacancy based roster as per Rule-11 of the 2017 Rules within 3 months from the date of this order. The respondent shall

file an affidavit of the same along with a timeline of recruitment for filling the said vacancies;

- ii. If any vacancy, which ought to have been reserved in accordance with the 2016 Act, has already been filled by any person not falling in the reserved category due to failure of the respondent to reserve the same, the respondent shall adjust those vacancies from the unreserved pool of the available vacancies. Such vacancies shall be deemed to be unfilled and accordingly, shall be considered to have been carried forward from the vacancies notified in the impugned advertisement;
- iii. The respondent shall implement the 4 percent reservation strictly in accordance with Section-34, with minimum one percent to be earmarked for the categories listed at clauses (a), (b), (c), (d) and (e) in Section-34;
- iv. The respondent shall compute the number of vacancies to be reserved for the persons with disabilities against the total number of vacancies in the cadre strength in each group, inclusive of both identified and unidentified posts;
- v. The final appointment shall be made against the identified posts, even if the actual number of persons with disabilities appointed at a given post exceeds four percent;
- vi. The respondent shall not create sub-categories subject-wise within a cadre. The vacancies shall be calculated on the total number of vacancies in a particular cadre and not on posts;
- vii. The respondent shall reserve the post of Principal for persons with benchmark disabilities in blind or low vision category at a minimum of one percent for that particular category;
- viii. No deviation from the statutory rule or exclusion of any post shall be made, except in accordance with the exemption clause and after proper notification by the appropriate government;
- 45. In light of these directions, we dispose of the petition. No order as tocosts.
- 46. We express our thanks to Ld. Counsels for the parties for their ableassistance in the matter.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

> (SANJEEV NARULA) JUDGE

OCTOBER 16, 2023"

7.12 The provisions and policies related to the identification of posts and reservation for PwBDs were made clear to the Respondent through notices in the month of February 2023 and subsequently during the hearings in the matter. They still chose to go ahead with the recruitment process and then on finding that there was no way, they could justify

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their brazenness, they accepted their mistakes in bringing out the impugned advertisements. In fact, the Respondent No. 2, in pursuance to the hearing dated 13<sup>th</sup> October, 2023 submitted an Action Plan vide their letter dated 19.10.2023 for filling up the remaining 1% vacancies. As per the Action Plan, they committed to fill the remaining vacancies in 5 months after identification of the Recruiting Agency and approval of the same by the Respondent No. 2, i.e. Department of School Education and Literacy, Ministry of Education. There has been no update on the same from the Respondents despite lapse of approximately 6 months.

- 7.13 The respondents are directed to consider that claims of the above mentioned Complainants in the light and within the timeline given by the Hon'ble High Court as quoted in para 7.10 above and forward action taken report along with a proof of depositing the fine as mentioned in pre para to this Court within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.
- 7.14 Accordingly, these cases are disposed of.

Signed by Rajesh Aggarwal Date: 18-04-2024 10:15:49

(Rajesh Aggarwal) Chief Commissioner for Persons with Disabilities 27437471/18/QRENDRASSINGH 1/2959/2024



# 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### In the matter of —

### Complainants:

SI.	Case No.	Name and Disability	Date of
No.			Notice
1.	13716/1011/2023	Shri Harendra Singh, 75% Locomotor (BL)	02.02.2023
2.	13717/1011/2023	Shri Rajaselvam R., 60% Locomotor (OA)	02.02.2023
3.	13723/1011/2023	Ms Sandhya Singh, 50% Locomotor (RLL)	02.02.2023
4.	13727/1011/2023	Ms. Sangeeta, 80% Locomotor (BL)	06.02.2023
5.	13745/1011/2023	Shri Amit Yadav, 60% Mental Illness (MI)	15.02.2023
6.	13762/1011/2023	Shri Pradeep Kumar, 100% Visual Impaired (B)	21.02.2023
7.	13783/1011/2023	Shri Bhawani Shankar, 41% Hearing Impaired (HI)	28.02.2023

### Versus

(1) The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110016
Email – commissioner-kvs@gov.in,
kvs.commissioner@gmail.com

... Respondent No.1

(2) The Secretary,
Department of School Education & Literacy,
Ministry of Education,
Room No. 124-C,
Shastri Bhawan,
New Delhi – 110001

... Respondent No.2

#### 1. Gist of Complaints:

Email: secy.sel@nic.in

**27/27-67/HARKEND/RACSING**H 1/2959/2024

1.1 The afore-mentioned complainants filed their respective complaints against the Respondent pursuant to its advertisements No.15/2022, 16/2022 published for direct recruitment to various teaching and non-teaching posts in its establishments/schools whereas these posts are identified as suitable for Persons with Benchmark Disabilities (PwBDs] as per the Gazette Notification dated 04.01.2021 issued by the Department of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD, MSJE].

- 1.2 The grievances raised by the complainants against the Respondent No. 1 mainly pertained to -1) arbitrarily reducing the quantum of reservation from 4% as provided under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the Act"; and 2) not implementing the list of jobs suitable for various types of disabilities issued by the central government from time to time and ignoring certain posts or subcategories of disabilities from the said list in the recruitments in their establishment.
- 1 . 3 The complaints were taken up with the respondents under the mandate and power of this Court as per sections 75 and 77 of the Act by issue of individual notices in each complaint on the dates mentioned in the table at the details of the parties above. The Respondent No.1 filed various replies to the notices. It is mentioned here that no reply or response, whatsoever, to any notice of this Court was received from the Respondent No. 2 in the above cases. The common premise on which the Respondent No.1 based their reply to the notice can be summed up as under:
  - (a) As per the Notification No. 16-15/2010-DD-III dated 29.07.2013 of MSJ&E issuing the list of identified jobs in groups A, B and C, the KVS had constituted a Committee to settle pending court cases/grievances pertaining to reservation and identification of posts suitable for persons with disabilities.
  - (b) The Committee having taken note of KVS being an All India level organization and that its schools are also situated in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018.
  - (c) Therefore, the Committee recommended that KVS should seek exemption from providing this 1% reservation as per the options available under Para 3 of the OM dated 15.01.2018. The Committee observed that KVS should refer the matter to the DEPwD for exemption of 1% enhancement in reservation for persons with Benchmark Disabilities i.e. autism, intellectual disability, specific learning disability and mental illness.
  - (d) However, KVS had identified the post of Trained Graduate Teacher (Art Education) against which this 1% reservation can be granted to the persons with multiple disabilities in the direct recruitment, i.e. for a person who is Hard of Hearing (HH) and Orthopedically disabled (One Leg). This 1% reservation was already advertised by the KVS in Advertisement No.14. This 1% reservation was already advertised by the KVS in Advertisement No.14.
  - (e) Accordingly, a detailed letter was sent to the Director, DEPWD.
  - (f) The impugned notification for the KVS Direct Recruitment was made taking all the above into consideration.
- 1.4 The details of the grievances raised by each of these complainants and specific

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response of the Respondent No. 1 in respect of those have been shown in the table below. The details are as under:

SI	Name of the	Issues Raised	Date of Reply and the
No.	Complainant		Response of Respondent No. 1
	(Shri/Smt./Km.),		·
	Details of disability,		
	Case No. and date of		
	Complaint		
1	Harendra Singh, 75%	The Respondent did not	20.03.2023 & 10.05.2023
	Locomotor Disability-	include the PwBD Both	
	Both Legs [LD-BL]	Legs (BL) in OH	
		category for recruitment	1. As per the minutes of the
	13716/1011/2023	to the posts of TGT and	Committee, persons having
		PGT	disability in both legs in OH
	07.12.2022		category are not suitable for the
2	Sangeeta		post of Principal, Vice-Principal,
	80% Locomotor	reservation for PwBD-BL	
	Disability-Both Leg		Chemistry/Biology/Bio-Tech/
	[LD-BL]	Vice-Principal, Primary	Computer Science) and TGT
			(Science), Primary Teacher,
	13727/1011/2023		Librarian, Finance Officer,
			Assistant Section Officer, Hindi
	05.12.2022	Section Officer, Hindi	
			Assistant and Stenographer
			Grade-II, on the grounds of the
		Stenographer Grade-II.	nature of duties involved in these
			posts.
			2. In the drop-down box under PH
			category, however, candidates
			could have submitted their
			category by putting OH in the
			drop-down box. The sub-
			category under OH was not asked
			from the candidates at that stage.
			If the complainants, were
			shortlisted for interview, they
			would not have been declared
			ineligible, and their selection
			would have been as per the
			marks obtained by them in the
			written test and the interview.
			The Respondent No.1 also
			submitted that the KVS has to
			review their reservation policy for
			divyangjan on all posts as per the
			latest instructions/notification
			issued by the Government of
			India and that the Committee
			consisting of officials from KVS
			-
			consisting of officials from KVS

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			would hold a meeting in this regard very soon.
3	60% Locomotor	l· -	
4	50% Locomotor	Primary Teachers. She submitted that KVS vide advertisement number 16/2022 had advertised 6414 vacancies of Primary Teacher in KVS but only 3% seats have been reserved for	
5		Denial of reservation for PwBD Others category in its advertisement 15/2022 for recruitment to the various teaching and non-teaching posts. He further submitted that Specific Learning Disability, Mental Illness and Autism all come under PwBD Others category, and out of total 4% reservation for PwBDs, 1% seats are reserved for PwBD Others category. He requested this Court that KVS be directed to	India level organization its Kendriya Vidyalayas are in very remote and far off places, the work being carried out would not suit to the persons who are

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		advertisement and	
		reserve 1% seats for PwBD-Others category.	
		g ,	
6	100% Visual	non-compliance with the Rights of Persons with	
	Impairment (Blind)	Disabilities Act, 2016 [hereinafter "the Act"] by	As per the minutes of the Committee, visually impaired
	13762/1011/2023	the Respondent by denying reservation to	persons are suitable for the post of Administrative Officer,
	10.12.2022	PwBD-VI in its Recruitment Notice No.15/2022 for filling of various posts of Assistant Commissioner, Principal, PGT (Physics, Chemistry, Maths, Biology, Commerce and Computer Science),	PGT(English), PGT(Hindi), PGT(Geog.), PGT(Hindi), PGT(Eco.), TGT(English), TGT(Hindi), TGT(Sanskrit), TGT(Social Studies), Primary Teacher, PRT(Music), TGT(Work Experience), Assistant Section Officer, Hindi Translator, Senior Secretariat Assistant, Junior Secretariat Assistant and Stenographer Grade-II, but not for the post of Deputy Commissioner, Assistant Commissioner, PGT (Biology/ Commerce/ Bio.Tech/Computer Science), TGT(Maths/Science/Art Education/P&HE) and Librarian as per their nature of job.
7		denial of 4% reservation to PwBDs by KVS in its	
	Impairment (HI)	advertisement for	As per the recommendation of the Committee, persons with
	13783/1011/2023	various teaching and	hearing impairment are not suitable for the post of Post
	30.12.2022	Advt. No.15/2022 online applications were invited	Graduate Teacher (Computer Science) in view of the nature of duties required to be performed in the said post.

## 2. Rejoinders filed by the Complainants:

2.1 All the Complainants in respective rejoinders refuted the reply filed by the Respondent and reiterated their complaints.

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## 3. **Hearing (1):**

3.1 As the grievances in all the above mentioned seven cases arose from the same process of recruitment in the Respondent establishment through Advertisements No.15/2022 and No.16/2022, it was decided to club them for the purpose of a joint hearing, Hence, the cases were heard online through video conferencing on **09.10.2023.** The following parties/representatives were present during the hearing:

### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

#### **Respondent:**

- 1. Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- 2. Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- 3. Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 3 . 2 **Record of Proceedings:** During the online hearing, the complainants challenged the recruitment process on the grounds that
  - i. The Respondent allowed 3% reservation for persons with benchmark disability as against the statutory provisions of 4%
  - ii. The Respondent arbitrarily altered the identification of posts notified by the Central Government vide Ministry of Social Justice & Empowerment Notification dated 04.01.2021 and deleted certain categories of disabilities, particularly the Visual Impairment and locomotor disability in both legs, as being a suitable category for the posts of Asstt. Commissioner, Principal, Vice Principal, TGT and PGT.
  - iii. In another comparable establishment, namely the Navodaya Vidyalaya Samiti, the post of Principal is suitable for these categories of disabilities.
  - iv. The Respondent had several cases where persons with visual impairment were appointed in the teaching posts and to the post of Principal through promotions.
- 3.3 The Respondent No.1 did not deny the aforesaid facts, but submitted that on account of functional requirements in KVS, certain categories have not been found suitable for the teaching posts. The Court sought to know if they have got the posts exempted through the procedure laid down in the Notification dated 04.01.2021 and the DoPT OM dated 15.01.2018 on the subject. The Respondents confirmed that such a process was not undertaken and an internal decision has been taken in this regard by the KVS.
- 3.4 The Respondent No.1 further submitted that the result of the impugned

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examination was already finalized and that they will follow the 4% reservation and the Notification of 04.01.2021 from the next recruitment exercise.

- 3.5 This Court was shocked at the arbitrariness and casual approach of the Respondent No.1 in undertaking this recruitment process for a total of 6990 posts across various teaching and non-teaching posts. Ignorance of the law cannot be an excuse to deny the rightful claim of persons with disabilities. In this recruitment process, ignorance also cannot be pretended as the law position was made very clear to the Respondents vide Notices in the above cases issued by this Court in February 2023. The Respondent No.1 instead of making course correction appeared to have gone ahead with the faulty process of the recruitment. Such disregard of the law passed by the Parliament and instructions issued by the competent authorities cannot be permitted.
- 3.6 Accordingly, this Court in exercise of its powers under Section 77 of the RPwD Act, 2016, directed the Commissioner of KVS to appear in person on the next date of the hearing, i.e., Friday, 13.10.2023, through online mode. The Respondent was permitted to file written explanation/submission, if any, by 12.10.2023.

## 4. Hearing (2):

4.1 The case was next heard online through video conferencing on **13.10.2023**. The following parties/representatives were present during the hearing:

### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

## **Respondents:**

- 1. Smt. Ajeeta Longjam, Joint Commissioner (Admn.I), KVS
- 4 . 2 **Record of Proceedings:** Vide Record of Proceeding dated 10.10.2023, the Commissioner, Kendriya Vidyalaya Sangathan (KVS) was asked to be present in the next hearing on 13.10.2023. In the meanwhile, the respondent requested for the exemption from personal appearance of the Commissioner, KVS on the ground of his pre-occupation elsewhere. It was also submitted that the Joint Commissioner concerned whould appear for the Respondent. The request was accepted.
- 4.3 At the outset of the hearing on 13.10.2023, the Court asked the representative of KVS whether she is conversant with the facts of the case. To which, she replied in affirmative. The Court then asked the representative of the KVS for its comments on the ongoing recruitment process which has been apparently carried on in complete disregard of the prevailing laws and instructions on the subject on the issue both suitability of the posts for various categories of disabilities as well as on the quantum of reservation.
- 4.4 The Joint Commissioner, KVS submitted that this is the first recruitment exercise

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after the Pandemic and that a large number of vacancies arose during the period, which are being filled through the current process. Being an academic establishment, the KVS relied on the experts from academic background for the purpose of identification of suitability of the posts. They have now realized that exemption of any post or any category of disabilities was required to be obtained from the D/o Empowerment of Persons with Disabilities, M/o SJ&E. The matter has now been discussed and it is being proposed to calculate the total 1% backlog vacancies and open it for the candidates across the country in their next recruitment exercise.

- 4.5 The Court sought to know when the next recruitment process shall begin. The respondent submitted that the current recruitment process shall be completed by the end of this year and the next process will commence sometimes in the next year. On this, the Court expressed its dissatisfaction observing that the present case started almost a year back. But, the respondent despite knowing the law position on the subject, acted in a very casual manner. The Court further asked as to how the pay, seniority and issues relating to candidates becoming overage are proposed to be resolved. The Court also observed that saying that the loss will be made up in the next recruitment year does not make any sense as the next recruitment year may happen after four years. The Court also sought to know as to how the respondent proposes to protect with the right of a candidate who was not allowed to compete in the current recruitment process for all vacancies, i.e., on the basis of reservation as well on their own merit only because some internal expert Committee recommended that they were not suitable for the job by now asking them to compete for only 1% backlog reservation. The total number of vacancies in the current recruitment process being on a rather higher side at approximately 7000, this fact cannot be overlooked.
- 4.6 Shri Rajaselvan R, in Case No.13717/1011/2023 submitted that he has already appeared in the examination but has not been selected because the post of Physical Education Teacher (PET) has not been declared suitable by the respondent whereas the same figures in the MSJE's Notification for locomotor disability and also that 16 persons suffering from locomotor disability are working as PET in Navodaya Vidyalaya which is a comparable establishment.
- 4.7 Shri Pradeep Kumar, in Case No. 13762/1011/2023 submitted that the post of the Principal has been suitable in the last 03 lists issued by the MSJ&E in 2007, 2013 and 2021. There are persons with visual impairment working as the Principal in Navodaya Schools and in schools under the Govt. of NCT of Delhi. So, the action of KVS is arbitrary and forcing us to wait for another recruitment process is basically harassment. Shri Pradeep also mentioned the names of the following persons with visual impairment who are appointed as Principal by KVS itself:
  - i. Shri Devinder Kumar Tiwari
  - ii. Shri N. K. Yadav
  - iii. Shri Rajguru
  - iv. Shri Balasaheb
  - v. Shri M. L. Mishra (Assistant Commissioner)
- 4.8 The representative of the Respondent No.1 submitted that it was based on the recommendation of an Expert Committee. On this the Court desired that the names of the Committee members also be furnished to the Court. The Court observed that the Committee's recommendations cannot be put on a higher pedestal than the provisions of the Act passed by the Parliament.

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4.9 Shri Pradeep Kumar further submitted that instead of including vacancies in the next recruitment process/year, the respondent should be asked to publish the corrigendum and consider the candidates who have already applied during the current process and bring the recruitment process in line with the Rights of Persons with Disabilities Act, 2016. He also requested that the Court should nominate a representative from the O/o CCPD to scrutinize the reservation rosters of the respondent organization.

4.10 The Court sought clarification from the Respondent on affidavit by an officer not below the level of Group 'A' officer as to why they cannot put the current recruitment process on hold and resolve the issue by way of appropriate corrigendum. If this is not found to be a practicable option, then how the Respondent should inform how does it propose to resolve the issues raised by this Court and the Complainants as have been mentioned in the preceding paragraphs. The Respondent shall also inform as to what action it proposes to initiate against its officials and members of the "Expert Committee" who were responsible for the illegality of the current recruitment. The reply of the Respondent shall be submitted to this Court via email at ccpd@nic.in within 03 days from the issue of this Record of Proceedings.

## 5. Compliance filed by the Respondents:

- 5.1 The Respondent No.1 filed its letter dated 19.10.2023 addressed to the Ministry of Education and endorsed to this Court inter-alia submitted that only 3% vacancies were reserved in their advertisements No.15/2022, and 16/2022. They submitted their tentative action plan for filling remaining 1% posts for Persons with Disabilities subject to the approval of the Respondent No. 2, the Department of School Education and Literacy, Ministry of Education:—
  - (a) For identification and approval of the Recruiting Agency, matter will be taken up with the Respondent No. 2 for filling up backlog vacancies.
  - (b) After approval of the Recruiting Agency with signing of MoU, after one month exam centres will be finalized.
  - (c) 15 days after the signing of MoU advertisement for Employment News and other print media.
  - (d) Approx. 45 days after the last date of submission of online applications or as decided by the Recruiting agency, written exam (CBT) will be conducted.
  - (e) After 15 days from the date of CBT candidates will be shortlisted for interview.
  - (f) Within one month after the display of the list of shortlisted candidates, the interview would be conducted.
  - (g) 15 days from the receipt of result from Recruitment Agency Select Panels will be prepared.
  - (h) After one month, appointment letters will be issued.

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### 6. **Hearing (3):**

6.1 An online hearing through video conferencing was conducted on **13.02.2024.** The following parties/representatives were present during the hearing:

## **Complainants:**

- (1) Shri Harendra Singh, 75% Locomotor (BL)
- (2) Shri Rajaselvam R., 60% Locomotor (OA)
- (3) Ms Sandhya, 50% Locomotor (RLL)
- (4) Ms. Sangeeta, 80% Locomotor (BL)
- (5) Shri Amit Yadav, 60% Mental Illness [MI]
- (6) Shri Pradeep Kumar, 100% Visual Impaired (B)
- (7) Shri Bhawani Shankar, 41% Hearing Impaired [HI]

## **Respondents:**

- (1) Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- (2) Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- (3) Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 6 . 2 **Record of Proceedings:** During the hearing, the Court observed that the representatives appearing on behalf of the Respondent No.1 have appeared unprepared not well versed with the case. And also, the Commissioner, KVS who was summoned to appear before the Court did not appear during the hearing. Further, no reply to the notices issued to the Department of School Education & Literacy, Ministry of Education [Respondent No.2] has been received in this matter. Therefore, the hearing was adjourned for half an hour and the representatives of the Respondent No.1 was directed that the Commissioner, KVS be informed to appear personally before the Court. The CCPD also directed that Office of the Respondent No.2 be also contacted to explore the feasibility of an officer at the level of Joint Secretary or Director who are well versed in the matter could appear in the next session of hearing.
- 6.3 During the next session of hearing which was conducted at about 16:57 hrs. neither the Commissioner, KVS nor any officer from the Respondent No.2 could appear during the hearing.

#### 7. Observations & Recommendations:

- 7.1 From the records of the case and submissions made by the parties, it is very clear that the Respondent No. 2 has violated the statutory provisions of sections 33 and 34 of the Act. For the purpose of understanding the nature of the violation, it will be appropriate to quote the said provisions of the Act here, which are as under:
  - 33. Identification of posts for reservation.—The appropriate Government shall—
    - (i) identify posts in the **establishments** which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
    - (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

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(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

- **34. Reservation**.—(1) Every appropriate Government shall appoint in every Government establishment, **not less than four per cent.** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—
  - (a) blindness and low vision;
  - (b) deaf and hard of hearing;
  - (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
  - (d) autism, intellectual disability, specific learning disability and mental illness;
  - (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

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7.2 In so far as the identification of posts is concerned the Act, mandates the appropriate government to identify posts in establishments. The term "appropriate government" has been defined in section 2 (b) as under:

#### (b) "appropriate Government" means,—

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.
- 7.3 Since, the KVS is a central establishment, it is the Central Government, which is the appropriate government in the instant case. From the language of Section 33, it is clear that the identification of post in all establishments under its control is required to be done by the nodal department of the Central Government and not the establishments concerned themselves. A quick look at the relevant extracts of the Allocation of Business Rules, 1961 (Item No. 4 under the allocation of subjects of the DEPwD at The Second Schedule) makes it clear that the DEPwD is the nodal department in this regard. The extracts are as under:
  - 4. To act as the nodal Department for matters pertaining to Disability and Persons with Disabilities.

Note: The Department of Empowerment of Persons with Disabilities (Divyangjan) shall be the nodal Department for the overall policy, planning and coordination of programmes for Persons with Disabilities. However, overall management and monitoring etc. of the sectoral programmes in respect of this group shall be the responsibility of the concerned Central Ministries, State Governments and Union territory Administrations. Each Central Ministry or Department shall discharge nodal responsibility concerning its sector.

- Accordingly, in fulfilment of the above obligation, the DEPwD has been publishing the list of jobs suitable for various kinds of disability through gazette notifications. The existing gazette notifications were issued vide Notification No. 38-16/2020-DD-III dated 04.01.2021. The previous list was also issued by the MSJE vide Notification No. 16-15/2010-DD-III dated 29.07.2013 as per the provisions of Section 32 of the PwD Act, 1995 (now repealed). These lists are not exhaustive as mentioned under Note 2 of the Gist of Recommendations by the Expert Committee constituted by the DEPwD/MSJE. Note 2 is being reproduced as under:
  - "Note 2: The list of posts being notified is only indicative and not an exhaustive list. If a post is not mentioned in the list, it is not to be construed that it has been exempted. Central Ministries, Departments, Autonomous Bodies, Public Sector Undertakings may further supplement the list by adding to the list of posts identified for respective category of disability."
- 7.5 It is therefore evident that it was not open for the Respondent No. 2 to reduce or delete certain posts or certain categories/sub-categories of disabilities from the list

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issued by the nodal department of the central government.

- 7.6 In OA No. 692/2023, Shri Raj Kumar and Shri Awadhesh Kumar Kaushal Vs The KVS and Ors before the Central Administrative Tribunal (PB), a matter similar in facts with that of Case No. 13762/1011/2023 before this Court, the Respondent No. 1 has filed a communication made to the applicants therein, who are both visually impaired persons working as PGTs in the KVS, expressing its willingness to appoint them as Principal. The extracts of the same communication dated 13.12.2023 are being quoted as under:
  - ".. (2) KVS is in a position to make appointment of two applicants for the Post of Principal under the UR category as approx. 150 post of Principals are still available in addition to 239 posts."
- 7.7 The Hon'ble CAT (PB) disposed of the above matter by its Order dated 05.01.2024 with the following direction:
  - 7. On hearing learned counsel for both the parties, we hereby direct the competent authority amongst the respondents to take further action for implementing their decision dated 13.12.2023, as quoted above, in respect of the applicants in the present O.A., within a span of eight weeks from the date of receipt of a certified copy of this order.
- 7.8 Strangely, in Case No. 13762/1011/2023 before this Court, the Respondent has been denying grant of same relief to the applicant on the grounds that the post of Principal in their establishment is not suitable for persons with visual impairment.
- 7.9 In so far as the decision of the Respondent No. 2 to reduce the reservation for PwBDs from 4% to 3% is concerned, that is also in complete violation of section 33 of the Act, which clearly mentions that every appropriate Government shall appoint in every Government establishment, **not less than four per cent** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. The proviso to Sub-Section 2 of Section 34 makes provisions for a situation where if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government. Hence, there was no grounds, no justification and no legal way for the Respondent No.2 for reducing the reservation from 4% to 3%.
- 7.10 This Court also wishes to draw attention to Judgements dated 01.11.2023 of the Hon'ble Delhi High Court in similar matters against the Respondent No.1 KVS, in W.P. (C) 17460/2022 Court in its own motion Vs KVS and Ors; and in W.P.(C) 665/2023 and CM APPL. 2585/2023 National Association of the Deaf Vs Union of India & Ors., wherein the Hon'ble Court observed and issued directions as under:
  - "30. In the considered opinion of this Court, the KVS has violated the statutory provisions as contained under the RPwD Act. The advertisements in question on this count alone, deserve to be quashed. The KVS has assumed a power which never vested in it. The task of identification as well as of exemption of posts falls in the domain of the appropriate government. However, when the matter was being argued, it was brought to the notice of this Court by learned counsel for the KVS that the process of recruitment was already over, and at this

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juncture, by quashing the advertisements, the Court shall be discontinuing the services of the persons who have been duly selected on various posts in terms of the advertisements.

- 31. In the considered opinion of this Court, if the process of recruitment is already over, the KVS in respect of the identified posts, shall provide 1% reservation against the total vacancies notified vide the impugned advertisements to deaf and hard of hearing persons, and shall initiate a drive of special recruitment for filling up the vacancies reserved for various categories of disabled persons, including 1% identified persons who are deaf and hard of hearing. To reiterate, the reservation must be calculated on the total number of vacancies and ultimate appointment shall take place on the posts identified in the 2021 notification. The exercise of issuing a fresh advertisement for disabled category of total 4% of posts in the entire organization be concluded within a period of three months from the date of receipt of certified copy of this order.
- 32. It is unfortunate that disabled persons are being compelled to file writ petitions and are being compelled to run from pillar to post by an organization like KVS. They are not claiming any charity, and they are claiming their rights as guaranteed to them under the RPwD Act. The legislature has laid down a noble vision of providing "reasonable accommodation" to persons with disabilities so as to ensure that all possible special measures are adopted to enable the PwDs to perform to the best of their ability. Despite so, instead of creating such reasonable accommodation, the respondent has looked down upon the PwDs from the lens of inconvenience.
- 33. In a recent judgment in the case of **National Federation of the Blind Vs. Kendriya Vidvalaya Sangthan & Ors.**, 2023:DHC:7551-DB, which was in respect of persons with disabilities (blind or low vision), this Court relying upon the same notification dated 04.01.2021, has directed the KVS to provide 1% reservation to the blind and low vision persons in respect of the total identified posts in the organization keeping in view the notification dated 04.01.2021.
- 34. Similarly, in the present case also, the KVS in respect of the identified posts as per the notification dated 04.01.2021, shall issue an advertisement and shall clear the backlog of vacancies within a period of six months from the date of receipt of certified copy of this judgment.
- 35. The posts of Principal and the Vice-Principal find place in the notification dated 04.01.2021 issued by the Government of India. The posts of Post Graduate Teacher (PGT), TGT (Trained Graduate Teacher), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II also find place in the notification dated 04.01.2021, and therefore, the KVS is directed to appoint deaf and hard of hearing persons by providing them 1% reservation against the total number of vacancies in the organization. Not only this, the KVS shall provide 4% reservation to the disabled persons in respect of total vacancies in the organization which is the mandate of law. The exercise of appointing disabled persons, including deaf and hard of hearing persons be concluded within a period of six months from the date of receipt of certified copy of this judgment.
- 36. Before parting, we feel constrained to observe that there appears to be a mismatch in the understanding of different departments regarding the mandate

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under RPwD Act. Whereas the Ministry of Social Justice and Empowerment (Nodal Ministry under the RPwD Act) has upgraded the list of posts suitable for the PwDs, the thought has not percolated to the departments which conduct recruitment. A similar "policy disconnect" was noted by the Hon'ble Supreme Court in Vikash Kumar v. Union Public Service Commission and Others, (2021) 5 SCC 370, wherein the stand taken by the Nodal Ministry was found to be in contrast with the stand taken by the recruiting agency — UPSC. This policy disconnect had led to a situation wherein different departments are made to learn the same lesson after individual cases travel to the constitutional Courts. The direct impact of this practice is to compel the PwDs to assert their basic rights before judicial fora, something that cannot be termed as desirable. In this regard, we direct the concerned Secretary, Ministry of Social Justice and Empowerment to issue suitable guidelines for the implementation of reservation policy by all departments in a uniform manner. One step may go far in the fulfilment of our promise to the PwDs.

37. The petitions, including applications (if any), stand disposed of in the aforesaid terms. No order as to costs.

SD/-

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

Sd/-

(SANJEEV NARULA) JUDGE

#### **NOVEMBER 01, 2023"**

- 7.11 In the matter of the National Federation of the Blind Vs the KVS, in WP(C) No.9520/2018, the Hon'ble High Court of Delhi at New Delhi vide Judgment dated 16 October 2023 held as under:-
  - "43. The impugned advertisement distinguishes the persons with disabilities from others, and puts a restriction on their potential to participate in the recruitment process to their full ability. The distinction is purely on the basis of disability. The advertisement has the effect of excluding the persons with disabilities from the race of recruitment, in complete violation of the mandatory reservation provision. It may be noted that an act of discrimination is not only a denial of the promise of equal protection before the law. Rather, every act of exclusion is an assault on the dignity of a person. More so, when the exclusion has the effect of compelling the persons with disabilities out of a race for gaining employment, without any fault of theirs. Instead of providing an equal space to grow, we have been compelling the persons with disabilities to prove, time and again, that they are capable of a lot more than we think.
  - 44. In light of the above discussion, we find the advertisement to be unsustainable. It is discriminatory and violative of the 2016 Act read with 2017 Rules. Accordingly, we issue the following directions:
    - i. The respondent shall conduct an audit of the total number of vacancies in the establishment and shall prepare a vacancy based roster as per Rule-11 of the 2017 Rules within 3 months from the date of this order. The respondent shall

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file an affidavit of the same along with a timeline of recruitment for filling the said vacancies;

- ii. If any vacancy, which ought to have been reserved in accordance with the 2016 Act, has already been filled by any person not falling in the reserved category due to failure of the respondent to reserve the same, the respondent shall adjust those vacancies from the unreserved pool of the available vacancies. Such vacancies shall be deemed to be unfilled and accordingly, shall be considered to have been carried forward from the vacancies notified in the impugned advertisement;
- iii. The respondent shall implement the 4 percent reservation strictly in accordance with Section-34, with minimum one percent to be earmarked for the categories listed at clauses (a), (b), (c), (d) and (e) in Section-34;
- iv. The respondent shall compute the number of vacancies to be reserved for the persons with disabilities against the total number of vacancies in the cadre strength in each group, inclusive of both identified and unidentified posts;
- v. The final appointment shall be made against the identified posts, even if the actual number of persons with disabilities appointed at a given post exceeds four percent;
- vi. The respondent shall not create sub-categories subject-wise within a cadre. The vacancies shall be calculated on the total number of vacancies in a particular cadre and not on posts;
- vii. The respondent shall reserve the post of Principal for persons with benchmark disabilities in blind or low vision category at a minimum of one percent for that particular category;
- viii. No deviation from the statutory rule or exclusion of any post shall be made, except in accordance with the exemption clause and after proper notification by the appropriate government;
- 45. In light of these directions, we dispose of the petition. No order as tocosts.
- 46. We express our thanks to Ld. Counsels for the parties for their ableassistance in the matter.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

> (SANJEEV NARULA) JUDGE

OCTOBER 16, 2023"

7.12 The provisions and policies related to the identification of posts and reservation for PwBDs were made clear to the Respondent through notices in the month of February 2023 and subsequently during the hearings in the matter. They still chose to go ahead with the recruitment process and then on finding that there was no way, they could justify

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their brazenness, they accepted their mistakes in bringing out the impugned advertisements. In fact, the Respondent No. 2, in pursuance to the hearing dated 13<sup>th</sup> October, 2023 submitted an Action Plan vide their letter dated 19.10.2023 for filling up the remaining 1% vacancies. As per the Action Plan, they committed to fill the remaining vacancies in 5 months after identification of the Recruiting Agency and approval of the same by the Respondent No. 2, i.e. Department of School Education and Literacy, Ministry of Education. There has been no update on the same from the Respondents despite lapse of approximately 6 months.

- 7.13 The respondents are directed to consider that claims of the above mentioned Complainants in the light and within the timeline given by the Hon'ble High Court as quoted in para 7.10 above and forward action taken report along with a proof of depositing the fine as mentioned in pre para to this Court within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.
- 7.14 Accordingly, these cases are disposed of.

Signed by Rajesh Aggarwal Date: 18-04-2024 10:15:49

(Rajesh Aggarwal) Chief Commissioner for Persons with Disabilities **2743 452-H20RENDRO-4-SOPOH** 1/2959/2024



# 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### In the matter of —

### Complainants:

SI.	Case No.	Name and Disability	Date of
No.			Notice
1.	13716/1011/2023	Shri Harendra Singh, 75% Locomotor (BL)	02.02.2023
2.	13717/1011/2023	Shri Rajaselvam R., 60% Locomotor (OA)	02.02.2023
3.	13723/1011/2023	Ms Sandhya Singh, 50% Locomotor (RLL)	02.02.2023
4.	13727/1011/2023	Ms. Sangeeta, 80% Locomotor (BL)	06.02.2023
5.	13745/1011/2023	Shri Amit Yadav, 60% Mental Illness (MI)	15.02.2023
6.	13762/1011/2023	Shri Pradeep Kumar, 100% Visual Impaired (B)	21.02.2023
7.	13783/1011/2023	Shri Bhawani Shankar, 41% Hearing Impaired (HI)	28.02.2023

#### Versus

(1) The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110016
Email – commissioner-kvs@gov.in,
kvs.commissioner@gmail.com

... Respondent No.1

(2) The Secretary,
Department of School Education & Literacy,
Ministry of Education,
Room No. 124-C,
Shastri Bhawan,
New Delhi – 110001

... Respondent No.2

#### 1. Gist of Complaints:

Email: secy.sel@nic.in

**27/23/62-)†20REWD/RA GOROH** 1/2959/2024

1.1 The afore-mentioned complainants filed their respective complaints against the Respondent pursuant to its advertisements No.15/2022, 16/2022 published for direct recruitment to various teaching and non-teaching posts in its establishments/schools whereas these posts are identified as suitable for Persons with Benchmark Disabilities (PwBDs] as per the Gazette Notification dated 04.01.2021 issued by the Department of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD, MSJE].

- 1.2 The grievances raised by the complainants against the Respondent No. 1 mainly pertained to -1) arbitrarily reducing the quantum of reservation from 4% as provided under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the Act"; and 2) not implementing the list of jobs suitable for various types of disabilities issued by the central government from time to time and ignoring certain posts or subcategories of disabilities from the said list in the recruitments in their establishment.
- 1 . 3 The complaints were taken up with the respondents under the mandate and power of this Court as per sections 75 and 77 of the Act by issue of individual notices in each complaint on the dates mentioned in the table at the details of the parties above. The Respondent No.1 filed various replies to the notices. It is mentioned here that no reply or response, whatsoever, to any notice of this Court was received from the Respondent No. 2 in the above cases. The common premise on which the Respondent No.1 based their reply to the notice can be summed up as under:
  - (a) As per the Notification No. 16-15/2010-DD-III dated 29.07.2013 of MSJ&E issuing the list of identified jobs in groups A, B and C, the KVS had constituted a Committee to settle pending court cases/grievances pertaining to reservation and identification of posts suitable for persons with disabilities.
  - (b) The Committee having taken note of KVS being an All India level organization and that its schools are also situated in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018.
  - (c) Therefore, the Committee recommended that KVS should seek exemption from providing this 1% reservation as per the options available under Para 3 of the OM dated 15.01.2018. The Committee observed that KVS should refer the matter to the DEPwD for exemption of 1% enhancement in reservation for persons with Benchmark Disabilities i.e. autism, intellectual disability, specific learning disability and mental illness.
  - (d) However, KVS had identified the post of Trained Graduate Teacher (Art Education) against which this 1% reservation can be granted to the persons with multiple disabilities in the direct recruitment, i.e. for a person who is Hard of Hearing (HH) and Orthopedically disabled (One Leg). This 1% reservation was already advertised by the KVS in Advertisement No.14. This 1% reservation was already advertised by the KVS in Advertisement No.14.
  - (e) Accordingly, a detailed letter was sent to the Director, DEPWD.
  - (f) The impugned notification for the KVS Direct Recruitment was made taking all the above into consideration.
- 1.4 The details of the grievances raised by each of these complainants and specific

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response of the Respondent No. 1 in respect of those have been shown in the table below. The details are as under:

SI	Name of the	Issues Raised	Date of Reply and the
No.	Complainant		Response of Respondent No. 1
	(Shri/Smt./Km.),		
	Details of disability,		
	Case No. and date of		
	Complaint		
1	Harendra Singh, 75%	The Respondent did not	20.03.2023 & 10.05.2023
	Locomotor Disability-	include the PwBD Both	
	Both Legs [LD-BL]	Legs (BL) in OH	
			1. As per the minutes of the
	13716/1011/2023	•	Committee, persons having
		PGT	disability in both legs in OH
	07.12.2022		category are not suitable for the
2	Sangeeta		post of Principal, Vice-Principal,
	80% Locomotor	reservation for PwBD-BL	PGT(Physics/
	Disability-Both Leg		Chemistry/Biology/Bio-Tech/
	[LD-BL]	Vice-Principal, Primary	Computer Science) and TGT
		Teacher, TGT, PGT,	(Science), Primary Teacher,
	13727/1011/2023		Librarian, Finance Officer,
			Assistant Section Officer, Hindi
	05.12.2022	Section Officer, Hindi	
		Translator, Junior	Assistant and Stenographer
		Secretarial Assistant and	Grade-II, on the grounds of the
		Stenographer Grade-II.	nature of duties involved in these
			posts.
			2. In the drop-down box under PH
			category, however, candidates
			could have submitted their
			category by putting OH in the
			drop-down box. The sub-
			category under OH was not asked
			from the candidates at that stage.
			If the complainants, were
			shortlisted for interview, they
			would not have been declared
			ineligible, and their selection
			would have been as per the
			marks obtained by them in the
			written test and the interview.
			The Respondent No.1 also
			submitted that the KVS has to
			review their reservation policy for
			divyangjan on all posts as per the
			latest instructions/notification
			issued by the Government of
			India and that the Committee
			consisting of officials from KVS
	l		l l

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			would hold a meeting in this regard very soon.
3	60% Locomotor		
4	50% Locomotor	submitted that KVS vide advertisement number 16/2022 had advertised 6414 vacancies of Primary Teacher in KVS but only 3% seats have been reserved for	
5		PwBD Others category in its advertisement 15/2022 for recruitment to the various teaching and non-teaching posts. He further submitted that Specific Learning Disability, Mental Illness and Autism all come under PwBD Others category, and out of total 4% reservation for PwBDs, 1% seats are reserved for PwBD Others category. He requested this Court that KVS be directed to	India level organization its Kendriya Vidyalayas are in very remote and far off places, the work being carried out would not suit to the persons who are having benchmark disabilities referred to in (d) and (e) of OM dated 15.01.2018. Therefore, the Committee recommended that KVS should seek exemption from the DEPwD from providing this 1% reservation for PwBDs having autism, intellectual disability, specific learning disability and mental illness made in addition of the existing reservation in terms Para 3 of the above said OM. Accordingly, a detailed letter was sent to the Director, DEPWD.

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		advertisement and reserve 1% seats for PwBD-Others category.	
6	100% Visual Impairment (Blind) 13762/1011/2023 10.12.2022	[hereinafter "the Act"] by the Respondent by denying reservation to PwBD-VI in its Recruitment Notice No.15/2022 for filling of various posts of Assistant Commissioner, Principal, PGT (Physics, Chemistry, Maths, Biology, Commerce and	As per the minutes of the Committee, visually impaired persons are suitable for the post of Administrative Officer, PGT(English), PGT(Hindi), PGT(Geog.), PGT(Hist.), PGT(Eco.), TGT(English), TGT(Hindi), TGT(Sanskrit), TGT(Social Studies), Primary Teacher, PRT(Music), TGT(Work Experience), Assistant Section Officer, Hindi Translator, Senior Secretariat Assistant, Junior
7	41% Hearing Impairment (HI)	recruitment to the various teaching and non-teaching posts. In Advt. No.15/2022 online applications were invited	As per the recommendation of the Committee, persons with hearing impairment are not suitable for the post of Post Graduate Teacher (Computer Science) in view of the nature of duties required to be performed in the said post.

# 2. Rejoinders filed by the Complainants:

2.1 All the Complainants in respective rejoinders refuted the reply filed by the Respondent and reiterated their complaints.

### 3. **Hearing (1):**

3.1 As the grievances in all the above mentioned seven cases arose from the same process of recruitment in the Respondent establishment through Advertisements No.15/2022 and No.16/2022, it was decided to club them for the purpose of a joint hearing, Hence, the cases were heard online through video conferencing on **09.10.2023.** The following parties/representatives were present during the hearing:

#### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

#### **Respondent:**

- 1. Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- 2. Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- 3. Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 3 . 2 **Record of Proceedings:** During the online hearing, the complainants challenged the recruitment process on the grounds that
  - i. The Respondent allowed 3% reservation for persons with benchmark disability as against the statutory provisions of 4%
  - ii. The Respondent arbitrarily altered the identification of posts notified by the Central Government vide Ministry of Social Justice & Empowerment Notification dated 04.01.2021 and deleted certain categories of disabilities, particularly the Visual Impairment and locomotor disability in both legs, as being a suitable category for the posts of Asstt. Commissioner, Principal, Vice Principal, TGT and PGT.
  - iii. In another comparable establishment, namely the Navodaya Vidyalaya Samiti, the post of Principal is suitable for these categories of disabilities.
  - iv. The Respondent had several cases where persons with visual impairment were appointed in the teaching posts and to the post of Principal through promotions.
- 3.3 The Respondent No.1 did not deny the aforesaid facts, but submitted that on account of functional requirements in KVS, certain categories have not been found suitable for the teaching posts. The Court sought to know if they have got the posts exempted through the procedure laid down in the Notification dated 04.01.2021 and the DoPT OM dated 15.01.2018 on the subject. The Respondents confirmed that such a process was not undertaken and an internal decision has been taken in this regard by the KVS.
- 3.4 The Respondent No.1 further submitted that the result of the impugned

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examination was already finalized and that they will follow the 4% reservation and the Notification of 04.01.2021 from the next recruitment exercise.

- 3.5 This Court was shocked at the arbitrariness and casual approach of the Respondent No.1 in undertaking this recruitment process for a total of 6990 posts across various teaching and non-teaching posts. Ignorance of the law cannot be an excuse to deny the rightful claim of persons with disabilities. In this recruitment process, ignorance also cannot be pretended as the law position was made very clear to the Respondents vide Notices in the above cases issued by this Court in February 2023. The Respondent No.1 instead of making course correction appeared to have gone ahead with the faulty process of the recruitment. Such disregard of the law passed by the Parliament and instructions issued by the competent authorities cannot be permitted.
- 3.6 Accordingly, this Court in exercise of its powers under Section 77 of the RPwD Act, 2016, directed the Commissioner of KVS to appear in person on the next date of the hearing, i.e., Friday, 13.10.2023, through online mode. The Respondent was permitted to file written explanation/submission, if any, by 12.10.2023.

#### 4. Hearing (2):

4.1 The case was next heard online through video conferencing on **13.10.2023**. The following parties/representatives were present during the hearing:

### **Complainants:**

- 1. Sh. Harendra Singh
- 2. Sh. Rajaselvam R.
- 3. Sh. Pradeep Kumar
- 4. Sh. Amit Yadav
- 5. Sh. Bhawani Shankar

### **Respondents:**

- 1. Smt. Ajeeta Longjam, Joint Commissioner (Admn.I), KVS
- 4 . 2 **Record of Proceedings:** Vide Record of Proceeding dated 10.10.2023, the Commissioner, Kendriya Vidyalaya Sangathan (KVS) was asked to be present in the next hearing on 13.10.2023. In the meanwhile, the respondent requested for the exemption from personal appearance of the Commissioner, KVS on the ground of his pre-occupation elsewhere. It was also submitted that the Joint Commissioner concerned whould appear for the Respondent. The request was accepted.
- 4.3 At the outset of the hearing on 13.10.2023, the Court asked the representative of KVS whether she is conversant with the facts of the case. To which, she replied in affirmative. The Court then asked the representative of the KVS for its comments on the ongoing recruitment process which has been apparently carried on in complete disregard of the prevailing laws and instructions on the subject on the issue both suitability of the posts for various categories of disabilities as well as on the quantum of reservation.
- 4.4 The Joint Commissioner, KVS submitted that this is the first recruitment exercise

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after the Pandemic and that a large number of vacancies arose during the period, which are being filled through the current process. Being an academic establishment, the KVS relied on the experts from academic background for the purpose of identification of suitability of the posts. They have now realized that exemption of any post or any category of disabilities was required to be obtained from the D/o Empowerment of Persons with Disabilities, M/o SJ&E. The matter has now been discussed and it is being proposed to calculate the total 1% backlog vacancies and open it for the candidates across the country in their next recruitment exercise.

- 4.5 The Court sought to know when the next recruitment process shall begin. The respondent submitted that the current recruitment process shall be completed by the end of this year and the next process will commence sometimes in the next year. On this, the Court expressed its dissatisfaction observing that the present case started almost a year back. But, the respondent despite knowing the law position on the subject, acted in a very casual manner. The Court further asked as to how the pay, seniority and issues relating to candidates becoming overage are proposed to be resolved. The Court also observed that saying that the loss will be made up in the next recruitment year does not make any sense as the next recruitment year may happen after four years. The Court also sought to know as to how the respondent proposes to protect with the right of a candidate who was not allowed to compete in the current recruitment process for all vacancies, i.e., on the basis of reservation as well on their own merit only because some internal expert Committee recommended that they were not suitable for the job by now asking them to compete for only 1% backlog reservation. The total number of vacancies in the current recruitment process being on a rather higher side at approximately 7000, this fact cannot be overlooked.
- 4.6 Shri Rajaselvan R, in Case No.13717/1011/2023 submitted that he has already appeared in the examination but has not been selected because the post of Physical Education Teacher (PET) has not been declared suitable by the respondent whereas the same figures in the MSJE's Notification for locomotor disability and also that 16 persons suffering from locomotor disability are working as PET in Navodaya Vidyalaya which is a comparable establishment.
- 4.7 Shri Pradeep Kumar, in Case No. 13762/1011/2023 submitted that the post of the Principal has been suitable in the last 03 lists issued by the MSJ&E in 2007, 2013 and 2021. There are persons with visual impairment working as the Principal in Navodaya Schools and in schools under the Govt. of NCT of Delhi. So, the action of KVS is arbitrary and forcing us to wait for another recruitment process is basically harassment. Shri Pradeep also mentioned the names of the following persons with visual impairment who are appointed as Principal by KVS itself:
  - i. Shri Devinder Kumar Tiwari
  - ii. Shri N. K. Yadav
  - iii. Shri Rajguru
  - iv. Shri Balasaheb
  - v. Shri M. L. Mishra (Assistant Commissioner)
- 4.8 The representative of the Respondent No.1 submitted that it was based on the recommendation of an Expert Committee. On this the Court desired that the names of the Committee members also be furnished to the Court. The Court observed that the Committee's recommendations cannot be put on a higher pedestal than the provisions of the Act passed by the Parliament.

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4.9 Shri Pradeep Kumar further submitted that instead of including vacancies in the next recruitment process/year, the respondent should be asked to publish the corrigendum and consider the candidates who have already applied during the current process and bring the recruitment process in line with the Rights of Persons with Disabilities Act, 2016. He also requested that the Court should nominate a representative from the O/o CCPD to scrutinize the reservation rosters of the respondent organization.

4.10 The Court sought clarification from the Respondent on affidavit by an officer not below the level of Group 'A' officer as to why they cannot put the current recruitment process on hold and resolve the issue by way of appropriate corrigendum. If this is not found to be a practicable option, then how the Respondent should inform how does it propose to resolve the issues raised by this Court and the Complainants as have been mentioned in the preceding paragraphs. The Respondent shall also inform as to what action it proposes to initiate against its officials and members of the "Expert Committee" who were responsible for the illegality of the current recruitment. The reply of the Respondent shall be submitted to this Court via email at ccpd@nic.in within 03 days from the issue of this Record of Proceedings.

# 5. Compliance filed by the Respondents:

- 5.1 The Respondent No.1 filed its letter dated 19.10.2023 addressed to the Ministry of Education and endorsed to this Court inter-alia submitted that only 3% vacancies were reserved in their advertisements No.15/2022, and 16/2022. They submitted their tentative action plan for filling remaining 1% posts for Persons with Disabilities subject to the approval of the Respondent No. 2, the Department of School Education and Literacy, Ministry of Education:—
  - (a) For identification and approval of the Recruiting Agency, matter will be taken up with the Respondent No. 2 for filling up backlog vacancies.
  - (b) After approval of the Recruiting Agency with signing of MoU, after one month exam centres will be finalized.
  - (c) 15 days after the signing of MoU advertisement for Employment News and other print media.
  - (d) Approx. 45 days after the last date of submission of online applications or as decided by the Recruiting agency, written exam (CBT) will be conducted.
  - (e) After 15 days from the date of CBT candidates will be shortlisted for interview.
  - (f) Within one month after the display of the list of shortlisted candidates, the interview would be conducted.
  - (g) 15 days from the receipt of result from Recruitment Agency Select Panels will be prepared.
  - (h) After one month, appointment letters will be issued.

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# 6. Hearing (3):

6.1 An online hearing through video conferencing was conducted on **13.02.2024.** The following parties/representatives were present during the hearing:

# **Complainants:**

- (1) Shri Harendra Singh, 75% Locomotor (BL)
- (2) Shri Rajaselvam R., 60% Locomotor (OA)
- (3) Ms Sandhya, 50% Locomotor (RLL)
- (4) Ms. Sangeeta, 80% Locomotor (BL)
- (5) Shri Amit Yadav, 60% Mental Illness [MI]
- (6) Shri Pradeep Kumar, 100% Visual Impaired (B)
- (7) Shri Bhawani Shankar, 41% Hearing Impaired [HI]

# **Respondents:**

- (1) Sh. Deepak Kumar Dabral, Assistant Commissioner, KVS
- (2) Sh. Amar Pal Singh Barar, Assistant Commissioner, KVS (E1)
- (3) Sh. Shiv Kumar Diwedi, Assistant Commissioner (Retd.) Consultant
- 6 . 2 **Record of Proceedings:** During the hearing, the Court observed that the representatives appearing on behalf of the Respondent No.1 have appeared unprepared not well versed with the case. And also, the Commissioner, KVS who was summoned to appear before the Court did not appear during the hearing. Further, no reply to the notices issued to the Department of School Education & Literacy, Ministry of Education [Respondent No.2] has been received in this matter. Therefore, the hearing was adjourned for half an hour and the representatives of the Respondent No.1 was directed that the Commissioner, KVS be informed to appear personally before the Court. The CCPD also directed that Office of the Respondent No.2 be also contacted to explore the feasibility of an officer at the level of Joint Secretary or Director who are well versed in the matter could appear in the next session of hearing.
- 6.3 During the next session of hearing which was conducted at about 16:57 hrs. neither the Commissioner, KVS nor any officer from the Respondent No.2 could appear during the hearing.

#### 7. Observations & Recommendations:

- 7.1 From the records of the case and submissions made by the parties, it is very clear that the Respondent No. 2 has violated the statutory provisions of sections 33 and 34 of the Act. For the purpose of understanding the nature of the violation, it will be appropriate to quote the said provisions of the Act here, which are as under:
  - 33. Identification of posts for reservation.—The appropriate Government shall—
    - (i) identify posts in the **establishments** which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
    - (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

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(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

- **34. Reservation**.—(1) Every appropriate Government shall appoint in every Government establishment, **not less than four per cent.** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—
  - (a) blindness and low vision;
  - (b) deaf and hard of hearing;
  - (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
  - (d) autism, intellectual disability, specific learning disability and mental illness:
  - (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

7.2 In so far as the identification of posts is concerned the Act, mandates the appropriate government to identify posts in establishments. The term "appropriate government" has been defined in section 2 (b) as under:

#### (b) "appropriate Government" means,—

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.
- 7.3 Since, the KVS is a central establishment, it is the Central Government, which is the appropriate government in the instant case. From the language of Section 33, it is clear that the identification of post in all establishments under its control is required to be done by the nodal department of the Central Government and not the establishments concerned themselves. A quick look at the relevant extracts of the Allocation of Business Rules, 1961 (Item No. 4 under the allocation of subjects of the DEPwD at The Second Schedule) makes it clear that the DEPwD is the nodal department in this regard. The extracts are as under:
  - 4. To act as the nodal Department for matters pertaining to Disability and Persons with Disabilities.

Note: The Department of Empowerment of Persons with Disabilities (Divyangjan) shall be the nodal Department for the overall policy, planning and coordination of programmes for Persons with Disabilities. However, overall management and monitoring etc. of the sectoral programmes in respect of this group shall be the responsibility of the concerned Central Ministries, State Governments and Union territory Administrations. Each Central Ministry or Department shall discharge nodal responsibility concerning its sector.

- Accordingly, in fulfilment of the above obligation, the DEPwD has been publishing the list of jobs suitable for various kinds of disability through gazette notifications. The existing gazette notifications were issued vide Notification No. 38-16/2020-DD-III dated 04.01.2021. The previous list was also issued by the MSJE vide Notification No. 16-15/2010-DD-III dated 29.07.2013 as per the provisions of Section 32 of the PwD Act, 1995 (now repealed). These lists are not exhaustive as mentioned under Note 2 of the Gist of Recommendations by the Expert Committee constituted by the DEPwD/MSJE. Note 2 is being reproduced as under:
  - "Note 2: The list of posts being notified is only indicative and not an exhaustive list. If a post is not mentioned in the list, it is not to be construed that it has been exempted. Central Ministries, Departments, Autonomous Bodies, Public Sector Undertakings may further supplement the list by adding to the list of posts identified for respective category of disability."
- 7.5 It is therefore evident that it was not open for the Respondent No. 2 to reduce or delete certain posts or certain categories/sub-categories of disabilities from the list

issued by the nodal department of the central government.

- 7.6 In OA No. 692/2023, Shri Raj Kumar and Shri Awadhesh Kumar Kaushal Vs The KVS and Ors before the Central Administrative Tribunal (PB), a matter similar in facts with that of Case No. 13762/1011/2023 before this Court, the Respondent No. 1 has filed a communication made to the applicants therein, who are both visually impaired persons working as PGTs in the KVS, expressing its willingness to appoint them as Principal. The extracts of the same communication dated 13.12.2023 are being quoted as under:
  - ".. (2) KVS is in a position to make appointment of two applicants for the Post of Principal under the UR category as approx. 150 post of Principals are still available in addition to 239 posts."
- 7.7 The Hon'ble CAT (PB) disposed of the above matter by its Order dated 05.01.2024 with the following direction:
  - 7. On hearing learned counsel for both the parties, we hereby direct the competent authority amongst the respondents to take further action for implementing their decision dated 13.12.2023, as quoted above, in respect of the applicants in the present O.A., within a span of eight weeks from the date of receipt of a certified copy of this order.
- 7.8 Strangely, in Case No. 13762/1011/2023 before this Court, the Respondent has been denying grant of same relief to the applicant on the grounds that the post of Principal in their establishment is not suitable for persons with visual impairment.
- 7.9 In so far as the decision of the Respondent No. 2 to reduce the reservation for PwBDs from 4% to 3% is concerned, that is also in complete violation of section 33 of the Act, which clearly mentions that every appropriate Government shall appoint in every Government establishment, **not less than four per cent** of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. The proviso to Sub-Section 2 of Section 34 makes provisions for a situation where if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government. Hence, there was no grounds, no justification and no legal way for the Respondent No.2 for reducing the reservation from 4% to 3%.
- 7.10 This Court also wishes to draw attention to Judgements dated 01.11.2023 of the Hon'ble Delhi High Court in similar matters against the Respondent No.1 KVS, in W.P. (C) 17460/2022 Court in its own motion Vs KVS and Ors; and in W.P.(C) 665/2023 and CM APPL. 2585/2023 National Association of the Deaf Vs Union of India & Ors., wherein the Hon'ble Court observed and issued directions as under:
  - "30. In the considered opinion of this Court, the KVS has violated the statutory provisions as contained under the RPwD Act. The advertisements in question on this count alone, deserve to be quashed. The KVS has assumed a power which never vested in it. The task of identification as well as of exemption of posts falls in the domain of the appropriate government. However, when the matter was being argued, it was brought to the notice of this Court by learned counsel for the KVS that the process of recruitment was already over, and at this

juncture, by quashing the advertisements, the Court shall be discontinuing the services of the persons who have been duly selected on various posts in terms of the advertisements.

- 31. In the considered opinion of this Court, if the process of recruitment is already over, the KVS in respect of the identified posts, shall provide 1% reservation against the total vacancies notified vide the impugned advertisements to deaf and hard of hearing persons, and shall initiate a drive of special recruitment for filling up the vacancies reserved for various categories of disabled persons, including 1% identified persons who are deaf and hard of hearing. To reiterate, the reservation must be calculated on the total number of vacancies and ultimate appointment shall take place on the posts identified in the 2021 notification. The exercise of issuing a fresh advertisement for disabled category of total 4% of posts in the entire organization be concluded within a period of three months from the date of receipt of certified copy of this order.
- 32. It is unfortunate that disabled persons are being compelled to file writ petitions and are being compelled to run from pillar to post by an organization like KVS. They are not claiming any charity, and they are claiming their rights as guaranteed to them under the RPwD Act. The legislature has laid down a noble vision of providing "reasonable accommodation" to persons with disabilities so as to ensure that all possible special measures are adopted to enable the PwDs to perform to the best of their ability. Despite so, instead of creating such reasonable accommodation, the respondent has looked down upon the PwDs from the lens of inconvenience.
- 33. In a recent judgment in the case of **National Federation of the Blind Vs. Kendriya Vidvalaya Sangthan & Ors.**, 2023:DHC:7551-DB, which was in respect of persons with disabilities (blind or low vision), this Court relying upon the same notification dated 04.01.2021, has directed the KVS to provide 1% reservation to the blind and low vision persons in respect of the total identified posts in the organization keeping in view the notification dated 04.01.2021.
- 34. Similarly, in the present case also, the KVS in respect of the identified posts as per the notification dated 04.01.2021, shall issue an advertisement and shall clear the backlog of vacancies within a period of six months from the date of receipt of certified copy of this judgment.
- 35. The posts of Principal and the Vice-Principal find place in the notification dated 04.01.2021 issued by the Government of India. The posts of Post Graduate Teacher (PGT), TGT (Trained Graduate Teacher), Assistant Engineer (Civil), Hindi Translator and Stenographer Grade-II also find place in the notification dated 04.01.2021, and therefore, the KVS is directed to appoint deaf and hard of hearing persons by providing them 1% reservation against the total number of vacancies in the organization. Not only this, the KVS shall provide 4% reservation to the disabled persons in respect of total vacancies in the organization which is the mandate of law. The exercise of appointing disabled persons, including deaf and hard of hearing persons be concluded within a period of six months from the date of receipt of certified copy of this judgment.
- 36. Before parting, we feel constrained to observe that there appears to be a mismatch in the understanding of different departments regarding the mandate

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under RPwD Act. Whereas the Ministry of Social Justice and Empowerment (Nodal Ministry under the RPwD Act) has upgraded the list of posts suitable for the PwDs, the thought has not percolated to the departments which conduct recruitment. A similar "policy disconnect" was noted by the Hon'ble Supreme Court in Vikash Kumar v. Union Public Service Commission and Others, (2021) 5 SCC 370, wherein the stand taken by the Nodal Ministry was found to be in contrast with the stand taken by the recruiting agency – UPSC. This policy disconnect had led to a situation wherein different departments are made to learn the same lesson after individual cases travel to the constitutional Courts. The direct impact of this practice is to compel the PwDs to assert their basic rights before judicial fora, something that cannot be termed as desirable. In this regard, we direct the concerned Secretary, Ministry of Social Justice and Empowerment to issue suitable guidelines for the implementation of reservation policy by all departments in a uniform manner. One step may go far in the fulfilment of our promise to the PwDs.

37. The petitions, including applications (if any), stand disposed of in the aforesaid terms. No order as to costs.

SD/-

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

Sd/-

(SANJEEV NARULA) JUDGE

#### NOVEMBER 01, 2023"

- 7.11 In the matter of the National Federation of the Blind Vs the KVS, in WP(C) No.9520/2018, the Hon'ble High Court of Delhi at New Delhi vide Judgment dated 16 October 2023 held as under:-
  - "43. The impugned advertisement distinguishes the persons with disabilities from others, and puts a restriction on their potential to participate in the recruitment process to their full ability. The distinction is purely on the basis of disability. The advertisement has the effect of excluding the persons with disabilities from the race of recruitment, in complete violation of the mandatory reservation provision. It may be noted that an act of discrimination is not only a denial of the promise of equal protection before the law. Rather, every act of exclusion is an assault on the dignity of a person. More so, when the exclusion has the effect of compelling the persons with disabilities out of a race for gaining employment, without any fault of theirs. Instead of providing an equal space to grow, we have been compelling the persons with disabilities to prove, time and again, that they are capable of a lot more than we think.
  - 44. In light of the above discussion, we find the advertisement to be unsustainable. It is discriminatory and violative of the 2016 Act read with 2017 Rules. Accordingly, we issue the following directions:
    - i. The respondent shall conduct an audit of the total number of vacancies in the establishment and shall prepare a vacancy based roster as per Rule-11 of the 2017 Rules within 3 months from the date of this order. The respondent shall

file an affidavit of the same along with a timeline of recruitment for filling the said vacancies;

- ii. If any vacancy, which ought to have been reserved in accordance with the 2016 Act, has already been filled by any person not falling in the reserved category due to failure of the respondent to reserve the same, the respondent shall adjust those vacancies from the unreserved pool of the available vacancies. Such vacancies shall be deemed to be unfilled and accordingly, shall be considered to have been carried forward from the vacancies notified in the impugned advertisement;
- iii. The respondent shall implement the 4 percent reservation strictly in accordance with Section-34, with minimum one percent to be earmarked for the categories listed at clauses (a), (b), (c), (d) and (e) in Section-34;
- iv. The respondent shall compute the number of vacancies to be reserved for the persons with disabilities against the total number of vacancies in the cadre strength in each group, inclusive of both identified and unidentified posts;
- v. The final appointment shall be made against the identified posts, even if the actual number of persons with disabilities appointed at a given post exceeds four percent;
- vi. The respondent shall not create sub-categories subject-wise within a cadre. The vacancies shall be calculated on the total number of vacancies in a particular cadre and not on posts;
- vii. The respondent shall reserve the post of Principal for persons with benchmark disabilities in blind or low vision category at a minimum of one percent for that particular category;
- viii. No deviation from the statutory rule or exclusion of any post shall be made, except in accordance with the exemption clause and after proper notification by the appropriate government;
- 45. In light of these directions, we dispose of the petition. No order as tocosts.
- 46. We express our thanks to Ld. Counsels for the parties for their ableassistance in the matter.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE

> (SANJEEV NARULA) JUDGE

OCTOBER 16, 2023"

7.12 The provisions and policies related to the identification of posts and reservation for PwBDs were made clear to the Respondent through notices in the month of February 2023 and subsequently during the hearings in the matter. They still chose to go ahead with the recruitment process and then on finding that there was no way, they could justify

**27/23/62-)†20REWD/RA GOROH** 1/2959/2024

their brazenness, they accepted their mistakes in bringing out the impugned advertisements. In fact, the Respondent No. 2, in pursuance to the hearing dated 13<sup>th</sup> October, 2023 submitted an Action Plan vide their letter dated 19.10.2023 for filling up the remaining 1% vacancies. As per the Action Plan, they committed to fill the remaining vacancies in 5 months after identification of the Recruiting Agency and approval of the same by the Respondent No. 2, i.e. Department of School Education and Literacy, Ministry of Education. There has been no update on the same from the Respondents despite lapse of approximately 6 months.

- 7.13 The respondents are directed to consider that claims of the above mentioned Complainants in the light and within the timeline given by the Hon'ble High Court as quoted in para 7.10 above and forward action taken report along with a proof of depositing the fine as mentioned in pre para to this Court within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.
- 7.14 Accordingly, these cases are disposed of.

Signed by Rajesh Aggarwal Date: 18-04-2024 10:15:49

(Rajesh Aggarwal) Chief Commissioner for Persons with Disabilities 242846110224003 o CCPD 1/2957/2024



# न्यायालय मुख्य आयुक्त दिव्यागजन

### 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### Case No. 14284/1102/2023

#### In the matter of —

Shri Ratan K. Kamble, R/o F-1, D Squire Apartment, Wadali Naka, Paratik Rana Nagar, Behind Sai Villa Society, Amravati - 444602,

Email: ratank1961@gmail.com

Contact: 9320111560

... Complainant

#### **Versus**

(1) The MD & CEO, Bank of India,

Head Office: Star House.

C-5, G-Block, Bandra Kurla Complex,

Bandra (East), Mumbai - 400051,

Email: md.ceo@bankofindia.co.in

... Respondent No.1

(2)The Branch Manager,

Bank of India,

Amravati Branch, Samra Complex,

Jaistambh Chowk,

At/PO/Tehsil: Amravati.

District: Amravati, Pin: 444601 (MH)

... Respondent No.2

#### 1. **Gist of Complaint:**

Shri Ratan K Kamble, a person with 100% Visual Impairment filed a complaint dated 30.06.2023 regarding the denial of providing banking facilities to a **2425**06H**202**4**D0**310 CCPD 1/2957/2024

person with visual impairment and not honoring crossed cheque having thumb impression by the Bank of India, Amravati Branch (Maharashtra).

- 1 . 2 The Complainant submitted that as per the RBI Circular No. DBOD. No. Leg. B.C. 91//09.07.005/2007-08 dated 4th June, 2008; and IBA Circular dated 18.11.2008 the bank should offer all the banking facilities including cheque book facility including third party cheques, ATM facility, Net Banking facility, retail loans, credit cards and locker facility to the visually challenged without any discrimination and also assist them in withdrawal of cash. Banks may also advise their branches to render all possible assistance to the visually challenged for availing the various banking facilities.
- 1.3 The Complainant requested the Branch Manager of Bank of India, Amravati to issue cheques in favor of a third party and also allow him to transfer the amount from his account to his other bank accounts, to issue cheques for payment of electricity bills and to transfer the amount to third party, etc.
- 1.4 A cheque bearing No.221701 dated 23.03.2023 for Rs.11,000/- (Rupees Eleven Thousand only) was issued by him in favor of Sachin Ramdas Shrirame. The said cheque was returned unpaid and an amount of Rs.590/- excluding GST was deducted towards cheque return charges, although the said cheque was already crossed and his thumb impression was verified by the bank officials. He had also informed the Bank that being a blind person he is unable to read, write, and see. Under this situation, he would not get full protection and somebody may take undue advantage by forging his signature and the risk is high. Moreover, if there is a difference in his signature, the bank may return the cheque issued to the third party, whereas nobody can copy his thumb impression.
- 1.5 The Complainant vide letter dated 20.04.2023 requested the Bank to follow the guidelines issued by RBI and also assured the Bank that he would take due care while issuing cheques. The Bank vide letter dated 20.05.2023 replied to him that a Blind person can be allowed to do selective banking services at the branch counter level with the authentication of a branch official, he can be allowed to operations like Cash, Transfer, NEFT, RTGS, ATM, Net Banking at branch level with authentication for some branch officer of this thumb impression. However, he cannot be allowed CTS Clearing services with thumb impression, as thumb impression, as thump impression is not acceptable in CTS.
- 1.6 The Complainant requested that he may be allowed to issue cheques with thumb impression and the guidelines issued by RBI/IBA to be observed by the

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officials of the Respondent Bank.

# 2. Reply submitted by the Respondents:

- 2.1 The Chief Branch Manager, Bank of India, Amravati Branch filed its reply on affidavit dated 10.10.2023 on behalf of the respondents and inter-alia submitted that all banking facilities are provided to the Complainant as per the guidelines issued in this regard and as such, cheque facility is already provided to the Complainant and the Complainant is regularly using the same. The clearance of the cheque is not with the branch but was issued by the Complainant to the Third Party who had presented the same in its bank i.e. Bank of Maharashtra, Khaparde Bagicha Branch, Amravati from where the same was sent to Clearing Centre and as such, the Clearing Centre had taken the objection about thumb impression. Had the same come to the knowledge of the Respondent Bank, it would have been cleared in the normal course. Non-clearance based on the thumb impression is also in an abundant precaution to avoid the misuse of the cheque of the Complainant.
- 2.2 The Respondent further submitted that branch officials as well as Clearing House have been instructed and requested to pass the clearing cheques where the thumb impression is duly authenticated by respective branch officials by signing and affixing a rubber stamp on the cheque along with the PF number and it found in order. The same is instructed for the convenience of the banking of the Complainant and safeguard to him from any loss or fraud. The Complainant was communicated and his grievances have already been sorted out.

#### 3. Rejoinder submitted by the Complainant:

3.1 The Complainant in his rejoinder dated 30.10.2023 inter-alia reiteratedhis Complaint. However, he added that the Bank officials had assured him that in the future if they get prior information about the issuance of a cheque, no cheque would be returned due to his thumb impression. The Bank officials assured him of their best services always. He submitted that he is satisfied with the reply given by the respondent bank. However, in the future, if any violation happens on the part of the bank in the subject matter, he will inform the matter to this Court accordingly.

# 4. Observations & Recommendations:

4.1 The Complainant has expressed his satisfaction with the reply filed by the Respondent. Moreover, the reply filed by the Respondent appears satisfactory as

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the Respondent has assured that no cheque would be returned due to thumb impression.

4.2 No further intervention is warranted in this matter and the case is accordingly disposed of with the approval of the Chief Commissioner for Persons with Disabilities.

Signed by Praveen Prakash Ambashta Date: 18-04-2024 06:58:35

(P. P. Ambashta)

Dy. Chief Commissioner

243196/81/0902/24/0030 CCPD 1/2975/2024



न्यायालय मुख्ये आयुक्ते 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### Case No. 14313/1092/2023

#### In the matter of —

Dr. Anu Dhiman, W/o Shri Manish Aggarwal, R/o D-285, 2nd Floor, Ranjit Avenue, Amritsar - 143001 (Punjab) Email: manishaggarwal069@gmail.com

Contact: 6296577301

Complainant

### **Versus**

(1) The Chairman,

National Highways Authority of India, G 5&6, Sector-10, Dwarka, New Delhi - 110075,

Email: chairman@nhai.org; prem@nhai.org ... Respondent No.1

(2) The Regional Director,

Regional Office - Chandigarh, National Highways Authority of India, Bay No. 35-38, 1st Floor,

Sector-4, Panchkula-134112

Email: rochandigarh@nhai.org

... Respondent No.2

#### 1. Gist of Complainant:

- 1.1 Dr. Anu Dhiman, a person with 40% Locomotor Disability filed a complaint dated 18.07.2023 regarding the denial of the exempted Fast tag by the National Highways Authority of India, Regional Office, Chandigarh.
- 1.2 The Complainant submitted that she purchased a Tata Nexon XZ+(O) in

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November 2020 with Registration No PB 02 EB 5049 after availing GST concession meant for Divyangjan. It is mandated that the vehicle purchased availing GST Concession be registered as an 'Adapted Vehicle'. However, RTO - Amritsar didn't issue the RC mentioning it to be 'Adapted Vehicle / Invalid Carriage' and saying that they had stopped using this terminology in the RC of a vehicle.

- 1.3 As per Guidelines/SOP issued by the MoRTH mechanical vehicles specially designed for a person suffering from physical disability are eligible for getting exempted FASTag from NHAI under code 34. Later, MoRTH through its Official Gazette order CG-DL-E-01012021-224091 dated 30th December 2020 added a provision in National Highways Fee (Determination of Rules & Collection) Rules, 2008 that Vehicles with ownership type as 'Divyangjan' under Motor Vehicles Act, 1988 will also be eligible for issuance of Exempted FASTag under Code 34.
- 1.4 Accordingly, she got the vehicle ownership type converted to 'Divyangjan (GST Concession)' and the owner category to 'Physically Handicapped' by the RTA Amritsar. However, the same change was not reflected on RC as RTA Amritsar stated that they can only issue a certificate regarding the same and could not mention the same on RC.
- 1.5 The Complainant applied to RO-Chandigarh, NHAI for issuance of exempted FASTag under Code 34 vide application no. RO-CHA-211972632997 in April 2021 submitting all the requisite documents such as Aadhaar Card, RC of vehicle, Disability Certificate (UDID Card), and New Certificate issued by RTA Amritsar mentioning ownership type as 'Divyangjan' for vehicle No. PB 02 EB 5049 etc. yet, her application was rejected by RO Chandigarh without citing the proper reason for the same. She again put up her case with RO Chandigarh but they again rejected her application on 31.08.2021. She continuously pursued her case with RO Chandigarh for the next 1 year but they continued to remain unresponsive and again rejected her application for the third time on 17.05.2022.
- 1.6 The Complainant referred the Case No.13244/1092/2022 in which this Court had issued an order dated 16.09.2022 regarding the issuance of Exempted FASTag with the instructions to NHAI and MoRTH for timely and smooth clearance of cases regarding issuance of exempted FASTag to Divyangjans.
- 1.7 The Complainant prayed that RO Chandigarh, NHAI may be directed to issue an exempted FASTag at the earliest and also issue her an apology letter/adequate compensation for the continuous harassment and toll fees charged from her in the last two years due to their ignorance and mistake.

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# 2. Reply submitted by the Respondents:

- 2.1 The DGM (Tech.), Regional Office, NHAI Chandigarh filed a reply on affidavit dated 23.08.2023 and inter-alia submitted that the rejection of the application for the exempted FAStag was only due to technical and procedural issues. Further, MoRTH vide letter No. H-25016/02/2018-Toll dated 23.11.2021 issued clarification with regard to the Standard Operating Procedure (SoP) and Guidelines for issuance of FASTag to exempted category of mechanical vehicle under National Highways Fee (Determination of Rates and Collection) Rules, 2008 as under:-
  - "2.1 In order to bring transparency in issuance of exempted FASTag to Divyangjan, the annexure of the SoP shall be revised as under:

In the Annexure-1 of the SoP dated 09.11.2019, in the exempted category of vehicle against Sl. No. (e) of the table, after the word "disability", the following shall be inserted, namely:-

"or registered with Ownership type as "DIVYANGJAN" under the Motor Vehicle Act, 1988 (59 of 1988) and the rules made there under."

- 2.2 In pursuant to GSR 174(E) dated the 1st March, 2019 the 'Ownership Type' field is not available in Smart Card issued for registration of a vehicle. The 'Ownership Type' details are present in Machine readable zone only. Therefore, NHAI shall obtain access for "Ownership type" field in Vahan Portal for verification of Vehicle Particulars and verify the ownership of a vehicle from VAHAN database for processing the applications of vehicles registered with Ownership type as DIVYANGJAN.
- 2.3 NHAI shall re-examine all the cases/applications of exempted FASTag under category 34 received after publication of amendment notification G.S.R. 804(E) dated 30th December, 2020 and rejected on the ground that Invalid Carriage/Divyangjan is not mentioned in Registration Certificate of vehicle.
- 2.2 Accordingly, the application dated 21.04.2021 was rejected on the ground that in the RC of the said vehicle the terms "Adapted Vehicle" was not mentioned, and the said vehicle was not found eligible for exemption of toll fee as per SoP. On the same ground other applications dated 31.08.2021 and 17.05.2022 were also rejected on the portal of MoRTH.
- 2.3 The Respondent further submitted that MoRTH has introduced the Exempted

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FASTag portal for the provision of "Validate" in the application section 21.12.2022 only and it is admitted fact that previously there was no provision to validate the vehicle details under the Divyangjan category. But now, it is shown on the Exempted FASTag portal to "Validate" the vehicle details under the Divyangjan category, and the NHAI, Regional Office has access to validate the vehicle and it is intended to process the application of the Complainant. The Complainant was requested vide letter No. 11902852 dated 22.08.2023 to re-submit the online application for exemption under category-34 for re-validation as per the provision on the portal for approval of the Competent Authority. After receipt of the application for re-validation from the Complainant, the same would be validated as per MoRTH guidelines.

2.4 The respondent vide its letter dated 11.09.2023 submitted that after due process, the exempted Fast tag has been issued and fixed on the vehicle of the Complainant bearing no. PB-02-EB-5049.

# 3. Rejoinder submitted by the Complainant:

- 3.1 The Complainant filed her rejoinder dated 24.09.2023 and inter-alia submitted that an Exempted FASTag has been provided to her in Amritsar at her residence by RO Chandigarh. However, she prayed to this Court that NHAI may be directed as under:-
  - (1) to follow the MoRTH's SoP dated 23.11.2021 in letter and spirit;
  - (2) Exempted FASTag may be sent directly to the address of the beneficiary or at the nearest Toll Plaza or Project Implementation Unit so that the beneficiary could receive the same; and
  - (3) Exempted FASTag may be issued for at least 3 to 5 years at par with when it is issued for Government vehicles to save the divyang beneficiaries from unnecessary harassment of reapplying.

# 4. Observations & Recommendations

4.1 Upon considering the facts of the case and the submissions of the parties, this Court has concluded that the grievance of the Complainant has been redressed by the Respondent. On the fresh pleas by the Complainant in her rejoinder, this Court is not inclined to issue any direction without hearing the Respondent. Also, there is no grievance of the Complainant on these issues and the Respondent is expected to adhere to the instructions of the central government and act in

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accordance with the spirit of the prevailing laws including the RPwD Act, 2016.

4.2 No further intervention is required in the matter and accordingly the case is disposed of with the approval of the Chief Commissioner for Persons with Disabilities.

Signed by Praveen Prakash Ambashta Date: 30-04-2024 09:18:42

> (P. P. Ambashta) Dy. Chief Commissioner

28850/fv/20214/20219 1/2958/2021



# न्यायालय मुख्य आयुक्त दिव्यांगजन

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

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 14317/1014/2023

#### In the matter of —

Shri Deepak Kumar,

District: Balaghat (Madhya Pradesh)

Contact: 8962790463

Email: khileshgautam07@gmail.com ... Complainant

#### **Versus**

The Secretary, Department of Posts, Ministry of Communications, Dak Bhawan, Sansad Marg, New Delhi-110001;

Email: secretary-posts@indiapost.gov.in;

Phone: 23096060 ... Respondent

# 1. Gist of the Complaint:

- 1.1 A complaint dated 20.07.2023 was received that ShriDeepak Kumar, a person with a disability, was allegedly harassed and humiliated by Shri Shanku Deb, SDI, Post Office Jairampur, District Changlang (Arunachal Pradesh) while Shri Deepak had visited there on 10.07.2023 for second verification of documents for selection to the post of ABPM.
- 1.2 The Complainant alleged that the SDI was not available in his office. After

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inquiry, it was informed by the staff of the said post office that the SDI had to go to Itanagar for official work and he might return on 13.07.2023. The SDI did not return on 13.07.23. On 14.07.23, the Complainant informed the Head of the Post Office Shillong about the absence of SDI. Subsequently, they assured the Complainant that soon the SDI Jairampur would come and verify the documents. On 16.07.23, the SDI Jairampur came to his office and chided Shri Deepak Kumar with brutal words rejecting his documents for having a fake disability certificate, and told him that he was ineligible for the post as well as the first document verification was a fake one. The Complainant also submitted that after 13.07.23 the verification of documents was not possible, and thereby, he was misguided by the SDI Jairampur.

# 2. Reply submitted by the Respondent:

The Director (Establishment), Department of Posts, New Delhi [Respondent] filed its reply dated 27.10.2023 and inter-alia submitted that after getting the matter examined, it was informed by the North East Circle that the candidature of Shri Deepak Kumar was rejected due to mismatch of data fed by the applicant on online (recruitment) portal and original documents submitted by the applicant at the time of documents verification. A provision was kept to edit/correct/modify the applications in the online portal from 17.02.2023 to 19.02.2023 about GDS Online Engagement portal and many applicants exercised the said option.

# 3. Notice for Rejoinder:

3.1 In response to the final reminder issued to the Respondent with a copy to the Complainant, the Complainant reacted as under:-

"मैं किसी भी सिर्फ एक समझाइश चाहता हूँ ना कि किसी प्रकार की कानूनी कार्रवाई। मैं अपना जीवन में इनको (SDI शंकु देव जी) माफ करके अपना भविष्य की ओर अग्रसर होने वाली प्रवृत्ति रखता हूँ।"

3.2 The reply of the Respondent was forwardedby email dated 03.11.2023 to the Complainant for submission of his rejoinder within 15 days. But, no response has been received so far from the Complainant.

# 4. Observations & Questions

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4.1 From the facts and submission of the parties on record, it appears that the Complainant is not interested to go ahead with the complaint filed by him. Also, he did not submit any documentary evidence, even a copy of his disability certificate. No specific rejoinder to the reply of the Respondent was filed by him.

4.2 As such, further intervention is not warranted in this matter and, accordingly, the case is being closed with the approval of the Chief Commissioner for Persons with Disabilities.

Signed by Praveen Prakash Ambashta Date: 18-04-2024 07:17:32

(P. P. Ambashta)

Dy. Chief Commissioner

**2408**A,91022024200230 CCPD 1/2925/2024



# न्यायालय मुख्ये 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

#### Case No. 14487/1022/2023

#### In the matter of —

Ms. Mamta Rani W/o Shri Rajneesh Kumar

Email: mamtateotia1985@gmail.com

Mobile: 7505676319 ... Complainant

#### **Versus**

The General Manager (Legal) Food Corporation of India, Headquarters, Khadya Sadan, 16-20, Barakhamba Lane, New Delhi-110001 Email: gmlaw.fci@gov.in

... Respondent

# 1. Gist of the Complaint:

1.1 श्रीमती ममता रानी ने ईमेल दिनांक 11.09.2023 के साथ उनके पित श्री रजनीश कुमार द्वारा दिनांक 21.08.2023 को महाप्रबंधक/कार्यकारी निदेशक को दिए गए अभ्यावेदन की प्रति, भारतीय खाद्य निगम के कर्मचारियों के लिए व्यापक स्थानंतरण नीति दिशानिर्देश दिनांक 22.03.2021, कार्यालय आदेश दिनांक 29.09.2023 एवं मुख्य प्रबंध निदेशक, भारतीय खाद्य निगम को सम्बोधित अपनी शिकायत दिनांक शून्य, जो कि उनके पित श्री रजनीश कुमार (96% श्रवण दिव्यांग व्यक्ति), के स्थानंतरण निरस्त करने हेतु दिए गए प्रार्धना पत्र पर विचार न किए जाने से सम्बन्धित है, की प्रतियाँ संलग्न की है। मामले में महाप्रबन्धक (विधि) को दिनांक 19.09.2023 को नोटिस जारी किया गया एवं उनसे मामले में टिप्पणी माँगी गई।

# 2. Submissions made by the Respondent:

2.1 The Assistant General Manager (Personnel), FCI vide their email dated 16.10.2023, filed the reply and submitted that the matter was placed before the

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Competent Authority and his request was not acceded to.

# 3. Submissions made in the Rejoinder:

3.1 The Complainant vide email dated 22.10.2023 filed the rejoinder reiterated her complaint.

# 4. Additional Submissions made by the Respondent:

4.1 In response to this Court's letter dated 29.01.2024 delineating he legal framework about the transfer and posting of employees with disabilities, the Respondent vide their reply dated 26th February 2024 submitted that the matter was placed before the Competent Authority and the ibid official has now been transferred from Jammu and Kashmir Region to the Punjab Region vide their Office Order No 03/2024/E-IX dated 08.01.2024 as per his own request. The Respondent also submitted that the alleged complaint/reference may be closed.

# 5. Withdrawal Request from Complainant:

5.1 The Complainant vide email dated 04.03.2024 submitted that her husband joined the duty in Punjab Region and she requested to close the case.

#### 6. Observations & Recommendations:

- 6.1 From the perusal of the records, it is evident that the grievance raised by the Complainant regarding the transfer of her husband to the place of his choice has been resolved. Further intervention of this Court in the case is not warranted.
- 6.2 Accordingly, the Case is disposed of with the approval of the Chief Commissioner for Persons with Disabilities

Signed by

Praveen Prakash Ambashta

Date: 01-04-2024 16:34:39

(P. P. Ambashta) Dy. Chief Commissioner **24655**41/20**02**40/23/0 CCPD 1/2930/2024



# 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 & Empowerment भारत सरकार/Government of India

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 14630/1011/2023

#### In the matter of —

Shri Vijay Anand F/o Shri Bharat Anand, Managing Director Kutch Railway Company Ltd. H-Block, Indra Palace, 2nd Floor, Connaught Place, New Delhi- 110001 Email: vanand369@gmail.com

... Complainant

#### Versus

The Chairman & Managing Director, GAIL Corporate Office GAIL (INDIA) Limited GAIL Bhawan, 16 Bhikaji Cama Place, RK Puram, New Delhi – 110066

Email: cmd@gail.co.in ... Respondent

# 1. Gist of the Complaint:

- 1.1 Shri Vijay Anand, filed a complaint dated 10 November 2023 regarding the denial of selection of his son, Shri Bharat Anand, a person with 77% mental illness, to the post of Senior Engineer (GAILTEL TC/TM) E-2 Grade by the Gas Authority of India Limited under the Special Recruitment Drive vide Advertisement No. GAIL/OPEN/SRC/3/2022 for recruitment to the said post.
- 1.2 The Complainant submitted that his son was shortlisted for the interview, as he fulfilled all the criteria and was eligible for the one reserved post under his subcategory of PwBD i.e. categories (d) and (e). He was, however, not selected. As per DoPT OM dated 15 January 2018, 1% of posts are reserved for PwBD for

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categories (d) & (e). Further, as per para 11.1 of the said OM if a sufficient number of candidates with PwBDs are not available based on the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining reserved vacancies provided they are not found unfit for such post or posts.

1.3 The Complainant prayed that since one post was reserved for PwBDs in the categories of (d) and (e), clarification may be sought from the GAIL as to why no candidate was selected despite the enabling provision under para 11 of DoPT OM dated 15.01.2018.

# 2. Notice issued to the Respondent:

A Notice dated 15.11.2023 was issued to the Chairman & Managing Director, GAIL, New Delhi for forwarding their comments on the affidavit on the complaint within 30 days.

# 3. Reply submitted by the Respondent:

- 3.1 The Chief General Manager (HRD), GAIL filed a reply on an affidavit dated 30.11.2023 on behalf of the Respondent and inter-alia submitted that a Special Recruitment Drive for SC/ST/OBC (NCL)/PwBD candidates was conducted in various discipline. Out of 26 posts for PwBDs, 01 post of Senior Engineer (GAILTEL TC/TM) was reserved for candidates under PwBD categories (d) and (e).
- 3.2 Two candidates including Shri Bharat Anand were shortlisted under categories (d) & (e) for the said post. The other candidate could not produce the relevant documents and hence, Shri Bharat Anand became the only candidate who attended the interview. Being the only candidate, the group discussion could not be conducted and the 25% weightage of Group Discussion was added to the weightage for Qualification. Accordingly, evaluation was done on 85% Qualification weightage plus 15% weightage for the Interview. The Selection Committee assessed the performance of Shri Bharat Anand under relaxed standards and even under the relaxed standards he could not fulfil the minimum qualifying marks of 55% in the interview which was required for selection. Hence, the duly constituted Selection Committee did not recommend his name for selection to the said post.

# 4. Submission made in Rejoinder by the Complainant:

- 4.1 The Complainant filed his rejoinder dated 04 December 2023 and submitted that as per Para 6 of the Notice (dated 15 November 2023) issued by this Court, the Respondent did not furnish the following details/documents before this Court. Hence, the Respondent may be directed to furnish the following details/documents which are very important in this case:
- (1) (a) Area of evaluation fixed by the interview board for judging 15% of total

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marks; (b) Maximum marks fixed by the interview board for each area of evaluation; and (c) Marks scored by Shri Bharat Anand in each of these areas;

- (2) The marks obtained by Shri Bharat Anand in Qualification from the total of 15% marks kept for the interview;
- (3) Interview evaluation sheet prepared by the interview board; and
- (4) The qualifications and area of specialization of the members of interview board.
- 4.2 The Complainant prayed that he may be granted some other date for submission of rejoinder after the above documents/details are furnished by the Respondents.

# 5. **Hearing (1):**

- 5.1 An online hearing through Video Conferencing was conducted on **18 December 2023**. The following parties/representatives were present during the hearing:
- (1) Shri Vijay Anand, Complainant
- (2) Advocate Sandeep Prabhakar; Shri Dev Kumar, General Manager; Shri Shailender Singh, Chief Manager; and Shri Mrinal Singh, Manager (Law) for the Respondent
- 5.2 **Record of Proceedings:** During the hearing, the Court observed that the candidate, Mr. Bharat Anand was not appearing in the hearing. The Court felt that the presence of the Candidate is critical in the case where the issue is the suitability of his disability for the post of Senior Engineer (GAILTELTC/TM). The Complainant assured this Court that he would appear in the next hearing.
- 5.3 The Chief Commissioner sought from the Respondent how the candidate's total marks were decided when the group discussion did not take place. The learned Counsel appearing for the Respondent submitted that since there was only one candidate and the Group Discussion could not take place, the weightage of the Group Discussion was added to the Qualification weightage of the candidate. The candidate was given all possible relaxations which were required to be given. The Court sought the break-up of the total marks. The learned Counsel expressed his inability to submit the break-up of the marks during the hearing but requested for permission to submit the same to this Court in a sealed cover.
- 5.4 This Court accepted the request of the Counsel and directed that the breakup of marks be submitted in a sealed cover within two weeks.
- 6. Compliance filed by the Respondent (Heard on 18.12.2023):
- 6.1 On 03.01.2024, Shri Pratap Behera, Advocate for the Respondent filed the

break-up of the marks obtained by the candidates during the interview. It was observed that the marks of Shri Bharat Anand in the Qualification category was 45 out the total weightage of 60, when the same is extrapolated to cover the weightage of group discussion also, it becomes 63.75 out of 85. The marks obtained by him in the interview was less than the benchmark, i.e. 55%.

(The weightage for Qualification is considered 85% in the absence of Group Discussion. Accordingly, the marks against qualification are calculated on a prorata basis as per the formula  $45/60 \times 85$ )

### **Sheet at Page No.6: Overall Mark sheet of Selection**

Not selected as the marks secured by the candidate in the interview is less than 55%.

# 7. Hearing (2):

7.1 A hearing was conducted in hybrid mode on **15 March 2024.** The following parties/representatives were present during the hearing:

SI. No.	Name of the parties/Representatives	For Complainant/ Respondent	Mode of attendance
1.	Shri Vijay Anand, Complainant	Complainant	Physical
2.	Shri Bharat Anand, affected PwBD	Complainant	Physical
3.	Shri Dev Kumar, General Manager	Respondent	Online
4.	Shri Shailendra Singh, Chief Manager	Respondent	Online
5.	Advocate Sandeep Prabhakar	Respondent	Online

Record of Proceedings: During the hearing the Learned Counsel appearing for the Respondent submitted that GAIL complied with all the statutory obligations under the Act and followed the policy of total equality and nondiscrimination. For the impugned recruitment, 60% weightage was on qualification, 25% on group discussion, and 15% for the interview. In this particular case, there were only two candidates. Since the other candidate did not satisfy the eligibility conditions, there remained only one candidate i.e. Shri Bharat Anand. The Group Discussion Weightage of 25% was added to the Qualification Weightage (60%) and the evaluation was done on 85% Qualification Weightage and 15% Weightage for the Interview. The assessment of marks and selection was done by a properly constituted selection committee headed by the chairman. There was also an external member of the Committee. The assessment sheet was submitted to the Court in sealed cover. The Selection Committee assessed the candidate based on the following parameters: personality, verbal communication, conceptual ability, and knowledge of the subject. The candidate Shri Bharat Anand could not secure the qualifying marks of 55%. In the case of SC/ST candidates also those with less than 55% marks were not considered qualified and were not selected. There were a total of 12 SC candidates who were not selected because their marks in the interview were less than 55%.

7.3 During the hearing, the Complainant furnished his submission in writing which was taken on record. Also, he submitted that the Respondent confirmed to the Court that "marks of only Interview i.e. out of 15 marks are being considered by the Respondent in checking the cut off of the pass percentage in all the categories of candidates while declaring the results". This doesn't appear to be a correct statement. The Respondent might not be considering the Qualification Marks but the marks in Group Discussion obtained by candidates of other categories are being considered. If not, what could be the purpose of holding the group discussions?

- 7.4 In the case of Shri Bharat, the Respondent effectively considered only the marks obtained in the interview. The marks obtained in Qualification were not considered in checking the cut-off for the pass percentage i.e. 55%. Therefore, there is a partiality in the case of declaring the result of Shri Bharat.
- 7.5 The Complainant submitted there will be a difference in conclusion if the performance of Shri Bharat Anand is checked out of 15+25=40 marks. For explanation, he submitted as under:

The committee decided to give the marks for group discussion equivalent to the Qualification. They could have given the 100% i.e. 25 marks to Bharat in Group Discussion as it was not Bharat's fault that the group discussion was not held particularly for the PwBD candidate of categories (d) & (e). Even if they have decided to give the marks for group discussion equivalent to that of qualification they should have added to the marks obtained out of 15 marks to check the cut-off before declaring the result as must have been done by the Respondent for other category of candidates.

7.6 The Complainant further submitted that the breakup of marks obtained by Shri Bharat Anand was not disclosed to the Complainant. Hence, the Complainant assumed the following calculation for consideration of this Court:

The results, if the marks obtained in group discussion out of 25 marks are added to the marks obtained out of 15 marks:

- (a) Let the marks obtained by Shri Bharat Anand out of 15 marks be = 'X' (the figure known to the Court).
- (b) Marks obtained by Shri Bharat Anand out of 25 marks for group discussion. The committee decided to give marks for group discussion equal to the weightage of the Qualification marks. "As per the advertisement the essential qualification required for the post of Sr. Engineer, GAIL TC/TM for which Bharat appeared for interview was a Bachelor Degree in Engineering in Electrical & Electronics with minimum 60% marks for SC/PwBD".
- (c) The qualification of Bharat duly verified by M/s. GAIL and

confirmed during the hearing by the Respondents on 15.03.2024 are 65.85%. He had done his engineering from Guru Gobind Singh I.P. University, Delhi in full-time mode.

7.7 Now there are two scenarios in front of the committee for the calculation of marks obtained in group discussion giving the weightage of qualification:

Scenario – 1 (Relaxed scenario): It is not possible to secure 100% marks in an Engineering course. Let us suppose that the committee decided that the candidates who have scored 80% in engineering shall be given 100% of the qualification marks then by the unitary method the marks secured by Bharat out of 25 marks for group discussion would have been:

If the percentage is 80%, the marks obtained are 25.

if the percent is 65.85%, marks obtained are  $25 \times 65.86 = 20.58$  marks

80

In this case, total marks obtained out of 15+25 = 40 marks is X + 20.58 marks

Thus, X + 20.58 marks out of 40 marks be checked for cut-off and the result should be declared for Mr. Bharat Anand.

Scenario – 2 (Worst case): It is not possible to secure 100% marks in Engineering. However, if the committee decided that candidates who have scored 100% marks in Engineering be given 25 marks in group discussion and then marks obtained by Bharat out of 25 marks for group discussion would have been:

if the percent is 100%, then the marks obtained are 25.

if percent is 65.85% marks obtained are  $25 \times 65.86 = 16.46$  marks

100

7.8 Thus, the committee cannot give less than 16.46 marks out of 25 marks in the group discussion. Thus, in this case, total marks obtained out of 15+25=40 marks = X + 16.46 marks.

#### 8. Observations & Recommendations:

8.1 After hearing both the parties and considering the documents available on record, this Court observed that the Group Discussion could not take place as there was only one candidate and the Weightage of Group Discussion i.e. 25% was added to the Qualification Weightage. There could have been two other methods for evaluation in this scenario. Firstly, as the Group Discussion was not conducted, the evaluation could be done only for 75 marks [60 + 15] and secondly, the weightage of the Group Discussion could be on the basis of extrapolation of

the marks in the Interview. However, as the candidate was required to score a minimum of 55% of marks individually in the interview also, which he could not do, he could not be selected. Respondent have also confirmed that they have not selected any candidate from any other categories, who has scored less than 55% marks in the interview.

- 8.2 This Court has considered the permissibility of separate benchmarking of performance in the interview. This issue came up before the Hon'ble Supreme Court in Civil Appeal No. 2179-2180 of 2024, Dr. Kavita Kamboj Vs High Court of Punjab and Haryana & Ors. In its final Order in the matter dated 13.02.2024 the apex court held that a candidate should not just show knowledge in the suitability test but must also demonstrate the same in the course of the interview held for the promotion. As such the Hon'ble Court found that the Respondent was justified in fixing a benchmark for the interview individually. In so far as the calculations, submitted by the Complainant, this Court cannot accept the same as being speculative. The Complainant has not been able to show any deprivation of rights of a person with disability or of any discrimination on the grounds of disabilities.
- 8.3 Notwithstanding the above, this Court would also like to observe that in the interest of fair play and transparency in public recruitments, the Respondent in this case would have done better by including the stipulation of a separate cut-off of 55% marks based on performance in the notification of the vacancies.
- 8.4 In view of the foregoing, there does not appear to be sufficient reasons for further intervention by this Court in this matter. The case is disposed of accordingly.

Signed by Rajesh Aggarwal Date: 02-04-2024 14:55:59

(Rajesh Aggarwal)
Chief Commissioner for Persons with Disabilities