



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE 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

5th 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. 13618/1024/2023

In the matter of—

Shri Kodakkal Shivaprasad
Founder and Chairman,
Indian Divyang Empowerment Association,
Kaveri, 33B, 4th Main Gopalagowda,
Extn 100th Road, Shivamoga,
Karnataka -577201
Email:indiandivyangempowerment@gmail.com ...**Complainant**

Versus

1. The General Manager
Canara Bank,
Head Office, HR wing,
112, JC Road, Bangalore,
Karnataka-560002
Email:hoir@canarabank.com ... **Respondent No. 1**
2. The Secretary,
Department of Financial Services,
Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg,

New Delhi-110001

Email: sct@nic.in

... Respondent No. 2

1. Gist of the Complaint:

1.1 Shri Kodakkal Shivaprasad, Founder & Chairman, Indian Divyang Empowerment Association vide email dated 12.11.2022 filed a complaint regarding non-implementation of reservation in promotion at Canara Bank and other Nationalized Banks.

1.2 He submitted that the Canara Bank and other Banks are not providing reservation to PwBDs in promotion, nor implementing the judgment of Hon'ble Supreme Court of India, Department of Financial Services Memo 3/1/2021 dated 06.06.2022 and DoP&T's circular No. 36012/1/2020-Estt (Re. II) dated 17.05.2022. He also alleged that this is a violation of Sections 2(y), 20 (2), and 34 of the Rights of Persons with Disabilities Act, 2016.

2. Submissions made by the Respondents:

2.1 The General Manager, Canara Bank, Respondent No. 01 filed a reply dated 21.02.2023 and inter-alia submitted that the averments made in the instant complaint are factually incorrect. The Respondent Bank, being a Public Sector Bank constituted under the Banking Companies Act, 1970 is acting in adherence to the extant guidelines issued by the Government of India in connection with reservation in promotion to those employees who are Persons with Benchmark Disabilities (PwBD).

2.2 He further submitted that the Department of Financial Services (DFS) vide letter dated 06.06.2022 had forwarded for compliance the Circular dated 17.05.2022 issued by the Department of Personnel and Training (DoP&T) on the subject of reservation in promotion to PwBDs. In the circular dated 17.05.2022, it was clarified that in case of promotion, 4% of the total number of vacancies in the cadre strength within Group 'C, from Group 'C to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A' shall be reserved for PwBDs. On the said pattern, their Bank is also extending the benefit of horizontal reservation in promotion at 4% to the PwBD employees who are covered under The Rights of Persons with Disabilities (RPwD) Act, 2016.

2.3 He also submitted that in the promotion from Sub-staff cadre to Clerical cadre

and from Clerical cadre to Junior Management Grade Scale - I i.e. the lowest rung in Officer's cadre, Bank is extending reservation in promotion to the PwBD employees in accordance with the existing Government guidelines. He also submitted that an agreement was entered into between the Management and the Majority Union for Workmen Employees on 14.03.2015 in connection with promotion from the Sub-staff cadre to the Clerical cadre. Further, a Memorandum of Settlement dated 29.11.2022 was entered into between the Management and the Majority Union for workmen employees in connection with promotion from Clerical cadre to Junior Management Grade Scale - I (lowest rung in Group A) in which the Bank had taken into consideration the DoP&T's letter dated 17.05.2022 regarding reservation in promotion to PwBD employees and had made necessary provisions for the same.

2.4 He further submitted that the Respondent Bank's memo number 86/2022 issued by the Respondent Bank pertains to promotion within Group A i.e. promotion to Middle Management Grade Scale-II, Middle Management Grade Scale-III, and to Senior Management Grade IV. In accordance with the existing guidelines issued by the DoPT, reservation in promotion to PwBD employees exists only up to the lowest rung in Group 'A' i.e. JMGS-I in the Officers' cadre. Hence, the said Circular issued by the Bank does not suffer from any illegality. Hence, it is submitted that the Bank is extending reservation in promotion to PwBD employees in adherence to the guidelines issued by the Government in the matter and the Bank is not acting in any manner in violation of the same.

2.5 The Under Secretary, Ministry of Finance, Department of Financial Services, Respondent No. 02 vide letter dated 24.04.2023 filed the reply in the matter. Respondent No. 02 inter-alia submitted that DoP&T is the nodal Department for issuing instructions/guidelines in respect of reservation/ promotion matters of SC/ST/OBC/PwBDs. Their Department circulates those guidelines/policies to all the Public Sector Banks/Public Sector Insurance companies/ Financial Institutions under their purview for due compliance. Accordingly, their Department vide letter dated 06.06.2022 circulated the DOP&T's O.M. dated 17.05.2022 regarding reservation in promotion to PwBDs for due compliance.

2.6 Respondent No. 02, further submitted that as per the statutory provisions, the general superintendence, direction, and management of Public Sector Banks is vested with the respective Board of Directors. Hence, they function as autonomous entities under the broad framework of Government guidelines and are responsible for carrying out the implementation of the same including those relating to

protection/representation of various categories of employees. As regards the instant complaint he has submitted that Canara Bank has submitted a detailed report before this Hon'ble Court wherein it has been stated that the averments made in the complaint are factually incorrect. Canara Bank, being a Public Sector Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, is acting in adherence to the extant guidelines issued by the Government of India from time to time in respect of Persons with Benchmark Disabilities (PwBDs).

2.7 He also submitted that the Bank in its report has informed this Hon'ble Court that in the Memorandum of Settlement dated 29.11.2022 entered into between the Management and the majority Union for workmen employees in connection with promotion from Clerical cadre to Junior Management Grade Scale-I (lowest rung in Group 'A'), the Bank has taken into consideration the letter No. 360121112020-Estt (Res-II) dated 17.05.2022 issued by DoPT regarding reservation in promotion to PwBD employees and has made necessary provisions for the same. Accordingly, the said Circular issued by the Bank does not suffer from any illegality.

3. Submissions made in Rejoinder:

3.1 The Complainant filed a rejoinder dated 24.02.2023 in response to the reply filed by the Canara Bank and submitted that the reply of the Bank is not acceptable at all. He has requested for impleading Department of Personnel and Training as Respondent No. 3 in the matter so as to clear the doubts and remove the upper cap of reservation in promotion up to the lowest rung of Gp A (Executive) posts. The Complainant vide email dated 09.04.2023 has submitted that the Canara Bank only initiated reservation in promotion for Sub-staff to Clerk and Clerk to Officer but has not followed reservation of PwBD from the post of Manager to General Manager despite the posts being identified as suitable.

3.2 The Complainant vide email dated 10.05.2023 filed a second rejoinder to the reply filed by the DFS and submitted that the reply is not according to every divyang employee's expectations. He further submitted that DoP&T had allowed reservations in promotion to SC/ST categories without any restrictions about the level of Posts. Hence, DoP&T is against equal opportunity mandated in RPwD Act, 2016 under various Sections in the RPwD Act. He reiterated to implead DoP&T as Respondent No. 3 in the matter.

4. Hearing:

4.1 A hearing was conducted in hybrid mode on 15.04.2024. The following parties/representatives were present during the hearing:

SI No.	Name of Parties / Representatives	For Complainant/ Respondent	Mode of Attendance
1.	Advocate Rajkumar Makkad	For Complainant	Online
2.	HR Wing, Canara Bank	For Respondent 1	Online
3.	Shri Jagjeet Kumar, Director (Welfare)	For Respondent 2	Online

5. Record of Proceedings:

5.1 During the Hearing, the Court asked both parties to present their respective cases in brief.

5.2 The learned counsel on behalf of the Complainant requested to implead the D/oP&T as Respondent No.3 in the case. He submitted that Section 34 of the RPwD Act, 2016, does not make any restriction or an upper cap in the reservation in promotion for PwBDs up to the lowest rung of Group 'A' posts. In the establishment of Respondent No. 1 there are 7 scales in the Officer's Grade i.e. from Scale-1 to Scale-7. but no such reservation in entry rung is provided by Respondent-1. The Bank has taken a specific plea in their written statement that they follow the instructions issued by the D/oP&T in such matters and the DoPT vide their OM dated 17.05.2022 has introduced the upper cap for reservation in promotion up to the lowest rung of Gp A (Officers' Cadre) posts. The DoPT does not have any authority to impose such restrictions when the same is not there in the statute. He further stated that in the case of '**Rajeev Kumar Gupta & others versus UOI & other**', the Hon'ble Supreme Court has clearly held that the terms "recruitment" and "appointment" used in the Act include promotion as one of the methods of promotion. In '**Siddharaju Case**' also, the Hon'ble Supreme Court has upheld the judgment passed in the case of '**Rajeev Kumar Gupta & others versus UOI & other**'.

5.3 The learned counsel further submitted that while clarifying its judgment in the '**Siddharaju Case**', the Hon'ble Supreme Court directed the D/oP&T to issue instructions for 4% reservation in promotion, which was absolutely fine in view of

the new Act of 2016. But, the Hon'ble Court never meant to say that the provisions of the erstwhile Act of 1995 making 3% reservation PwD in appointment should not be extended in promotion between. 07.02.1996 when the PwD Act, 1995 became effective till the RPwD Act, 2016 became applicable with the notification of the RPwD Rules, 2017 wef. 18.04.2017. As such, 3% reservation was required to be provided from 07.02.1996 to 18.04.2017 whereafter the quantum of reservation should have increased to 4%. Since both these decisions of the DoPT are not in conformance with the statute, they are required to be impleaded in the case.

5.4 In response to a query from the Court as to what is the extent of reservation in promotion for SCs and STs in the establishment of Respondent No. 1 or in other comparable CPSEs, Respondent No. 1 submitted that the position for SC/ST reservation is also similar to that of the PwBDs. Reservation in promotion for SC/ST employees is also restricted up to the lowest rung of the Officers' Cadre. He also cited the case titled '**Central Bank of India VS Central Bank of India SC/ST Employees Welfare Association**' wherein the grievance was that reservation has not been extended to SC/ST employees in promotion from Scale-2 to Scale-3, Scale-3 to Scale -4 and upwards till Scale 8. The Hon'ble Supreme Court held that the existing guidelines regarding reservation in promotion would be extended in promotion only upto the lowest rung in Officer Cadre i.e. from Clerical Cadre to Officer Cadre Scale-1.

5.5 Respondent No.2 submitted that the instructions received from the D/oP&T have been forwarded to the concerned Public Sector Banks for compliance. In the instructions, it is clearly defined that the reservation in promotion has been given to the PwBDs up to the level of the lowest rung of Group 'A'. The same is applicable in all the nationalized banks and insurance companies.

5.6 After hearing the parties, this Court allowed 2 days' time to all the parties to submit copies of judgments and documents relied upon by them during the hearing.

6. Submissions by Respondent after Hearing:

6.1 The General Manager for Respondent No. 1 vide their letter dated 16.04.2024 submitted that in the matter of extending promotion to PwBD employees, the Bank is following the guidelines issued by DoPT vide Circular No. 3602/1/2020-Estt(Re.II) dated 17.05.2022, which was forwarded to them by DFS on 06.06.2022. In the ibid O.M. dated 17.05.2022 it is provided that in case of promotion, 4% of the total number of vacancies in the cadre strength within Group C, from Group C to Group B, within Group B and from group B to the lowest rung of Group A shall be

reserved for PwBDs.

6.2 In response to CCPD's query during the hearing on 15.04.2024, it has been submitted that the benefit of reservation is granted to SC and ST employees in promotion from subordinate staff cadre to clerical cadre as well as from clerical cadre to JMGS-I i.e.the lowest rung in Officer's cadre. There is no reservation for SC & ST Officers in promotion within the Officer's cadre i.e. from Scale - I to upwards in case of promotion by selection. As per the extant guidelines, reservation in promotion to SC/ST employees as well as the PwBD employees is only upto the lowest rung in the Group A which in the Bank is equivalent to JMGS-I.

7. Submissions made by the Complainant after Hearing:

7.1 The Complainant vide email dated 16.04.2024 reiterating his complaint and argue not to close the case until the Respondent No. 1 and other banks implement the promotion reservation in all groups, all grades and all posts. He also referred to the DoP&T's circular issued in the year 1993 and onwards having evidence that promotion reservation should be in all posts, all cadres, and all groups.

8. Observations :

8.1 Upon considering the materials available on the record of the case and submissions of the parties, this Court observes that the Complainant has not been able to show how is he aggrieved by any decision/action of the respondents or of the DoPT. He has also not been able to establish any prima facie case of denial of rights of any person with disabilities or of any discrimination on the grounds of disabilities. In this regard the first proviso to Section 34 very clearly lays the power to issue instructions for regulating the reservation for PwBDs in promotion to the appropriate government, and as such to the Central Government or more precisely to the DoPT, being the nodal department. The said proviso is reproduced as under:

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

8.2 The DoPT has accordingly issued OM dated 17.05.2022 wherein they have decided to keep the same upper cap on reservation in promotion for PwBDs as are applicable for the SCs and the STs for the past several decades. Vide another OM dated 28.12.2023, the reservation in promotion in Gp A & B posts granted vide the OM dated 17.05.2022, have been given notional effect from 30.06.2016 in

accordance with the judgement of the Hon'ble Supreme Court in the Rajeev Kumar Gupta case based on a clear direction of the apex court in the Copntempt Petition (Civil) 873/2023 namely, SS Sundaram Vs. UOI on the issue of the date of effect . Moreover, the exact issue of the validity of upper cap of reservation in promotion is currently sub judice in Contempt Petition (Civil) No. 686 of 2020 in CA No. 1567 of 2017, Dr. Siddharaju Vs. State of Karnataka which was listed before the Hon'ble Court on 05.03.2024. The Court was pleased to pass the following Order:-

“ XXXX

CONMT.PET.(C) No. 686/2020 in C.A. No. 1567/2017

The present petition is de-tagged from CONMT.PET.(C) No. 678/2020.

Learned Additional Solicitor General appearing for the Union of India will obtain instructions as to whether the Office Memorandum restricting reservation in promotion for persons with benchmark disabilities in the lowest rung/Junior Scale in Group 'A' posts, will be contrary to provisions of the Rights of Persons with Disabilities Act, 2016, and the judgments of this Court. Let an affidavit, in this regard, be filed by the Union of India within a period of three weeks from today. The petitioner will be entitled to file reply/response within a period of two weeks after service of the said affidavit.

Re-list in the week commencing 15.04.2024.”

8.3 In view of the foregoing, no further intervention of this Court is warranted in the matter

8.4 The case is disposed of accordingly.

Signed by Rajesh Aggarwal

Date: 08-05-2024 08:07:01

(Rajesh Aggarwal)

Chief Commissioner
for Persons with Disabilities.

Email

O/o CCPD

Case No. 13618/1024/2023-Order

From : O/o CCPD <ccpd@nic.in>


Wed, May 08, 2024 11:25 AM

Subject : Case No. 13618/1024/2023-Order 1 attachment**To :** indiandivyangempowerment@gmail.com, hoir@canarabank.com, ARUN KUMAR <sct@nic.in>

Madam/Sir,

Please find the attachment.

Office of the Chief Commissioner for Persons with Disabilities (Divyangjan),
Department of Empowerment of Persons with Disabilities(Divyangjan),
Ministry of Social Justice & Empowerment, Govt. of India,
5th Floor, NISD Building, Plot No.G-2, Sector-10,
Dwarka, New Delhi-110075
Ph. No.011-20892364, 011-20892275

 **13618-order.pdf**
154 KB



न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No: 13625/1022/2023

In the matter of —

Shri Malay Kumar Barik
Assistant Executive (DP)
R/o Chhanghara, Kushamati,
Near Kalika Temple, Jatani,
Khorda, Odisha-752050
Email: mkbarik@ignou.ac.in

...Complainant

Versus

The Registrar
Indira Gandhi National Open University,
Block-12, Maidan Garhi,
New Delhi-1 10068
Email: sedgrievance@ignou.ac.in
Phone - 011-29572204

...Respondent

1. Gist of the Complaint:

1.1 Shri Malay Kumar Barik, a person with 40% visual impairment filed a complaint dated 08.08.2022 regarding transfer to his native place. The Complainant submitted that he was recruited as Assistant Executive (DP) under Quota/category of Low Vision (VI) OBC in IGNOU and posted at IGNOU Regional Center Bhubaneswar, Odisha w.e.f 24.12.2013. IGNOU has issued an order dated 19.07.2022 transferring him to Regional Center, Angul, Odisha.

1.2 The Complainant further submitted that as per the DoPT instructions, a PwD government employee should preferably be posted near their native place or nearby place. Therefore, he should be allowed to work near his native place at Bhubaneswar which is 30 Km distance from his house instead of Angul, which is

160 Km away from Bhubaneswar. He has been facing visual difficulties in his day-to-day activities like non-tolerance to lights, viewing difficulties after lighting down, etc.

1.3 The Complainant further submitted that being the only son of his parents he is facing family problems. His mother aged 66 years & father aged 76 both suffering from multiple age-related ailments, are completely dependent on him. He has the responsibility to take care of his pregnant wife. He has submitted his representation to the Registrar Admin, IGNOU, New Delhi on 21.07.2022 and has been following it up telephonically, but no response received yet.

2. Submissions made by the Respondent:

2.1 The Registrar (Administration), IGNOU filed a reply vide their letter dated 06.09.2023 and inter-alia submitted that Respondent is expanding its Regional Centers and accordingly, a new establishment of Regional Central at Angul, Orissa was set up vide office notification dated 24.06.2022. Notably, since the Regional Centre at Angul was recently established, employees from other Regional Centers were transferred to run the new establishment.

2.2 The Respondent further submitted that with a view to providing for the requirement of staff at the newly opened center, the Respondent decided to transfer staff from Regional Centres - Bhubaneswar and Koraput to Regional Centre - Angul. In view thereof, the Complainant and one Shri Soubhagaya Ranjan Mallick from Regional Centre Bhubaneswar were transferred to Regional Centre-Angul vide Office Order dated 19.07.2022 for facilitating the student support services and functioning of the new Regional Centre.

2.3 That the transfer was done by the Administrative Division of the Respondent, in the public interest and to start the operations in the New Regional Centre at Angul. The Complainant has continued to work at RC-Bhubaneswar since his appointment in 2013 and the present transfer has been made keeping in view the guidelines, and also the special requirements of the Complainant as well as of the newly established Regional Centre at Angul.

3. Hearing: An online hearing through Video Conferencing was conducted on 18.12.2023. The following parties/representatives were present during the hearing:

(1) Shri Malay Kumar Barik, Complainant

- (2) Shri P. K. Kakkar, Director (RSD), for Respondent
- (3) Shri Vibhash Tripathi, Assistant Registrar (Legal), for Respondent
- (4) Shri Priyesh Mohan Srivastava, Advocate, for Respondent

4. Record of Proceedings:

4.1 The learned counsel for the Respondent submitted that after filing the instant Complaint before the Hon'ble Court of CCPD, the Complainant filed a Writ petition before the Hon'ble High Court of Odisha. A Notice was issued and the matter is sub-judice. The Complainant has suppressed this fact in the Hon'ble Court of CCPD. He challenged the same transfer order in both the Courts.

4.2 The Complainant submitted that after receiving his transfer order, he got confused and filed a Writ petition in the Hon'ble High Court of Odisha. Since there was no stay ordered by the High Court, he filed the Complaint before this Court.

4.3 The Court took cognizance of the fact that the Complainant did not inform this Court about a pending writ in the High Court of Odisha, which is a serious lapse on his part. However, the Court also observed that the Respondent also did not bring this fact to the knowledge of the Court till date. The learned counsel submitted that even he came to know of this only on the day of the hearing on 18.12.2023. The Complainant apologised for his lapse which was accepted by the Court. However, on his suggestion that if the Court directs him to withdraw the writ from the High Court, he will do so, the Court clarified that this was something which he needs to decide himself.

4.4 The Court, however, was of the opinion that the Notice dated 13.01.2023 issued to the Respondent was not restricted to the individual grievance of the Complainant. While it appreciated that it would not be proper to look into the individual grievance of the Complainant, the Court can continue with the inquiry of the general level of implementation of the RPwD Act in the Respondent's establishment.

4.5 The Court drew the attention of the Respondent to para 4 of the Notice where the provisions of Section 21 were mentioned and a copy of the same was sought from the Respondent. The Court sought to know why the Respondent did not reply to this notice properly and within the given time. The Court desired to know from the Respondent if they have published and registered their Equal Opportunity Policy (EOP) as per Section 21 of the RPwD Act, which is a mandatory

provision. And if yes, whether the said EOP incorporates the policy of posting/transfer for employees with disabilities as prescribed by the Central Government at Rule 8 of the RPwD Rules under its mandate given in Section 21 of the Act. The learned counsel submitted that the Respondent is following the OM in this regard. The Court reiterated the obligation of every establishment to publish and register their EOP as per Section 21 of the Act. The learned counsel could not readily answer about the existence of an EOP at the Respondent establishment; neither could any of the officers of the Respondent present during the hearing answer the query. The officers of the Respondent submitted that they have an Equal Opportunity Cell in the establishment.

4.6 The Court observed that the Respondent attended the hearing without proper preparation. Accordingly, it directed the Respondent to submit the following information within a week:

(a) A copy of the EOP highlighting the provisions related to posting/transfer of PwD employees as per Section 21 of the Act read with Rule 8 (3) (c) of the RPwD Rules, 2017.

(b) If the EOP has not been framed till date then justifications for the same alongwith the name and details of officials being held accountable?

(c) A list of employees who are posted at the same station for more than 12 years which should include the employees who got transferred to some other places but were transferred back to the same station within three months.

(d) Status of the writ petition filed before the Hon'ble High Court.

5. Submissions made by the Respondent after ROP:

5.1 The Respondent vide their letter dated 07.03.2024 submitted their EOP where the provisions related to posting/transfer of PwD employees as per Section 21 of the Act read with Rule 8 (3) (c) of the RPwD Rules, 2017 are mentioned at 4.8 and appointment of GRO is mentioned at para 7 of the EOP. The Reservation Roster is also submitted by the Respondent.

6. Submissions made by the Complainant after ROP:

6.1 The Complainant vide email dated 15.03.2024 submitted that he got his Transfer Order on 15.03.2024 to his place of choice i.e. Bhubaneswar.

6.2 From the perusal of the records submitted by the Complainant it is evident that the grievance of the Complainant is resolved. The Court has also noted that the Respondent has published their Equal Opportunity Policy in compliance with Section 21 of the RPwD Act, 2016. Further intervention of this Court is not warranted in this case.

6.3 The case is disposed of accordingly.

Signed by Rajesh Aggarwal

Date: 05-05-2024 20:51:05

(Rajesh Aggarwal)

Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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परिवाद संख्या -13659/1024/2023

मामले के सन्दर्भ में —

Dr. Deep Singh Sasode
Head of Department and Senior Scientist,
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...परिवादी

Versus

The Chancellor,
Rajmata Vijayaraje Scindia Krishi Vishwavidyalaya,
Gwalior, Madhya Pradesh- 474001
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Email: registrar@rvskvv.net

...प्रतिवादी

1. परिवाद का सार:

1.1 राज्य आयुक्त दिव्यांगजन, मध्यप्रदेश सरकार ने पत्र दिनांक 31.10.2022 डॉ दीप सिंह सासोडे, 50% चलन दिव्यांग व्यक्ति को दुगुने दर से परिवहन भत्ता न दिए जाने से सम्बंधित शिकायत इस न्यायालय को प्रेषित की।

1.2 शिकायतकर्ता ने कहा कि मानव संसाधन मंत्रालय विकास, उच्च शिक्षा विभाग के पत्र क्रमांक 1-32/2006-U.II/U.I(i) दिनांक 31.12.2008 के अंतर्गत क्रम संख्या 8 - 'अन्य नियम और शर्तें' खंड (सी) भत्ते (iii) के अनुसार यूजीसी के द्वारा संचालित विश्वविद्यालयों/कॉलेजों और संस्थानों में शिक्षक तथा पुस्तकालय और शारीरिक शिक्षा में समकक्ष पद पर कार्यरत तथा विकलांग जन (अधिकारों की सुरक्षा, समान अवसर और पूर्ण भागीदारी) अधिनियम, 1995 के तहत परिभाषित दृष्टि, चलन, श्रवण तथा अन्य विकलांगता वाले व्यक्ति, 6ठे वेतन आयोग की सिफारिशों के केंद्र सरकार की स्वीकृति के अनुसार परिवहन

भत्ता की सामान्य दर से दोगुना का हकदार होगा।

1.3 शिकायतकर्ता का कहना है कि जो परिवहन भत्ता 6ठे वेतनमान आयोग में शासन द्वारा दिए जा रहे थे उन्ही को 7वें वेतनमान में नए दर से जारी रखा गया है। अतः 7वें वेतनमान में दिए जाने वाले परिवहन भत्ता के आदेश के अनुसार प्रार्थी का आदेश जारी करने का कष्ट करे। शिकायतकर्ता ने आगे कहा कि विश्वविद्यालय में 7वाँ वेतनमान 1 जनवरी 2016 से लागू किया जा चुका है और प्रार्थी की नियुक्ति विश्वविद्यालय में 3 अगस्त 2016 से है। अतः 7वें वेतनमान में दिव्यांग कर्मचारियों को सामान्य से दुगने दर के हिसाब से परिवहन भत्ता दिए जाने का नियम है। अतः उन्हें नियमानुसार सामान्य से दुगने दर के हिसाब से परिवहन भत्ता दिया जाए।

1.4 शिकायतकर्ता ने अपना आवेदन विश्वविद्यालय को उचित माध्यम द्वारा दिया था परन्तु विश्वविद्यालय ने यह कहकर टाल दिया कि विश्वविद्यालय के विधि सलाहकार सहमत नहीं है। विश्वविद्यालय के विधि सलाहकार द्वारा दिए गए अभिमत में अंकित है कि म.प्र. शासन द्वारा दिनांक 11.09.2012 के विज्ञप्ति अनुसार परिवहन भत्ता केवल तृतीय एवं चतुर्थ कर्मचारियों को ही देय है और वर्तमान में शिकायतकर्ता प्रथम श्रेणी अधिकारी है। शिकायतकर्ता विश्वविद्यालय के विधि सलाहकार द्वारा दिए गए अभिमत से पूर्णतः असहमत है। यह अभिमत तथ्यहीन और निराधार है। शिकायतकर्ता का यह भी कहना है कि UGC वेतनमान के आदेशनुसार विश्वविद्यालय एवं महाविद्यालय में कार्यरत दिव्यांग शिक्षकों एवं वैज्ञानिकों को परिवहन भत्ते का लाभ दिया जाना है, यह लाभ माननीय उच्चतम न्यायालय द्वारा दिए निर्णय में केंद्र एवं राज्य के विश्वविद्यालय UGC वेतनमान में कार्यरत दिव्यांग कर्मचारियों को दिया जायेगा। शिकायतकर्ता को UGC के आदेश में वर्णित परिवहन भत्ता दिया जाये। शिकायतकर्ता ने निवेदन किया है कि उसे दुगने दर से परिवहन भत्ते का लाभ दिलवाने की कृपा करें।

2. प्रतिवादी द्वारा प्रस्तुत उत्तर-

2.1 प्रतिवादी से इस शिकायत का कोई उत्तर प्राप्त नहीं हुआ।

3. Hearing:

3.1 A hearing was conducted in hybrid mode on 15.04.2024. The following parties/representatives were present during the hearing:

Sl No.	Name of Parties / Representatives	For Complainant/ Respondent	Mode of Attendance
1.	Advocate Manas Dubey	For Complainant	Online
2.	Dr. Yagya Dev Mishra, Deputy Registrar	For Respondent	Online

4. Record of Proceedings:

4.1 At the outset, the Chief Commissioner asked the Respondent about their stand on payment of Transport Allowance at double the normal rate to employees with disabilities.

4.2 The Respondent submitted that the University is a State Government University and opened in the year 2008. The University is following the State Government Rules as well as the UGC Rules. There is an order from the General Administration Department in which only group C & D employees with disabilities are entitled to Transport Allowance at double the normal rate.

4.3 On a specific query from the Chief Commissioner whether the other offices of the State Government have also not been paying Transport Allowance at double the normal rate to its employees with disabilities, the representative of the Respondent submitted that he is not aware of the same.

4.4 The Respondent further submitted that the University is a State Agricultural University which is working under guidance of ICAR. If ICAR endorsed the order and the State Government notified the rules, then only the rules are implemented. In the Central Government, the rule for payment of Transport Allowance at double the normal rate to employees with disabilities was implemented in 2016 but the State Government notified it in 2022.

4.3 The representative of the Complainant referred to the Respondent's order dated 06.01.2022 wherein it was mentioned that the Chancellor, Scientists, Teachers and other employees of the University will get a revised pay scale as per 7th CPC from 01.01.2016. The Respondent follows the UGC guidelines and the 7th CPC is implemented there. He also submitted that the State Government in its Order dated 24.06.2013 had referred to the letter dated 11.09.2012 issued by the General Administration Department wherein it was mentioned that in the letter dated 11.09.2012, there was no mention of the Gazetted Officers due to which they were left out from the benefit of transport allowance. As per the order dated 24.06.2013, the Gazetted Officers are entitled to an amount of Rs. 500/- per month as Transport Allowance. He also referred to the order passed by the Hon'ble Supreme Court of India in WP(Civil) No. 107/2011.

4.4 The Respondent submitted that he is not aware about the State Government order dated 24.06.2013 as the same was not endorsed to them.

5. Observations and Recommendations:

5.1 After hearing both the parties, this Court observed that the stand of the Respondent is not valid. The Court took serious note that the Respondent did not file the reply to the Notice despite a reminder issued by this Court. There appears to be deliberate discrimination against the employees with disabilities by the Respondent University. Ignorance of order/law is not an excuse. The Respondent neither follows UGC rules nor the State Government orders.

5.2 This Court recommends the Respondent to take the corrective decision and pass a proper order in this matter within a week and pay the Transport Allowance at double the normal rate to all the left out employees with disabilities with interest either from the date of UGC order or the State Government order whichever is earlier. This Court observed that despite directions from the Court, the Respondent did not take any corrective decision within the stipulated time limit of one week.

5.3 This Court recommends that the UGC take strong action against the university for not following the orders as this is a classic case of discrimination, deliberate action against employees with disabilities. If a wilful suppression of the relevant government instructions on the subject is established against any official of the University, appropriate penal action should be taken against such officials to send a strong message to all concerned.

5.4 This Court also recommends that the Respondent University to pay the Transport Allowance at double the normal rate to the Complainant as well as to the other left out employees with disabilities with interest from the date of UGC order or the State government order whichever is earlier.

5.5 The Respondent is directed to take appropriate action with an open and positive mind in accordance with the spirit of the RPwD Act, 2016, and the relevant rules on the subject and submit an Action Taken/ Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

5.6 The Case is disposed of accordingly.

Signed by Rajesh Aggarwal
Date: 05-05-2024 20:51:58
(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

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5th 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. 13662/1024/2023

In the matter of —

Shri Sundar Singh Bishla
Email: sundersingh7034@gmail.com
Mobile: 90680-57732

...Complainant

Versus

1. The Chairman,
Corporate Centre,
State Bank of India,
State Bank Bhavan,
Madam Cama Road,
Nariman Point, Mumbai,
Maharashtra – 400021
Email: chairman@sbi.co.in,
dgm.ir@sbi.co.in

...Respondent No.1

2. Office of Principal Controller of Defence Accounts,
Western Command, Sector 9-A,
Chandigarh-160009
Nearest landmarks- UT Secretariat,
Punjab Police Headquarters
Email:cda-chd@nic.in,
legalcell.pcdawc@nic.in

...Respondent No.2

1. Gist of the Complaint:

1.1 The O/o State Commissioner for Persons with Disabilities, Government of Haryana vide email dated 16.12.2022 forwarded the complaint dated 13.11.2022 of Shri Sunder Singh Bishla, a person with 100% locomotor disability regarding non-payment of arrears of disability element of disability pension from 20.10.2006 to

31.05.2014 by pension disbursing bank.

1.2 The Complainant submitted that he served in IAF from 16.01.1985 to 19.10.2006 and was medically boarded out with 100% disability in his spinal cord, attributable to service while on duty. From 01.01.2006 he got the benefits of MACP and arrears were paid in April 2022. He got the arrears of service element of disability pension, but the arrears of disability element of disability pension were not paid w.e.f. 20.10.2006 to 31.05.2014. He submitted two applications in this regards on 02.03.2022 and 26.09.2022 but no action was taken by the pension disbursing agency, i.e. the State Bank of India.

2. Submissions made by the Respondent:

2.1 The Deputy Controller of Defence Accounts, PCDA(WC), Chandigarh, Respondent No. 2 filed his reply vide email dated 14.02.2023 and submitted that the Pension Disbursing Authority in the matter is State Bank of India, CPPC, Panchkula and their office has no role to play in this matter. He also requested for extension of one month for filing the affidavit in the matter.

2.2 The General Manager (NW II), State Bank of India, LHO Chandigarh, Respondent no. 1 filed his reply vide letter dated 02.03.2023 and *inter alia* submitted that the Complainant has been given disability element benefit amounting to ₹6,22,129/- w.e.f. 01.07.2014 on upgradation of rank from Sergeant-to-Sergeant ACP1. The Complainant is requesting arrears from the date of retirement. Further, the Complainant has been informed vide communication dated 09.02.2023 that no Corresponding PPO has been received to date which is required for a change of Disability Element in pension from the date of retirement.

3. Submissions made in the Rejoinder:

3.1 No Rejoinder received from the Complainant despite this Court's letter dated 09.03.2023 in this regard.

4. Hearing:

4.1 A hearing was conducted in hybrid mode on 15.04.2024. The following parties/representatives were present during the hearing:

Sl	Name of the parties	For Complainant/	Mode of
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No.	Representatives	Respondent	Attendance
1.	Shri Sundar Singh Bishla	Complainant	Online
2.	Shri Sujit Kumar, General Manager LHO, SBI, Chandigarh	For Respondent No.1	Online
3.	Ms. Suman Gupta, Advocate Shri Rajesh Kumar Singh, AAO Shri Ravi Dhawan, AAO	For Respondent No.2	Online

5. Record of Proceedings:

5.1 At the outset, the Chief Commissioner said that both the Respondents are not denying the entitlement of the Complainant but shifting the responsibility on each other. Both the respondents were asked about their views and clarification on the matter.

5.2 The representative of Respondent No. 1 submitted that they have implemented all the orders issued by the Pension Sanctioning Authority (PSA). Regarding the disability element of 100% disability, they are paying it but it was not confirmed by the PSA during the period from 2006 to 2014. The entitlement is in the purview of the PSA because there is difference in amount also. In PPO, it is mentioned what disability element they have to pay to the pensioners. It is categorically written in the Core PPO. They are bound to release payment as authorised in the PPO and they are doing it. It is further submitted that the Complainant was getting disability element of ₹ 5304/- since August, 2006 upto 2014. In 2014, they got a revised PPO and paid the disability element as per Core PPO. The revised PPO of 2006-2014 was not provided to them. It must be provided by the parent department. The Complainant's rank was changed from Sergeant to Sergeant ACP-1. The revised basic pension was advised by the Department but the revised disability element was not advised. In Core PPO, during that period, there was no notification about the disability element.

5.3 Further, the representative of the Respondent No. 1 submitted that the Complainant's pension account was migrated to Sparsh in August 2023. Whatever Core PPO issued by the Department related to disability element, may be addressed to Sparsh, PCDA for disbursal of the pension and arrears, if any.

5.4 The representative of Respondent No. 2 submitted that the Complainant is not drawing pension from their end but drawing it from CPPC, Panchkula. The JCDA, Air Force, New Delhi issued a PPO to the Complainant for 100% disability

and the payment is made by the CPPC, Panchkula. They have no involvement in this matter.

5.5 The Complainant submitted that he got an arrear for the revised pension element but did not receive any arrear for disability element for the period from 20.10.2006 to 31.05.2014.

6. Observations and Recommendations:

6.1 After hearing both the parties, this Court observed that the representative of the Respondent No. 2 attended the hearing without preparation, is not aware of the relevant information and displayed a casual attitude. The Respondent No. 2 was not represented by a senior officer of competence who was conversant with the facts of the case. The stand of the Respondent No. 1 is clear and correct. The pension Disbursing Authority cannot decide the disability element. The amount of pension and allowances to be paid is to be decided by the parent department. The Court directed Respondent No. 2 to decide the matter without further delay. If the Complainant is not entitled to what he is asking, then a speaking order by citing clear reasons should be issued. If the complainant is entitled to arrears from 2006-2014 must be explained, then Respondent No. 2 should issue a revised PPO within 5 days and share a copy of the same with this Court.

7. Submissions made by the Respondent after the Hearing:

7.1 The Respondent No. 2 vide email dated 25.04.2024 has attached a copy of a letter dated 24.04.2024 informing that a copy of fresh corrigendum PPO bearing no. 601200601010 notifying Disability Element as Rs. 5805/- (revised from Rs. 5304/- being paid earlier) issued by the O/o the PCDA (P), Prayagraj and a pension slip for the month of April, 2024 generated by the SPARSH showing arrears amounting to Rs. 67,043/- payable to the Complainant. The Complainant has also confirmed that he has received the payment.

8. Submissions made by the Complainant after the Hearing:

8.1 The Complainant vide email dated 23.04.2024 has attached the NEFT transaction message received from State Bank of India showing that an amount of Rs. 67,043/- has been credited by the PCDA.

9. Conclusion:

9.1 After perusal of records received from both parties, it is evident that the

grievance of the Complainant is resolved. No further intervention of this Court is warranted in the matter.

9.2 The case is disposed of accordingly.

Signed by Rajesh Aggarwal

Date: 03-05-2024 12:32:18

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

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

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364
5th 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: 13687/1022/2023

In the matter of —

Shri Prashant Ranjan Yadav
HR No.60210215, JE (Phones),
O/o SDE (Phones), Badlapur,
Jaunpur-222125, UP, East Circle
Mobile: 9487103005
Email: prashantranjan04@gmail.com **...Complainant**

Versus

1. The Director (HR)
BSNL,
BSNL Bhawan, Janpath,
New Delhi-110077
Email: dirhrd@bsnl.co.in **...Respondent No. 1**
2. The AGM (OP),
Office of DGM (OA),
Jaunpur, Uttar Pradesh-222125 **...Respondent No. 2**

1. Gist of the Complaint:

1.1 Shri Prashant Ranjan Yadav, Junior Engineer working in BSNL filed a complaint dated 28.12.2022, requesting for cancellation of his transfer order from Tamil Nadu circle to UP (East) circle as he is care-giver to his mother a person with 50% Locomotor Disability.

1.2 The Complainant submitted that he was appointed as a Junior Engineer in BSNL at Manapparai, SDCA in Trichy SSA, Tamil Nadu circle on 26.06.2017. On 31.10.2019 he was temporarily transferred from Tamil Nadu circle to UP (East) circle on parent health ground and was posted at Badlapur SDCA of Jaunpur SSA, but again transferred to Tamil Nadu circle. He has requested for permanent transfer for the following humanitarian reasons:

(i) His mother aged 72 years is a person with disability (Ortho + visual) and needs proper care and his father aged 73 years is a heart patient and had two heart attacks;

(ii) His both in-laws are also persons with disability;

(iii) His wife is working as a Postmaster and is presently posted in Jaunpur. On 05.03.2021 he was blessed with a baby girl and it was difficult for his wife to look after her parents and the baby girl. During illness, his wife needs his help as no one else is available to take care of them.

1.3 He has requested for his permanent transfer from Tamil Nadu Circle to UP (East) Circle on the grounds of his disability of his mother and in-laws.

2. Submissions made by the Respondent :

2.1 In response, AGM (OP), O/o DGM (OA), JNP filed a reply dated 15.03.2023 and inter-alia submitted that the Complainant was on deputation from Trichy BA, Tamil Nadu Circle to Jaunpur, UP (East) Circle for a period of one year vide memo dated 21.10.2019. The Complainant was relieved on 31.10.2019 AN with instruction to report to CGM, BSNL UP (East) Telecom Circle for further posting. The Complainant joined Jaunpur SSA on 06.11.2019.

2.2. The Respondent further submitted that the Complainant was posted under Badlapur SDCA at his own cost on approval of the Telecom District Manager, Jaunpur vide Memo dated 08.11.2019 with the condition that the period of one year will count from the date of joining, his deputation shall automatically cease on the day he completes one year and he may be relieved back to his parent unit without waiting for further order. He further submitted that in compliance to Letter No. Staff/M-28/TTA Deputation/2017/5/114 dated 07.12.2022 of AGM (Admin), O/o CGMT, UP (East) Circle AGM (OP), O/o DGM (OA), Jaunpur issued relieving order vide Memo No. E-4/TT/TFR-Pstg/Ch-II/TDM-JNP/2022-23/38 dated 24.12.2022. The Complainant was relieved on 31.12.2022 AN by SDE (T), Badlapur with direction to report to his parent circle Tamil Nadu for further duties and instructions.

3. Submissions made in the Rejoinder:

3.1 The Complainant vide email dated 08.04.2023 filed the rejoinder reiterated his grievance and requested for cancellation of his transfer order. He again prayed for his transfer from Tamil Nadu to UP (East).

4. Hearing(1):

4.1 The case was heard via Video Conferencing by the then Chief Commissioner for Persons with Disabilities on **11.07.2023**. The following parties were present:

- (i) Shri Prashant Ranjan Yadav : Complainant
- (ii) Ms. M. Subha Krishnan : AGM, Establishment Corporate Office Respondent No. 1
- (iii) Shri Yaduvendra Singh : DGM, Admin (BSNL) Respondent No. 2

4.2 The Court sought the details about the places and duration where the Complainant was posted during his entire tenure of service in the Respondent establishment in tabular form within 15 days.

4.3 No reply was received from the Respondent despite another reminder.

5. Hearing(2):

5.1 A hearing was conducted on 15.04.2024 in the hybrid mode of . The following parties/representatives were present during the hearing:

SI No.	Name of Parties / Representatives	For Complainant/ Respondent	Mode of Attendance
1.	Shri Prashant Ranjan Yadav	For Complainant	Online
2.	Shri SP Singh, DGM (Estb)	For Respondent 1	Online
3.	Shri Kalyan Sagar Nipani, Director(HR)	For Respondent 2	Online

5.2 At the outset, the Chief Commissioner asked the Respondent about the Transfer Policy for PwD being implemented in the BSNL.

5.3 The Respondent submitted that there is a Transfer Policy of BSNL and Inter Circle transfer is not granted to anyone. The Complainant joined the service as a Junior Engineer in 2017 and got his initial appointment at Trichy SSA in Tamilnadu Circle as per his option. After 2 years of joining, he started to adopt various means to get transferred to his native place.

5.4 The Respondent further submitted that Junior Engineer is a Circle Cadre recruited for that specific circle only and cannot be transferred to other circles. In case of emergency, temporary transfer can be given for a maximum period of 2 years. In 2019, he was given temporary transfer to UP (East) Telecom Circle on

the grounds of his parent's health for one year which was extended for another 2 years. He was allowed for a maximum of 3 years of temporary transfer to another Circle. The Complainant wants to change his Circle permanently against the rules of the Department. The Respondent also submitted that in UP Circle, there is no vacancy and as such he joined the Bihar Circle in August, 2023 at his own choice. The Respondent further submitted that there are fewer medical facilities in his hometown as compared to the Sasaram City.

5.5 The Complainant submitted that his mother is a PwD and is wheelchair-bound. There is no one to look after her except him. There is a sanctioned strength in every State. He further submitted that there is surplus strength in Bihar, Punjab, and Uttar Pradesh, but his request was accepted by Bihar Circle on sympathetic grounds. He alleged that the Uttar Pradesh Circle is also having surplus strength but people from Maharashtra Circle are still transferred to Uttar Pradesh. He also alleged that some employees have stayed at temporary transfer for over 4 years but have not been relieved back to their Parent Circle.

5.6 On a specific query from the Court regarding giving any representation in his Department through proper channels, the complainant confirmed that he submitted a representation to the Director (HR) and PGM Establishment in the Corporate Office. The Court asked the Respondent whether they have a Grievance System in their Organisation. The representative of the Respondent did not confirm the appointment of a Grievance Redressal Officer as mandated under section 23 of the RPwD Act, but submitted that the Complainant met the authorities and he was informed that his request will be considered sympathetically if he submits his application through proper channel.

6. Observations and Recommendations:

6.1 The Respondent did not submit any reply to the ROP dated 22.09.2023. They have also not confirmed whether they have any transfer/posting policy for PwBDs. Neither have they submitted a copy of their Equal Opportunity Policy. It is relevant to mention here that in another case against the MP Telecom Circle of the BSNL, namely Shri Pankaj Jain Vs CGMT, MP Telecom Circle in Case No. 13667/1022/2023, this Court vide Order dated 06.10.2023 directed as under:

*(i) "From the submissions of the Respondents, it is apparent that **they do not have a policy on the issue of transfer and posting of the PwD as mandated under Sec 20 (5) of the RPwD Act, 2016 or an Equal Opportunity Policy as per Section 21 of the Act. Despite a clear mention of these statutory provisions in the Notice dated 24.02.2023 of this***

Court whereby a copy of the same was sought to be annexed with their reply, the Respondents have neither annexed the policy nor have they commented on these statutory obligations. The Respondent is statutorily obligated to submit their EOP to this Court for its registration in compliance with Section 21 (2) of the Act.

(ii) Sections 20 (5), 21 read with Rule 8 of the RPwD Rules, 2017 makes it clear that a policy in this regard is mandatory. When such a policy is not available in the establishment, the issue cannot be left at the hand of local authorities to decide as per their subjective discretion. To fill the void, reliance is required to be resorted to the guidelines issued by the administrative or the nodal ministry. In the instant case, DoPT have OM vide F. No. 42011/3/2014-Estt.(Res) dated 08.10.2018 has made enabling provisions for exemption from routine and rotational transfer of caregivers of dependent family members who are persons with benchmark disability having specified disability. The said OM has been circulated by the Department of Public Enterprises vide their OM No. DPE-GM00433333/2014-GM (FTS-1899) dated 05.04.2023.

(iii) In the light of the aforesaid provisions, this Court is inclined to conclude that the Complainant is eligible to seek exemption from routine/rotational transfer and hence to recommend that the Respondent will examine the case afresh and give an open and sympathetic consideration to the same in the light of the stipulations brought out in the preceding paragraph.

6.2 The Respondent in the aforesaid case filed their compliance report vide letter dated 12.01.2024 and submitted that the Complainant has been transferred to Bhopal, i.e. to the place of his choice vide transfer order dated 30.11.2023.

6.3 This Court is inclined to draw the attention of the Respondent to the relevant provisions of the RPwD Act, 2016, the RPwD Rules, 2017 and the instructions of the central government on the issue of posting and transfer of employees with disabilities, which are reproduced as under:

Section 20 (5) of the RPwD Act:

"(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

Section 21 of the RPwD Act:

"21. Equal opportunity policy.—(1) Every establishment shall notify equal

opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government. (2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be."

Rule 8 of the RPwD Rules, 2017 prescribing the manner of preparing and notifying the Equal Opportunity Policy under Section 21 of the Act:

"8. Manner of publication of equal opportunity policy. (1) Every establishment shall publish equal opportunity policy for persons with disabilities. (2) The establishment shall display the equal opportunity policy preferably on their website, failing which, at conspicuous places in their premises. (3) The equal opportunity policy of a private establishment having twenty or more employees and the Government establishments shall inter-alia, contain the following, namely: (a) facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment; (b) list of posts identified suitable for persons with disabilities in the establishment; (c) the manner of selection of persons with disabilities for various posts, post-recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation if any, and other facilities; (d) provisions for assistive devices, barrier-free accessibility and other provisions for persons with disabilities; (e) appointment of liaison officer by the establishment to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees. (4) The equal opportunity policy of the private establishment having less than twenty employees shall contain facilities and amenities to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment."

Para I of the DoPT's OM dated 02.02.2024 Detailing Guidelines for providing certain facilities in respect of persons with disabilities who are already employed in Government for efficient performance of their duties:

"I. (i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints;

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (i) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and acid attack victims (ii) Blindness (iii) Low vision (iv) Deaf (v) Hard of Hearing (vi) Speech and Language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to (a) Neurological conditions such as Multiple Sclerosis and Parkinson's disease (b) Blood disorder -Haemophilia,

Thalassemia and Sickle Cell Disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government

(iii) The term "Specified Disability" as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/rotational transfer by a Government employee, who is a care-giver of dependent daughter/son/parents/spouse/brother/sister as stated in Para 1(i) above."

6.4 It is not clear whether the Respondent has prepared, published and registered their Equal Opportunity Policy in compliance with the above statutory provisions and that the same covers reasonable accommodation to persons with disabilities in terms of choice and preference in the matter of transfer and posting and an exemption from routine/rotational transfer.

6.5 Upon considering all the facts of the case and submission of the parties in the light of the aforementioned framework on the issue of posting and transfer of persons with disabilities and those who are caregivers to dependent family members who are persons with disabilities, this Court has noted the statement of the Respondent that the Complainant had himself applied for TN Circle at the time of his initial appointment despite knowing of the rules, a fact which has not been rebutted by the Complainant in his pleadings, and such the Complainant can't claim transfer to his native place as a matter of right. The Court, however, feels that if other employees whether a PwD or otherwise are getting posted outside their home circle for a period beyond the stipulated one, than the PwD, for whom there are enough enabling provisions both statutory and instructional must not be deprived of a similar dispensation. Even otherwise a reasonable accommodation is required to be made for such employees.

6.6 The Respondent is directed to take appropriate action with an open and positive mind in accordance with the spirit of the RPwD Act, 2016, and the relevant rules on the subject and submit an Action Taken/ Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

6.7 The Case is disposed of accordingly.

Signed by Rajesh Aggarwal
Date: 03-05-2024 12:35:34

(Rajesh Aggarwal)
Chief Commissioner for the Persons with Disabilities

Email**O/o CCPD****Case No. 13687/1022/2023**

From : O/o CCPD <ccpd@nic.in>

Fri, May 03, 2024 02:31 PM


Subject : Case No. 13687/1022/2023 1 attachment**To :** Dr. Kalyan Sagar Nippani <dirhrd@bsnl.co.in>,
prashantranjan04 <prashantranjan04@gmail.com>

Madam/Sir,

Please find attached herewith Order passed in this case. Hard copy follows.

Regards,

Office of the Chief Commissioner for Persons with Disabilities (Divyangjan),
Department of Empowerment of Persons with Disabilities(Divyangjan),
Ministry of Social Justice & Empowerment, Govt. of India,
5th Floor, NISD Building, Plot No.G-2, Sector-10,
Dwarka, New Delhi-110075
Ph. No.011-20892364, 011-20892275

 **13687-1022-2023-Order.pdf**
102 KB



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE 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
 5th 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. 13710/1014/2023/173693

In the matter of —

Shri Suklal Subhash Patil,
 At: Bhatkhande bk.
 Post: Anturli-i Tal. Bhadgaon,
 District - Jalgaon (Maharashtra)
 Pin: 424201
 Email: suklalpatil14091991@gmail.com
 Mobile: 7798170949

... Complainant

Versus

Sr. Superintendent of Post Offices,
 Department of Posts,
 Office of Senior Superintendent of Post Offices,
 Mumbai North Division,
 Nanda Patkar Road, Vile Parle East,
 Mumbai-400057
 Email: domumbainorth.mh@indiapost.gov.in;
 hod.north@gmail.com

... Respondent

1. Gist of Complaint:

1.1 Shri Suklal Subhash Patil, a person with 75% visual impairment, filed a complaint dated 12.11.2022 regarding the denial of appointment to the post of General Postman under Direct Recruitment No.NBII/DR/RECTT/PM/-MG-MTS/2015-16 & 2016-17 based on Notification issued for online examination on 29.09.2020.

1.2 The Complainant was informed that he was appointed to the post of Postman. So, he took his medical test at J.J. Hospital on 03.05.2022 and his disability was shown as 75%. On 06.05.2022, he was informed

to go for his medical test again at J.J. Hospital on 15.06.2022. On that day his medical report said that his disability was 100%.

1.3 The Complainant submitted that he was being treated unfairly and was deliberately being left out. He tried to contact the Respondents on the phone from time to time but was not explained properly about the reasons for not selecting him.

2. Reply filed by the Respondent:

2.1 The Respondent filed their reply dated 10.03.2023 and inter-alia submitted that after completing pre-appointment formalities the Complainant was sent for medical at the J.J. Hospital vide their letter dated 25.04.2022. In the Health Certificate dated 02.05.2022 received from J.J. Hospital, his 75% visual disability in both eyes was confirmed. However, there was no confirmation of the category of the candidate in which he has been found fit to work as a Postman. Hence, his case was taken up again with the J.J. Hospital vide letter dated 06.05.2022 informing that the candidate was provisionally selected as Postman in PwD sub-category (a) and as per the notification for Direct Recruitment Quota for the years 2015-16 and 2016-17 which was issued on 29.09.2020, the post of Postman was identified suitable for the disability of (a) sub-category which includes Low Vision as the work performed by Postman/Mail Guard is arduous including intensive traveling for delivery of Dak and cash handling. Therefore, persons with Blindness, Cerebral Palsy, Muscular Dystrophy and Autism, Intellectual disability, and Mental Illness may not be found suitable for this post. The Respondent further submitted that as per para 8 of D/oP&T's O.M. dated 29.12.2005, a person with low vision means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is capable of using vision for the planning or execution of a task with appropriate assistive device and requested to examine the candidate keeping in mind the facts of eligibility of the candidate for the post of Postman.

2.2 The Respondent submitted that the Disability Certificate dated 15.06.2022 received from the J.J. Hospital showed the percentage of his disability as 100% blindness and found fit under the visually disabled category.

2.3 The Respondent further submitted that while filling up the online application form, the Complainant had opted for the services of Shri Kiran Subhash Patil as a scribe. He had uploaded the name, date of birth, qualification of the scribe, and PAN Card as proof of his ID. However, in the letter of undertaking for using his own scribe, the candidate had neither mentioned the name of the scribe nor the qualification. On the PAN card, the signature of Shri Kiran Subhash Patil did not match the signature of the scribe on the Admit Card.

2.4 Given both the above points, a cancellation letter dated 17.08.2022 was issued to the Complainant.

3. Submissions made in Rejoinder:

3.1 The Complainant vide email dated 24.03.2023 attached a copy of his rejoinder dated 22.03.2023 and submitted that the scribe he had chosen while applying, was not available on the day of the examination. So, he contacted the Post Recruitment Department through email, and they allowed him to change the scribe. The Complainant submitted a copy of that email as proof. Further, he expressed his doubt about the testing agency showing him 100% blindness. His request for a re-medical check-up was rejected.

4. Hearing (1):

4.1 An online hearing through Video Conferencing was conducted on **18.12.2023**. The following parties/representatives were present during the hearing:

- (1) Shri Sukhlal Subhash Patil, Complainant
- (2) Shri Alok Kumar, Dy. Superintendent of Posts, Mumbai North Division for the Respondent

4.2 Record of Proceedings:

4.2.1 During the hearing, the Complainant submitted that he is a person with low vision having 75% visual impairment. He had sent his request through email for a change of scribe as the scribe he had chosen while applying was not coming on the day of the examination. So, he contacted the Recruitment Division of the Postal Department through email to inform them that he was changing the scribe, and the Postal Department allowed him to change the scribe vide email dated 24.03.2023. However, the invigilator did not allow him the scribe and also tore away the documents the Complainant had produced regarding the change of scribe.

4.2.2 The Complainant also raised the issue of the need for the review of his disability. He submitted that in the first certificate dated 02.05.2022, his disability was kept at 75%, but the Respondent sent him for another medical test on 15.06.2022, wherein the disability was revised to 100%.

4.2.3 After hearing both parties, the Court directed the respondent to submit the following documents/information within 15 days from the date of receipt of this Record of Proceedings-

- (i) Submit the complete details of the candidates with disabilities

appearing in the said examination and the details of the scribe allowed to them.

(ii) The details of the candidates with disabilities who were subjected to more than one medical test in the name of verification of his/her disability.

5. Compliance filed by the Respondent:

5.1 Sr. Superintendent of Post Offices, Mumbai North Division, Mumbai filed a reply dated 22.12.2023. From the perusal of the reply, the reply to the queries appeared as under:-

(i) The said examination for recruitment was conducted by an outside agency hired by the Department of Posts, Maharashtra Circle. After the examination and selection of the candidates, they were allotted to all the divisions/units for document verification, pre-appointment formalities, and the final appointment process. Therefore, they do not have the details of the scribe allowed to the candidates.

(ii) There was only one candidate in category (c) [OH] who was initially sent to Cama & Albles Hospital for medical examination. The candidate had a locomotor disability and the diagnosis in her case was Multiple Exostosis. Her extent of percentage of physical impairment/disability was evaluated as 78% permanent non-progressive and not likely to improve.

5.2 The Respondent also submitted that this reply be treated as an interim reply. As soon as the information is received from the concerned authorities, the same will be submitted to this Court. No further reply was received from the Respondent.

6. Hearing (2):

6.1 The second hearing in this matter was conducted on **15 April 2024 in hybrid mode**. The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/Representatives	For Complainant/ Respondent	Mode of attendance
1.	Shri Suklal Subhash Patil	Complainant	Online
2.	Shri Akshat Singh, Advocate	Respondent	Online

6.2 RECORD OF PROCEEDINGS

6.2.1 During the hearing, the learned counsel for the Respondent submitted that the letter issued by the Respondent on 17.08.2022 cited the following two reasons for the rejection of candidature:-

- (a) The extent of disability assessed in the second medical examination by the JJ Hospital, Mumbai which pegged it at 100%;
- (b) Discrepancy and mismatch in the identification data of the scribe collected at the time of examination from the information submitted by the Complainant in his application form.

6.2.2 The learned counsel also submitted that the issue of the scribe was not raised by the Complainant in his initial complaint. He did so only in his later communication. He also informed that the vacancy against which the Complainant was appointed on provisional basis has now been filled by the appointment of another candidate with disability from the supplementary list.

6.2.3 The Court observed that as per the records of the case, it is seen that the issue of scribe was actually brought up by the Respondent in its reply dated 10th March 2023. The Complainant had only responded to the assertion of mismatch in the signature and other identity details of the scribe who appeared in the exam from the one for whom the Complainant had requested at the time of submission of his application form. The Complainant had submitted that the one who appeared was a different person as the original scribe was not available on the day of the examination and this was done with prior approval of the Respondent. To support his claim, he forwarded a copy of the email he received from the department (dopmah@onlineregistrationform.org) on 09th November 2021 purportedly allowing him the change of scribe.

6.2.4 The Court observed that the issue before this Court is only to check the legality of the rejection on the grounds of the visual impairment being 100% and the circumstances around getting the disability reviewed by the Respondent twice in quick succession.

7. Observations & Recommendations:

7.1 During the hearing the learned counsel representing the Respondent submitted that the post of General Postman has been identified as suitable for Low Vision, but not for the Blind. In their written reply dated 10.03.2023, the Respondent has cited a

departmental notification, namely the Notification for Direct Recruitment Quota for the years 2015-16 and 2016-17 issued vide ADR/Rectt./DR/PM-MG/MTS/2015-16 & 2016-17 dated 29.09.2020. As per the said notification, the post of Postman/Mail Guard is of an arduous nature including intensive traveling for delivery of Dak and cash handling. As such, the post has not been found suitable for Blindness, Cerebral Palsy, Muscular Dystrophy, Autism, Intellectual Disability, and Mental Illness, but was considered suitable for Low Vision candidates. The Respondent has further submitted that as per Para No. 8 of OM No. 36035/3/2004-Estt (RES) dated 29.12.2005 'person with low vision' means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of task with appropriate assistive device.

7.2 In this regard, Section 33 of the RPwD Act, is relevant. The same is being reproduced 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

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

7.3 From reading the above statutory provision, it is evident that the mandate for the identification of posts is with the "appropriate government" and not with the individual establishments. A reference to the Second Schedule of the Allocation of Business Rules, 1961 under the work allocation of the Department of Empowerment of Persons with Disabilities (DEPwD), Ministry of Social Justice & Empowerment (MSJE) (Item No. 4) will reveal that it is the DEPwD, which is the "appropriate government" for the purpose of the identification of posts. Accordingly,

the DEPwD, MSJE have been issuing the lists of identified jobs from time to time through public notifications. The last such list was published by the DEPwD, MSJE vide Notification No 38-16/2020-DD-III dated 04.01.2021. In the said list, the posts of Postman (City) and Village Postman have been listed at Sl No. 197 and 198 (in the list of Gp D posts) respectively, and have been found suitable for both Blind and Low Vision among other sub-categories of disabilities. Even the previous list issued by the DEPwD vide their Notification No. 16-15/2010-DD.III dated 29.07.2013, these posts have been shown as suitable for both Blind and Low Vision candidates at Sl. No. 10 to 11 respectively in the list of group D posts. It is also relevant to mention that in the said lists under the heading "Nature of Job", all the job descriptions mentioned by the Respondent in its written submission as grounds for not identifying the post of General Postman for Blind candidates, such as traveling for delivery of Dak and cash handling etc. have been mentioned and therefore, taken into account before concluding that the posts are suitable for Blind persons as well.

7.4 Further, the gist of the recommendations of the Expert Committee constituted by the central government under the powers and mandate extended to it by section 33 of the RPwD Act, 2016 or by section 32 of the erstwhile law, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, published in the Notification dated 04.01.2021 are also relevant. The same are as under:

Note 1: *Persons with benchmark disabilities require aids and assistive devices to overcome their difficulties. The aids and assistive devices may be provided to persons with benchmark disabilities on their appointment keeping in view their requirement as per the instructions of DoPT issued from time to time.*

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.*

Note 3: *If a post is already held by a person with benchmark disability, it shall be deemed to have been identified for that category of benchmark disability.*

Note 4: *If a post is identified in the feeder grade, all the posts in the promotional grade should also stand identified.*

Note 5: *If a post having identical nature and place of job with respect to any identified post, the post should be construed to be identified even if the post has a different nomenclature and/or is placed in a different group.*

Note 6: *This list will be the principal list in respect of the posts identified suitable for persons with benchmark disabilities. However, in case a list of post is separately identified by any Central Government establishment, the list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail.*

Note 7: *In case a post is identified suitable for more than one sub-category under a broad category, individual Central Ministries or Departments or Public Sector Undertakings or Autonomous Bodies should conduct recruitment for all the sub-categories and cannot suo-moto choose one particular sub-category for appointment.*

Note 8: *It is for the Central Ministries or Departments or Public Sector Undertakings or Autonomous Bodies to verify the authenticity of the certificate of disability and examine suitability of the candidate in terms of functional requirements before appointment against any identified post.*

Note 9: *In the event of discrepancies in the English and Hindi versions of this Notification, English version shall prevail over the Hindi version."*

7.5 It is therefore abundantly clear from reading the recommendation

at Note 2 and Note 6 above that the mandate for identification of jobs lied with the Department of Empowerment for Persons with Disabilities, Ministry of Social Justice and Empowerment. Establishments such as the Respondent in this case, could have added or supplemented to the list notified by the DEPwD, but could not have removed any post or a sub-category of disability without referring the matter to the DEPwD.

7.6 Hence, the departmental notification of the Department of Post, Maharashtra Circle denying Blind candidates from appointment to the post of General Postman is in clear violation of the provision of Section 33 and the list issued by the Central Government thereunder.

7.7 The next issue to be considered by this Court is whether it was appropriate on the part of the Respondent to refer the candidate for assessment of disability and fitness for appointment to the post of the General Postman twice within a short span of time.

7.8 At the time of applying for the post, the Complainant was in possession of a disability certificate issued on 17.12.2015 by the District Hospital, Jalgaon Maharashtra showing his visual impairment at 75%. Rules 19 and 20 of the RPwD Rules, 2017 provide as under:

"19. Certificate issued under rule 18 to be generally valid for all purposes.- A person to whom the certificate issued under rule 18 shall be entitled to apply for facilities, concessions and benefits admissible for persons with disabilities under schemes of the Government and of non-Governmental organizations funded by the Government.

20. Validity of certificate of disability issued under the repealed Act.- The certificate of disability issued under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) shall continue to be valid after commencement of the Act for the period specified therein."

7.9 Hence, it is undisputed that the disability certificate issued by the District Hospital Jalgaon was a valid certificate for consideration of the

candidature of the Complainant for the post of General Postman. As per Note 8 of the Gists of Recommendations of the Expert Committee as brought at para 7.4 above, Central Ministries or Departments or Public Sector Undertakings or Autonomous Bodies have the mandate to verify the authenticity of the certificate of disability and examine the suitability of the candidate in terms of functional requirements before appointment against any identified post. Verification is normally done by referring the document back to the issuing authority and getting confirmation about its genuineness. However, if the practice is to send the candidates with disabilities to a designated medical board for fresh re-assessment, the same can not be faulted as abundant precaution is necessary to ensure that major and life-long benefits such as government employment are not appropriated by undeserving and ineligible candidates. Hence there is no illegality in sending the Complainant to the JJ Hospital on the first occasion on 02.05.2022.

7.10 It is, however, the decision of the Respondent to send the Complainant to the JJ Hospital for another examination after the hospital issued a Health Certificate in respect of the Complainant confirming the disability as 75% visual impairment in both eyes, the same as were the findings in the original certificate issued by the District Hospital, Jalagaon, which raises questions on the fairness of the procedures. In their written reply dated 10.03.2023, the Respondent submitted that in the health certificate dated 02.05.2022, there was no confirmation of the category of the candidate in which he has been found fit to work as a Postman.

7.11 The complete text of the Health Certificate of 02.05.2022 signed by the Medical Superintendent is as under:

"I hereby certify that I have examined Sukalal Subhash Patil, a candidate for employment in the Indian Post and Telegraph Department, and cannot discover that same as above has any disease (communicable or otherwise), constitutional weakness or bodily infirmities except Visual Impairment in both eyes with 75%.

I do not consider this a disqualification for employment in the

office of Department of Post."

7.12 In the Visual Impairment category of Disabilities, there are only two sub-categories, namely Blind and Low Vision. When the certificate assesses the disability at 75%, it has to be only the Low Vision sub-category. Officials charged with the functions of recruitment and establishment are supposed to have this basic knowledge. The reason cited by the Respondent is quite apparently inadequate for sending the Complainant for a second verification. The text of the letter dated 06th May 2022 sent by the Senior Superintendent of Post Offices, Mumbai North Division in the Respondent establishment to the JJ Hospital furnishing the reasons for sending the candidate back to them is also noteworthy. The relevant text can be seen here-

"As per the Notification for Direct Recruitment Quota for the year 2015-16 & 2016-17 which was issued vide ADR/DR/PM-MG-MTS/2015-16 & 2016-17 dated 29.09.2020 the post of Postman has been identified suitable for the disability of A Category which includes Low Vision.

Further it is to bring your notice as per OM No. 36035/3/2004-Estt(RES) dated 29.12.2005 that 'person with low vision means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.'

In view of the above, kindly examine the candidate keeping in mind the facts of eligibility of the candidate for the post of postman."

7.13 This Court is of the considered opinion that once the medical authority has opined on type and extent of disability, it is for the concerned establishment to examine the suitability of the candidate in terms of the rules and instructions governing the issue. It was not appropriate for the Respondent's department to refer the matter to the hospital for a decision based on the functional requirements.

7.14 In the absence of adequate justification for a second referral

within 4 days, it is difficult for this Court to rule out the possibility of an attempt to harass the complainant, discriminate against him on the grounds of his disability, and deny him his rightful appointment. The Respondent appears to have tried to influence the minds of the medical authorities at the JJ Hospital by unnecessarily citing the definition of "Low Vision" and that too from an OM of DoPT which has already been quashed by the Hon'ble Supreme Court in their Judgement dated 30.06.2016 in WP (C) 521 of 2008 Rajeev Kumar Gupta Vs. UoI.

7.15 The JJ Hospital conducted another medical examination and issued a fresh disability certificate on 15 June 2022 declaring the percentage of their disabilities at 100% but also mentioning "Fit under visually disabled category".

7.16 Upon considering the entire facts available on the records of this case and submissions of the parties, this Court is constrained to note with deep concerns and anguish that the action of the Respondent, in this case, is arbitrary, discriminatory, and is in blatant disregard to the statutory provisions and government instructions on the subject. This can happen only due to complete ignorance of the law on the subject if not with a malafide intention.

7.17 This Court recommends that the Complainant be appointed as General Postman. This Court also recommends the Respondent to conduct a departmental inquiry and fix the accountability of the delinquent officials, if, on conclusion of the inquiry, it is found that there was any malafide intention or wilful non-conformance with the law in the rejection of the candidature of the Complainant and appointment of another person from the supplementary list, who must have gotten less mark than the Complainant. The said departmental inquiry should also cover other similar cases which might not have been brought to the attention of this Court.

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

Disabilities Act, 2016.

7.19 The Case is disposed of, accordingly.

Signed by Rajesh Aggarwal

Date: 03-05-2024 12:43:13

(Rajesh Aggarwal)

Chief Commissioner

for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE 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
 5th 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. 13795/1021/2023

In the matter of-

Shri Anirudh Mahto
 ASO, Ad. II B Section, Room No. 243 D,
 Central Board of Indirect Taxes,
 Department of Revenue,
 Ministry of Finance,
 North Block, New Delhi – 110001
 Email - anirudh.mahto@nic.in

... Complainant

Versus

1. The Secretary
 Department of Personnel and Training,
 Ministry of Personnel, P G and Pensions,
 North Block, New Delhi – 110001
 Phone No - 01123092338
 Email – secy_mop@nic.in; diradmin@nic.in

... Respondent No. 1

2. The Secretary
 Department of Expenditure,
 Ministry of Finance,
 North Block,
 New Delhi – 110001
 Phone No – 01123092929
 Email – secyexp@nic.in

... Respondent No. 2

1. Gist of the Complaint:

1.1 Shri Anirudh Mahto, a person with 75% Hearing Impairment filed a complaint dated 05.01.2023 regarding the denial of reservation in promotion. The Complainant is denied promotion in the PwD quota from Junior Secretariat Assistant to Senior Secretariat Assistant and not promoted to the post of Assistant Section Officer in the select list 2013 with part-1 of the select list, 2003 of 81

candidates.

1.2 The Complainant further submitted that he was working as an ad-hoc ASO in the Cadre of Expenditure, Ministry of Finance, North Block, New Delhi. In the seniority list of UDC (Extended) circulated by DoP&T, his seniority position is showing as 1518, and his category was mentioned as UR whereas he has been a PwD since joining.

1.3 The Complainant also submitted that in the year 2022, the DoP&T promoted 81 candidates from a total of 2010 UDCs/SSA of SL 2003 of SSA (Erstwhile UDC) to the SL 2013 of Assistant Section Officer and sent them to ISTM training. After training they were placed in the SL of 2022 and were promoted to the grade of Section Officer vide OM dated 01.12.2022 as per the Order of CAT (Principal Bench) New Delhi. The Court cases of SSA (Erstwhile UDCs) do not pertain to the PwD employees. The employees of PwD quota of SL 2011 & 2012 of ASO (directly recruited) were promoted to the grade of Section Officer through the SL of 2021 whereas other categories of employees of SL 2011 & 2012 of ASO were promoted to the grade of Section Officer through the SL of 2022. The Complainant has not been promoted to the higher grade as per the PwD quota till date.

2. Submissions made by the Respondent:

2.1 The Under Secretary, DoP&T filed the Reply vide letter dated 19.04.2023 and inter-alia submitted that the Complainant was appointed as Lower Division Clerk under OBC (PH) quota in 1994 in the Ministry of Finance. Thereafter, a Draft select list of SSA for 2006 was initially issued. In the draft SL of 2006, the name of the Complainant was missing. Consequent to the cadre restructuring, 2151 vacancies were created and the Complainant was placed in SL 2003 (Extended) at Sl.No. 1330 issued.

2.2 The Respondent further submitted that the Selected List 2003 (Extended) was challenged in the Hon'ble High Court of Delhi vide W.P. No. 5259/2019 and W.P. 8454/2019. The Hon'ble High Court of Delhi in its judgement dated 07.02.2023 directed this Department to place 2151 vacancies after the SL of 2009. After the finalization of SSA CSL for 2003 (Extended) a fresh draft select list dated 24.02.2023 in respect of SSAs for SLY 2004 to 2016 was issued by the department, which also did not include the name of the Complainant. The Department of Revenue vide letter dated 10.03.2023 again raised a concern to include the name of the Complainant in SL 2006.

2.3 The Respondent further submitted that the zone of consideration for fixation of range of seniority for promotion of 81 officials of SSA grade of SL 2003 to ASO grade for the select list year 2013 was issued by this department vide OM dated 22.05.2022. After conducting the DPC, 72 eligible SSAs were promoted to the ASO grade of SL 2013, and the final part common seniority list for ASO grade for SL 2013 after incorporating these 72 ASOs was issued by the department vide OM dated 01.12.2022. The Complainant was placed in SL 2003 (Extended), and after rescinding SL 2003 (Extended), he was likely to be placed in SL 2006 of SSA. After finalization of the draft SL of SSAs for the years 2004 to 2016, the Complainant shall be considered for placing in the appropriate CSL of Assistant Section Officer (ASO), as per his eligibility, seniority, and quota.

3. Submissions made in Rejoinder:

The Complainant filed the Rejoinder vide letter dated 01.05.2023 and reiterated his Complaint.

4. Hearing (1): An online hearing was conducted on 06.06.2023 through Video Conferencing. The following parties/representatives were present:

1. Shri Anirudh Mahto, ASO, Complainant in Person
2. Shri Vinay Kumar, Under Secretary along with Shri Raju Chowdhary, Section Officer

5. Record of Proceeding:

5.1 This Court observed that the Complainant in his written submission, did not provide specific details of the grievance. Therefore, this Court granted an opportunity to the Complainant to file his Rejoinder providing details of the grievance by 13.06.2023 with an advance copy served to the Respondent. The Complainant was also asked to file proof of service of the Complaint served to the Respondent.

5.2 During the online hearing, the representative appearing on behalf of the Respondent could not inform the details relating to the promotion of the 20.06.2023 on the aforesaid rejoinder which shall be filed and served by the Complainant. In addition to the above, the Respondent was directed to provide the following service details of the Complainant:

- a. Date of appointment;
- b. Post on which he was initially appointed;
- c. Date on which he was promoted to the post of Upper Division Clerk from Lower Division Clerk and whether the same was done under PwD Quota as per the DoPT OMs dated 20.11.1989 & 29.12.2005;
- d. Date on which he was promoted to the post of Assistant Section Officer from Upper Division Clerk and whether the same was under PwD Quota;
- e. Whether he was considered for promotion to the post of Section Officer in his turn or under the PwD Quota;
- f. Whether any junior employee including an employee with disabilities has been given promotion to the post of Section Officer.

5.3 The Court also directed that in case a copy of the aforesaid rejoinder is not served to the Respondent, it shall provide the above-sought details by 20.06.2023, failing which the Complaint may be decided ex-parte.

6. Submission by the Respondent after Record of Proceedings :

6.1 In response to the Record of Proceedings dated 07.06.2023, the Under Secretary, DoP&T, vide its letter dated 18.07.2023, submitted that the Central Secretariat Clerical Service is a decentralized service. In the years 2005 to 2006, this service consisted of 33 cadre units. Every cadre unit is the sole authority for the release of vacancy and, maintenance of the reservation rosters including for the PwD. The DoP&T issues only a 'Zone of Consideration'. He challenged the contention of the Complainant by saying that there were three vacancies in the Cadre of Expenditure including 1 for OH. The Representative of the Respondent was, however, unable to provide more information.

6.2 The Respondent submitted the relevant information as asked by the Court in the previous hearing dated 06.06.2023 which is as under:

- a. 07.08.1996

- b. Lower Division Clerk (Direct Recruitment)
- c. W.E.F. 17.07.2008 under PH(HH) category
- d. He was promoted as ASO on Ad-hoc basis w.e.f. 23.02.2015 and reservation under PwD quota was not applicable at that time.
- e. The Complainant is still holding the post of Assistant Section Officer on Ad-hoc basis.

7. Hearing (2): Another hearing was conducted in the matter through Video Conferencing on 05.01.2024. The following parties/representatives were present during the hearing:

(1) None appeared for the Complainant

(2) Shri Kumar Rajiv Ranjan, Under Secretary, DoPT, for Respondent No. 1

8. Record of Proceedings:

8.1 At the outset, the Chief Commissioner asked the Respondent about the information submitted after the last hearing dated 07.06.2023. The representative of the Respondent submitted that DoPT shared the relevant information on 18.07.2023. He further submitted that the Central Secretariat Clerical Service is decentralized and it consists of 33 cadre units. Every cadre unit is the sole authority for the release of vacancy and, maintenance of the reservation rosters including for the PwD. He challenged the contention of the Complainant by saying that there were three vacancies in the Cadre of Expenditure including 1 for OH. The Representative of the Respondent was, however, unable to provide more information.

8.2. After hearing the Respondent, this Court observed that the representative of the Respondent attended the hearing without preparation and relevant information/documents. As such, the Court directed to implead the Secretary, Department of Expenditure, Ministry of Finance as a Respondent in the matter and seek the following details from the respondents within 10 days from the date of these

proceedings:

- (i) The total number of vacancies filled in the grade of ASO by promotion since 2016.
- (ii) Out of (i) above, the total number of persons with different categories of disabilities promoted against vacancies reserved for them.
- (iii) The number of vacancies available for promotion as on date.
- (iv) The position of the Complainant in the seniority list of SSA; and
- (v) Action taken in this case so far in pursuance to DoPT OM dated 28.12.2023.

8.3 The Court also directed that in the next hearing, senior officers from both Respondents, who are well-versed with the facts of the case, shall attend the hearing.

9. Submissions made by the Respondent No.2 after the Record of Proceedings:

9.1 The Assistant Section Officer, Cadre Administration Section, D/o Expenditure vide their email dated 08.01.2024 submitted the following information :

S. No.	Details Sought	Details Furnished
1.	The total number of vacancies filled in the grade of ASO by promotion since 2016.	Pertains to DoP&T
2.	Out of 1 above, the total number of persons with different categories of disabilities promoted against vacancies reserved for them.	
3.	The number of vacancies available for promotion as on date.	
4.	The position of the Complainant in	
		DoP&T vide its OM No. 19/3/2022-

	the seniority list of SSA;	CS.II(B) dated 01.06.2023 issued Final Common Seniority List in SSA grade for the Select List years 2004 to 2016. In the said list, the Complainant stands at Serial no. 406 in SSA seniority list for the year 2006.
5.	Action taken in this case so far in pursuance to DoPT OM dated 28.12.2023.	<p>i. The Complainant was promoted to the post of UDC under PH category against SL Year 2006 w.e.f. 17.07.2008</p> <p>ii. However, DoPT's OM dated 28.12.2023 regarding reservation in promotion to PwBDs is effective w.e.f. 30.06.2016.</p> <p>iii. DoPT vide its OM No. 11/2/2022-CS.II(B) dated 20.07.2023 included the Complainant in the range of seniority for promotion to ASO grade against ASO SL year 2016. Accordingly, this Department on recommendations of DPC promoted him to ASO grade for SL Year 2016 under seniority quota vide office order no. A-12026/06/2023-CAS dated 01.08.2023.</p>

10. Submissions made by the Respondent No.1 after the Record of Proceedings:

10.1 The Under Secretary (CS.II-B), DoP&T, vide their email dated 27.03.2024 filed the ATR and submitted that as per the direction of the Hon'ble Court of the CCPD, the matter has been re-examined in terms of DoP&T OM 28.12.2023 and following facts are submitted:

i. As per Common Seniority List (CSL) finalized on 01.06.2023 for the SL 2004 to SL 2016, the Complainant has been placed in the SL-2006 and his CSL number is 1364.

ii. The Complainant was again promoted to the post of Assistant Section Officer (Level-7) under seniority quota against SL Year 2016, after rendering 10 years of approved service in terms of Sub Rule 4(B) (i) of Central Secretariat Service Regulations, 2013.

iii. In Select List, 2016 of ASO Grade, total vacancies were 349 out of which 14 posts were earmarked for PwBD in terms of DoP&T OM dated 17.05.2022 and 28.12.2023. The Complainant, UR (HH) was promoted to the post of ASO against SL-2016 under the UR category i.e. on his own merit after rendering 10 years of approved service in the grade of SSA.

iv. The next promotion to the post of Section Officer (Level-8) will due on 01.07.2024 on the basis of 8 years of approved service in terms of Sub Rule 4(B) (i) of Central Secretariat Service Regulations, 2013.

11. Hearing (3):

The third hearing in the matter was conducted on 17.05.2024 in the hybrid mode (Online/Offline). The following parties/representatives were present during the hearing:

Sl.No.	Name of the parties /Representatives	For Complainant/ Respondent	Mode of Attendance
1.	Shri Anirudh Mahto	Complainant	Online
2.	Ms. Priya Mahadevan, Dy. Secretary, Deptt. of Personnel and Training	For Respondent No.1	Online
3.	Shri Ranjit Kumar Jha, Under Secretary, Department of Expenditure	For Respondent No.2	Online

12. Record of Proceedings:

12.1 Respondent No. 1, submitted that in SL-2016 of ASO grade, the total vacancies were 349, and 14 were earmarked for PwBDs as per DoPT. The Complainant got promoted to ASO grade on his own merit without PwBD quota on 01.07.2016 and will be eligible to be promoted to the SO grade on 01.07.2024. The Complainant joined the service as LDC in 1994 and got promoted to UDC in 2006. He got his next promotion to the grade of ASO in the year 2016, i.e. exactly

on completion of the requisite approved service of 10 years. As such, there has not been any discrimination with the Complainant on the ground of his disability.

12.3 Despite several attempts, the Complainant was not able to effectively submit his case during the hearing. As such, this Court advised the Complainant to visit the office of the Chief Commissioner and meet the Dy. Chief Commissioner, who will explain to him the versions of the Respondent and take on record any written submission that he may have to furnish.

13. Submission made by the Complainant after hearing dated 17.05.24:

13.1 मुख्य आयुक्त दिव्यांगजन के निर्देशानुसार शिकायतकर्ता दिनांक 21.05.2024 को मुख्य आयुक्त दिव्यांगजन के द्वारका, नई दिल्ली स्थित कार्यालय में उपस्थित हुआ और उप मुख्य आयुक्त, श्री प्रवीण प्रकाश अम्बष्ठ, से मिलकर अपना पक्ष रखा। शिकायतकर्ता ने कहा कि उसके केस क्रमांक 13691/1024/2023 एवं 13795/1021/2023 में दिनांक 17.05.2024 को सुनवाई होना सुनिश्चित हुआ था, परन्तु उसकी लेवल बी ट्रेनिंग जो कि 29.04.2024 से 17.05.2024 तक थी और 17.05.2024 को उसे assignments जमा करने थे और वहां नेटवर्क भी काम नहीं कर रहा था। श्रवण बाधित होने कि वजह से वह बिना किसी की मदद के सुनवाई में भाग नहीं ले सकता था।

13.2 शिकायतकर्ता ने कहा कि उसने अवर श्रेणी लिपिक (LDC) की नौकरी वर्ष 1994 में शुरू की। सन 2008 में वरीयता के आधार पर उसकी पदोन्नति उच्च श्रेणी लिपिक (UDC) में हुई और उसे 2006 का SL दिया गया। तत्पश्चात उसकी सहायक ग्रेड (अभी ASO) में Ad-hoc आधार पर 2015 में पदोन्नति हुई जिसे 2016 से रेगुलर कर दिया गया था। उसकी 8 साल की Approved Service 30.06.2024 को पूरी हो जायेगी। दिनांक 28.12.2023 के DoPT के कार्यालय ज्ञापन के अनुसार 30.06.2016 से ग्रुप A और B में दिव्यांगजन को भी पदोन्नति में आरक्षण की व्यवस्था की गयी है। उपरोक्त के अनुसार उसकी पदोन्नति आरक्षण के नियमानुसार Section Officer Grade में सुनिश्चित की जाये। अगर उसे 2024 में पदोन्नति मिल जाती है तो उसकी कोई शिकायत नहीं रहेगी।

14. Observations and Recommendations:

14.1 After hearing both the parties and from perusal of the records submitted by them, the Court observed that the Complainant is a member of the Central Secretariat Service and his instant grievance emanates from the alleged delay in granting his promotion to the grade of Assistant Section Officer (ASO) and the next promotion to the grade of Section Officer (SO). It is a matter of record that both these posts are Group B posts in the CSS. For the persons with benchmark disabilities, reservation in promotion to Gp A & B posts was first introduced on 17.05.2022. Later vide DoPT OM dated 28.12.2023, the said reservation was given retrospective effect on a notional basis wef. 30.06.2016.

14.2 Incidentally, the Complainant, who got his promotion to the grade of SSA through the select list of 2006 and as such whose approved service in the grade commenced wef. 01.07.2006, completed the minimum service of 10 years required for promotion from the SSA grade to the ASO grade on 30.06.2016. Since he was given the regular Select List of 2016 in the grade of ASO, there was no discrimination against him on the ground of his disabilities, and none of his rights as a PwBD were compromised.

14.3 In view of the foregoing, there does not appear to be any grounds for this Court to intervene in this matter except to recommend the respondents to ensure that his next promotion to the grade of SO is granted strictly as per the service rules and the instructions of the DoPT issued in pursuance to Section 34 of the RPwD Act, 2016. A Compliance Report be filed within 90 days from the date of this Order.

14.4 The case is disposed of accordingly.

Signed by Rajesh Aggarwal

Date: 28-05-2024 14:14:34

(Rajesh Aggarwal)

Chief Commissioner
for Persons with Disabilities

Case No. 13795/1021/2023-Order

From : O/o CCPD <ccpd@nic.in>

Tue, May 28, 2024 03:48 PM

Subject : Case No. 13795/1021/2023-Order 1 attachment**To :** Anirudh Mahto <anirudh.mahto@nic.in>, Office of Secretary, Personnel <secy_mop@nic.in>, O/o DS/Dir(Admin) <diradmin@nic.in>, T.V. Somanathan <secyexp@nic.in>

Madam/Sir,

Please find the attachment.

Office of the Chief Commissioner for Persons with Disabilities (Divyangjan),
Department of Empowerment of Persons with Disabilities(Divyangjan),
Ministry of Social Justice & Empowerment, Govt. of India,
5th Floor, NISD Building, Plot No.G-2, Sector-10,
Dwarka, New Delhi-110075
Ph. No.011-20892364, 011-20892275

 **13795-Order.pdf**
154 KB



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

5th 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. 14177/1022/2023

In the matter of—

Shri Vijay Pratap Singh Chauhan
FM (Mech), DNAI/UW
West Block – 5, R K Puram
New Delhi – 110066
Email – kpsc235@gmail.com

...Complainant

Versus

(1) Director of Civilian Personnel
Directorate of Civilian Personnel,
Integrated Headquarters, Ministry of Defence (Navy)
Talkatora Stadium Annexe Building
New Delhi – 110001
Email – dcp-navy@nic.in

...Respondent No. 1

(2) Director General of Naval Armament Inspection
Directorate General of Naval Armament Inspection,
Integrated Headquarters, Ministry of Defence (Navy)
West Block V (FF) Wing 1 & 5
R K Puram, New Delhi – 110066
Email – dgnai@navy.gov.in

...Respondent No. 2

1. Gist of the Complaint:

1.1 Shri Vijay Pratap Singh Chauhan, a person with 85% hearing impairment filed a complaint vide email dated 05.06.2023 regarding reservation in promotion. He applied for promotion to the post of CTO (Mech) under PwBD quota on 21.04.2023, but without giving any reply to his application, Respondent No.1 issued a panel without any PwBD candidate. Aggrieved by this, the Complainant filed a Writ in the Delhi High Court on an urgent basis. On the basis of the directions of

the Hon'ble High Court, Respondent No.1 replied to his representation on 16.05.2023 and denied his candidature on three grounds. He again submitted a representation to Respondent No.1 with justification/ clarification on those grounds.

1.2 The Complainant further submitted that Respondent No.1, in response to his representation, quoted SRO 1972, stating that the eligibility for promotion from Senior Foreman to CTO, the eligibility period was mentioned as 03 years, but not for Foreman to CTO. During the sanction of merging the posts of Foreman and Senior Foreman and altering the strength of the Foreman and CTO, the eligibility period of promotion was not decided. He further submitted that as per the government rules & regulations, after implementation of the recommendation of every pay commissions, the RRs should be amended as per government order. But, the Respondent did not follow these Government instructions.

1.3 In support of his claim, the Complainant enclosed a copy of the DOPT's O.M. No.AB14017/48/2010-Estt.(RR) dated 31.12.2010 issued after the recommendations of the 6th Pay Commission for Revision of Guidelines for Framing/Amendment/Relaxation of Recruitment Rules. The said guidelines provided that the qualifying service for promotion from a post-carrying Grade pay of Rs. 4600 to the higher one with GP of Rs. 4800 would be 02 years. Similarly, after the 7 th CPC, the DoPT issued another OM vide. F. No. AB - 14017/4/2021- Estt. (RR) dated 20.09.2022 for revised pay levels as per the recommendations of the Seventh Central Pay Commission for promotion from level 7 to level 8 was also kept as 2 years. The DoPT ordered this amendment to be carried out in the case of group A and group B posts within six months from the date of issue of this memorandum. Still, the department did not amend the RRs and thereby debarred him for promotion.

1.4 The Complainant also submitted that if for any reason, the department has not amended the RRs, it should follow the government instructions, DOP&T's order for the eligibility period for promotion from level 7 to level 8. He also requested this Court that the candidature of PwBDs be considered and if candidates are not available in extended Zone to fill up the remaining vacancies reserved for them, provided they are not found unfit for such post so as to follow the Hon'ble Supreme Court order and Section 34 of the RPwD Act, 2016.

2. Submissions made by the Respondent:

2.1 On behalf of the respondents, the Senior Administrative Officer (CP) – G,

filed a Reply dated 12.07.2023 and submitted that the Complainant is holding the grade of FM (M), a Group 'B' Non-Gazetted post in Level-7 w.e.f. 11.03.2021. The Complainant vide his application dated 05.06.2023 has requested to consider him for promotion to the Grade of CTO (M) against the PwBD Quota in the DPC year 2023. The Respondent further submitted that there were 07 vacancies in the grade of CTO (Mech) in the DPC year 2023. Foreman (Mech) with 03 years of service in the grade rendered after appointment thereto on regular basis are eligible for consideration for promotion to CTO (M).

2.2 The normal zone of consideration for 07 vacancies was 18 and the extended zone of consideration was 35 as per DoPT's OM dated 06.01.2006. All the 07 vacancies were earmarked for unreserved according to the post-based reservation roster mentioned in DoPT's OM dated 02.07.1997. Also, out of these 07 vacancies, 01 was reserved for PwBDs as per DoPT's OM dated 17.05.2022.

2.3 The Respondent also submitted that the DPC for filling up the above 07 vacancies was held on 20.04.2023. All 07 candidates were recommended for empanelment by the DPC as the eligible PwBDs candidate was not available in the normal/extended zone of consideration. Hence, PwBDs reservation was carried forward to the next DPC year. Accordingly, a panel consisting of candidates from Sl. 01 to 07 of the seniority list as recommended by the DPC, was issued vide IHQ MoD(N) letter dated 03.05.2023.

2.4 The Respondent further submitted that the Complainant was the only PwBD candidate in the feeder grade at Sl. No. 76 of the seniority list. The Complainant was not considered eligible in the DPC on multiple grounds as follows: -

- a. The Complainant was not in possession of PwBD status as of the crucial date of eligibility, i.e., 01.01.2023 of the DPC 2023 as per DoP&T's OM dated 08.05.2017.
- b. The Complainant had not completed requisite qualifying service of 03 years in the grade of FM(M) on the crucial date of eligibility, as prescribed in the Recruitment Rules.
- c. The individual was well beyond the normal as well as extended zone of consideration. The Complainant was at Sl. No. 76 of the seniority list.

2.5 The Complainant's application dated 21.04.2023 was received at IHQ, MoD

(N)/DCP on 03.05.2023 after promulgation of the above promotion panel. The Complainant vide his application had requested to consider him for promotion to the grade of CTO (M) under the PwBD quota. However, the same was found not admissible as brought out above. The Complainant vide his application dated 19.05.2023 again requested consideration for promotion to the grade of CTO (M) on his own misunderstanding / misinterpretation of the Government Rules.

2.6 The Respondent also submitted that the Complainant had also filed a WP (C) 6419 /2023 & CM Appl. 25297/2023 before the Hon'ble High Court of Delhi. The Hon'ble High Court vide its order dated 16.05.2023, directed Respondents to decide the representation dated 21.04.2023 within 04 weeks and communicate the decision to the petitioner within 01 week. The representation was examined and the same was disposed of on 16.05.2023. It is also pertinent to mention that the Complainant approached the Hon'ble High Court without exhausting the remedies/disposal of his representation through proper channels from the Department.

2.7 The Complainant vide his application dated 05.06.2023 has now approached the Court of the Chief Commissioner or Persons with Disabilities to consider his promotion to the grade of CTO (M) against PwBDs quota by providing relaxation in eligibility and without the restriction of the zone of consideration. The request of the Complainant for promotion was re-examined and found not admissible due to the reasons as brought in the above paras. He has requested to dismiss the application of the Complainant in view of the following :- (i) There was no discrimination with the Complainant for considering him for promotion to the grade of Civilian Technical Officer (Mech) against PwBDs quota on the part of Naval Headquarters and the provisions of DoP&T O.M. dated 17.05.2022 are being complied; and (ii) The Complainant is not eligible for consideration for promotion to the grade of CTO (M) in DPC year 2023 due to the multiple reasons as brought out above.

3. Submissions made in Rejoinder:

3.1 The Complainant filed his rejoinder vide email dated 02.08.2023. He submitted that he is a Defence Civilian employee and Central Civil Services Rules are followed in his service-related matters. DoP&T is the competent Authority for the formulation of policy regarding Central Civil Services Rules. He further submitted that the Cadre Controlling Authority may relax crucial date eligibility criteria as prescribed in the recruitment rules/service rules (RRs/SRs) for these

posts/cadre, as on the crucial date viz 01.01.2023, for up to a maximum period of 03 months. Relaxation in eligibility service is to be accorded in such cases where the employees would have been eligible for being considered for promotion as of 01.04.2023, but due to the change in the crucial date to 01.01.2023, they become ineligible for being considered for promotion during 2023. Relaxations in eligibility service for those employees who would complete eligibility service in RRs between 01.01.2023 to 31.03.2023 for DPC of 2023. However, his category was changed from General to General-PwBD from 19.01.2023, which was between 01.01.2023 to 31.03.2023. His service eligibility 02-year service in Foreman (Mech.) - 4600 grade in regular basis was also completed on 11.03.2023, which was also between the 01.01.2023 to 31.03.2023. As per the handbook for Administration of Civilian Personnel issued from IHQ-MoD(N) dated 02.05.2017, page no 34 also mentioned that eligibility for DPC on the crucial date would be 1st April, where APAR is written on a financial year basis.

3.2 The Complainant further submitted that if a sufficient number of PwBDs were not available on the basis of general standards to fill all the vacancies reserved for them, the PwBD candidates may be selected on relaxed standards to fill up the remaining vacancies reserved for them. He was the only PwBD candidate in the foreman grade in DGNAI and there is no representation of PwBD in CTO (Mech) grade of DGNAI.

3.3 The Complainant submitted another response vide an email dated 20.02.2024 and submitted that Respondent No. 1 released panel for promotion to the grade of Civilian Technical Officer for the year 2024. In this panel no PwBD candidate was considered for promotion this year also to level 8 from level 7 and the vacancy of PwBD is filled by general candidates.

4. Hearing:

4.1 A hearing was conducted on 15.04.2024 in hybrid mode. The following parties/representatives were present during the hearing:

SI No.	Name of Parties / Representatives	For Complainant/ Respondent	Mode of Attendance
1.	Advocate Uddhav Pratap	For Complainant	Online
2.	Shri Tazammul Hussain, Chief Adm. Officer	For Respondent 1	Online

3.	Ms. Sarika Sharma, Dy. Director	For Respondent 2	Online
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6. Record of Proceedings:

6.1 At the outset, the Chief Commissioner asked the parties to briefly state their cases.

6.2 The learned counsel for the Complainant submitted that since he was the only eligible candidate with disabilities in the feeder grade and one vacancy out of the seven for which the DPC was being held was reserved for PwBD, non-consideration of his candidature was impermissible. He further quoted from the DoPT instructions on the reservation in promotion issued vide their OM dated 17.05.2022 to submit that the reserved vacancies will be filled up separately from amongst the eligible candidates with benchmark disabilities who are lower in merit than the last candidate in the merit list, but otherwise found suitable for appointment, if necessary, by relaxed standards. He further submitted that if a sufficient number of PwBDs were not available on the basis of general standards to fill all the vacancies reserved for them, the PwBD candidates may be selected on relaxed standards to fill up the remaining vacancies reserved for them.

6.3 The representative of the Complainant stated that DoPT O.M. dated 12.08.2021 clears the shifting of the financial year to the calendar year. Since the Complainant was from the General PwD category, the vacancies notified in 2023 shall follow the DoPT O.M. dated 12.08.2021 in his favour. In the promotion from P-7 to P-8 level, a minimum 2-year qualifying service is required. The Respondent is applying O.M. and Circulars which are in their favour. As per DoPT O.M. dated 17.05.2022, it is clear that the PwD candidate may be selected or given relaxation in selection. The Respondent is not justified in rejecting the candidature of the Complainant and moreover, the vacancy is carried forward. The DoPT O.M. dated 17.05.2022 mentions provisions for notional promotion. The Complainant is qualified for P-8 promotion. A special DPC may be conducted to provide P-8 level promotion to the Complainant.

6.3 The Respondent No. 1 stated that a zone of consideration is prepared for providing relaxation to the employees. If eligible candidates are not available, then the normal zone can be extended up to 5 times. In the year 2023, there were 7 vacancies and the zone of consideration was extended up to $7 \times 5 = 35$. The Complainant was at serial no. 76 at that time and hence was not considered for

promotion. No relaxation is given to anyone more than 5 times the extended zone of consideration. The qualifying service required for promotion is 3 years but his qualifying service was 2 years only. Every year in the 100 Points reservation roster, Point No. 1 is reserved for PwD employees and if he falls in the zone of consideration, he is qualified for promotion. Further, on 01.01.2024, there were only 10 vacancies and the zone of consideration was extended to 50. The Complainant was at serial no. 68 and his qualifying service of 3 years was to be completed in March 2024. The respondent confirmed that as per Recruitment Rules the post is a selection post.

7. Observations and Recommendations:

7.1 After hearing both the parties, this Court observed that the Complainant's disability certificate is dated 19.01.2023. As per the DOP&T's O.M. dated 10.06.2009, he will be eligible for benefit of disability from the date he submitted the copy of his disability certificate in his office.

7.2 This Court is of the opinion that the request for relaxation of qualifying service by three months is in the nature of relaxation in the eligibility criteria and is not a relaxation in the standards of suitability. In terms of para 8 of the DoPT OM dated 17.05.2022, such relaxation is not permissible. In so far as his claim for promotion on the grounds that one vacancy was reserved for PwBD and he was the only person with benchmark disability in the feeder grade is concerned, the opening sentences of para 13.1 of the aforesaid instructions of the DoPT is relevant and is quoted as under:

"13.1 While filling up the reserved vacancies by promotion by selection, those PwBD candidates who are within the normal zone of consideration, shall be considered for promotion. However, if adequate number of PwBD candidates of the respective category are not available within the normal zone, the zone of consideration may be extended to five times the number of vacancies and the PwBD candidate falling within the extended zone may be considered for promotion. In the event of non availability of candidates even in the extended zone, the vacancy shall not be filled and be carried forward to the subsequent year..."

7.3 There is no provision to further extend the extended zone of consideration for effecting reservation in promotion.

7.4 This Court concludes that the Complainant has failed to establish any case of deprivation of his rights as a person with disabilities or of any discrimination on the grounds of disabilities. As such, the relief sought can not be granted.

7.5 However, the Respondent made a mistake by filling all the seven vacancies including the one reserved for PwBD and merely carrying forward the reservation. As per section 34 of the RPwD Act, 2016 and para 13 of the DoPT OM dated 17.05.2022, the reserved vacancy should not have been filled in the first recruitment year and it should have been carried forward to the subsequent year.

7.6 This Court directs the Respondent to submit an Action Plan outlining the corrective measures it wishes to take for the above-mentioned irregularity within one month from the date of this Order. No further intervention is required in this matter.

7.7 The Case is disposed of accordingly.

Signed by Rajesh Aggarwal

Date: 01-05-2024 13:30:20

(Rajesh Aggarwal)

Chief Commissioner for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

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Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

In the matter of—

Case No. 14474/1022/2023

Ms. Rashmi Suryavanshi

Khasra No. 215-216,

Metro Pillar-536,

Mundka, West Delhi,

New Delhi- 110041,

Mobile: 9667722910

Email: rashmisuryavanshi100@gmail.com ... **Complainant**

Versus

The Commissioner

Navodaya Vidyalaya Samiti,

B-15, Institutional Area, Block B,

Industrial Area, Sector 62, Noida,

Uttar Pradesh-201307

Email: commissioner.nvs@gov.in ... **Respondent**

1. Gist of the Complaint:

1.1 Ms. Rashmi Suryavanshi, a person with 100% visual impairment filed a complaint dated Nil regarding transfer to her native place. The Complainant submitted that she is an employee of Navodaya Vidyalaya Samiti (NVS) and has been working as a JSA at JNV, Ambala **since 08.06.2023**. This is her initial posting. After joining, she suffered from illness due to extreme heat and dehydration and hence she had to come to Delhi.

1.2 The Complainant further submitted that she is facing a lot of difficulties after

joining the institution. The Principal and the staff of the NVS Ambala are very cooperative and help her in handling her problems. However, she is finding it difficult to cope. The main problem for her is that the campus is far from the market area. She is not able to manage things for daily needs. She cannot drive a vehicle due to her disability. Her father is also severely ill and is undergoing treatment. Therefore, her family members are unable to stay with her.

1.3 The Complainant requested this Court to help her in getting a transfer from JNV, Ambala to JNV, New Delhi, or nearby New Delhi.

2. Submissions made by the Respondent:

2.1 The Deputy Commissioner (Pers.), NVS, HQ vide their email dated 09.11.2023 filed the reply and submitted that the Complainant was selected for the post of JSA under the PH category. While considering her posting as per Para 3 (q) of the Transfer Policy 2021, there was no vacancy for JSA in Delhi and nearby JNVs. Accordingly, considering her PwD category and her hometown being in Delhi, she was given an initial posting to the nearest JNV at Ambala within the Jaipur Region.

2.2 The Respondent further submitted that vide a request dated nil, she requested for transfer from JNV, Ambala to Delhi or nearby Delhi. The transfer of employees in NVS is governed by the provisions contained in Transfer Policy 2021, according to which such requests are processed through online mode in a totally fair and transparent manner. It accords the highest priority to the request of PwD employees to accord transfer to a place of their convenience subject to the availability of the vacancy and completion of the mandatory lock-in period to the extent applicable. ***A period of 02 years as lock-in shall remain applicable on all kinds of transfer and posting for new recruits on Direct Recruitment (on Probation) as well as posting of existing employees on promotion. A request for transfer from an employee on initial posting after recruitment is not considered before completion of the prescribed mandatory tenure at the initial place of posting. The tenure of PwD category employees is fixed as 02 years to seek them transfer-on-request after completion in comparison to Non-PwD employees for whom it is 7 years.***

2.3 The Respondent further submitted that all available provisions were adhered to while deciding the initial posting of the Complainant. Accordingly her posting to JNV, Ambala is justified. Now her request for transfer from JNV, Ambala to elsewhere shall also be taken on highest preferential treatment as per established provisions laid down in NVS Transfer Policy 2021. Accordingly, the claim of the

Complainant for transfer to Delhi or nearby before completion of the lock-in period has no substance and merit adhering to the provisions of the Transfer Policy.

3. Submissions made in the Rejoinder:

3.1 The Complainant vide email dated 11.01.2024 filed the rejoinder reiterating her complaint and inter-alia submitted that the location where she resides is prone to snake bite and scorpion bite. She is facing danger to her life being a PwD with 100% visual impairment (blindness). She has to travel 10 Kms to a nearby market to buy her daily needs and being a girl she gets exposed to every possibility of risks like eve teasing, kidnapping, and acid attack. Moreover, there are no Govt. hospitals around the campus. She also submitted that after a long treatment, her father died on 13.07.2023. She has to look after her 52-year-old widowed mother residing in Delhi as no one is there to look after her mother after the death of her father.

4. Hearing:

4.1 A hearing was conducted in the matter on 15.04.2024 through hybrid mode. The following parties/representatives were present during the hearing:

SI No.	Name of the parties / Representatives	For Complainant/ Respondent	Mode of Attendance
1.	Shri Sandeep	For Complainant	Online
2.	Shri Vikram Joshi, Dy. Commissioner	For Respondent	Online

5. Records of Proceedings:

5.1 At the outset, the Chief Commissioner asked the Respondent about the posting policy of the NVS particularly for the new recruits, and also whether the Respondents have ever made any exception for anyone regarding relaxation in the lock-in period of initial appointment for the transfer.

5.2 The Respondent stated that it is their policy to provide postings nearest to the native place for the PwD employees. In the case of the Complainant too, an

attempt was made for the same. However, there was no vacancy in the NCR region. As a result, it was decided to post her to the next nearest place, Ambala where the vacancy was available at that time. As per the Transfer Policy-2021, there is a lock-in period of 2 years for the transfer of a PwD employee as against 7 years for non-priority employees. This policy of lock-in is applicable to all categories of employees and there has been no exception in the application of the policy for any category of employees. As per provisions of the Transfer Policy-2021, an employee under the PwD category is accorded the highest priority.

5.3 The Respondent assured that after completion of the lock-in period, the transfer application of the Complainant will be considered. He also indicated that there is a likelihood of a vacancy arising In Delhi in November 2024 and her case will be considered on priority.

5.3 The representative of the Complainant stated that the Complainant is facing a lot of difficulties in her day-to-day life. Being a single PwD female, she is prone to any accidents/ incidents as she is living alone in campus. She is unable to manage herself and hence requested to consider her application for posting to New Delhi as she is much familiar to New Delhi. He also submitted that after the death of the Complainant's father, her mother has been alone at home. The Complainant is the only earning member in her family and has to look after her mother and a school-going younger brother.

6. Observations & Recommendations:

6.1 After hearing both parties, this Court observed that the Respondent has complied with the provisions of Section 20 (5) of the RPwD Act by formulating and issuing a Transfer Policy, wherein special provisions have been made for employees with disabilities. The Respondent has also stated that they have not given any exception to any other employees in so far as the policy of lock-in is concerned. There appears to be an effort on the part of the Respondent to keep the Complainant in a place nearest to her native place/preferred place as per the available vacancies, which aligns with the instructions of the DoPT OMs of 31.03.2014 and 02.02.2024 on the subject. As such, there appears to be neither any violation of the statutory provisions or government instructions nor of any discrimination on the grounds of disabilities.

6.2 This Court further observes that the case of the Complainant is on purely compassionate grounds. Factors concerning her family condition, service

condition, and the disadvantages arising due to her visual impairment make this a compelling case to be resolved at the earliest. The Respondent has narrated how their policy is transparent and has been applied universally without any exception, but has not furnished sufficient reason or elaboration for not treating this case as an exception other than stating that the same will be to the detriment of their administrative need. However, considering all the facts of the case including the submissions of the parties, and keeping in mind the legal framework on the subject, this Court is not inclined to go any further than to advise the Respondent to reconsider the Complainant's request at the earliest opportunity.

6.3 Accordingly, the case is disposed of.

Signed by Rajesh Aggarwal
Date: 01-05-2024 13:31:27

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice & Empowerment
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In the matter of—

Case No. 14506/1022/2023

Ms. Pratheeksha V R
 Pratheeksha (House),
 Eruva West,
 Kareelakulangara P.O.
 Kayamkulam, Alleppy
 Kerala- 690572,
 Mobile: 9526273757
 Email: pratheeksha.vr@gmail.com

...Complainant

Versus

The General Manager,
 Indian Overseas Bank,
 Central Office, 763, Anna Salai,
 Chennai-600002
 Tele No. 044-28889292
 Email: gmhr@iobnet.co.in
 padsup@iobnet.co.in

...Respondent

1. Gist of the Complaint:

1.1 Ms. Pratheeksha V R, a caregiver of her two children, who are 90% visually impaired filed a complaint vide email dated 20.09.2023 regarding the cancellation of her transfer order.

1.2 The Complainant submitted that she is working as a Manager in Indian

Overseas Bank. She is a caregiver of her two children, who are 90% visually impaired. Her husband is employed in a Private Firm and is posted in Thrissur District and therefore unable to support the children personally. Her children are totally dependent on her for their personal, emotional, and academic support.

1.3 The Complainant further submitted that as per the Bank's transfer policy, she got transferred to the Trichy Region in the year 2021 on completion of a maximum term of 6 years, but on her request, she was retained on compassionate grounds. Again in the year 2022, she was transferred to the Coimbatore Region vide transfer order dated 08.07.2022. She submitted a request to the General Manager, HRMD, Central Office Chennai on 11.07.2022 regarding retention on compassionate grounds but without any reply or consideration, she was relieved on 30.07.2022. Due to her children's health issues, she informed the Personnel Admin Department, Trivandrum as well as Coimbatore regarding her leave on medical grounds. After 45 days of leave, she got retention in the Trivandrum region up to March 2023 vide retention order dated 14.09.2022, along with an order to report to Kallumala Branch. In the said order it was mentioned that the leave will not be considered and the period of 45 days will be considered as Unauthorized Absence. Despite having sufficient leave in her credit, she was without pay for 45 days. She submitted a leave application after joining the Kallumala branch on 15.09.2022 but it was rejected by the Regional Office, Trivandrum on 24.01.2023 because the Central Office, Chennai in its Retention Order mentioned marking the period of absence as Unauthorized Absence. The leave application was submitted well in advance and no reply or rejection was received from the bank. As a result, it was presumed to be a sanctioned leave.

1.4 The Complainant further submitted that as rehabilitation of her children was not possible even after March 2023, she again represented to General Manager, HRMD on 08.03.2023 requesting for retention in Trivandrum Region but no reply was received. On 25.08.2023 she received a mail from Regional Office Trivandrum for immediate relief to the Coimbatore Region. She again represented to the General Manager, HRMD on 25.08.2023 and personally visited the Central Office, Chennai on 28.03.2023 along with her husband and son. The General Manager humiliated her and her family. She again sent her representation to the Executive Director-HRMD vide mail dated 01.09.2023 and the General Manager-HRMD on 02.09.2023. She was forcefully relieved on 02.09.2023 and after being relieved on 02.09.2023 despite applying for leave, the bank was not sanctioning her leave and her salary was stopped. She also mailed her grievance to the Grievance Redressal Officer on 05.09.2023 but did not get any acknowledgment or reply.

2. Submissions made by the Respondent:

2.1 The Deputy General Manager (HR), Indian Overseas Bank Central Office, Chennai vide email dated 01.11.2023 filed the reply and submitted that the Complainant joined the service of the bank on 21.11.2011 and was initially posted to Trivandrum and Ernakulum Region during the probation period. In the year 2012 despite her posting to Tirunelveli Region, she was retained in Ernakulum Region on her request. In 2015, on her promotion, the bank considered her request and transferred her to the nearby Trivandrum Region. She completed the tenure of 10 years in the same State and hence, as per the transfer policy, a transfer order issued on 16.10.2021 to post her to the Trichy Region. On her request, this transfer order was also cancelled by the bank on 28.10.2021. On 08.07.2022, the Complainant was transferred to the Coimbatore Region and was relieved from the Trivandrum Region on 31.07.2022. She did not report to Coimbatore but submitted representation seeking retention at the same place and it was considered by the bank to retain her upto 31.03.2023. The husband of the Complainant is working in Thrissur which is closer to Coimbatore than her present posting.

2.2 The Respondent further submitted that the Complainant remained absent from the period between her relieving from Trivandrum on 31.07.2023 and her posting to the Kallumala branch on 15.09.2023 without permission from the bank. Hence, the period between 01.08.2023 to 15.09.2023 was considered an Unauthorised absence. The Complainant was considered by the management compassionately and to the maximum limit permissible under the law. No further indulgence can be granted to her after exhausting all provisions of the service rules.

3. Submissions made in the Rejoinder:

3.1 The Complainant vide email dated 15.11.2023 filed the rejoinder reiterating her complaint and inter alia submitted that she is not satisfied with the reply of the Respondent. She submitted that though she was retained in the Trivandrum Region her postings were not near to her native place even if the transfer was within the Trivandrum Region. The work place of her husband is now much more nearer to Coimbatore than Trivandrum Region and has no relevance as the care of the children is a paramount duty for her.

4. Hearing:

4.1 A hybrid mode of hearing was conducted on 15.04.2024. The following

parties/representatives were present during the hearing:

Sl No.	Name of Parties / Representatives	For Complainant/ Respondent	Mode of Attendance
1.	Ms. Pratheeksha V.R.	Complainant	Online
2.	Shri Ashokan R., DGM (HR)	For Respondent	Online

5. Record of Proceedings:

5.1 At the outset, the Chief Commissioner asked the Respondent about their stand in the case.

5.2 The Respondent submitted that the Complainant joined the service of the Bank on 21.11.2011 in Chennai and was initially posted to Trivandrum Region. Since the beginning, she was posted in Trivandrum except for a short period when she had a posting at Earnakulum. These postings were her choice postings. In the year 2015, on her promotion, the Bank considered her request and transferred her to the nearby Trivandrum Region. As per the Transfer Policy 2021, she completed tenure of 10 years in the same State hence, In the year 2022, the Complainant was transferred to Coimbatore Region and was relieved from Trivandrum Region on 31.07.2022. She did not report to Coimbatore, but submitted representation seeking retention at the same place which was considered by the Bank and she was retained at Trivandrum up to 31.03.2023. Thereafter the Complainant was asked to join the new place of posting i.e. Coimbatore near Trivandrum where she had not joined. The Respondent also submitted that Kerala, Trivandrum, and Coimbatore are the adjacent regions. The Complainant's husband is working in Thrissur which is closer to Coimbatore than Trivandrum.

5.3 The Complainant submitted that she is a caregiver of her two children, who are 90% visually impaired and her husband is posted at Thrissur i.e. far away from Trivandrum. She submitted that in the year 2011, she was settled in Chennai with her husband and requested for posting in Chennai but she was posted at Trivandrum. Subsequently, her husband who works in a private company, got himself transferred to Thrissur. She also submitted that after promotion to Scale II, she was posted to Trivandrum Region which was not at her request as stated by the Bank. She submitted it will be difficult for her children to move with her to Coimbatore and adjust to a new atmosphere/school as there will be a linguistic barrier which will adversely affect the academic development of her children. The children also need her support in doing their assignments.

5.4 On the submission of the Respondent that in comparison to Trivandrum, Coimbatore is close to Thrissur, the place of posting of her husband, the Complainant submitted that her request is not for a posting near her husband's place of posting. Ever since she got her job in the bank they have never lived together. Thrissur is also 250 km from Trivandrum. Her request is to ensure that the children get their education in a familiar environment and in the company of at least one parent as they will be the ultimate sufferers if she is not posted back to Trivandrum. Hence, she wanted a posting at Trivandrum for the welfare of her children with disabilities despite her husband being posted far away from Trivandrum. She also submitted that the representative of the respondent appears to be unaware that she has already joined the new place of posting w.e.f. 01.04.2024. She said that it was a difficult decision to leave the children in the care of her aged parents, but it was becoming more difficult to survive with the children without getting her salary.

6. Observations & Recommendations:

6.1 After hearing both parties, this Court observed that in such matters generally the nationalized banks and insurance companies have been very sympathetic not only to employees with disabilities or caregivers but also to employees suffering from serious illness. There have also been examples of persons not facing any such difficulties who have been retained at the same place for a longer duration than what is permitted in their policies. In the case of employees with disabilities and caregivers, the central government has issued guidelines for exempting them from routine posting and transfers and such orders have been made applicable to the banks by the Department of Financial Services.

6.2 This Court is inclined to draw the attention of the Respondent to the relevant provisions of the RPwD Act, 2016, the RPwD Rules, 2017 and the instructions of the central government on the issue of posting and transfer of employees with disabilities, which are reproduced as under:

Section 20 (5) of the RPwD Act:

"(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

Section 21 of the RPwD Act:

"21. Equal opportunity policy.—(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government. (2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be."

Rule 8 of the RPwD Rules, 2017 prescribing the manner of preparing and notifying the Equal Opportunity Policy under Section 21 of the Act:

"8. Manner of publication of equal opportunity policy.

(1) Every establishment shall publish equal opportunity policy for persons with disabilities.

(2) The establishment shall display the equal opportunity policy preferably on their website, failing which, at conspicuous places in their premises.

(3) The equal opportunity policy of a private establishment having twenty or more employees and the Government establishments shall inter-alia, contain the following, namely:

(a) facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment;

(b) list of posts identified suitable for persons with disabilities in the establishment;

*(c) the manner of selection of persons with disabilities for various posts, post-recruitment and pre- promotion training, **preference in transfer and posting**, special leave, preference in allotment of residential accommodation if any, and other facilities;*

(d) provisions for assistive devices, barrier-free accessibility and other provisions for persons with disabilities;

(e) appointment of liaison officer by the establishment to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees.

(4) The equal opportunity policy of the private establishment having less than twenty employees shall contain facilities and amenities to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment."

Para I of the DoPT OM No. 36035/44/2023-Estt (Res-II) dated 02.02.2024 Detailing Guidelines for providing certain facilities in respect of persons with disabilities who are already employed in Government for efficient performance of their duties:

" I. Exemption from routine exercise of transfer! rotational transfer in respect of Government employee, who is a caregiver of Person with Disability dependents:

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/ brother/sister with Specific Disability, as

certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints...."

6.3 Considering the entire facts of the case and the submissions of the parties, this Court acknowledges that the instant matter pertains to the overall development of two children with special needs and accordingly makes a strong recommendation that the Respondent post the Complainant back to Trivandrum.

6.4 The case is disposed of accordingly.

Signed by Rajesh Aggarwal

Date: 01-05-2024 13:28:48

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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5th 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. 14675/1022/2023

In the matter of –

Shri V. Kaviyarasan
Drug Inspector,
Central Drugs Standard Control Organisation,
Directorate General of Health Services,
FDA Bhavan, ITO, Kotla Road,
New Delhi- 110002
Email: kaviyarasan.drugsinspector@gmail.com
Mobile: 8452864740

... Complainant

Versus

Drugs Controller General of India
Central Drugs Standard Control Organisation,
Directorate General of Health Services,
Ministry of Health & Family Welfare,
FDA Bhavan, ITO, Kotla Road,
New Delhi -110002
Email: dci@nic.in

... Respondent

1. Gist of the Complaint:

1 . 1 Shri V. Kaviyarasan, a caregiver to his mother Ms. Kalaimani, who is a person with 50% Mental Illness filed a complaint dated 27.11.2023 regarding transfer to his native place.

1.2 The Complainant has submitted that he is working as a Drugs Inspector in the Central Drugs Standard Control Organisation (CDSCO), New Delhi. His 74-year-old mother is suffering from Alzheimer's disease with 50% Mental Illness and he is the only caregiver to his mother. On 31.07.2023, he requested the Respondent's establishment to consider retaining him in the same workplace or anywhere in Tamil Nadu to enable him to take care of his disabled mother. Despite several requests, no positive response was received from the Director (Admin), CDSCO, HQ, New Delhi. The Complainant stated that the health condition of his mother requires constant care and his transfer to New Delhi is impacting his ability to provide essential care. Moreover, the cold climate of Delhi poses a severe risk and endangers the life and her health and safety.

2. Submissions made by the Respondent:

2.1 The Dy. Director Admin (Drugs), CDSCO, New Delhi vide letter dated 28.12.2023 filed the reply on behalf of Respondent and submitted that as per the Rules 51 and 52 of Drugs and Cosmetics Rules, 1945, the duties and functions of Drugs Inspector include inspections of all licensed drug and cosmetics manufacturer licensed Sales Units, Blood Banks, etc. The most important function of a Drug Inspector is to inspect agencies, companies, or organizations that produce, store, and sell any kind of foods, drugs, and cosmetics. The Drugs Inspector has the authority to revoke licenses to avoid compromising the safety, quality, and hygiene of medications.

2.2 As per the duties of a Drugs Inspector, it is required a rotational transfer/posting by the Competent Authority. Hence, the Complainant was posted/ transferred to various places since joining as a Drugs Inspector. The Complainant is ineligible as a caregiver of a dependent parent with a specified disability as per Sec 2 (r) of the RPwD Act, 2016 to claim an exemption from the routine/ rotational transfer as per the DoPT's OM dated 08.10.2018 which states:

"3(i) A government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability as certified by the certifying authority as a person with Benchmark Disability as defined under Sec. 2 (r) of the RPwD Act, 2016 may be

exempted from the routine exercise of transfer /rotational transfer subject to the administrative constraints.”

2.3 The Respondent further submitted that there is no explicit definition or details elaborated regarding Alzheimer’s disease in the definition of Mental Illness under the Schedule to the RPwD Act, 2016. Hence, the Complainant is not eligible to claim an exemption under the said DoPT's OM.

2.4 The Respondent further submitted that the word 'may' cannot be construed as mandatorily 'yes' for posting at the caregiver ground and DoPT has allowed discretion to the Government/Cadre Controlling Authority to take decisions in accordance with law. The words of the OM are “merely obligatory” and not mandatory in nature. It is the discretion of the department to consider the said guidelines or not while considering transfer cases.

2.5 The Respondent also submitted that the Complainant enclosed a Disability Certificate dated 16.11.2023 issued by Thanjavur Medical College Hospital, Thanjavur. The Certificate is prepared and issued just 10 days before the filing of the complaint. The DEPwD has issued Gazette notification S.O. 76(E) dated 04.01.2018, containing guidelines for evaluation and procedure for certification of various specified disabilities including mental illness. This process is a lengthy process for obtaining a disability certificate from the Competent Authority. The Respondent further stated that as per the DEPwD Gazette Notification SO 1736 (E) dated 05.05.2021, it is mandatory for all the States/UTs to issue Certificates of Disability only through online mode using the UDID portal after 01.06.2021.

2.6 The Respondent further submitted that while checking this disability certificate through the certificate number mentioned on it, no data is available on the website of UDID. It seems that the Complainant has somehow managed to fabricate this certificate with a malafide intention only to get the benefit of the said OM regarding exemption from rotational transfer. The issue of exemption from rotational transfer/posting has been considered by the Hon’ble Supreme Court of India and the Hon’ble High Courts of India and further decided that

transfer in an All India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting of one's choice. It was also decided by the Hon'ble Courts that the role of the Tribunals and Courts to interfere in the transfers and scope of the judicial review of such cases is limited. In view of the submission made in reply, the Respondent prays to dismiss the complaint.

2.7 The Respondent vide email dated 07.03.2024 further submitted ATR in respect to the complaint. It is stated that the Complainant has completed nearly three years of his tenure at South Zone, Chennai. The nature of the Complainant's position is inherently sensitive, necessitating periodic transfers and postings. Hence, the transfer of the Complainant to CDSCO (HQ), New Delhi does not constitute any illegality, arbitrariness, or malfeasance.

2.8 The Respondent vide a subsequent communication dated 12.04.2024 submitted that a Grievance Redressal Officer has been appointed to redress the grievances of the PwD employees as per Section 23 of the RPwD Act, 2016.

3. Submissions made in Rejoinder:

3.1 The Complainant filed the Rejoinder vide email dated 10.01.2024 reiterating his complaint, described the Alzheimer's disease, cited judgments of various Courts, and requested to pass favorable orders to revoke or cancel Complainant's transfer order to New Delhi on humanitarian grounds and uphold Complainant widow mother's rights under the Rights of Persons with Disabilities Act, 2016.

4. Hearing:

4.1 A hearing was conducted in hybrid mode on 15.04.2024. The following parties/representatives were present during the hearing:

Sl	Name of the parties/	For	Mode of
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No.	Representatives	Complainant/ Respondent	Attendance
1.	Shri V Kaviyarasan	Complainant	Physical
2.	Advocate Dinesh Kumar	Respondent	Online
3.	Shri Shakti Singh, Section Officer	Respondent	Online

4.2 At the outset, the Chief Commissioner asked the Complainant about details of his mother's UDID Card.

4.3 The Complainant submitted that his mother's Disability Certificate was issued by Thanjavur Medical College Hospital, Thanjavur on 16.11.2023. On a specific query of the Court regarding the date of applying for the UDID card he informed that he applied for the UDID card a week before 16.11.2023. The UDID Card bearing No. TN1940819500301096 was issued on 04.01.2024 showing 50% Mental Illness.

4.4 The Complainant further submitted that he was transferred to Chennai in the year 2020 and within 3 years he was transferred to New Delhi. His 74-year-old mother, suffering from mental illness, lives in Chennai and needs constant care which only he can provide. The Complainant requested this Court for transfer to Chennai or any place in Tamilnadu.

4.5 The Court sought the stand of the respondent on the matter. In response, the learned counsel appearing on behalf of the Respondent requested for adjournment by one day as the main counsel was unable to attend the hearing due to some health issue. This Court was not inclined to grant adjournment and sought as to why officers of the Respondent establishment did not join the hearing. The Counsel requested for some time to arrange the appearance of an officer of the department. The Court allowed a short adjournment and the hearing resumed after 10 minutes when Shri Shakti Singh, Section Officer (Gp B) appeared for the Respondent. The representative of the Respondent initially requested for adjournment citing the unavailability of the main counsel, but the same was not allowed by this Court. He submitted that the Complainant completed nearly three years of his tenure at South Zone, Chennai. The nature of the Complainant's duty is inherently

sensitive, necessitating periodic transfers and postings. As per CVC's Circular No. 03/09/13 dated 11.09.2013 regarding rotation of officials working in sensitive posts, it is prescribed that Ministries/Departments/Organizations and CVOs are mandated to identify the sensitive posts in their establishments and ensure that staff working in these posts are strictly rotated after every two/three years to avoid developing vested interests. Hence, the transfer of the Complainant to CDSCO (HQ), New Delhi does not constitute any illegality or arbitrariness.

4.6 The Court sought from the Complainant about his posting history so far. In response, he submitted that he was posted in govt. of NCT of New Delhi from 2005 to 2013; thereafter upon his recruitment in the Respondent establishment, he was initially posted to Mumbai in 2013. In 2015 he was transferred to Kolkata and within 30 days he was transferred to Guwahati. In 2016, he was transferred to Chandigarh, and on 16.08.2020 he was transferred to Chennai. On 31.07.2023, before the completion of his tenure of 3 years, he was transferred to New Delhi where he is presently posted.

4.7 The Court also sought from the Complainant about the present and past residence of his mother. He informed that his mother was previously residing at his native place in Thanjavur and now she is in Chennai.

4.8 The Court further asked about the details of siblings of the Complainant on which he informed that he has an elder sister who is married, is working, and lives approximately 50 km from his native place in Thanjavur in Tamil Nadu.

4.9 The Court asked the Respondent whether PwD employees are also being transferred in 3 years on which he informed that the rotational transfers are applicable also on the PwD employees but they are allowed to submit their choices.

5. Observations :

5.1 After hearing both parties, the Court expressed its displeasure over the manner in which the representative of the Respondent appeared before the Court without adequate preparation and kept asking for adjournment. It was evident that the Respondent had taken it

for granted that they would get the adjournment. It was also noted with deep concern that the Respondent was represented by a Group 'B' officer and no senior Officer was present despite clear stipulations for the deployment of a representative not below the level of Group 'A'/Class-I officer well-versed with the case at the time and date of hearing to present their case vide the Notice of Hearing dated 01.04.2024. This indifferent attitude towards an authority created by an Act of Parliament does not reflect well on the Respondent.

5.2 On the merits of the case, this Court needs to examine and determine the validity of arguments made by the parties on the following points:

- (a) Is the Complainant eligible/entitled for/to relief in the matter of posting/transfer as per the RPwD Act and the relevant instructions of the DOP&T?
- (b) Is the mother of the Complainant a person with a specified disability in terms of Section 2 (r) and the Schedule of the RPwD Act?
- (c) Are the provision of the RPwD Act and relevant instructions on the issue of transfer/posting of PwBD employees binding/obligatory on the establishments or they are merely recommendatory as claimed by the Respondent?
- (d) Has the Respondent establishment followed the relevant provisions of the Act and the relevant instructions?
- (e) Is there any conflict between the statutory provisions and government instructions on the issue of transfer/ posting of a person with disabilities or a caregiver and the CVC circular dated 11.09.2013 cited by the Respondent?
- (f) Lastly, does the impugned transfer order suffer from any illegality or is it an arbitrary or discriminatory order?

5.3 In order to examine the aforesaid issues, the following statutory provisions and government instructions need to be considered.

(a) Provisions from the RPwD Act, 2016 & RPwD Rules, 2017

(i) Section 2 –

Unless the context otherwise requires,

.....

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

.....

(r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(ii) Section 20 (5) :

“.....

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

(iii) Section 21 of the RPwD Act read with Rule 8:

21 . (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

Rule 8. Manner of publication of equal opportunity

policy.-

(1) Every establishment shall publish equal opportunity policy for persons with disabilities.

(2) The establishment shall display the equal opportunity policy preferably on their website, failing which, at conspicuous places in their premises.

(3) The equal opportunity policy of a private establishment having twenty or more employees and **the Government establishments shall inter alia, contain the following**, namely:-

(a) facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment;

(b) list of posts identified suitable for persons with disabilities in the establishment;

(c) the manner of selection of persons with disabilities for various posts, post-recruitment and pre-promotion training, **preference in transfer and posting**, special leave, preference in allotment of residential accommodation if any, and other facilities;

(d) provisions for assistive devices, barrier-free accessibility and other provisions for persons with disabilities;

(e) appointment of liaison officer by the establishment to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees.

(4) The equal opportunity policy of the private establishment having less than twenty employees shall contain facilities and amenities to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment.

(iv) Section 58 (3) read with Rule 19:

“58 (3) The certificate of disability issued under this section shall be valid across the country.

Rule 19. Certificate issued under rule 18 to be generally valid for all purposes.- A person to whom the certificate issued under rule 18 shall be entitled to apply for facilities, concessions and benefits admissible for persons with disabilities under schemes of the Government and of non-Governmental organizations funded by the Government.

(b) Instructions from DOP&T:-**(i) Para 3 of the DOPT OM No. 42011/3/2014-Estt. (Res) dated 08.10.2018**

“3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OMs of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

(i) A Government employee who is a care-giver of dependent daughter/ son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

.....”

(ii) DoPT OM No. 36035/44/2023- Estt. (Res) dated 02.02.2024

Detailing Guidelines for providing certain facilities in respect of persons with disabilities who are already

employed in Government for efficient performance of their duties:

"I. Exemption from routine exercise of transfer/rotational transfer in respect of Government employee, who is a caregiver of Person with Disability dependents:

(i) A Government employee who is a care-giver of dependent daughter /son/parents /spouse/ brother/sister with Specific Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints...."

5.4 Analysis of Submissions of Parties on the issues enumerated at para 5.2

(i)(a) The Complainant has submitted copies of disability certificate as well as of the UDID Card in respect of his mother. He has submitted that and submitted that his mother is dependent on him and he is the only caregiver to his mother, a fact which has not been rebutted by the respondent. He is, therefore, covered within the definition of 'caregiver' and is eligible for being considered for all the relaxations, and benefits extended to a caregiver. However, he is entitled to consideration only and not to get the relief as sought by him as all the aforesaid statutory provisions and instructions are in the nature of enabling and recommendatory provisions.

(b) The mother of the Complainant has been issued a disability certificate from a Competent Authority Medical Board at the government hospital, Thanjavur, Medical College Hospital, Thanjavur, and has also been subsequently issued a UDID card. But it needs to be noted that this certificate has been applied and obtained only after the order of the rotational transfer.

(ii) The Respondent's submission that they could not find any

data about the disability certificate on the website of the UDID is understandable because at the time of filing their reply to this Court on 28/12/2023, the UDID card was not yet issued. The UDID Card was issued subsequently on 04/01/2024.

(iii) From the reading of the legal framework as brought out in Para 5.3 above, it is clear that the provisions related to posting and transfer of employees with disabilities and those who are caregivers for dependents family members having specified disabilities are enabling or recommendatory in nature. However, as per Section 21 of the RPwD Act read with Rule 8 of the RPwD Rules, 2017, the formulation of an Equal Opportunity Policy is mandatory for all establishments. These provisions are in the nature of "reasonable accommodation" which have been considered necessary for providing equal opportunity in the matters of employment or appointment as enshrined under Article 16 (1) of the Constitution. Article 41 of the Indian Constitution also makes it obligatory for the State to make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement.

(iv) The Respondent has not submitted a copy of their Equal Opportunity Policy despite the clear stipulation and requisition of the same in the notice dated 06.12.2023 of this Court. The representative of the Respondent (Group B Officer) submitted before this Court that no exemption or waiver is given to any employee in so far as transfer/posting is concerned but persons with disabilities are allowed to submit their options. The same has, however, not been included in their written reply, and neither has any supporting document been submitted to this Court. Thus, the respondent's establishment has not complied with the statute in this regard.

(v) As the statutory provisions and government instructions on the transfer/posting of persons with disabilities or of caregivers are enabling in nature, there cannot be any conflict of these provisions with the circular of the Central Vigilance Commission which provides for the identification of sensitive and non-sensitive posts, tenures for such posts and for mandatory rotational transfer. Cadre

Controlling Authorities need to find a harmonious solution in each case considering the facts of the case, the rule position, and the precedents. Needless to say, government establishments cannot be seen to be arbitrary or discriminatory in the application of rules.

(vi) Considering the facts of the case, this Court is of the opinion that the impugned transfer order does not appear to be illegal, arbitrary, or discriminatory. The facts that the Complainant is a Gazetted Officer holding an important and sensitive post and that his current posting is in Delhi, which has all kinds of medical and other facilities available; cannot be overlooked. The Court has taken note of the fact that the disability certificate was issued very swiftly and just 10 days before the filing of the Complaint before this Court. However, it is not inclined to infer any malafide in the absence of any evidence to that effect.

6. Recommendation:

6.1 Considering all the facts of the case and the written submissions of the parties, this Court directs the Respondent to frame an Equal opportunity Policy in the manner as prescribed under Rule 8 of the RPwD Rules, 2017 incorporating therein reasonable accommodation to PwDs in the matter of posting/transfer and not treat them at par with non- PwD employees. The employers are expected to use this enabling provision to allow for reasonable accommodation to PwDs and caregivers.

6.2 This Court concludes that no further interference in this case is warranted. However, the Respondent is recommended to consider the request of the Complainant with an open mind in view of the provisions mentioned in the above paras.

6.3 Accordingly the case is disposed of.

Signed by Rajesh Aggarwal

Date: 08-05-2024 11:01:26

(Rajesh Aggarwal)

Chief Commissioner

for Persons with Disabilities

Email

O/o CCPD

Case No. 14675/1022/2023-Order

From : O/o CCPD <ccpd@nic.in>

Wed, May 08, 2024 03:00 PM

Subject : Case No. 14675/1022/2023-Order 1 attachment**To :** kaviyaran drugsinspector <kaviyaran.drugsinspector@gmail.com>, Dr. Rajeev Singh Raghuvanshi <dcj@nic.in>

Madam/Sir,
Please find the attachment.
Office of the Chief Commissioner for Persons with Disabilities (Divyangjan),
Department of Empowerment of Persons with Disabilities(Divyangjan),
Ministry of Social Justice & Empowerment, Govt. of India,
5th Floor, NISD Building, Plot No.G-2, Sector-10,
Dwarka, New Delhi-110075
Ph. No.011-20892364, 011-20892275

 **14675-Order.pdf**
183 KB



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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

5th 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. 13532/1102/2022

In the matter of —

Shri Amar Jain,
M2/5, Model Town 3,
Delhi-110009;
Phone: 9892622230;
Email: amarjain@amarjain.com

... Complainant

Versus

The Director/The Company Secretary,
Ani Technologies Private Limited,
Regent Insignia, #414, 3rd Floor,
4th Block, 17th Main, 100 Feet Road,
Koramangala, Bangalore-560034;
Email: CompanySecretary@olacabs.com;
bhavish.aggarwal@olacabs.com

... Respondent

1. Gist of Complaint:

1.1 Shri Amar Jain, a person with 100% Visual Impairment filed a complaint dated 05.09.2022 regarding the violation and non-implementation of the provisions of accessibility as stipulated in the Rights of Persons with Disabilities Act, 2016 [hereinafter referred to as "the Act"] and Rules thereunder by M/s Ani Technologies Private Limited, Bangalore [the Respondent].

1.2 The Complainant submitted that the respondent is a private company registered under the Companies Act, 2013, and provides services under the brand name of "Ola". Ola is India's largest mobility platform. The Ola app offers mobility solutions by connecting customers to drivers and a wide range of vehicles across

bikes, auto-rickshaws, metered taxis, and cabs enabling convenience and transparency for hundreds of millions of consumers and over 1.5 million driver-partners.

1.3 The Complainant submitted that he is unable to effectively access the Ola IOS application due to various accessibility barriers which inter-alia include the following:

- (a) The services offered on the app such as cab bookings, auto bookings, and bike bookings, are thoroughly unorganized and completely inaccessible with a screen reading software. Some buttons are not labeled at all. Some others have nonsensical labels;
- (b) Multiple elements are clubbed together which prevents screen reader users from selecting a given service and operating functionality of the app;
- (c) Many images do not have the alt text which makes images completely inaccessible for persons with blindness;
- (d) Banners have no meaningful text which is confusing in terms of accessibility;
- (e) The app has no accessibility framework embedded which prevents persons with blindness from operating the app;
- (f) Persons with blindness are not able to select pick-up location and destination from the search results as that is not announced by the screen reader;
- (g) Owing to all of these barriers combined, the experience of accessing the app for the Complainant is akin to a sighted person being required to access an app in a foreign language that she does not understand.

1.4 The Complainant further alleged that even after the implementation of the Act on April 19, 2017, and the Rules being notified on June 15, 2017, the app is not accessible.

2. Submissions made by the Respondent:

2.1 The Respondent filed its reply dated 22.12.2022 and denied all allegations.

They submitted that the scope of guidelines is limited to the government websites and portals, belonging to both the Central Government as well as State/UT Governments, (including District Administrations to Village Panchayats). Therefore, the compliance stated under the said Guidelines is not mandatorily applicable to private organizations like them.

2.2 The Respondent denied that their App does not provide such accessibility features at all. The App is already enabled with some features for indiscriminate use by all the users in general (as per the list attached). About the compliance of other things, being a customer-oriented organization, requisite actions towards complete enabling features have already been initiated. However, due to technicality and phase-wise rollout of the features and a complete enabling of the features on the app, a further period of 9 months is required for which the respondent implored.

2.3 The Respondent further submitted that they have not indulged in any non-compliance. Being a consumer-driven organization that provides services for the benefit of all the consumers as well as for the drivers, they are willing to enhance and improve their services for the betterment of their consumers.

2.4 The Respondent prayed for a personal hearing in the matter so that no adverse order is passed.

3. Submissions made in Rejoinder:

3.1 The Complainant filed a rejoinder vide email dated 23.02.2023 and submitted that despite supplying Practo order and a note explaining how the Act and the Rules apply to private establishments, such as a company like this along with the complaint which leaves no room for any ambiguous interpretation, the Company is denying the applicability of the very legal obligations themselves. The respondent is duty-bound to comply with the legal obligations under the RPwD Act, 2016. As far as the inaccessibility of the Ola app is concerned, and without agreeing to the annexure supplied by the Company, a very quick audit demonstrates how inaccessible the Company's app is for anyone to avail of the basic services it offers. For real solutions to problems being faced by people with disabilities, this Court must order the Company to undergo an accessibility evaluation which brings out the gaps and provides remedial measures. Failing that, at this juncture, it is impossible for someone with blindness to use a screen reader to even book a ride on the app.

4. Hearing (1):

4.1 An online hearing through video conferencing was conducted on **30.05.2023**. The following parties/representatives were present:

- (1) Complainant in person along with Adv. Rahul Bajaj
- (2) Ms. Sukirti, Sr. Legal Manager along with Ms. Aparna, Legal Assistant

4.2 During the online hearing the Complainant submitted that it is a long process to make the 'mobile app' of the Respondent's establishment called 'Ola' [hereinafter referred to as "app"] accessible and would require substantive time, however, some issues deserve immediate attention and necessary action, such as the features of pickup & drop location and driver information should be accessible for Persons with Disabilities.

4.3 This Court agreed with the preliminary observations made by the Complainant. This Court recommended that the Respondent should make features such as pickup & drop location and driver information accessible for Persons with Disabilities so that Persons with Disabilities can make these inputs without the assistance of another person.

4.4 This Court further recommended that the Respondent should conduct a meeting with the Complainant and identify issues relating to the accessibility of the app and prepare a roadmap for making all features of the app accessible for Persons with Disabilities.

4.5 Considering the continuous nature of the Complaint, this Court decided that a hearing should be conducted again in the present Complaint. The Respondent was directed to inform this Court about the compliance of the above two recommendations during the next hearing.

5. Response to Record of Proceedings dated 03.06.2023:

5.1 No response was received from the Respondent.

6. Hearing (2):

6.1 The next hearing (online through video conferencing) was conducted on **04.09.2023**. The following parties/representatives were present during the hearing:

- (1) Shri Amar Jain, the Complainant

(2) Ms. Aparna Tripathi, Assistant Manager for the Respondent

6.2 Since the main issue raised by the Complainant was the accessibility concern of the app of the Respondent, during the hearing, it was highlighted that the essential features of the app need to be made accessible to ensure true accessibility. This Court recommended that the Respondent must take steps to make all essential features of the app accessible for Persons with visual impairment within 2 weeks from the date of the Order.

6.3 Further, the Respondent was instructed to conduct testing of the app by involving some persons having blindness as well as by involving persons with low vision, to ensure its accessibility and the Respondent establishment should compare their app with the accessibility features of apps from other companies.

7. Response to the hearing conducted on 04.09.2023:

7.1 The Complainant vide email dated 06.09.2023 submitted that while two weeks is a fair time for compliance for blindness and low vision persons, the Respondent should be strictly directed to make its application accessible to all categories of persons with disabilities in line with the prevailing standards in a time bound manner. Failing which, the Respondent would fall foul of the Act and the rules made thereunder which would entail penal and other consequences.

7.2 No response was received from the Respondent.

8. Hearing (3):

8.1 The next hearing (online through video conferencing) was conducted on **04.11.2023**. The following parties/representatives were present during the hearing:

- (1) Shri Amar Jain, the Complainant
- (2) Ms. Aparna Tripathi, Assistant Manager for the Respondent

8.2 At the outset, the Chief Commissioner gave a background referring to the last Record of Proceedings dated 06.09.2023 of the hearing wherein the respondent was asked to have a meeting with the Complainant and members from blind and low vision community for their feedback on accessibility; to compare their App with similar Apps of other service providers and finally to make the essential feature of their App accessibility in the next two weeks.

8.3 The Court then sought the status from the Respondent. The Respondent confirmed that they had meetings with Shri Amar Jain and an employee from their

own company. One of the main concerns of the Complainant has been that the App is working fine with the Android version but not on the iOS. She said that iOS is a complex version. However, based on the feedback received from the Complainant and their employee, they made significant improvements in the App. Ms. Tripathi then made a video presentation to show the talkback/screen reader functionality of the App.

8.4 The Complainant, however, expressed his reservation, particularly on the aspect of inaccessibility of search result options on entering the pick-up and drop location. The Complainant explained that when one enters the pick-up and drop location several options prop up as the search results. But when any of those search results are selected, the screen reader is not able to read it out. The Complainant also expressed his concern that the internal employee can give valuable suggestions as a user, but he or she may not have the skill of an accessibility auditor.

8.5 This Court appreciated the efforts made by the respondent. However, it was concerned at the slow speed of the progress. The Court directed the respondent to make the App fully accessible by 15.12.2023 after getting it audited comprehensively by a recognized professional access auditor having IAAP certification on its accessibility for persons with various disabilities.

8.6 The Respondent sought some more time to comply with the directions, which were not accepted by the Court. Accordingly, the respondent was directed to submit an action taken report along with an undertaking that the App of the respondent complies with the BIS17802 Standards notified by the Ministry of Social Justice & Empowerment vide GSR 359(E) on 10.05.2023.

9. Response to the hearing conducted on 04.11.2023:

9.1 The Complainant vide email dated 14.11.2023 submitted that a video was shot by a person who has sight. But when a blind person navigates or types, that is not how one uses a screen reader. Even while choosing the alphabet, the finger was pointed at the exact location as opposed to touching letters and figuring out the alphabet which one wants to type. Best smartphone users with blindness globally are not able to do it with the precision that was shown in the video. Hence people with blindness need to be included while shooting the video.

9.2 The Complainant further submitted that the ability to select pick-up and drop-destinations is not fixed, which was the major complaint since day one.

Because, these persons with visual impairment are not able to book a ride at all. He prayed that the Respondent should be directed to conduct a proper accessibility audit from the people who are certified accessibility professionals from the International Association of Accessibility Professionals, with the designation "Certified Professional on Web Accessibility". Further, the audit report should be in line with the Bureau of Indian Standards 'IS 17802 parts one and two respectively. And that report should be placed on record for this Court's examination along with a copy of the same to him for review being a Complainant. The audit should be conducted for all criteria so that the issues can be addressed for all persons with disabilities and not just people with blindness. A community of users should be identified to regularly test the app from the user's perspective to ensure that the user inputs are factored in.

9.3 The Complainant vide email dated 22.12.2023 submitted that the Respondent has moved in the right direction by fixing the ability to choose pick up and drop location issue on IOS. As a result of just this fix, at least customers with disabilities have a choice to use another transport aggregator like Ola. They certainly have other issues like the cab quality or lack of sensitization of drivers, or never once in life charging the fair that was shown at the time of booking, but despite that, at least the consumer is empowered with one choice, especially in cities where they have a huge presence.

9 . 4 The Complainant further submitted that he has been requesting Ola ever since 2012 while others have been taking up the matter for the last 10 years. With the intervention and pro-activeness of this Court in the last one year, it has got to a stage where inaccessibility issues are now being taken seriously by Ola. The Complainant requested that the Respondent be directed to take all measures required to continue the newly added features to the App and make further improvements based on compliance with the BIS IS 17802, feedback from the PwD community and periodic access audit results. He submitted his request as under:

- (a) A written undertaking from the Respondent that they would comply with IS17802 (which is part of the last ROP issued by this Court);
- (b) Annual self-certification to be signed by the CEO and an Independent Director that they are complying with accessibility standards and the same should be produced to this Court upon requisition. Unless the CEO and Independent Director signature mechanism is brought in, the compliance will be done half-heartedly. As a lawyer having 10 years of experience he said

that the moment this mechanism is introduced, an Independent Director will not even look at a certificate without a backup that satisfies them on the due diligence being done to certify accessibility compliance;

(c) A clear direction that all existing features will be made accessible and any new features will not be rolled out without accessibility by design;

(d) Steps taken to ensure compliance with the ROP issued regarding the appointment of an accessibility auditor and other measures;

(e) Clear roadmap with timelines to ensure that existing flow will be made accessibility compliant in a time-bound manner;

(f) Ola to have specific training materials and workshops for Ola partners/drivers on how to deal with customers who have a disability;

(g) An excellent example of how it is being done by Namma Yatri, a Bengaluru-based auto rickshaw booking app who have launched Purple Rides for persons with disabilities, allowing users to disclose their disability in their profile, and conducting targeted training for drivers;

(h) These may be issued as interim directions, and once the timelines are abided by, this Court may hold a final hearing and assess if needful is done; and

(i) The progress may be monitored by this Court, otherwise just like other companies have dropped the ball like Make My Trip once the matter was disposed of, the same may happen in this case too.

10. Observations & Recommendations:

10.1 Upon considering the facts of the case and the submission of the parties, this Court concludes that the Respondent has shown its willingness and commitment to making their App accessible to the PwDs. They have made significant strides towards the same during the pendency of this case.

10.2 The Court recommends the Respondent to take the following measures for standardization and further improvement in the accessibility of the App:

(a) Allow users to disclose their disability in their profile alerting their

partners/drivers, if their next booking involves passengers with disabilities. The alerts can be sent in appropriate and sensitive graphics in addition to text or pop-up messages. Appropriate monitoring mechanisms should be put in place for monitoring unfair cancelations of bookings made by the PwD passengers ;

(b) Design and conduct appropriate training programs for the drivers on their joining the aggregator to sensitize them about the needs of persons with disabilities and train them on handling passengers with different types of disabilities.

(c) Appointment of an accessibility auditor and a nodal/grievance redressal officer;

(d) A clear direction from the CEO that all existing features will be made accessible and new features will be rolled out only after ensuring accessibility;

(e) Full compliance with IS 17802 and submission of an undertaking in this regard;

(f) Annual self-certification of continued compliance with accessibility standards to be signed by the CEO/an Independent Director which should be produced to this Court upon requisition.

10.3 A compliance report within 90 days, failing which 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 the Rights of Persons with Disabilities Act, 2016.

10.4 Accordingly, the case is disposed of.

Signed by Rajesh Aggarwal

Date: 10-05-2024 15:12:01

**(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities**

Email

O/o CCPD

Case No. 13532/1102/2022-Order


From : O/o CCPD <ccpd@nic.in>

Fri, May 10, 2024 04:36 PM

Subject : Case No. 13532/1102/2022-Order 1 attachment**To :** amarjain@amarjain.com, CompanySecretary@olacabs.com, bhavish aggarwal <bhavish.aggarwal@olacabs.com>

Madam/Sir,
Please find the attachment.

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Department of Empowerment of Persons with Disabilities(Divyangjan),
Ministry of Social Justice & Empowerment, Govt. of India,
5th Floor, NISD Building, Plot No.G-2, Sector-10,
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