



सत्यमेव जयते

EX-29

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

Case No: 12530/1021/2021

Complainant: Shri S. Kailasam, General Secretary  
All India Deaf Bank Employees Association  
A-1, New No. 43 (Old No. 22), Car Street  
Near Parthasarathy Temple, Triplicane, Chennai - 600005  
E-mail: <aidbea87@gmail.com>

Respondent: The Chief General Manager (HR)  
State Bank of India, Corporate Centre  
State Bank Bhawan, 16<sup>th</sup> Floor, Madam Cama Road  
Mumbai - 400021

Complainant filed by All India Deaf Bank Employees Association.  
Disabilities percentage of beneficiary not mentioned.

### GIST of the Complaint:

Complainant vide complaint dated 28.12.2020 has submitted that State Bank of India had conducted examination for their working sub-staff members for promotion to clerical cadre on 22.11.2020 and final results were declared on 18.12.2020. As many as 589 sub-staff members in Karnataka Zone were promoted to Clerical Cadre and their category was clearly mentioned in the list as SC, ST, OBC and General. He alleged that Bank has neither provided reservation in promotion nor maintaining 100 points reservation roster for PwDs and violating several Sections of RPwD Act, 2016. They have sought relief as - (i) Stay order in promotion in all Clerical Cadre for the promotion year 2020-21 for which the result declaration dated 18.12.2020. (ii) promotion of Deaf Sub staff Member Shri Jayaraju G.

2. The matter was taken up with the Respondent vide letter dated 05.01.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager & CDO, State Bank of India vide letter dated 17.02.2021 submitted that as per proviso to Section 34 (1) of the RPwD Act, 2016, there is no provision of reservation in promotion and para 07 of DoP&T OM dated 15.01.2018 very explicitly provides the reservation for PwDs in direct recruitment only. They

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further submitted that Bank is maintaining 100 point reservation roster and Bank is not violating Section 03 and 20 of the RPwD Act, 2016. As regard Sri Jayaraju G PF, he is a SC employee and as per the policy of Bank, he has been imparted pre promotional training from 19.10.2020 to 21.10.2020 and 09.11.2020 to 10.11.2020. The incumbent at no point of time made a request during the training to provide for sign language interpreter. On his request this will be provided in future.

4. After considering the respondent's reply dated **17.02.2021** and the complainant's rejoinder dated **18.03.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.04.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.04.2021**. The following were present:

- Shri S. Kailasam – complainant
- Shri D.B. Yedukkar, AGM on behalf of respondent

#### **OBSERVATIONS & RECOMMENDATIONS**

5. Complaint is filed by the Complainant alleging that the Respondent establishment has denied to extend reservation in promotion for Persons with Disabilities. It is also alleged that pre promotion training was not given to the Complainant and the Respondent is not maintaining 100 points reservation roster.

6. Respondent submits that reservation in promotion is not extended for Persons with Disabilities because as per Section 34 Proviso of Rights of Persons with Disabilities Act, 2016, reservation in promotion shall be in accordance with such instructions as issued by appropriate government from time to time. Respondent submits that the 'appropriate government' in the present case is Department of Personnel & Training ('DoPT'). Since DoPT has not issued any instructions on this point hence, Respondent cannot extend reservation in promotion to Persons with Disabilities.

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

8. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by Hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way reflects that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).

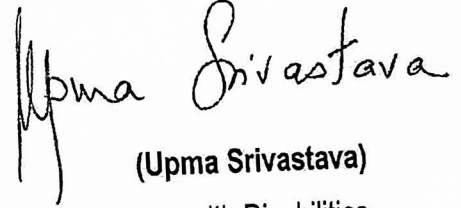
9. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of Hon'ble Supreme Court and High Court.

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

*Uma Srivastava*

11. In view of the clear directions of the Supreme Court and as fully detailed in the enclosed Orders, this court recommends that the Respondent shall pursue the Order attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the judgment of the Supreme Court in Rajeev Kumar Gupta and others Vs Union of India and others.

12. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 15.06.2021