

577



78

## 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. 11987/1011/2020

Complainant: Shri Shailesh Shetty, BA, Shetty Compound, Near Jharandhaya Temple, Boloorkatte, Mangalore - 575 003.

Respondent: Central University of Kerala (Through the Registrar), Tejaswini Hills, Periyar (P.O.), Kasargod (D.T.), Kerala - 671 316.

Disability : 45% Hearing impairment.

### Gist of Complaint:

The complainant vide his complaint dated 30.04.2020 submitted that he applied to the post of Assistant Professor in English in Central University of Kerala under Hearing Impaired category with eligible UGC NET score and Post Graduation degree in English. His application was not entertained as he was told that seats cannot be allotted for a person with hearing impairment in English department. He was told that they have reserved one seat under hearing impaired category in Education department and not in English department. He submitted that as per the reservation roster, the University has not reserved any seat for hearing impaired persons in English department till date.

2. The Registrar, Central University of Kerala vide letter No. CUK/LEG.SEC/NDC/2020 dated 25.11.2020 submitted that University had notified the vacant teaching posts by providing 4% reservation to PwD candidates in each post of Assistant Professor, Associate Professor and Professor vide Adv./T/1/2019 dated 14.06.2019. The total sanctioned posts in the cadre of Assistant Professor were 106. Hence, 4 posts are to be reserved for PwD candidates. The University had already filed 02 posts of PwD in Assistant Professor level. The remaining 02 posts are reserved for PwDs against said notification. One post of Assistant Professor was identified and reserved under category (b) - Deaf and hard hearing in the Department of Education. The recruitment against the said advertisement could not be conducted since the Vice Chancellor of the University was on extended period of tenure. Shortlisting of candidates was done for newly formed 04 departments only (Management Studies, Tourism Studies, Commerce & International Business & Kannada). The University has not shortlisted any candidates for interview in other departments including department of Education and Department of English. The Respondent submitted that the new Vice Chancellor took charge on 14.08.2020 and as per the decision of the Executive Council of the University vide Resolution No. EC:47:18 dated 25.09.2020, all the posts are to be re-notified since one year has elapsed. The re-notification will be done with a clause that the applications already submitted offline against Notification No.T/1/2019 will be considered provided



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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

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

31

they are updating their application online. The Respondent further submitted that the post of Assistant Professor in the Department of English was not reserved for PwD candidate in the Notification.

3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 12.01.2021.

4. The following persons were present during the hearing;

- 1) Shri Shailesh Shetty, Complainant
- 2) Shri Pradeep Kumar, Dy. Registrar on behalf of the respondent

#### OBSERVATIONS & RECOMMENDATIONS

5. Plethora of Complaints is filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.

6. Whole recruitment cycle can be divided into following parts –

- a) Identification of Posts suitable for PwD candidates.
- b) Reservation given to Persons with Disabilities
- c) Issuance of Notification
- d) Examination Fees
- e) Examination Process – Facilities provided during examination and Examination Centres
- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection

7. Before proceeding further, it is important to elicit objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination.

8. For the present complaint whole summary of the statute is unwarranted, hence, relevant provisions for relevant portions are hereafter identified and mentioned.



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**IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES**

9. In an organisation there may be number of posts which can not be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to 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. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 16-15/2010-DD.III dated 29.07.2013 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

<http://disabilityaffairs.gov.in/content/page/notifications.php>

10. Addition of any post from this list –

(a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that this list is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements. The same is mentioned in Note 2 of Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>

(b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 29.07.2013, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.

(c) Point 4 of the notification dated 29.07.2013 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.

**RESERVATION FOR PERSONS WITH DISABILITIES**

11. This category can be divided into following 6 sub categories –

- a. Quantum of reservation
- b. Exemption
- c. How vacancies shall be computed
- d. Maintenance of Roster
- e. When not filled – Inter se exchange and carry forward
- f. Nature – horizontal



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12. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

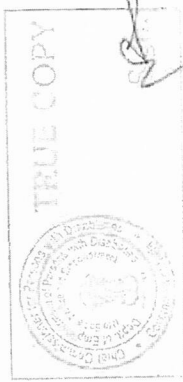
13. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

14. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

15. How Vacancies can be Computed–The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts is taken into consideration. Method is same for recruitment to group A, B and C posts. (DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018)

16. Maintenance of roster– Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain group wise 100 points vacancy based Reservation Roster Register. Detailed method of maintaining and ear marking vacancies is laid down in Para 7.1 to 7.8 of the OM.

17. When vacancies cannot be filled - It may happen that in recruitment year some or all vacancies may not be filled up due to non-availability of suitable person with disability or for any sufficient reason. Under such circumstances, government establishment cannot convert such vacancies to unreserved category. Detailed procedure for conversion of such unfilled vacancies is laid down in Para 8 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. As per the instructions mentioned in the OM, following steps have to be followed by government establishment –



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Such unfilled vacancy shall be carried forward in the subsiding recruitment year.

- a. Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, it may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and mental illness; multiple disability from amongst persons above mentioned for disabilities.
- b. Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.

18. It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.

19. Nature of reservation - It is settled position of law that reservation for PwBD is horizontal and vacancy based, unlike reservation for SC/ST and OBC which is post based and vertical in nature. Therefore, specific method for earmarking selected PwBD candidates has to be adopted. Reference can be made to Para 9 to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 and DoPT OM No. 36035/2/2017-Estt.(Res) dated 25.03.2019.

**ISSUING OF NOTIFICATION**

20. DoPT OM No 36035/2/2012-Estt.(Res) dated 26.11.2012 lays down certain points which are to be kept in mind while advertising the vacancies. Summary of the point is as follows.

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.
- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.

**EXAMINATION FEES**

21. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.



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**EXAMINATION PROCESS**

22. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured. Hence, while conducting examination government establishment has to ensure that test centres as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.

23. Reference can also be made to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. Para I to XVII of the OM lays down detailed provisions related to facilities which shall be provided to PwBDs during examination.

24. Scribe – Para IV, V and VI of the OM lays down detailed guidelines related to Scribe/Reader/Lab Assistant. In these paragraphs exhaustive guidelines are provided as to when it is mandatory and when discretionary to provide for Scribe/Reader/Lab Assistant. Similarly, Para VIII contains guidelines with respect to mode of answering the questions asked.

25. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.

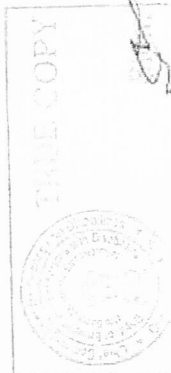
26. At this point relevant provisions related to 'Reasonable Accommodation' need to be mentioned. Section 3 of RPwD Act, 2016 lays down that appropriate government shall ensure reasonable accommodation for persons with disabilities. Reasonable Accommodation is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

27. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

**RELAXED MINIMUM CRITERIA**

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

29. AGE RELAXATION – As per DoPT OM No. 15012/1/2003-Estt.(D) dated 29.06.2015, age relaxation of minimum 10 years to PwBD-General candidates, 13 years to PwBD-OBC candidates and of 15 years to PwBD-SC/ST candidates is granted.



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**SELECTION ON MERITS**

30. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with bench mark disability is selected on merits without relaxed standards along with other candidates. He will not be interested against the reserved shared the vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability

**RECOMMENDATION FOR ACTION:**

31. In the present complaint, it is submitted by the Respondent that due to administrative reasons, previous notification was withdrawn and new notification shall be issued within a period of 1 month. This court recommends that the Respondent while drafting and issuing new notification, shall follow the guidelines issued by DoP&T and other ministries from time to time as fully detailed above.

Dated: 18.01.2021

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

