



## 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

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**Case No: 13545/1022/2022**

**In the matter of —**

Shri Kumar Kalbande  
CPWD Type 4 Quarter 1  
Block 66, Civil Lines Nagpur  
Email: [kumarkalbande@gmail.com](mailto:kumarkalbande@gmail.com)

**...Complainant**

**Versus**

The Director General  
Forest Survey of India  
Ministry of Environment Forest & Climate Change,  
Kaulagarh Road, P.O. IPE Dehradun  
Uttarakhand – 248195  
Email : [dgfsi@fsi.nic.in](mailto:dgfsi@fsi.nic.in), [jdtfi@fsi.nic.in](mailto:jdtfi@fsi.nic.in)

**... Respondent**

### 1. Gist of the Complaint:

Shri Kumar Kalbande, a person with 50% locomotor disability filed a complaint on 05.06.2022 before the Court of the Commissioner of Persons with Disabilities, Government of Maharashtra regarding the cancellation of his transfer order and posting to place near his native place. The Complainant was working as a Junior Technical Assistant at the Forest Survey of India and is a resident of Maharashtra. The Complainant was transferred to Kolkata which is very far from his native place. His salary was also stopped for over 16 months including during the period of Covid-19 lockdown by using "No Work No Pay" rules. It was also alleged that the Estate Manager forced the applicant to evacuate the quarter. The Complainant has made multiple representations to the SCPD, Maharashtra regarding this. As the opposite party in this matter happened to be an establishment under the control of the Central Government, the State Commissioner vide his letter dated 06.10.2022 forwarded the matter to this Court under the provisions of Section 75 (1) (b) of the RPwD Act, 2016 (In short "the Act"). The matter was taken up with the Respondent vide Notice dated 11.11.2022.

## **2. Submissions made by the Respondent**

2.1 The Dy. Director (P&A) Forest Survey of India, Dehradun vide letter dated 12.12.2022, filed the reply and submitted that Forest Survey of India (FSI), Dehradun, an organization under the MoEF&CC, assesses forest cover assessment, which is a wall-to-wall mapping exercise based on remote sensing supported by intensive ground verification and field data from National Forest Inventory. ISFR is an important report for the Government of India, required for policy-making at the Centre and state level and reporting the Forest Cover/tree cover/forest inventory/growing Stock/Carbon Sink related area at several international forums.

2.2 The Respondent further submitted that the matter has been referred to the current employer of the Complainant Forest Survey of India, Regional Office (Eastern) Kolkata regarding the submission of proper application, medical certificate, and other relevant documents if any submitted by the complainant. After receipt of the documents, his case will be considered as per the extant rules.

2.3 The Respondent submitted that the Complainant has been serving in the Forest Survey of India, Regional Office (Central), Nagpur since 2009, he was transferred along with 4 other employees in the public interest. The transfer order of the Complainant along with 4 other employees was issued on 30.07.2021 which is around a year ago while his disability as claimed by the Complainant is since 11.05.2022 (attached). This indicated that the Complainant was transferred almost a year before his date of claim of temporary disability. Instead of joining, the Complainant started using the influence of ministers and public representatives to cancel his transfer order. He started writing letters to several senior officers of the Ministry and Sh. Bhupender Yadav, Hon'ble Minister of Environment, Forest and Climate Change, and other public representatives rather than joining his new place of posting. The Respondent stated that the Complainant has been involved in sexual harassment activities in the office. The female employees who were working in the office complained in writing. After the inquiry by the Internal Complainant Committee, the Director General, the Forest Survey of India issued a charge sheet to him. Necessary action is in process in this regard.

2.4 Regional Director, Regional Office (Central), Nagpur has come to know that the Complainant got a Government job with a fake experience certificate which was issued by his father, who was RFO, Hingani Range at that time. The concerned deputy Conservator of Forests, Wardha has confirmed that his office and the office of the RFO under his jurisdiction have never issued such an experience certificate, and the certificate used by Sh. Kumar Kalbande to get a job in FSI is a fake certificate. He stated that the Complainant has never worked in the forest department. For this chargesheet has been served to the Complainant on 29.04.2022. The necessary disciplinary action is in progress.

2.5. The Respondent stated that the complainant's cumulative unauthorized absence since 01.04.2020 is more than 1 ½ years. His attendance month-wise from April 2020 to March 2021 is completely nil. The Complainant has the habit of being absent from the office for more than 200 days in a year. The charge sheet has been already served in this case to the Complainant.

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

3.1 The Complainant has submitted the Rejoinder vide letter dated 14.02.2023 and reiterated his complaint and inter alia submitted that the Respondent does not follow the DoPT OM dated 31.03.2014 regarding exemption of PwD employees from the rotational transfer.

**4. Hearing(1):** A hearing online through video conferencing was conducted on 26.05.2023. The following parties/representatives were present during the hearing:

1. Shri Kumar Kalbande, with Shri Akshay Jain, **Complainant**
2. Shri Kamal Pandey, Dy. Director, FSI for **Respondent**

4.2 During the Online hearing the Complainant submitted that after receipt of the transfer order, he visited the Kolkata Office for joining, but he was not allowed to join. The Respondent denied the statement of the Complainant and submitted that he was given an opportunity to join the Kolkata Office, but he didn't join his duties at the office.

4.3 The Chief Commissioner asked the parties to show the documents/evidence in support of their statements. Both parties requested time for filing the supporting documents.

4.4 The Chief Commissioner accepted their request and granted 05 working days to file the supporting documents.

4.5 The Record of Proceedings for the hearing was issued to the parties on 06.06.2023.

**5. Evidence/documents filed by the parties:**

5.1 No documents/evidence in support of his statement was received from the Complainant till date.

5.2 The Respondent vide email dated 06.06.2023 filed his response and a chronology of events in respect of the transfer of the Complainant from 30.07.2021 to 02.06.2023. In the chronology as mentioned at serial number 19, the Complainant vide email dated 01.11.2022 had requested only for providing a place to stay at Kolkata. His request was forwarded to RO, Kolkata through email dated 15.11.2022. The FSI, Kolkata vide email dated 21.11.2022 replied to FSI, Nagpur with a copy to the Complainant that the Complainant neither had mentioned the date of his arrival at Kolkata nor the period of stay in the Guest House. The FSI Kolkata also requested the FSI Nagpur to inform the Complainant to provide the date of arrival and the period of stay in the Guest House.

**6. Hearing (2):** An online hearing was conducted on 18.12.2023. The following parties/representatives were present during the hearing:

- (1) Shri Kumar Kalbande, Complainant in person
- (2) Shri Arvind Munde, Dy. Director FSI, for Respondent

## **7. Record of Proceedings:**

7.1 The representative of the Respondent submitted that the Complainant was transferred to Kolkata on 30.07.2021 from Nagpur. He has not joined his duties at the new place of his till date is on unauthorized absence. The Respondent attempted many times for his joining at RO, Kolkata so that all dues could be paid to him. Further, an inquiry is ongoing against the Complainant on the charge of submitting a fake experience certificate to secure employment, which is almost complete and the report is likely to be submitted soon. During the inquiry, his previous employer as per the experience certificate submitted by the Complainant, informed that no such person had worked there and also no payment was made towards him. Further, the appointment of the Complainant was not from the PwD quota. The Complainant submitted a temporary disability certificate on 11.05.2022, i.e. after 9 months of his transfer. The photo on his disability certificate was at least 10 years old. The disability certificate was verified by the GMC, Nagpur, who asked the Complainant to appear for re-examination. The same was communicated to him.

7.2 It was further submitted that as regards sexual harassment, an internal inquiry is in progress and the hard disc of the computer has been sent to Forensic Lab, Pune. The forensic report is still awaited.

7.3 The Complainant submitted that he tried to join RO Kolkata, but he was provided with accommodation on the 3rd floor. The lift was not working and he was unable to stay there. He filed a police complaint there and submitted the videos as evidence. In RO, Kolkata, there are two posts for JTA and both were filled. There is no post available for him. Regarding the experience certificate, the Complainant submitted that he had worked in the forest department on a daily wage basis as a contractual worker. Regarding disability certificate, it was issued by GMC, Nagpur after he met an accident on 11.05.2022. He visited GMC, Nagpur for a medical re-examination but was not entertained as his Identity Card was held by RO, Nagpur. He was not paid with salary during the Covid-19 period. He also submitted that he has video evidence in support of his claims.

7.4 After hearing both the parties this Court observed that during the last hearing conducted on 26.05.2023 both parties were asked to submit certain documents/evidence in support of their statements but they have not submitted the same as yet. The Court asked the Respondent about reasons for the delay in internal inquiry for fake experience certificate and sexual harassment. The Chief Commissioner for Persons with Disabilities directed both parties to submit documents, videos, and any other evidence in support of their statement within 48 hours so that the next course of action can be taken.

## **8. Submissions made by the Complainant after the issue of the R.o.P. dated 31.12.2023:**

8.1 The Complainant vide email dated 05.03.2024 submitted that he did not get any relief even after the issuance of this Court's letter of Legal framework dated 29.01.2024 to the Respondent. Further, he submitted that the Respondent Department is conspiring to dismiss him from the service by forcing an ex-parte inquiry. Further, he reiterated his complaint and submitted the following prayers:

1. Action on non-compliance of Legal Framework Notice dated 29.01.2024 issued by this Court.
2. Compliance on DoP&T OM dated 08.12.2022.
3. Immediate action on continuous atrocities and harassment happening to a Person with Disability.

## **9. Submissions made by the Respondent after R.o.P.:**

9.1 The Deputy Director (P&A), FSI, Dehradun vide email dated 19.12.2023 submitted that the Complainant was selected for the post of Deputy Ranger in FSI, Regional Office, Nagpur under the UNRESERVED category and not under the PwD quota. He was transferred from FSI Regional Office(Central), Nagpur to FSI, Regional Office (Eastern), Kolkata vide office order dated 30.07.2021 in the public interest and was relieved from FSI Regional Office(Central), Nagpur vide office order dated 30.07.2021.

9.2 It is further submitted that against the transfer order, the Complainant filed a case O.A. No. 514/2021 in Hon'ble CAT, Nagpur on 17.08.2021 in which the Hon'ble CAT rejected his prayer for interim relief. After that he filed a W.P. No. 3967/2021 in the Hon'ble High Court, Nagpur challenging his transfer order. The Hon'ble High Court in its order dated 27.10.2021 has upheld the transfer order issued by DG, FSI, and has quashed the petition and issued strictures that his behavior is unbecoming of a Government servant for his various acts.

9.3 The Respondent further submitted that the temporary disability certificate with UDID NO. MH0960619850289436 valid up to 11.05.2024, was issued to the Complainant on 11.05.2022 which was 09 months later after his transfer. The Complainant is having the habit of producing medical certificates for his absence every now and then. In this regard, the then Controlling Authority of the Complainant communicated to the Additional Director, CGHS, Nagpur to check the genuineness of the certificates and it was requested to the Medical Superintendent, Government Medical College & Hospital, Nagpur to re-examine the Complainant with respect to temporary disability card. In view of the videos available with the Respondent's office clearly show that the Complainant is driving the vehicle and is walking without any hindrances. The photo posted on the temporary disability ID card is more than 8 years old. The Complainant was asked to appear in the Government Medical College & Hospital, Nagpur for the re-examination of his temporary disability vide letter dated 01.08.2023 but he did not appear for the re-examination.

9.4 The Respondent further submitted that during the Hearing dated 18.12.2023, the Complainant had claimed that he had tried to join at his place of posting i.e. FSI, Regional Office(Eastern), Kolkata. In this regard, it is stated that neither the Headquarters nor the Regional Office (Eastern), Kolkata has any information regarding his attempt to join Kolkata in any form. Moreover, the Regional Director, FSI, Regional Office (Eastern), Kolkata has informed the Respondent through different letters that the Complainant has never joined the Regional Office (Eastern), Kolkata. Contrary to his claim, the Complainant vide his email dated 08.12.2023 addressed to the DG, FSI has requested to book the tickets so that he

could join FSI, Regional Office (Eastern), Kolkata.

9.5 The Respondent further submitted that during the hearing at this Hon'ble Court dated 26.05.2023, the Complainant produced before the Court, a video of the Regional Office, Nagpur stating that the video is of Regional Office (Eastern), Kolkata, and he tried to mislead the Court to believe that he tried to join the Kolkata office but was refused entry. On the perusal of the above incidences, it is clear that he has never joined his place of posting and hence, the Complainant is trying to mislead this Hon'ble Court by providing false information by way of showing videos of FSI Regional Office (Central) Nagpur being shown as video of Regional Office(Eastern), Kolkata. Hence, it is requested to dispose of the complaint as it is devoid of any merit.

#### **10. Submissions made by the Respondent in response to Legal Framework:**

10.1 The Deputy Director (P&A), IFS, FSI vide their email dated 12.03.2024, in response to the Legal Framework Notice dated 29.01.2024 submitted that the Complainant is transferred to Kolkata for the first time since his joining at Nagpur in 2009 after a period of more than 13 years. The post of the Complainant is transferable. The motive of the transfer of government officials is to prevent the creation of vested interests to promote transparency in the administration.

10.2 The Respondent further submitted that the Regional Office, FSI, Kolkata had informed that the ramp and washroom facilities are available as per the required specifications on the Ground Floor. Further, one suitable room is also available for attending the office on the ground floor in the Regional Office (Eastern), Kolkata. Hence, all the information is provided as required by this Hon'ble Court.

**11. Hearing (3):** Another hearing was conducted in the matter on 17.05.2024 in 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 Kumar Kalbande	Complainant	Physically at the Venue at the CGO Complex
2.	Advocate Rahul Bajaj	For Complainant	Online
3.	Shri Arvind, Deputy Director	For Respondent	Online

12.1 At the outset, the Chief Commissioner for Persons with Disabilities stated that though the initial issues raised by the Complainant before the Court of the Maharashtra State Commissioner for Persons with Disabilities, which in due turn was transferred to this Court related only to transfer to a place other than his native place and stoppage of the pay for the last 16 months, during the pendency of the case several new facts and issues kept cropping up, such as -

- a) an ongoing case of sexual harassment at the office,

- b) a purportedly fake experience certificate alleged to have been issued by his own father who was the RFO, Hingani Range at that time, for which another departmental proceedings are underway,
- c) relying upon a temporary disability certificate issued after 9 months of the issue of the transfer order to challenge the order before this Court,
- d) agitating the matter of transfer before this Court after the dismissal of the writ petition in the Nagpur Bench of the Hon'ble Bombay High Court and his OA by the CAT Nagpur Bench,
- e) non-appearance in the GMC Nagpur for the re-examination of disability,
- f) an alleged attempt to gain entry at the previous office after the issue of the transfer order and after a stern observation of the Hon'ble High Court in their final Order dated 27th October 2021 terming such conduct, if any, as misconduct and unbecoming of a government officer,
- g) frequent and long-term unauthorized absence from work, which is the subject matter of a third departmental proceedings against the Complainant, etc.

12.2 The Ld. Counsel for the Complainant stated that there are a lot of allegations and counter-allegations in this matter. He represented two suggestions for the kind consideration of this Court. Firstly, the Complainant could be given a posting at any place of the Respondent's choice which is accessible and where he can work. The Complainant was posted to Kolkata but when he went there a month ago, the infrastructure was not accessible there. He could not use the lift to get to his office on the first floor. Secondly, with respect to all the departmental proceedings whether it is on sexual harassment or unauthorized absence, can be concluded expeditiously while providing him reasonable opportunities to defend himself, reasonable accommodations in terms of sections 3 and 20 of the RPwD Act, 2016, and accessible location where inquiries are being held. The Ld. Counsel further submitted that it was a malicious transfer and it was also challenged. The Complainant should have joined the Kolkata Office and later on as per the outcome of the pending case before this Court, steps could have been taken.

12.3 When asked by the Court how the disability occurred and why he was not paid salary, the Complainant replied that when the accident happened, he was not being paid the salary from the department. He was undergoing treatment but could not follow up on the treatment as the department did not provide him with medical allowances. In the year 2021, he was on medical leave, when he got Covid positive. During medical leave, firstly his medical allowance was stopped and then his salary was stopped. He wrote to the Director General, FSI, and requested for release of salary and medical allowances. The Director General FSI ordered the department to release his salary but the department stopped his entry in the office at Nagpur. After that, the Ministry of Environment set up an inquiry conducted by the Deputy Director General. The Regional Director asked the Director General to transfer the Complainant to another place. On 29.07.2021, the Deputy Director General issued a notice to his Department, and immediately on the next day, he was transferred to Kolkata. Then he went to the office and was relieved for field work at Ujjain. He went to his office to get the Relieving Order and Last Pay

Certificate but was not provided with the same. He was not allowed to hand over the charge of the store and library for which he was the In-charge. He was declared unauthorized absent by his department. He was asked to join the Kolkata Office. Later on, he proceeded to the Central Administrative Tribunal, where the Respondent submitted false submissions that he was relieved and the Relieving Order was sent to him through speed post. When he asked the Respondent about the acknowledgment, then they replied that it was sent through ordinary post. He was relieved from office in his absence.

12.4 The Complainant further submitted that his name was forwarded to the DG for termination. After that, he got into deep stress and met with an accident. After 3-4 months he got the disability. On 15.05.2023, he attempted to join the Kolkata office and later on he went to Kolkata and stayed there from 10.12.2023 to 12.12.2023. The office was not accessible as the lift was not functional and the ramp was not there. The Ministry of Environment issued a letter to him in the month of February 2024 asking him to join the Kolkata Office. Again he went to Kolkata on 19.04.2024 and waited for a long time inside the office. He again visited the office on 25.04.2024 but it was not accessible. Meanwhile, there was a departmental inquiry conducted by the Nagpur Office. He requested for virtual hearing but no link was provided to him. Later on, he came back to Nagpur. He has been continuously obeying the Respondent's orders. He attempted repeatedly to join the office so that his salary could be released.

12.5 On a query from the Court about the ongoing departmental proceedings, the Respondent submitted that an Internal Complaint Committee was constituted and its preliminary report has already been submitted. The disciplinary authority had already started the inquiry. A letter was issued to the Complainant for attending the inquiry but he did not attend. He did not join the link provided and asked for a link on next day but the Committee members were already preoccupied. On 24.05.2024, a hearing is scheduled in this matter. When asked about the availability of lifts and ramps at the Kolkata Office, the Respondent replied that there is a ramp but the lift is not functional. When the Complainant went to join the Office in Kolkata, a room on the ground floor was provided to him, but instead of joining his duties, he just took photos and videos of the office. A biometric attendance was done for him. A temporary ramp was arranged for him but he did not show any interest in joining even after being asked by the Regional Director and the Deputy Director to do so. He has gone to Kolkata two times and for that videos are available there. He should have joined there so that his salary could have been resumed and medical bills would have been cleared as per the rules. He was asked to appear before the GMC, Nagpur for re-examination of his temporary category three times.

12.6 The Respondent further submitted that the GMC, Nagpur verified that the Disability Certificate of the Complainant was issued by them. The GMC intimated to the Respondent that the Complainant can come anytime from Monday to Friday for the re-examination. Then the Complainant was requested to visit the GMC. His temporary disability was recorded on 11.05.2022 and the validity of his Disability Certificate expired on 11.05.2024.

12.7 The Court observed that the Complainant did not have any disability at the time when his transfer order was issued on 30.07.2021. As such, the action of



Respondent can not be faulted on the premise of being violative of reasonable accommodation available to persons with disabilities under the RPwD Act, the rules made thereunder, or any instructions of the government in this regard. As on the date of the last hearing on 17.05.2024, the validity of 2 years of the temporary disability certificate issued on 11.05.2022 has also expired. The fact that the temporary disability certificate was issued less than one month before the case was filed in the Court of the State Commissioner for Persons with Disabilities on 05.06.2022 and after the earlier litigations before the CAT Nagpur Bench and before the Nagpur Bench of the Hon'ble High Court of Bombay failed in yielding any relief in terms of the cancelation of the transfer order of the Complainant and also that the Complainant did not get his disability reviewed and got his certificate renewed within the stipulated time, can not be ignored. The Complainant has not been able to establish his bonafide before this Court. As such, this Court is not inclined to intervene on the issue of transfer of the Complainant from Nagpur to Kolkata.

12.8 This Court directs that the disability of the Complainant be reviewed within 30 days by an independent medical board to be constituted for this purpose by the State Government of Maharashtra. A copy of this Order be sent to the State Commissioner for Persons with Disabilities, Govt. of Maharashtra for ensuring implementation of this direction. The Court also directs the Respondent to ensure that all its premises across the country are made accessible for all persons having any kind of specified disabilities within a period of 3 months from the date of issue of this Order. A Compliance/Action Taken Report to be submitted by the Respondent and the SCPD within 3 months from the date of the issue of this Order

13. The case is disposed of accordingly.

**Signed by Rajesh Aggarwal**

**Date: 13-06-2024 11:04:46**

**(Rajesh Aggarwal)**

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

### Case No. 13729/1101/2023

In the matter of—

Shri Rahul Bajaj,  
 Attorney, Ira Law, Senior Associate Fellow,  
 Vidhi Centre for Legal Policy,  
 R/o Block 12, Sarvapriya Vihar apartments,  
 New Delhi-110016,  
 Email: rahul.bajaj1038@gmail.com

... Complainant

### Versus

(1) Radisson Blue Hotel,  
 7, Wardha Road, Nagpur,  
 Maharashtra-440015  
 Through its Managing Director,  
 Radisson Hotel Group,  
 Chimes 61, 59, Bhagwan Mahaveer Marg,  
 Sector 44, Gurugram, Haryana 122003  
 Email: revenue@rdcitycenter.in

... Respondent No.1

(2) The Ministry of Consumer Affairs, Food &  
 Public Distribution,  
 Department of Consumer Affairs,  
 (Through The Secretary)  
 Sansad Bhawan, New Delhi-110001  
 Email: secy-ca@nic.in

... Respondent No.2

(3) The Chief General Manager-in-Charge,  
 Department of Regulations,  
 Reserve Bank of India,  
 12<sup>th</sup> Floor, Central Office Building,  
 Shahid Bhagat Singh Road,  
 Mumbai – 400001  
 Email: cgmicdor@rbi.org.in

... Respondent No.3

(4) The Chief General Manager,  
Department of Payment and Settlement Systems,  
Reserve Bank of India,  
14<sup>th</sup> Floor, Central Office Building,  
Shahid Bhagat Singh Road,  
Mumbai-400001  
Email: cgmdpssco@rbi.org.in

...Respondent No.4

## 1. Gist of Complaint:

1.1 Shri Rahul Bajaj, a person with 100% visual Impairment filed a complaint dated 19.11.2022 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the Act", regarding an inaccessible Point-of-Sale device at Radisson Blu Hotel, Nagpur (Maharashtra).

1.2 He submitted that the Respondent No.1 is a leading 5-star hotel in Nagpur and the Respondent No.2 is the nodal ministry entrusted with the implementation of Consumer Protection Act, 2019; implementation of Bureau of Indian Standards Act, 2016; implementation of Standards of Weights and Measures - The Legal Metrology Act, 2009, among other tasks. Respondent No.3 is India's Central Bank.

1.3 The Complainant alleged that Respondent No.1 violates several provisions of the Act specifically, Chapter VIII. The Bureau of Indian Standards notified IS17802 Parts 1 and 2 on December 24, 2021, and April 29, 2022, in relation to the Accessibility of ICT Products and Services dealing with Requirements and Conformance respectively. These BIS Standards are at par with international standards and are comparable to the accessibility standards adopted by Europe and the United States of America as well as the World Wide Web Consortium. These standards cover Point-of-Sale devices also.

1.4 The Complainant visited Respondent No.1's hotel on 25th October 2022 and was unable to effectively access the services due to their Point-of-Sale (POS) device being touch-screen based and having smooth surfaces that don't provide tactile or auditory access or feedback. The blind persons are unable to independently confirm that they are being charged the proper sum as they are unable to independently use a POS device. They would have no choice except to provide a friend, member of their family, or even the salesperson with their PIN number so they could input it on their behalf. This situation exposes the blind to the danger of fraud and theft. Code Factory on Windows Mobile, Android, and Apple's iPhone, iPod, and iPad have all demonstrated how a touch-screen device can be made accessible using current technology. These Apple devices have a built-in touch-screen interface with an inconspicuous Voiceover screen reader for non-sighted users, allowing blind and sighted users to coexist with a single device.

Respondent No.1's failure to make their Point-of-Sale device accessible to blind users makes it liable to face the full panoply of legal consequences flowing from this statutory contravention.

1.5 The private sector's obligation to make its offerings accessible to the disabled and to provide them reasonable accommodation was underscored in a three-judge bench decision of the Supreme Court in *Vikash Kumar v. Union Public Service Commission and Ors.*, 2021 SCC online SC 84. He quoted the relevant extracts of the judgment as below:

*"35 The principle of reasonable accommodation captures the positive obligation of the State and private parties [emphasis supplied] to provide additional support to persons with disabilities to facilitate their full and effective participation in society.*

...

*38 While most of the obligations under the RPwD Act 2016 are cast upon the government or local authorities, the Act and rules made under it have also imposed certain obligations on the private sector. The role of the private sector in the market has increased manifold since the advent of liberalization in India... It is imperative that not only the government but also the private sector takes proactive steps for the implementation of the RPwD Act 2016."*

1.6 Respondent No.1 is in violation of an international obligation arising out of the said convention which India has undertaken on itself for the empowerment of persons with disabilities by not complying with the Act and the Rules.

1.7 Section 89 of the Act provides for offences and penalties under Chapter XVI as follows:

*"89. Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees, but which may extend to five lakh rupees."*

1.8 In view of the foregoing, the Complainant prayed for:

(a) That Respondent No.1 be asked to start using accessible [i.e. physical keypad and text-to-speech enabled] Point-of-Sale devices forthwith and cease the use of touchscreen PoS devices that are not visually challenged friendly.

(b) That Respondent No. 1 be directed to conduct an accessibility audit of the

touchscreen interface of its Point-of-Sale device used in its restaurants and hotels respectively, and submit the Accessibility Audit report along with a statement of remedial actions taken within 3 months;

(c) That appropriate directions/orders of a peremptory nature be issued to Respondent No. 1, mandating time-bound compliance with the standards on accessibility as prescribed under the BIS Standards;

(d) That the present complaint may not be disposed of till the directions/orders issued by Chief Commissioner are not complied with by the Respondent No.1; and

(e) Any other order/direction/recommendation which the Chief Commissioner finds proper to impose or issue to meet the ends of justice in the instant complaint.

## **2. Submissions made by the Respondents:**

2.1 Respondent No.1 filed a reply on 23.03.2023 and denied that they violated several provisions of the Act and the Rules. On the day the Complainant visited the Hotel, the Point-of-Sale devices were operational and functional. All guests irrespective of their disability got complete independence to use the device and made their respective payments without interference from any third party. As soon as the payment is made the individual is updated on his/her mobile about the transaction via SMS service. Respondent No.1 denied that a non-sighted person is left with no choice but to provide their PIN number to a friend, a member of their family, or even the salesperson to input on their behalf. The Complainant cannot even allege himself to be an aggrieved person. No violation of any provision of law has been committed by Respondent No. 1 and no remedial action is required to be taken as false, frivolous, and vexatious allegations have been leveled. Respondent No.1 prayed for the dismissal of the complaint.

2.2 Respondent No.2 filed their reply dated 03.03.2023 and submitted that they examined the matter in the Department and the comments with reference to the BIS Standards pertaining to LITD are as follows:

(i) The provision of Numeric keys in ICT devices [Including Point-of-Sale (PoS Devices)] is already covered in standards IS 17802 (Part 1): 2021, Accessibility for the ICT Products and Services Part1: Requirements and IS 17802 (Part 2): 2022, Accessibility for the ICT Products and Services Part 2: Determination of

Conformance.

(ii) At present, these standards are voluntary in nature. These standards have already been submitted by the BIS to the Department of Empowerment of Persons with Disabilities (DEPwD), Government of India.

2.3 Respondent No.3 and Respondent No.4 did not file their reply.

### 3. Submissions made in Rejoinder:

No rejoinder was filed by the Complainant to the replies filed by Respondent No.1 and Respondent No.2 respectively.

### 4. Hearing (I):

4.1 The case was heard on **22.06.2023** via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **22.06.2023**. The following persons were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
<b>From Complainant:</b>		
1.	Mr. Husain Anis Khan on behalf of the Complainant, Shri Rahul Bajaj	Online
<b>From Respondent No.1:</b>		
1.	Advocate Pepakayala Geetanjali	Online
<b>From Respondent No.2:</b>		
1.	Shri Chirag Shah	Online
<b>From Respondent Nos.3 &amp; 4:</b>		
1.	Ms. Karpagam R, AGM, RBI	Online
2.	Shri Shashank Kumar	Online
3.	Ms. Priyanka Soni	Online

4.2 **Record of Proceedings:** During the hearing, the Complainant's representative informed this Court that other establishments are using such payment devices that are accessible for Divyangjan with blindness. Further, the Complainant's representative expressed his willingness to share the list of such establishments with this Court.

4.3 This Court directed Respondent No.1 to conduct a meeting with the Complainant within 15 days from the date of the Record of Proceedings issued by this Court, to discuss the possible solutions of issues relating to accessibility of payment devices. Further, this Court also directed that the Complainant shall share the names of such

establishments which are using accessible payment devices, with this Court and also with Respondent No.1.

## **5. Compliance by Complainant (heard on 22.06.2023):**

5.1 Vide his email dated 13th July 2023, he narrated a similar experience at the Hyatt Regency Hotel and the Saleem's Hotel during his visits to these on 18th March 2023 and 06th June 2023 respectively.

5.2 In pursuance to the record of proceedings issued on 16.08.2023, no ATR was received from the respondents. However, the Complainant's email dated 09th September 2023 submitted his response and provided the names of the establishments using physical payment devices either in addition to or instead of touchscreen devices as detailed below:

### **I. Le Méridien:**

Le Méridien is an upscale, design-focused international hotel brand with a European perspective. It has more than 115 hotels across 35+ countries and has established itself as a five-star hotel chain. Upon inquiring with their Hyderabad and New Delhi branches, Mission Accessibility discovered that the hotel chain uses both physical and touchscreen payment devices in order to cater effectively to all its guests.

### **II. Hilton Garden Inn:**

Hilton Garden Inn is an American chain of mid-priced, limited, or focused service hotels owned by Hilton Worldwide. Its Saket branch is a four-star hotel located near the DLF Place Mall. Mission Accessibility enquired with their Saket branch to find that the hotel provides an option for physical payment devices for easy access to guests who have a visual impairment.

### **III. Hotel Avasa:**

Located in the heart of Hyderabad, Hotel Avasa is a luxury business hotel, offering top leisure amenities, seamless services, and elegant dining options. Avasa has established itself as a 5-star contemporary hotel. The hotel ensures the availability of a physical payment device in addition to a touchscreen device at all times.

#### **IV. Saleem's Restaurant:**

Saleem's Restaurant is a well-known long-standing eatery offering typical Indian, Mughlai & Chinese specialties. Located in Kailash Colony, the Restaurant used to only be equipped with a touchscreen EDC installed by Axis Bank. In response to a complaint, Rahul Bajaj v. Saleem's Restaurant, Case No. 2756/1105/2022/09/6864 (Court of State Commissioner for Persons with Disabilities, NCT of Delhi), highlighting the inaccessible nature of such touchscreen devices, through a letter dated 03 October 2022, the Restaurant, conscious of its customers who belong to the category of persons with disabilities, requested Axis Bank to install a physical EDC machine at its outlet. In its reply to the complaint before the Court of State Commissioner for Persons with Disabilities in Delhi, the Restaurant provided an assurance that it would promptly install the physical EDC machine as soon as it is provided by the Bank.

#### **6. Reply filed by Respondents No.3 and No.4:**

6.1 The Assistant General Manager, Department of Payment and Settlement Systems, RBI filed their reply dated 21.06.2023 on affidavit on behalf of respondents No.3 and No.4 and submitted that RBI is a statutory corporation constituted by the provisions of Section 3 of the Reserve Bank of India Act, 1934. RBI has been, inter alia, entrusted with the statutory obligation of administering the provisions of the Banking Regulation Act, 1949 (hereinafter referred to as BR Act) and Payment and Settlement Systems Act, 2007 (hereinafter referred to as "PSS Act"). Under the BR Act, RBI regulates and supervises the functioning of banks in the country. Under the PSS Act, RBI has been vested with powers to regulate and supervise payment systems in the country. The Radisson Blu Hotel, Respondent No.1 is not a Regulated Entity of RBI. Further, RBI did not issue any specific guidelines or instructions on the physical features/ accessibility of Point-of-Sale machines. Therefore, it is submitted that RBI is not a necessary party to the present proceedings.

6.2 However, RBI has relaxed Additional Factor Authentication (AFA) for card present transactions for a maximum value of ₹5,000/- per transaction subject to adherence to EMV standards in terms of the circular titled "Card transactions in Contactless mode – Relaxation in requirement of Additional Factor of Authentication", (DPSS.CO.PD No.752/02.14.003/2020-21 dated December 4, 2020) issued by RBI. This service can be availed subject to the cardholder switching on contactless transactions as detailed in the circular titled "Enhancing Security of Card Transactions" (DPSS.CO.PD No. 1343 /02.14.003 / 2019-20 dated January 15, 2020) issued by RBI.



6.3 The RBI stated to have organized a global hackathon and invited participation from domestic and global fintech entities to find innovative solutions to the existing challenges in the financial landscape. One of the problem statements selected for the second edition of the hackathon - HARBINGER 2023 is Innovative easy-to-use digital banking services for the differently abled (Divyaang)' with the objective to empower the Divyaang people of the country with easy-to-use innovative solutions for digital financial services. The modus operandi of a hackathon are that it is a competitive event where the participants submit ideas, create solutions, exhibit the prototypes, and the solutions are evaluated by an independent panel of judges to arrive at the winner/s. The solutions thus achieved are primarily technology-driven innovative solutions, which if found suitable can be later developed by interested entities following due process. RBI's role is limited to the conduct and completion of the hackathon and not beyond the same.

## 7. Hearing (II):

7.1 The next hearing was conducted on **14 November 2023 (online/offline)**. The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
<b>From Complainant:</b>		
1.	Shri Rahul Bajaj, Complainant	Online
<b>From Respondent No.1:</b>		
	None appeared	
<b>From Respondent No.2:</b>		
	None appeared	
<b>From Respondent Nos.3 &amp; 4:</b>		
1.	Shri Sandeep Kumar, Legal Assistant, RBI	Online

7.2 **Record of Proceedings:** During the online hearing, the Court inquired from Respondent No.03 which department looks after ATM and POS machines in the RBI. The Respondent said that two departments deal with matters related to ATM and POS machines, namely, the Department of Payment Settlement and the Department of Regulation.

7.3 The Court directed the Respondent to submit a report on the accessibility of ATMs including the room where it is kept, POS machines, all QR code-based Apps, debit/credit card machines, all operating software, all payment apps, and all other services available for a person with disabilities in the form of a PowerPoint presentation within 02 weeks from the date of proceedings.

7.4 The Court also agreed with the request of the Complainant that Respondent No. 5

should have close supervision and monitoring of the accessibility of all services mentioned above.

7.5 The Court took a serious view of the non-appearance of Respondent No.1 during the hearing and directed them to ensure their representation in the next hearing positively.

## 8. Hearing (III):

8.1 The 3<sup>rd</sup> hearing in the matter was conducted on **17.05.2024** in hybrid mode (online/offline). The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/ Representative	Mode of Appearing
<b>For Complainant:</b>		
1.	Shri Rahul Bajaj, Complainant	Online
2.	Shri Amar Jain	Online
<b>For Respondent No.1:</b>		
1.	Advocate Ashish Kumar	Online
<b>For Respondent No.2:</b>		
	None appeared	---
<b>For Respondent No.3, 4 &amp; 5:</b>		
1.	Shri Sandeep Kumar, Legal Officer, RBI	Online
2.	Shri V.K. Niranjan, DGM, Department of Payment and Settlement, RBI	Online
3.	Shri Shashank Kumar	Online

8.2 **Record of Proceedings:** During the hearing, the Complainant reiterated a brief background of his grievance which relates to the accessibility of the Point-of-Sale devices (PoS) specifically in the context of the Radisson Blu Hotel, Nagpur where the Complainant had visited. The sale device had a touch screen and was inaccessible to persons with 100% visual impairment (blindness) and partially blind (low vision). As had been directed by this Court in the last hearings, the Complainant had furnished the information about the hotels or restaurants namely, Le Meridian; Hilton Garden Inn; Hotel Avasa; and Saleem's Restaurant (ref. Para 5 above) which do have keypad based voice-enabled accessible Point-of-Sale devices. As had been directed by this Court, Respondent No.1 (the authority of the Radisson Blu Hotel) did not approach him so far for an interaction to make the Point-of-Sale accessible.

8.3 The Complainant further submitted that the Department of Regulations [Respondent No.3] and Department of Payment and Settlement Systems [Respondent No.4] of RBI were also directed to place their position on record what steps have been taken to ensure the accessibility of Point-of-Sale devices.

8.4 Advocate Ashish Kumar, the Counsel appearing for Respondent No.1 submitted that the Point-of-Sale devices are not touch screen based as stated by the Complainant. The reply filed on record from Respondent No.1, depicts the pictures of the devices. These machines of the Lura model are used world over by the world-wide companies and are accessible for persons with disabilities, especially for persons with visual impairment. The picture of the Point-of-Sale device was also put up before the Court for perusal. The learned Counsel pointed out the dot which was visible on the digit 5 and said that Respondent No.1 had instructed him to say that these kinds of machines have been always utilized at the hotel and no other kind of machines are used.

8.5 Shri Sandeep Kumar, Legal Officer, RBI inter-alia relied on the reply filed on record. However, he added that RBI has taken steps for the accessibility of bank branches, and ATMs and banks have been advised to enhance door-to-door banking facilities. In a reply to the question, the representative affirmed that RBI does not regulate PoS machines.

8.6 Shri V.K. Niranjan, DGM, Department of Payment and Settlement, RBI submitted that RBI does not prescribe any standard for any Point-of-Sale machine. The PoS is regulated by those who handle it.

8.9 Shri Amar Jain, Advocate for the Complainant submitted that clause 1.2.3 (i) of the Accessibility Standards and Guidelines for Banking Sector, issued by the Department of Financial Services, Ministry of Finance provides that "*The machines should be designed suitably so that they are easily accessible by visually impaired persons without compromising the security measures.*" In addition to that, there was a High Court Appointed Expert Committee which had given extensive recommendations to make PoS devices accessible. Those guidelines only say that the PoS machine should be made accessible to the visually impaired without compromising security and there is no other mention of what those accessible PoS machines should look like. But towards the end of the DFS standards, the power to issue instructions relating to accessibility has been delegated by the Ministry of Finance to the RBI as a regulator. So while the RBI is right in saying that they don't prescribe for manufacturers what the PoS standards could be for manufacturing, it is very much within its power to direct payment system participants and payment system operators to ensure accessibility of their entire infrastructure be it physical or digital, including PoS devices.

8.10 Shri Amar Jain pointed out the present problem that while there are keypad-based PoS devices, what amount is entered and unless the transfer transaction goes

through or is declined, the customer with visual impairment does not get to know what amount the merchant has punched in and what amount are transacting it for, as well as, when the PIN is entered, there is no announcement. So it's purely the guesswork. If one understands the keypad well, one can operate it. Further, it is not just about the ability to enter the PIN, also one needs to know where the enter button is, and where the cancel button is, those things are also not currently accessible, even with the physical keypad PoS devices.

8.11 In reply to a question, Shri Amar Jain submitted that in some cases there is no standardization of keypad buttons in the PoS devices.

8.12 The Counsel for Respondent No.1 submitted that mostly there is standardization in the PoS devices. Moreover, the picture of the PoS machine that had been shown to this Court is used mostly.

8.13 The Complainant also submitted that nobody appeared on behalf of the Respondent No.2 Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution. In the matter of hotels & restaurants, Respondent No.2 is a central consumer protection authority and it is their responsibility to issue the guidelines and instructions.

## **9. Observations & Recommendations:**

9.1 Upon considering the submissions of the parties, this Court concludes that the fact that the PoS device used for receiving payment from the Complainant when he visited Radisson Blue Hotel on 25.10.2022 was not accessible for him, either due to the design of the device or because of the lack of training of the staff of Respondent or both. Respondents are therefore, duty-bound to issue guidelines for ensuring a practicable solution where the transactions could be made by persons with disabilities, especially those with visual impairment without causing any threat to their financial security and privacy. This also compromises their dignity as they would become dependent on a third party for the payment to be processed.

9.2 This Court, therefore, directs Respondent No. 1 to ensure that they continue to use physical keypad-based Point-of-Sale devices in all their hotels across the country. The RBI (Respondent No. 3 & 4) is directed to issue appropriate guidelines to all payment system operators and payment system participants to ensure that all payment systems that are approved by them, including the Point-of-Sale devices, are accessible to persons with disabilities. It is imperative that every establishment have some keypad-

based Point-of-Sale devices as the touchscreen-based Point-of-Sale devices may have issues of accessibility for visually impaired persons in the absence of a screen reading software. Respondent No. 2 is also directed to ensure that similar guidelines are issued to all hotel and restaurant associations to ensure that they use accessible Point-of-Sale devices. The Respondents are also directed to submit an Action Taken Report/Compliance Report in terms of Section 76 of the RPwD Act, 2016 within 90 days of the issue of this Order.

9.3 The Case is disposed of accordingly.

**Signed by Rajesh Aggarwal**

**Date: 14-06-2024 15:09:54**

**(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  
 5<sup>th</sup> Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364  
 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

**Case No. 13761/1103/2023**

**In the matter of—**

Shri Anwar Hussain P  
 S/o Shri Poola Kasim Saheb,  
 R/o H.No. 13/9/A, Koilkuntla Habitation,  
 Koilkuntla Village, Koilkuntla Mandal,  
 Kurnool District (Andhra Pradesh)  
 Email: anwarpoola@gmail.com

**... Complainant**

**Versus**

(1) The Divisional Railway Manager Office,  
 DRM Complex  
 Southern Railway, Park Town  
 Chennai - 600003.  
 Email: drm@mas.railnet.gov.in

**... Respondent No.1**

(2) The Chairman & Managing Director,  
 IRCTC, 11th Floor, Statesman House,  
 Barakhamba Road,  
 New Delhi – 110001  
 Email: cmd@irctc.com

**... Respondent No.2**

(3) The Secretary,  
 Railway Board,  
 Rail Bhawan, Rafi Marg,  
 New Delhi-110001  
 Email: secyrb@rb.railnet.gov.in

**... Respondent No.3**

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

1.1 Shri Anwar Hussain P, a person with 85% Locomotor Disability filed a complaint dated 10.01.2023 regarding –

- (1) Not providing concessional railway tickets in AC 1 Tier, AC 2 Tier, and AC Chair Car whereas as per Indian Railway Rules 50% concession is admissible for divyang persons;
- (2) Number of seats/berths reserved for divyang in Sleeper Class and AC 3 Tier coaches;
- (3) Selling of divyang seat to the other passenger on the same train and at the same time; and
- (4) Non-acceptance of UDID Card in the booking of concessional ticket.

1.2 He submitted that as per the railway concession rules, 50% concession is admissible for the divyang. As a case study, various trains with different dates and destinations under disabled quota, always used to reflect as 'Not Available' for disabled persons in 1-tier AC, 2-tier AC, and AC chair car. From the beginning of these concession rules till now no concession was provided to the disabled in AC first class, AC chair car, 1-tier and 2-tier coaches in all the trains. At the same time, it is understood that 3-tier AC coaches, sleeper coaches, and the concession 75% are being provided under the disabled quota. If the Indian Railways don't want to provide any concession in AC first class, AC chair car, 1-tier and 2-tier coaches, they can issue circulars accordingly. Train No.12077 from Chennai to Vijayawada, which he used to travel frequently, never showed its availability to divyang at any point of time at any station either in 2S (General) or AC chair car.

1.3 Indian Railways have earmarked only 04 seats/berths for disabled in sleeper class and 02 seats/berths in 3-tier AC coaches. According to the RPwD Act 2016, around 20 types of disabilities were included. Moreover, the population of divyang persons is also increasing. In any case, if 10 disabled persons along with their dependents want to travel, they have to go to a second-class coach due to very limited seats being earmarked which is very challenging for them to travel.

1.4 He submitted that on 08.01.2023, he booked ticket in 3-tier AC coach(B1) under divyang quota from Chennai Central to Nellore with PNR-4554384581 Train number: 22808 seat No.1 Total Amount: ₹228/- was paid also ticket confirmation mail received from IRCTC. At the time of traveling, another commuter, Mr. Gumdi Marndi, age 27 with PNR-4760378746 traveling from Chennai Central to Balasore was also allocated with same seat No.1 with boarding point from Chennai Central, destination to Balasore and he had paid a total amount ₹1713/-. The complainant showed the other passenger his confirmed ticket and asked the Complainant for his seat. After cross-checking with the Ticket Collector of that train, it was observed that seat No.1 was allocated for both the Complainant as well as Mr. Gumdi Marndi and hence the Complainant had no other

option but to vacate the seat and shift to another place, and with a great difficulty he traveled to his destination. How can railways sell the same seat to different passengers at the same time?

1.5 To date, Indian Railways issues separate passes to the divyang through DRM offices to book the tickets under PwBD quota online/offline. This process takes 3-4 months. Indian Railways should accept UDID cards as proof of disability.

## 2. Reply filed by the Respondents:

2.1 No reply was received from the Respondent No.1 – DRM/Chennai.

2.2 Respondent No.2 – IRCTC filed their reply dated 16.03.2023 and submitted that they provide an online booking platform only to book rail tickets through its portal. IRCTC website is directly linked with the Passenger Reservation System (PRS) which is managed by Railways and it fetches the details of tickets such as distance of journey, class of booking, calculating ticket fare with or without concession from the PRS itself. Deciding the eligibility of concession in various classes of travel is a policy matter and thus decided by the Ministry of Railways, IRCTC has no role in it.

2.3. Respondent No.3 – Railway Board filed their reply dated 31.03.2023 and in reply to Points No.1 and No.2 submitted that the following categories of persons with disabilities are granted concession in train fares for booking:

<b>Persons with Disabilities (PwD) / Divyang Passengers</b>		
1	Orthopaedically Handicapped/ Paraplegic persons who cannot travel without escort –when traveling alone or with escort – for any purpose	<ul style="list-style-type: none"> <li>• 75% in 2nd, SL, 1<sup>st</sup> Class, 3 AC, AC Chair Car</li> <li>• 50% in 1AC and 2AC</li> </ul>
2	Mentally retarded persons who cannot travel without escort – when travelling alone or with an escort for any purpose	<ul style="list-style-type: none"> <li>• 25% in 3AC &amp; AC Chair Car of Rajdhani/ Shatabdi trains</li> </ul>
3	Persons with Visual Impairment with total absence of sight travelling alone or with an escort – for any purpose	<ul style="list-style-type: none"> <li>• 50% in MST &amp; QST in First and Second Class</li> <li>• One escort is also eligible for the same element of concession.</li> </ul>
4	A person with Hearing and Speech	<ul style="list-style-type: none"> <li>• 50% in 2nd, SL and 1st</li> </ul>



<p>Impairment totally (both afflictions together in the same person) travelling alone or with an escort – for any purpose.</p>	<p>Class</p> <ul style="list-style-type: none"> <li>• 50% in MST &amp; QST in first and second class</li> <li>• One escort is also eligible for same element of concession</li> </ul>
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2.4 Railway Board further submitted the procedure for availing concession that (i) Concession tickets are issued directly from Stations on the production of a copy of the prescribed certificate from a Government Doctor; (ii) For Person with Visual Impairment with total absence of sight, certificates issued by RMPs and certain institutions working for Blind persons (listed in Coaching Tariff) are also accepted. On the basis of the Unique ID issued the concessional e-ticket can also be booked through the IRCTC website. Concession is admissible in basic fare of Mail/Express/Superfast trains. For the first three categories in Rajdhani and Shatabdi trains in 3AC and CC class only. Concession is not admissible in other categories of trains like Vande Bharat, Gatimaan, Humsafar, Special Trains, Antyodaya, etc.

2.5 Indian Railways provides concession to only 4 categories of Divyangjan passengers and that too in extreme cases only whereas as per RPwD Act, 2016, DID card is issued for around 21 categories of Divyangjan. Therefore, common UDID cards or Railway concessions are not desirable.

2.6 A similar case is pending before the Hon'ble High Court of Delhi having Writ Petition (C) 2501 of 2019 filed by National Platform for the Rights of the Disabled (NPRD) through its General Secretary against the Ministry of Railways and Others. The next hearing was on 18.05.2023.

2.7 The Railway Board has the power to fix/rationalize the rate for carriage of passengers and conditions thereon. There are 04 berths in the Sleeper class and 02 berths in the air-conditioned 3-tier (3AC)/air-conditioned 3-tier Economy (3E) class have been earmarked for Persons with Disabilities and their attendant, but it is utilized to the extent of 31% only. It is, therefore, considered more than adequate to cater to the present level of traffic, and a decision was taken to earmark a reservation quota of two seats each in Second reserved sitting (2S) and air-conditioned Chair Car (cc) classes in the trains having more than two coaches of such class and in which PwDs have been allowed to book reserved tickets on concession.

2.8 Regarding the specific incident of selling divyang seats, it was found that on the said date, two tickets were booked against berth No.1 of the B1 coach. The first ticket

was booked from ex. MGR Chennai Central (MAS) to Nellore (NLR) (approximately 176 km) for Sh. Anwar Hussain. The second ticket was booked in the name of Shri P. Gumdi Marndi from MAS - Balasore (BLS) with a boarding facility from Bhubaneswar (BBS). The train originates from MGR Chennai Central and goes up to Santragachi JN covering a distance of 1654 km. Nellore is an en-route station after 176 km. Bhubaneswar is around 1223 km from the originating station and Balasore is after that approximately 1428 km from the originating station. As such, there is no fault in the system because it utilized the partially utilized berth available from MAS to BBS on account of the boarding point by Shri P. Gumdi Marndi. As regards, the second passenger who changed the boarding point and boarded from the original point i.e. MAS in such a situation there is a provision that the berth can be allotted to such passenger subject to availability. Since this berth was not available and booked up to Nellore, the second passenger did not have any right over that berth. When the onboard ticket-checking staff Shri K. Vara Prasad found that Shri Marndi was not authorized to travel on this berth, he was excess charged and was sent to berth No.17.

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

3.1 The Complainant filed a rejoinder dated 27.03.2023 to the reply of IRCTC and submitted that as per the Railway Concession Rules, 50% concession in fare is provided to Divyangjan in AC 1 tier and 2 tier and AC Chair Car. Railways issued these concession rules for Divyangjan. Hence, IRCTC failed to implement the guidelines given by the Ministry of Railways. Hence, IRCTC is liable for this intentional mistake.

3.2 The Complainant filed his Rejoinder dated 10.05.2023 to the reply filed by the Railway Board and submitted that the Railway Board has not filed a reply on the affidavit. He reiterated his complaint that even after having a valid concession certificate and concessional card, no concession is provided for more than 5 years in Class 1A, 2A where 50% concession is permissible. No concession is provided in AC Chair Car where 75% concession is permissible. No concession is provided in AC Chair Car of Rajdhani/Shatabdi Trains whereas a 25% concession is permissible as per the table given above.

3.3 Regarding selling divyang seats to the other passengers on the same train at the same time, the Railway Board did not provide any evidence that they levied a penalty to the person Mr. Marndi for boarding the train from Chennai and occupying his seat. However, as per the message received from IRCTC to Mr. Marndi, the boarding point was Chennai Central only. Also, till Nellore Railway station he had to travel in other seats.

3.4 Further only 06 seats are earmarked for Divyang i.e. 04 in Sleeper Class and 02 in 3AC with 75% concession each. Thereby, Indian Railways are restricting Divyangjan to travel with escorts.

#### 4. Hearing (I):

4.1 A hearing was conducted on **17.05.2024** in hybrid mode (online/offline). The following parties/representatives were present during the hearing:

S. No.	Name of the parties/ Representatives	Mode of appearing
<b>For Complainant:</b>		
1.	Shri Anwar Hussain P., Complainant	Online
<b>For Respondent No.1:</b>		
1.	Shri Ali Khan, Divisional Commercial Manager, BZA	Online
2.	Shri Ravi Kant, Assistant Commercial Manager, BZA	Online
<b>For Respondent No.2:</b>		
	None appeared	----
<b>For Respondent No.3:</b>		
1.	Shri Rohit Kumar for Railway Board	Online
2.	Shri Sanjay Manocha, Director, Railway Board	Online

4.2 **Record of Proceedings:** At the very outset, the Court observed that the issues raised by the Complainant regarding not providing concessional railway tickets in AC1, AC2, and AC Chair Car in all trains of Indian Railways are policy issues. But the issue raised at point No. (3) regarding the ***selling of berth of a divyang passenger to another passenger in the same train and at the same time***” is a very serious matter and it shows the insensitivity of the railway's staff towards a divyang passenger in the train. The Court took strong exception to the fact that no reply was filed by the concerned Divisional Railway Manager, Southern Railway [Respondent No.1], and the IRCTC [Respondent No.2].

4.3 During the hearing, the representative of Respondent No.1 submitted that two tickets were booked against berth No.1 of the B1 coach for the same day of travel. The first ticket was booked from ex. MGR Chennai Central (MAS) to Nellore (NLR) (approximately 176 km) for Sh. Anwar Hussain. The second ticket was booked in the name of Shri P. Gumdi Marndi from MAS - Balasore (BLS) with a boarding facility from Bhubaneswar (BBS). The train originates from MGR Chennai Central and goes up to Santragachi JN covering a distance of 1654 km. Nellore is an en-route station after 176 km. Bhubaneswar is around 1223 km from the originating station and Balasore is approximately 1428 km from originating station. As such, there is no fault in the system because it utilized the partially utilized berth available from MAS to BBS, where the second passenger Shri P. Gumdi Marndi was supposed to board. The second passenger, however, boarded from the original point i.e. MAS (Chennai). In such a situation, there is a provision that the berth can be allotted to such passengers subject to availability. Since this berth was not available and booked up to Nellore against the

name of the Complainant, the second passenger did not have any right over that berth. When the onboard ticket-checking staff Shri K. Vara Prasad found that Shri Marndi was not authorized to travel on this berth, he was penalized and charged the excess amount.

4.4 The Complainant reiterated his grievance and added that he felt compelled to leave his berth as the second passenger was not willing to leave berth No.1 allotted to the Complainant and continued to forcefully occupy his berth saying that as he was already penalized and excess charged. He also submitted that while he was deboarding the train at Nellore, the second passenger was still occupying berth No.1.

## **5. Observations & Recommendations:**

5.1 Upon considering the versions of the parties, this Court concludes that the onboard ticket-checking staff did penalize the second passenger Shri P. Gumdi Marndi for his wrongly boarding the train. The Court also observed from the reply dated 31.03.2023 of Respondent No. 3 that after penalizing the second passenger he was allotted another berth (No.17) in the same coach. No supporting document was submitted by the Respondent in this regard. During the hearing, the representatives appearing on behalf of Respondent No.1 and Respondent No.3 did not mention the fact that the second passenger was allotted an alternate berth/berth No.17. They appeared very casual and were not prepared well for the hearing of this case. From the facts available on the record of the case and the submissions made by the parties, it is apparent that the onboard ticket-checking staff did not ensure that the Complainant who is a person with disability gets the rightful occupation of berth No. 1 as the second passenger continued to occupy the berth instead of moving to his allotted berth No.17.

The onboard ticket checking staff and other concerned officials who were managing the coach of the train were duty bound to send the second passenger to his newly allotted seat.

4.6 In view of the facts submitted by the parties, the Court has further concluded that the representatives of the respondents as well as the onboard ticket-checking staff have prima facie appear to be insensitive towards the needs and challenges of divyang passenger. Respondent No. 3 is accordingly directed to conduct full-day sensitization training programs on disability matters at all units under its establishment within the next three months. Respondent No.1 is also directed to arrange for the deputation of the representatives appearing on its behalf to any special school for children with visual impairment recognized by the state government and serve there for 3 days for sensitization on disability matters. The Respondents are also directed to refund the full amount paid by the Complainant for the reservation of his berth for the said journey with an equal amount as compensation for the harassment that he had to suffer. This Court also feels that this is a fit case for imposition of penalty of an amount of ₹10000/- in accordance with Section 89 of the Rights of Persons with Disabilities Act, 2016 [hereinafter "the Act"] for contravention of sections 3, 7, 41, and 46 of the Act. The fine

will be **deposited to the National Trust (Bank Account Number 520141000555076, IFSC Code: UBIN0530786 of Union Bank of India, Delhi-Connaught Place Branch, New Delhi)** within next two weeks. A Compliance/Action Taken Report shall be submitted to this Court within 90 days from the date of this Order in terms of Section 76 of the Act.

4.7 The case is accordingly disposed of.

Signed by Rajesh Aggarwal

Date: 11-06-2024 10:28:21

(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

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

**Case No. 13990/1021/2023**

**In the matter of —**

Shri Rajoo Saroj  
Group Centre CRPF Old Airport,  
Phaphamau, Prayagraj,  
Uttar Pradesh – 211013  
Mobile No – 7007789947  
Email – rajoosaroj461@gmail.com

**...Complainant**

**Versus**

1. The Directorate General,  
Central Reserve Police Force,  
Block No – 01, C G O Complex,  
Lodhi Road, New Delhi – 110003  
Email – igadm@crpf.gov.in

**...Respondent No. 1**

2. Deputy Inspector General of Police,  
GC CRPF,  
Old Airport Phaphamau,  
Prayagraj,  
Uttar Pradesh – 211012  
Control Room No – 8765179280

**...Respondent No. 2**

**1. Gist of the Complaint:**

1.1 Shri Rajoo Saroj, a person with 65% locomotor disability filed a Complaint dated 25.03.2023 regarding denial of promotion.

1.2 The Complainant submitted that presently he is posted at GC, CRPF Phaphamau, Prayagraj, Uttar Pradesh. He became disabled in 2006 during

service and his disability is 65% Locomotor Disability (Right Leg amputated below knee). He further submitted that he was appointed in the year 2004 and has completed 18 years of service in the Central Reserve Police Force. As per him, all his colleagues got the promotion, but he was denied promotion due to his disability. He gave several representations to his office for his promotion but he was not given the promotion. He also referred to DOP&T's O.M. dated 17.05.2022 regarding reservation in promotion. He has requested his promotion as per the Rules.

## **2. Submissions made by the Respondent:**

2.1 The Respondent No. 2 vide its letter dated 15.05.2023 had endorsed a copy of its above-mentioned letter addressed to the Commandant, 101, BN RAF, Prayagraj, U.P. to this Court and submitted that since the aforesaid Complainant had already been relieved on transfer to 101, BN RAF, therefore, further correspondence in this regards may kindly be made with the Commandant 101 BN RAF, Santipuram, Prayagraj.

2.2 The DIG (Adm), for Respondent No. 1 vide its reply affidavit dated 11.08.2023 submitted that the unfortunate incident that caused the disability of the Complainant occurred outside the purview of the injuries sustained during the Active Duty. It is submitted that 'Active Duty' is defined in Section 2 (a) of the Central Reserve Police Force (CRPF) Act, 1949 which says "active duty" means the duty to restore and preserve order in any local area in the event of any disturbance therein. Whereas it is an admitted fact that the injuries suffered by the Complainant were during the travel to participate in the game and hence, the case of the Complainant does not qualify the parameters of medical categories of injuries sustained during the Active Duty. Therefore, the present complaint of the complainant is liable to be dismissed on this very ground.

2.3 He further submitted that the Government of India in consultation with the Chief Commissioner for Persons with Disabilities, vide notification dated 18.08.2021 had exempted the establishment of the Respondents from the provisions contained in Sections 20 and 34 of the RPwD Act, 2016, and hence the complaint is not maintainable. Moreover, the CRPF is responsible for safeguarding the internal security of the country, is involved in combatant duties, and has no provision for the promotion of disabled personnel except for some medical categories of injuries sustained during Active Duty and the case of the Complainant is not covered under such category. Hence, the complaint is not admissible and liable to be dismissed.

### 3. Submissions made in the Rejoinder:

The Complainant filed the Rejoinder vide letter dated 24.08.2023 and reiterated his Complaint. The Complainant *inter alia* stated that he was being pressured by the Respondent to withdraw the Complaint.

4. **Hearing (1):** An online hearing through Video Conferencing was conducted on 05.01.2024. The following parties/representatives were present during the hearing:

- (1) Shri Rajoo Saroj, Complainant
- (2) Shri Shambhu Kumar Singh, Asst. Commandant, 101 RAF, for Respondent
- (3) Shri Ranjeet Kumar Jha, Advocate, for Respondent

### 5. Record of Proceedings

5.1 The Complainant submitted that the PwD and Non-PwD personnel of his batch got promoted but he was denied promotion and felt discriminated against. The representative of the Respondent submitted that the Department is giving promotions as per rules and relevant laws.

5.2 After hearing both parties, this Court observed that this is a case of apparent discrimination on the grounds of disability in the matter of promotion of the Complainant. The Court also felt that his disability and needs should have been factored in while assigning his duties by providing reasonable accommodation. Accordingly, this Court directed the Respondent to review their orders and consider the Complainant for promotion wef. the date of promotion of his junior employee, if any. This Court took a serious view of the non-appearance of any Senior Officer during the hearing.

5.3 This Court directed that a senior officer well-versed with the facts of the case must be present in the next hearing. The Court also instructed to submit the reasons for denying promotion to the Complainant within a week from the date of proceedings.

5.4 In response to this Court's Record of Proceedings dated 15.01.2024, the Advocate for the Respondents *inter alia* submitted that there is no violation of any provisions of the RPwD Act, 2016 as the case of the Complainant does not qualify



to be heard by the Court of CCPD as Section 34 provides that the reservation in promotion shall be in accordance with such instructions as are issued by appropriate government from time to time. It was also submitted that the Respondents are following the instructions issued by the appropriate government, i.e. the Central Government from time to time with regard to the subject matter. The Respondent further submitted that the proviso Section 34 is concerned with reservation and reservation in promotion only whereas the case of the Complainant is of violation of his right to seek promotion and hence the Complaint in its present form is not maintainable and is liable to be dismissed on this very ground.

5.5 He further submitted that there is an established procedure for promotion being followed in their establishment as per which a constable (GD) has to undergo and qualify for a promotional course i.e. HCPC to become eligible for the next rank promotion in which he should be in SHAPE-I medical category which is an essential condition for the promotion of all combat personnel in all groups/ranks/cadres in Central Para Military Forces (CPMFs) and therefore, it is not the case that the reason of discrimination is solely based on the sole ground of a disability of the Complainant. Rather, it is a uniform policy matter and hence, the present complaint is liable to be dismissed.

## 6. Hearing (2):

A hearing was conducted on 17.05.2024 in hybrid mode (online/offline). The following were present during the hearing:

Sl.No.	Name of the parties / Representatives	For Complainant/ Respondent	Mode of Attendance
1.	Shri Rajoo Saroj	Complainant	Online
2.	Advocate Sourabh Bhusan Advocate Ranjeet Kumar Jha	For Respondent No.1 & 2	Online
3.	Shri Sanjit Kumar Singh Asst. Commandant, 101 RAF	For Respondent No.2	Online

## 7. Record of Proceedings:

7.1 The Chief Commissioner for Persons with Disabilities asked the Complainant whether the post to which the Complainant was seeking promotion was a combatant or a civilian post. The Complainant replied that it was a combatant

post.

7.2 The Ld. Counsel appearing for the Respondents submitted that the disability of the Complainant was not attributable to the service or the work he is doing. The Ld. Counsel further clarified that the disability is attributable to service when a person got disability during the war, terrorist attack, intruders, and while on field operations.

7.3 The Complainant submitted that his rights are being denied regarding reservation in promotion and the Respondents are planning to send him home after conducting an internal Medical Board.

7.4 This Court asked the Ld. Counsel whether the Complainant is demanding promotion in the PwD category or in the general category. The Ld. Counsel replied that he is asking for the promotion under Sections 20 & 34 of the RPwD Act, 2016 for which the Armed Forces are exempted which has already been mentioned in the reply submitted by Respondent No. 1 on 11.08.2023. The Ld. Counsel submitted that the Government of India in consultation with the Chief Commissioner for Persons with Disabilities, vide notification dated 18.08.2021 had exempted the establishments of the Respondents from the provisions contained in Sections 20 & 34 of the RPwD Act, 2016, and hence the complaint is not admissible. He further submitted that the CRPF is involved in combatant duties and has no provision for the promotion of disabled personnel except for some medical categories of injuries sustained during the active duty and the case of the Complainant is not covered under such category.

7.5 After considering the records of the case and the submission of the parties, this Court has noted that the Complainant has basically raised two issues, namely - (a) denial of promotion on the grounds of disability and (b) denial of reservation in promotion. Section 20 (3) of the Right of Persons with Disabilities Act, 2016 stipulates that no promotions shall be denied merely on the grounds of disability. Further, Section 34 of the Act provides for reservation in direct recruitment and promotion. In the instant case, the Respondent establishment has been granted exemption from the application of sections 20 and 34 of the Act vide Notification dated 18.08.2021. Thus, the Complainant can not seek relief under these sections. However, considering the fact that the Respondent has continued to employ the Complainant after his acquisition of disability, it should not deny him promotion if his seniority is covered and the promotional post is suitable for the disability of the Complainant. The Respondent has been granted exemption from

providing reservation in appointment to persons with disabilities, but that can not be used to deny promotion even as per the seniority. The Respondent is therefore directed to consider the case of the Complainant accordingly and submit an Action Taken Report within 90 days.

7.6 The case is disposed of accordingly.

**Signed by Rajesh Aggarwal**

**Date: 05-06-2024 14:41:34**

**(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

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**Case No: 14574/1022/2023**

**In the matter of—**

Shri Sandeep. S  
 H302, Smondo 3.0,  
 Neotown, Electronic City Phase- 1,  
 Bengaluru-560100  
 Email: sandeeps2009@gmail.com  
 ssandeep@cdac.in

**...Complainant**

**Versus**

The Executive Director,  
 Centre for Development of Advance Computing (C-DAC),  
 Knowledge Park, Opp. HAL Aeroengine Division,  
 Old Madras Road, Byappanhalli,  
 Bengaluru-560038  
 Email: sds@cdac.in  
 edblr@cdac.in

**...Respondent**

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

1.1 Shri Sandeep. S, a person with 90% visual impairment filed a complaint dated 15.10.2023 requesting cancellation of his transfer order. He is working as a Senior Technical Officer at the Centre for Development of Advance Computing (C-DAC) in Bangalore. He is dependent on his mother for caregiving in terms of his disability and she is now in poor health conditions.

1.2 The Complainant further submitted that he was recruited under a Special Recruitment Drive for PwDs and joined C-DAC, Pune on 21.04.2017. Upon his request, he was transferred to C-DAC, Knowledge Park Office, Bangalore in the year 2018.

Further, he was transferred to the Electronic City Office, Bangalore. After some time, he experienced incidents of mental harassment, discrimination, insults, and exclusion while working on the MANAS Phase-2 Project. On 05.12.2022, he was asked to join an online meeting to discuss the 'MANAS Phase-2 Project'. During the meeting, he was not given due consideration. He was asked to provide some information regarding the feasibility of the said project and in response, he asserted the impossibility of such implementations. Subsequently, he was posed with critical and discourteous questions, impugning his professional credibility and technical competence in the presence of three members and he was called 'Incapable'. He reported the incident to higher authorities but the matter was dismissed without appropriate resolution. On 05.04.2023 he asked his reporting officer about formal assignments of tasks but the officer responded with mere suggestions which reflected a lack of respect for his personal integrity. He approached various accessibility devices but no response was received yet.

1.3 The Complainant further submitted that on 08.08.2023, he received an Office Order from the HR department mandating his relocation to the Knowledge Park Office, effective from 21.08.2023. Despite his requests and complaints regarding accessibility and workplace harassment, he was compelled to join the office where he was assigned to work unrelated to the identified tasks suitable for a PwD employee. He was directed to work on Web Design and GUI-related work, disregarding his acknowledged limitations. On 16.08.2023, he met with the Executive Director and explained his problems. However, throughout the discussion, the Executive Director maintained a negative stance. He was told that the reason for his transfer was his poor performance. In addition, the Executive Director indirectly threatened his position within the organization by subjecting him to insults and unfavorable comparisons with the performance of his colleagues. Additionally, the Executive Director posed a threat concerning his request for special casual leave, which was imperative for attending scheduled eye hospital appointments. He asserted that the said leave was not authorized and insinuated the possibility of suspension as a consequence. He dismissed the challenges arising out of the Complainant's disability. On 20.08.2023, just before joining the new office, he sent a formal request letter to the Executive Director through the appropriate channel, outlining his issues but he did not receive an immediate response and in apprehension, he joined the new office.

1.4 The Complainant further submitted that he was mentally disturbed due to all incidents. On 01.09.2023 he was asked to be physically present in the office as they were dissatisfied with his work done from home. In the Project titled Chips to Start-up (C2S), he experienced intentional mistreatment. He was made to sit in an inaccessible place and provided with a short, non-adjustable chair along with a system that was not

accessible. He was insulted in front of others, questioning his usefulness in the group. He was being asked about the updates on the tasks and weekly reports which were deviated from C-DAC practices. In terms of performance, his APAR places him in the 'Very Good' category. The reporting officer did not assign him proper tasks and accessibility devices were not provided to him to enhance his performance. The environment thus created by the office with the aim of pressuring him to resign from his position and leave the organization.

1.5 The learned Counsel for the Complainant further submitted that as per the information available in the public domain, no designated Grievance Redressal Officer (GRO) or a Liaison Officer has been appointed for PwD employees by the Respondent establishment nor has there been an Equal Opportunity Policy (EOP) published by them. There are issues related to lack of reasonable accommodation, transfer, postings, reservation in promotion, etc. The distance between his residence and office is near about 30 Km. A round trip takes 3-4 hours. Due to the diminished visibility in the evening, it becomes a genuine safety concern for him. The C-DAC Electronic City Office aligns better with his needs, providing him with an improved level of accessibility. The C-DAC Knowledge Park office lacks handrails on its stairs. The C-DAC Electronic City office is more spacious and accessible. The residential apartments are convenient and provide all amenities and daily needs. The distance of the C-DAC Electronic City office is almost 3 kilometers from his residence.

1.6 The Complainant prayed for the following reliefs:

- a. The transfer order dated 08.08.2023 be revoked.
- b. He may be permitted to relocate to the C-DAC Electronic City Office.
- c. He may be provided with reasonable accommodation and accessibility devices.
- d. EOP should be notified by the Respondent as per the RPwD Act, 2016.

## 2. **Submissions made by the Respondent:**

2.1. The Manager & Head, HRD, C-DAC, Knowledge Park, Bangalore vide their letter dated 21.11.2023 filed the reply and submitted that the Complainant has not been harassed, discriminated against, insulted, or excluded while working on the the MANAS-2 project. No complaints of alleged harassment have been brought to the notice at any point in time. It is said to have taken place in December 2022 and reported to the HRD only on 17.04.2023 by which time the First Level Authority (FLA) of the Complainant has changed.

2.2 The Respondent further submitted that the Complainant expressed that it was

impossible to implement the GA matrix in the MANAS-2 Project and after considering his statement he was asked to prepare a presentation to prove the non-feasibility of its implementation which he did not. It is further submitted that the word 'incapable' as stated by the Complainant which was used by the department is not a personal affront upon him in any manner but used purely on technical grounds since the meeting was about technical feasibility. The Complainant made a false allegation that he has not been provided with infrastructure facilities. He was provided with all facilities like lighting, mouse, screen, etc. He was also given the option to choose his place in the office and also chairs suitable for him. The Complainant met the Executive Director on 16.08.2023 without prior appointment as required. He was asked to communicate what he is capable of delivering and based on which appropriate work may be given to him.

2.3 On the complaint regarding the refusal of the Special Casual Leave to the Complainant, the Respondent stated that there was no relation of this with his disability. Appointments with hospitals are scheduled beforehand. It is mandatory that leave can be sought only with prior approval. The Respondent further stated that he was never insulted by anyone in front of team members. He was made to sit in the lab and for a short time, he was shifted to a cubicle with all amenities including a bigger screen and a laptop. Regular assignments have been made to the Complainant. But, he is a chronic defaulter as far as submission of work is concerned. The Complainant has stated that commutation from his place of residence to the office is a problem for him. It is submitted that he has not been transferred to some other city or state but within the same city. It is also relevant to inform that the Complainant was initially posted at Knowledge Park, but even then he chose to take up rental accommodation at Electronic City which clearly shows that the commutation was not an issue at all.

2.4 The Respondent further submitted that all policies of the Government of India with respect to amenities and support to be provided to employees with disabilities are being followed. The Complainant was himself recruited against PwD vacancies under a Special Drive and C-DAC Bangalore alone has 5 employees falling under the PwD category. The C-DAC has a GRO who takes care of the grievances reported. The Respondent requested for dismissal of the case.

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

3.1 The Complainant vide his email dated 07.12.2023 filed the rejoinder reiterating his original complaint and expressed dissatisfaction with the reply filed by the Respondent. He stated that on 13.12.2022 he inquired about the grievance channels for PwD employees but he was directed to a non-designated GRO. He said that his transfer

decision lacked consultation and consideration of his skillset and vision challenges. The absence of requested assistive devices and the expectation of weekly reports without addressing these concerns further indicate inadequate accommodation. He said that the i-HRMS portal lacks a provision for applying for Special Casual Leave for PwD employees, he notified the higher authorities and he was asked to wait for 2-3 months to incorporate these changes on the portal.

3.2 The Complainant further submitted that the claim of being a chronic defaulter in submitting work within the prescribed time is inaccurate and misleading. The complaint reflects genuine workplace challenges and is not vexatious. Further, the claim that he chose rental accommodation in Electronic City despite being posted to Knowledge Park is misleading as he opted for it after his subsequent transfer to the Electronic City Office. The C-DAC neither conducted any sensitization or awareness programs on working with PwD employees nor has it undertaken any accessibility audit.

#### 4. Hearing:

4.1 A hearing was conducted on **30.05.2024 in hybrid mode (Online/Offline)**. The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
<b>From Complainant:</b>		
1.	Shri Sandeep S., Complainant	Online
2.	Advocate Aparna Mehrotra for Complainant	Online
<b>From Respondent:</b>		
1.	Shri Vilas Prabhu, Manager (HRD), CDAC	Online
2.	Advocate Arjun Santhosh for the Respondent	Online

4.2 **Record of Proceedings:** At the outset, the Court expressed its dismay at the averments of the Respondent in their written reply on the following points:

(a) Addressing the Complainant as “incapable” in front of many officials during a meeting of the MANAS-2 Project, was attempted to be normalized by saying that it was not a personal affront but a statement of a technical nature. The CCPD mentioned that under Section 92 (a) of the Rights of Persons with Disabilities Act, 2016 (In short “the Act”), an act of such insults or intimidation with an intent to humiliate a person with disability in any place within public view is liable for a punishment of imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(b) The Respondent took an exception for the Complainant's conduct of arriving



for a meeting with the Executive Director (HR) without prior appointment.

(c) Special Casual Leave (SCL), even for the purpose of treatment was denied to the Complainant on the grounds that for such scheduled treatment, the application for SCL itself should have been submitted after prior approval.

4.3 The Court also took cognizance of the submission of the Complainant in his rejoinder that the iHRMS of the Respondent establishment did not have the facility to apply for the Special Casual Leave. Upon contact, the senior officers of the establishment informed him that incorporation of such features in the software would take about 2-3 months, whereafter he may apply for the SCL.

4.4 Considering the above facts, the Court felt that prima facie it was a case of targeted harassment and humiliation of a person with disability. The Court felt that more than the issue of law and procedure, the case appeared to be of an attitudinal barrier.

4.5 The Court desired a response from the ED (HR), against whom the allegation of misbehavior and harassment was leveled by the Complainant. However, the learned advocate appearing for the Respondent informed the Court that the official was busy elsewhere in some official work. The Ld. Counsel for the Respondent and a representative of the Respondent, Shri Vilas Kumar, Manager (HRD) submitted that the leave was never denied. If it is a planned, informed, and approved leave then there is no denial.

4.6 The Ld. Counsel for the Complainant submitted that this is a case of punitive arbitral transfer of the Complainant who has been working in the Respondent Establishment since 2017 and after 2022 onwards, there are incidents of harassment. There are written submissions and communications to put on records. In August 2023, a transfer order was issued to the Complainant mentioning that he had to work on a specific project in another branch of the Respondent which is about 30 kilometers away from his current residence. The Complainant is residing with his mother who is the only caregiver to him. The Respondent explained that the transfer was made so that the Complainant could work under the direct supervision of the Executive Director, but there has been no evidence of the direct supervision of the Executive Director. How is it that the person, who was actually supervising the Complainant was unaware of his skillset? The Complainant was made to work on the design and user interface. The Complainant informed that he was not able to work on that project and then only he was asked about his skillset. The Complainant informed that the environment of the office was extremely hostile.

4.7 Further, the Ld. Counsel for the Complainant submitted that being a central government PSU, an EOP has to be published in compliance with Sec. 21 of the Act read with Rule 8 of the RPwD Rules, 2017. Their website does not have the EOP of the establishment posted on it, nor has the EOP been displayed at conspicuous places in the office premises as required under the law. Further, as per Section 20 (5) of the Act, the Respondent is required to have a transfer policy containing reasonable accommodation for persons with disabilities. No such transfer policy exists in the establishment. Furthermore, no GRO has been appointed by the Respondent in compliance with Section 23 of the Act. She further stated that the Complainant was even targeted for allegedly sharing the official email to an NGO working for the welfare of PwDs. The said email id is in the public domain. The Complainant informed that the office environment is quite hostile and protection in some way needs to be provided to him.

4.8 After hearing both parties, it was observed that it would be an unfortunate situation if, after the passage of 8 years since the enactment of the Act, the respondent establishment is not yet able to publish its EOP and nominate a GRO. Therefore, the case was listed for a physical hearing on the 03rd June at 1500 hrs. impleading the administrative ministry for the Respondent establishment, the Ministry of Electronics and Information Technology through its Secretary as Respondent No. 2 in the case. The Court also directed that copies of the record of the case be shared with the ministry, which shall nominate an officer not below the level of a Group A, to be present in the physical hearing as aforesaid to represent the ministry. The Court in the exercise of its powers under Section 77 of the RPwD Act, 2016 sought the presence of the ED (HR) in person for a hearing as per the above schedule. Respondent No. 1 was also called upon to submit copies of the following on or before the date of the next hearing as aforesaid:

- (a) Their EOP incorporating therein all the facilities, amenities, and provisions as mentioned in Rule 8 of the Rules including but not limited to the assistive devices, special casual leave, and identification of suitable jobs;
- (b) Letter of registration of the EOP as mandated under Section 21 (2) of the Act;
- (c) Transfer Policy as per Section 20 (5) of the Act;
- (d) Registers and Records as mandated under Section 22 read with Rules 9 and 10 of the Rules; and
- (e) A copy of the Order nominating the GRO of the establishment in accordance with Section 23 of the Act.

4.9 Respondent No. 1 was also directed to share the Access Audit Report of their

office premises from a competent access auditor recognized by the Department of Empowerment of Persons with Disabilities or by the State Government or by any other government agency by 31st July 2024.

## 5. Hearing (II):

5.1 The next hearing was conducted on **03.06.2024 in hybrid mode**. The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
<b>From Complainant:</b>		
1.	Shri Sandeep S., Complainant	Online
2.	Advocate Aparna Mehrotra Counsel for the Complainant	Physical
<b>From Respondent:</b>		
1.	Dr. S.D. Sudarshan, Executive Director, C-DAC	Physical
2.	Shri Jagadeesh Kumar R S Director HR for Corporation Office, C-DAC	Physical
3.	Ms V Rajalakshmi, Under Secretary, M/o Electronics & IT	Physical
4.	Advocate Rishi Arora Counsel for the Respondent	Physical

5.2. **Record of Proceedings:** The representatives for the Respondent informed that they had taken note of the directions contained in the Record of Proceedings of the last hearing held on 30.05.2024 and are taking corrective actions for each one of them. The Respondent also submitted a copy of the OM 20/24 dated 31.05.2024 notifying appointments of GROs at its 14 Centres across the Country along with an additional written submission dated 03.06.2024 seeking time till 31.07.2024 for complying with the remaining directions as contained in para 4.8 above. This Court expressed its displeasure over the non-implementation of sections 20, 21, 22 & 23 of the Act and of Rules 8,9 & 10 of the Rules of 2017 for over 7 years since the promulgation of the Act. The Court drew the attention of the Respondent towards the provisions of Section 89 of the Act, under which such non-implementation is an offence punishable by the imposition of monetary fines.

5.3 In reply to a question, the Respondent submitted that the Complainant has been in CDAC since 2017, He was posted in Pune, and he was transferred to Bangalore on his request. On a further query by the Court about the work being assigned to the Complainant and his contribution to the service, the Respondent informed that he has been contributing to a project called KAI which is basically about accessibility standards

for various kinds of disabilities so that the website becomes accessible to different disabilities. The project was jointly done by multiple C-DAC centers. The Complainant had also contributed to a project called MANAS which is related to normal segmentation of mental health. About the project KAI, the Court informed the Respondent that there was not much scope to do any original research work as both domestic and international agencies have already done this work and published the standards, which are now part of Rule 15 of the RPwD Rules.

5.2 The Complainant submitted that for the MANAS project, he was involved in the development, mainly in the coding for the Android and iOS. Since no proper task suitable to his disability, was assigned, he was studying the brain-computer interface as he was more interested in that and also in the accessibility. The Court wanted to know about his substantive contribution to public service during the 7 years of his service at the Respondent establishment. The Complainant submitted that he performed all assignments given to him and his Performance Appraisal has been "Very Good".

5.3 The Ld. Counsel for the Complainant submitted that the transfer given to the Complainant in August last year was a punitive transfer and that the transfer needs to be set aside. Further, even after his transfer, the Complainant has been given UX-related work, to design the website. The Complainant had written to the officer in charge saying that he was unable to do the work because of his visual impairment. So in fact, he had been actively put in a spot where he could not perform well.

5.4 The Ld. Counsel for the Respondent affirmed that an order to post him back to the C-DAC Electronic City Office has been issued by the Respondent. The Ld. Counsel also undertook that all statutory obligations would be completed by 31<sup>st</sup> July 2024 by the Respondent.

5.5 The Complainant expressed his apprehension that the Respondent may again transfer him once this Court disposes of the matter.

## **6. Observations & Recommendations:**

6.1 After hearing the parties and considering the documents available on the records of the case, this Court concludes that the Respondent is in violation of several provisions of the Act, the Rules made thereunder and the instructions issued by the appropriate government. It was a shocking revelation that the office premises of the Respondent at the Knowledge Park, Bengaluru are not accessible in terms of Sections 40, 44, and 45 of the Act read with Rule 15 of the RPwD Rules, 2017 as amended from time to time. The fact that the Respondent could not utilize the potential of the Complainant properly

during the last 7 years of his service, has also come out during the deliberations. This indicates an attitudinal barrier in the mind of officials of the Respondent establishment, besides the lack of reasonable accommodation required for providing equal opportunities to persons with disabilities in the spirit of Articles 5 and 27 of the UNCRPD-2006 and sections 3 and 20 of the Act. The Court expressed its strong disfavour for not getting adequate and meaningful work from the employees with disabilities as the same does no good for advocating opportunities for recruitment of persons with disabilities. The Court though, is not oblivious to the fact that the Complainant also had a role in maintaining a cordial relationship with his colleagues and superiors and integrating himself with the organisation. Both parties need to work on reducing the perceived conflict and hostility.

6.2 In view of the written undertaking dated 03.06.2024 of the Respondent, this Court has decided to allow them the requested time for compliance with the statutory provisions by 31.07.2024 along with an access audit report as mentioned in para 4.9 above. The Respondent is also directed to install railings on the staircase of their office at the Knowledge Park within this time.

6.3 The following directions are also issued to the parties for compliance and report within 90 days from the date of this Order in terms of Section 76 of the Act:

- a) The Respondent is directed to decide the future posting of the Complainant and all employees with disabilities working with it to a place where they can commute easily so that they can focus on contributing to their work more efficiently;
- b) The Complainant and all employees with disabilities are to be allocated meaningful Projects/works suitable to their skill and talent but also according to their individual disability, preferably in a team environment;
- c) The Complainant to also work on his interpersonal behaviour and develop camaraderie with colleagues; and
- d) Both parties to sit together and mutually resolve all the issues.

6.4 The case is accordingly disposed of.

**Signed by Rajesh Aggarwal**  
**Date: 17-06-2024 11:36:05**

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