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सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12531/1024/2021

Complainant: Shri Karthikeyan, M. Pharm
Lecturer in Pharmacy, Department of Pharmacy
Thanjavur Medical College, Thanjavur – 4

Respondent: The Registrar-cum-Secretary, Pharmacy Council of India
III Floor, MBCC Centre, Flat No. 02, Community Centre
Maa Anandamal Marg, Okhla Phase – I, New Delhi – 110020
e-mail: <registrar@pci.nic.in>

Complainant: 60% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **26.12.2020** submitted that he has working as Lecturer at Department of Pharmacy in Thanjavur Medical College, Tamil Nadu since 16.10.2015 and as per the Pharmacy Council of India (PCI) notification, "Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014" dated 11.11.2014, Lecturer will be Re-Designated as Assistant Professor after 02 years of Teaching experience in PCI approved or recognized pharmacy colleges but this has not been implemented.

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

3. Registrar-cum-Secretary, Pharmacy Council of India vide e-mail dated **22.01.2021** inter-alia submitted that the condition that "a lecturer will be re-designated as Assistant Professor after 02 years of teaching experience in PCI approved/recognized Pharmacy College" prescribed under Minimum Qualification for teachers in Pharmacy Institutions Regulations, 2014 is applicable to institutions approved by the PCI for B.Pharm/Pharm.D/Post graduate course in Pharmacy and as per the record of PCI, Department of Pharmacy, Thanjavur Medical College, Thanjavur is approved for D.Pharm and it does not run B.Pharm Course. Hence, the above prescribed requirement is not applicable to him.

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4. After considering the respondent's reply dated **22.01.2021** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.03.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- Shri Karthikeyan – complainant
- None appeared on behalf of respondent

Observation/Recommendations:

5. Complainant is a lecturer in educational institution recognised by Respondent establishment. Complainant prays that his post must be re-designated to Assistant Professor on the ground of completion of 2 years of service as lecturer.

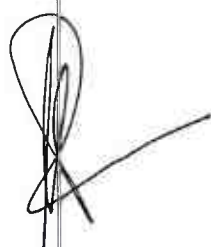
6. Complainant has alleged that the Respondent establishment re-designated post of 2 other lecturers, namely Smt. Saraswati B and Sri Sampat on completion of 2 years of service, who were serving in similar colleges.

7. Section 3(3), 20(1) and 20(3) of Rights of Persons with Disabilities Act, 2016 protect employment rights of Persons with Disabilities. As per the provisions, government establishment can not discriminate with Persons with Disabilities in matter of employment and promotions. Statute provides that Divyangjans must be treated at par with enabled person. Section 3 and 20 are reproduced below -

Section 3(3) - No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

Section 20(1) - No Government establishment shall discriminate against any person with disability in any matter relating to employment.

Section 20(3) - No promotion shall be denied to a person merely on the ground of disability.

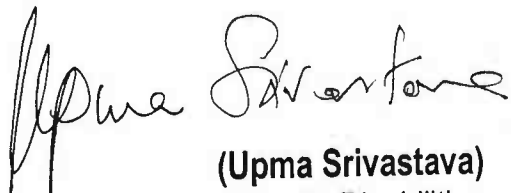


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8. Hence, this court concludes that Respondent has violated equality rights of the complainant by denying re-designation of the post of Lecturer to the post of Assistant Professor. Therefore, this court recommends that the Respondent establishment shall redesignate the post of the Complainant on similar lines in the case of two enabled employees namely Smt. Saraswati B and Sri Sampat who were re-designated.

9. Case is disposed off.



(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 15.03.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12541/1021/2021

वादी:

श्री अशोक कुमार गुप्ता, मकान नं: 01/954

रुचि खण्ड - 1।ए शारदा नगर योजना

रायबरेली रोड़, लखनऊ - 208012

e-mail: <samratashok1965@gmail.com>

प्रतिवादी:

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दूरदर्शन परिसर, दूरदर्शन भवन

टॉवर-सी, कॉपरनिक्स मार्ग, मण्डी हाऊस

नई दिल्ली - 110001

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e-mail: <dgair@air.org.in>

केन्द्र निदेशक/केन्द्राध्यक्ष, उत्तर प्रदेश एवं उत्तराखण्ड जोन

आकाशवाणी, 18, विधानसभा मार्ग, लखनऊ।

e-mail: <lucknow@air.gov.in>

Complainant: 50% person with disability

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक 16.12.2020 में कहना है कि उन्होंने कर्मचारी चयन आयोग द्वारा आयोजित परीक्षा सन् 1986 उत्तीर्ण कर, दिव्यांगता कोटे के तहत दूरदर्शन, लखनऊ में सितम्बर, 1989 में एलडीसी (LDC) के पद पर कार्यभार ग्रहण किया तथा सामान्य विभागीय सीनियारिटी लिस्ट के तहत वह वर्तमान में यूडीसी (UDC) के पद पर कार्यरत है। शिकायतकर्ता का आगे कहना है कि उन्हें आज तक कोई भी पदोन्नति में दिव्यांगता आरक्षण का लाभ नहीं प्राप्त हुआ और न ही प्रतिवादियों द्वारा दिव्यांगजनों के लिए कोई रोस्टर तैयार किया गया है। शिकायतकर्ता ने आरोप लगाया है कि उचित दावा मांगने पर मानसिक प्रताड़ना देते हुए उनका स्थानान्तरण कर दिया गया है।

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2. The matter was taken up with the Respondent vide letter dated **12.01.2021** under Section 75 of the RPwD Act, 2016.

3. Director (Engg.)/Head of Office, Prasar Bharat, All India Radio, Lucknow vide e-mail dated **12.02.2021** inter alia submitted that with enactment of the RPwD Act, 2016 and as per DoP&T OM's, there is no provision for reservation in promotion for PwDs. So far as the request for giving the benefit of reservation in promotion on account of disabilities notionally with retrospective effect is concerned, being policy matter advise of the Directorate General All India Radio is being obtained.

4. After considering the respondent's reply dated **12.02.2021** and the complainant's rejoinder dated **17.02.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.03.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- Shri Ashok Kumar Gupta – complainant
- Shri K.M. Rastogi, Sr. Admin Officer on behalf of respondent

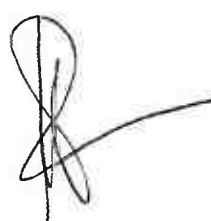
Observation/Recommendations:

5. Both the parties were heard.

6. Complainant submits that the Respondent establishment has not extended reservation in promotion for employees belonging to Persons with Benchmark Disabilities category. As per the Complainant's submissions, reservation in promotion for PwBD employees is denied since year 1996.

7. Respondent submits that the matter is already in consideration and decision will be taken within 2 months.

8. This Court dealt with similar Complaints in the past where Government establishment denied reservation in promotion for PwBD employees. Reasoned



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Recommendation – Order were passed by this court citing various judgments of Hon'ble Supreme Court and Hon'ble High Courts and also DoPT OM's. This court feels compelled to pass similar Recommendation in the present Complaint. After perusal of various such Complaints this court has identified following two issues which need to be addressed in such matter:

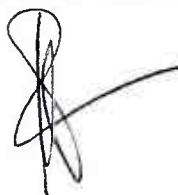
- i) Whether reservation in promotion to Group A and B is applicable for Persons with Benchmark disabilities (hereinafter mentioned as 'PwBD') and can be implemented being a horizontal reservation as against vertical reservation for other categories;
- ii) Whether Government instructions are mandatory to be issued before implementation of reservation for PwBD in promotion to Group A and B.

Issue No. 1

9. The Hon'ble Supreme Court settled this issue in the judgment of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153, whereby hon'ble court laid down that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment, further Government was directed to extend reservation under The Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act 1995 (hereinafter mentioned as 'PwD Act of 1995') to PwD in all identified posts in Group A and Group B irrespective of mode of filling up of such vacancies. Relevant paras of the judgment are reproduced below –

"24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

25. In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."



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10. The Hon'ble court's reasoning behind the directions was based upon the objective and purpose sought to be achieved by the legislature. Court in the same judgment noted that the objective behind PwD Act of 1995 is to integrate PwD into society and to ensure their economic progress. The intent is to turn PwD into agents of their own destiny.

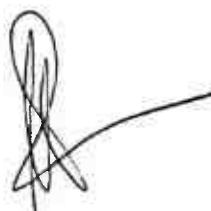
11. Court also addressed the anomaly which arises when reservation in promotion is not extended to identified posts in Group A and Group B. Para 13 of the judgment is reproduced below –

"13. For some of these identified posts in Group A and Group B, the mode of recruitment is only through promotions. The purpose underlying the statutory exercise of identification under Section 32 of the 1995 Act would be negated if reservation is denied to those identified posts by stipulating that either all or some of such posts are to be filled up only through the mode of promotion. It is demonstrated before us that PWD as a class are disentitled to some of the identified posts in Group A and Group B because of the impugned memoranda and the relevant regulations, under which the only mode of appointment to those identified posts is through promotion. Once posts are identified under Section 32, the purpose behind such identification cannot be frustrated by prescribing a mode of recruitment which results in denial of statutory reservation. It would be a device to defraud PWD of the statutory benefit granted under Section 33 of the 1995 Act."

12. Hon'ble Court in the same judgment has further held that the basis for providing reservation for PwD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in *INDRA SAWHNEY v. UNION OF INDIA*; AIR 1993 SC 477 is clearly and normatively not applicable to the PwD.

13. Recently in judgment dated 14.01.2020, in the matter of *SIDDARAJU v. STATE OF KARNATAKA* [Civil Appeal No. 1567 of 2017] the Hon'ble Supreme Court of India has upheld the judgement passed in the matter of *Rajeev Kumar Gupta* (Supra). The Supreme Court has held that –

"10) After hearing learned counsel appearing on behalf of all the parties including the learned Additional Solicitor General, we are of the view that the judgment of this Court cannot be faulted when it stated that Indra Sawhney dealt with a different problem and, therefore, cannot be followed."



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11) *We may also note that review petitions were filed and have since been dismissed against both the 2013 and 2016 judgments. Consequently, the reference stands answered by stating that the 2013 judgment as clarified in National Federation of the Blind vs. Sanjay Kothari, Secy. Deptt. Of Personnel and Training, 2015 (9) Scale 611 and the judgment in Rajeev Kumar Gupta & Others v. Union of India & Others – (2016) 13 SCC 153 case will bind the Union and the State Governments and must be strictly followed notwithstanding the Office Memorandum dated 29.12.2005, in particular. Since the reference has been disposed of by us today, contempt petitions be listed for hearing.”*

14. At this point it is pertinent to mention that the above judgments were delivered while interpreting Sections 32 and 33 of PwD Act of 1995. Therefore, issue arises whether the law laid down in these judgments shall be applicable for implementation and execution of rights under The Rights of Persons with Disabilities Act, 2016 (hereinafter mentioned as 'RPwD Act of 2016') as well.

15. This court observes that the aforementioned rulings of Hon'ble Supreme Court are in the context of the PwD Act of 1995 which has now been replaced by The Rights of Persons with Disabilities Act, 2016. This court concludes that the mandate, objectives and targeted beneficiaries of both the PwD Act of 1995 and RPwD Act of 2016 are identical. Hence, replacement of the Act of 1995 does not in any way change the interpretation of the Supreme Court's directions in this matter.

16. Further the hon'ble Supreme Court held in JUSTICE SUNANDA BHANDARE FOUNDATION v. UNION OF INDIA (2017) 14 SCC 1 that RPwD Act of 2016 confers more rights on PwDs and is a sea change and requires a march forward. Relevant Para of the judgment is reproduced below -:

“24. We have referred to certain provisions only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation.”



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17. Therefore, this court concludes that despite of similar objectives of the two acts, if effect of judgments of hon'ble Supreme Court in Rajeev Kumar Gupta (Supra) and Siddaraju (Supra) is not extended to RPwD Act of 2016 Act, it shall be a step backwards rather than march forward.

18. At this juncture it is vital to mention the judgment of Hon'ble High Court of Uttarakhand delivered in UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLineUtt 865. Hon'ble High Court held that law as laid down in Rajeev Kumar Gupta Case by the hon'ble Supreme Court does not make any distinction between Group A and B posts vis a vis Group C and D posts. Then the hon'ble High Court went on to held that judgments rendered under the light of provisions of PwD Act of 1996 still hold good under RPwD Act of 2016. Relevant Para of the judgment is reproduced below -:

"14. A bare perusal of Section 34 of the new Act reveals that every appropriate Government is under a duty to appoint person with benchmark disabilities to the extent of not less than 4% of the total number of vacancies in the cadre strength, in each group of posts. Thus, the judgments rendered in the light of provisions contained in Act no. 1 of 1996 still hold good under the new Act."

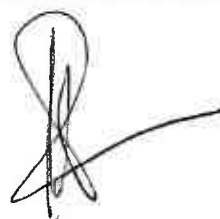
19. Hence, this court concludes that replacement of the PwD Act of 1995 does not in any way change the interpretation of the Supreme Court's directions in this matter

Issue No. 2

20. In the RPwD Act of 2016, the proviso to section 34(1) states that "reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time". The plea taken by the Respondent in many Complaints is that as the Government's directions are still awaited in this respect, establishments cannot implement the Supreme Court directions.

21. First proviso to sub-section (1) of section 34 of the Rights of Persons with Disabilities, 2016 reads as follows:

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



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22. The question before this Court is whether reservation in promotion to PwBD in the services under the Government of India can be given at present in the circumstances when the Government of India has not issued any instructions about reservation in promotion to the PwBD after the RPwD Act of 2016 came into existence.

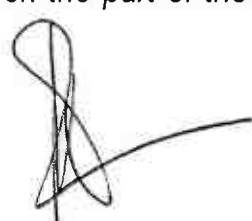
23. In this regard it is imperative to mention the judgment of Hon'ble Supreme Court in matter of GOVERNMENT OF INDIA v. RAVI PRAKASH GUPTA; (2010) 7 SCC 626. One of the issues in the case was whether reservation to PwDs under s.33 of 1996 Act can be denied till executive identifies posts for reservation under Section 32 of 1996 Act. Court held that waiting for the executive to identify posts in order to extend reservation to PwDs shall be violation of the intent of the legislature. Relevant Para of the judgment is reproduced below -:

"25. ... The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Groups A and B posts in the IAS was undertaken after the year 2005 is not of much substance."

24. Incidentally, Hon'ble Uttarakhand High Court in its judgment delivered in matter of UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLineUtt 865 reiterated the same with respect to Section 34 of RPwD Act of 2016. Relevant Paras of the judgment are reproduced below -:

"17. First proviso to Section 34 of the new Act provides that reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. We have been informed that such instructions are yet to be issued by the State Government.

18. Rights of Persons with Disabilities Act, 2016 is a beneficial legislation and Section 34 thereof confers statutory right of reservation in public employment to persons with benchmark disabilities. This valuable right cannot be denied to persons with disabilities due to inaction on the part of the State Government in issuing instructions."




25. The Government of India vide DOPT OM No. 36035/02/2017 dated 15.01.2018 issued instructions about implementation of reservation for PwBD. These instructions cover reservation in the matter of posts filled by direct recruitment. The OM appears to be silent about reservation in the matter of promotion but it is not.

26. The OM dated 15.01.2018 refers to two OM's, one of which is OM No. 36035/03/2004 dated 29.12.2005. The OM dated 29.12.2005 contains instructions about reservation in promotion for PwBD and has not been withdrawn or superseded by OM dated 15.01.2018 or any other OM or Order or any other type of communication. The OM dated 15.01.2018 has replaced instructions about reservation for PwBD in direct recruitment but has left instructions about reservation in promotion intact. As such, instructions about reservation in promotion for PwBD issued by the Central Government already exist and reservation in promotion to PwBD should be given as per these instructions as long as any other instructions are issued by the Government.

27. A question may be raised that OM dated 29.12.2005 relates to Persons with Disabilities (PWD) while as per the RPwD Act of 2016 reservation is provided to the PwBD. Careful reading of the RPwD Act of 2016 and the OM dated 29.12.2005 makes it clear that the term PwBD used in the Act and the term PWD used in OM dated 29.12.2005 have exactly the same meaning.

28. This court appreciates the fact that the Respondent is considering the issue of reservation in promotion in Respondent establishment and expects that swift decision shall be taken by the Respondent establishment. Hence this court recommends that the Respondent establishment shall take into consideration the rule position in preceding paragraphs while reaching to the conclusion on the issue of reservation in promotion and shall file Compliance Report within 90 days of date of this Order.

29. Case is disposed off.


(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 15.03.2021

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12517/1024/2020

Complainant: Shri Ravindra Kumar Gupta, 16/2D, Type – 3
BSNL Quarter, Kali Badi, Gole Market, New Delhi – 110001
E-mail: <ravindergupta.2008@gmail.com>

Respondent: The Director (HR), Bharat Sanchar Nigam Ltd
Corporate Office, Harish Chandra Mathur Lane
Janpath, New Delhi – 110001
e-mail: <agmbldgbsnlco@gmail.com>

Complainant 50% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 21.12.2020 submitted that he is working in BSNL, New Delhi as a JTO and living in BSNL TYPE – III quarter at first floor in Kali Bari, New Delhi where he is facing lots of difficulties. He further submitted that he has been entitled of Type – IV quarter since 2012 and he is continuously applying from last four years for Type-IV ground floor quarter. He alleged that in the last year, BSNL implemented VRS scheme due to this, around 100-150 quarter have been vacated but they allotted to SC, ST and OBC except PwDs. He also alleged the BSNL administration neither providing reservation to PwDs in promotion and nor in allotment of quarter.

2. The matter was taken up with the Respondent vide letter dated 29.12.2020 under Section 75 of the RPwD Act, 2016.

3. In response, Asst. General Manager (Bldg.), BSNL vide letter dated 29.01.2021 inter-alia submitted that Shri Ravindra Kumar Gupta is seeking priority for allotment of Type-IV, Ground Floor accommodation at Kali Bari locality but his name is at Sr. Nol. 24 in Type-IV waiting list in the month of January 2021 and at present there is no Type-III quarter vacant at Ground floor in Kalibari. They further submitted that BSNL is providing reservation to PwDs in promotion as per guidelines of Govt. of India.

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4. Complainant vide rejoinder dated **12.02.2021** inter-alia requested that 21/1D, Type-IV, Ground Floor Quarter in Kali Bari Marg allotted to Shri Rajesh Gupta whose son is also 80% disabled is going to vacate in near future which is suitable for him as per his requirement.

5. After considering the respondent's reply dated **21.01.2021** and the complainant's rejoinder dated **07.02.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.03.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- Shri Ravindra Kumar Gupta - complainant.
- Shri Sunil Kumar Gupta, AGM on behalf of the respondent.

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant who suffers from 50% locomotor disability is employee of Respondent establishment and is currently living in Type-III residential accommodation provided by the Respondent establishment. Complainant alleges that the residential accommodation he is living in is on the first floor. He submits that he is entitled for Type-IV residence, which he has applied for. His name is at Sr. No. 24 in waiting list of Type – IV residential accommodation. He further submits that he is also eligible for Out-of-turn allotment, however, Respondent is denying him out of turn allotment.

8. Respondent submits that the Complainant shall be allotted Type – IV accommodation when his number will be due. His name can be considered for out of turn allotment on medical grounds in accordance with the rules which provide that out of turn allotment can only be considered in the next below type of the entitlement of the official concerned. Hence, as soon as Type - III residence on Ground Floor will be vacant, Complainant shall be allotted the same as per out of turn allotment rules.

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9. Fact that despite of suffering from 50% locomotor disability, Complainant was never provided residence on the ground floor despite the clear cut provision of out of turn allotment indicates discrimination with the Complainant. This act is also a violation of 'accessibility rights' of the Complainant.

United Nations defines concept of 'Accessibility' in following terms –

"Accessibility is about giving equal access to everyone. Without being able to access the facilities and services found in the community, persons with disabilities will never be fully included. In most societies, however, there are innumerable obstacles and barriers that hinder persons with disabilities. ... An accessible physical environment benefits everyone, not just persons with disabilities. The Convention states that measures should be undertaken to eliminate obstacles and barriers to indoor and outdoor facilities including schools, medical facilities and workplaces."

10. Respondent allotting residence to the Complainant on the first floor, despite of his disability reflects that the Respondent never cared to allot residence to the Complainant on the ground floor. When the Complainant approached this court, Respondent tried to take shelter behind guidelines issued by Directorate of Estate relating to 'out of turn' allotment. These guidelines should have been followed earlier and Complainant should have been allotted residence on the ground floor. However, no such attempt was made by the Respondent. This inaction of the Respondent reflects harassment of the Complainant and denial of accessibility rights.

11. Hence, this court recommends that the Respondent shall immediately allot Type III residence on ground floor as soon as any such residential facility becomes vacant automatically or by Respondent's efforts of exchanging quarters. Further, this court recommends that as soon as any Type IV residence on ground floor become available, the Complainant shall be allotted the residence on first priority.

12. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.03.2021

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सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12520/1022/2020

Complainant: Kumari Atisha Singh
D/o Shri Radha Charan
E 133 – F, First Floor, Mittal Chowk
Pul Prahladpur, New Delhi – 110044
e-mail: <atishasingh96@gmail.com>

R-26752

Respondent: The Commissioner, Kendriya Vidyalaya Sangathan
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016
e-mail: <kvse2section@gmail.com>

R-26753

Complainant: Shri Radha Charan 80% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **28.12.2020** submitted that her father Shri Radha Charan, 80% locomotor disability and widower has been serving at Kendriya Vidyalaya, NEPA, Barapani, Meghalaya which is situated about 2000 km from his native place i.e. New Delhi since 24.09.2016 and she with her brother living alone at New Delhi without any elder member. She further submitted that the post of Principal in Kendriya Vidyalaya, NTPC Badarpur which is near to their residence in New Delhi is vacant, therefore, she has requested to transfer her father from KV NEPA, Meghalaya to KV NTPC, Badarpur, New Delhi.

2. The matter was taken up with the Respondent vide letter dated **28.12.2020** under Section 75 of the RPwD Act, 2016.

3. सहायक आयुक्त (स्था-1), केन्द्रीय विद्यालय संगठन, नई दिल्ली का अपने पत्र दिनांक **27.01.2021** में कहना है कि कोविड-19 के संक्रमण के दृष्टिगत वर्तमान सत्र 2020-21 की केन्द्रीय विद्यालय संगठन की स्थानांतरण प्रक्रिया अभी शुरू नहीं हुई है। स्थानांतरण प्रक्रिया

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शुरू होने पर कुमारी अतिशा सिंह के प्रतिवेदन पर उनके पिता की सहमति लेकर, रिक्तियों की उपलब्धता के तहत नियमानुसार कार्यवाही की जायेगी। विपक्षी का आगे कहना है कि पूर्व में मुख्य आयुक्त दिव्यांगजन के हस्तक्षेप से श्री राधाचरण का स्थानांतरण, उस समय उपलब्ध रिक्तियों में से सबसे नजदीक केंद्रीय विद्यालय में दो बार किया गया था परन्तु दोनों बार श्री राधाचरण ने स्थानांतरण से इंकार कर दिया।

Observation/Recommendations:

4. The Court noted that the complainant is seeking transfer nearby his hometown Kendriya Vidyalaya, NTPC Badarpur, New Delhi where post is vacate and available.

5. The respondent is advised to note the following provisions of Rights of Persons with Disabilities Act, 2016 in this matter.

"Section 20 (5) - 'Non-discrimination in Employment' of the Rights of Persons with Disabilities Act, 2016 provides that the appropriate Government may frame policies for posting and transfer of employees with disabilities."

Further, as per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.

6. In view the explicit provisions of the RPwD Act, 2016 which prevail upon the transfer guidelines of the institution, the respondent are recommended to transfer the complainant to nearby his hometown Kendriya Vidyalaya, NTPC Badarpur, New Delhi within three months from the issue of these orders and the compliance report be furnished to this Court within 90 days.

7. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.03.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12381/1023/2020

Complainant: Shri P.G. Baiju, Make-up Artist (Rtd)
C - 8, Staff Quarters, Doordarshan Kendra
Thiruvananthapuram - 695043
e-mail: <sasikalabaiju@gmail.com>

Respondent: The Director General, Doordarshan Kendra
Copernicus Marg, New Delhi
e-mail: <dgdd@doordarshan.gov.in>

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **15.10.2020** inter-alia submitted that he was appointed as casual Make-up Assistant at Doordarshan Kendra, Thiruvananthapuram w.e.f. 24.03.1987 and he submitted a representation for regularization under liberalized regularization scheme of casual artists formulated in 1994 and in 2005, he was appointed on ad-hoc basis and retired on 31.05.2020 without regularization. He has requested to change service from Ad-hoc to regular, service to get full pension and immediate disbursal of provisional retirement benefits.

2. The matter was taken up with the Respondent vide letter dated **27.10.2020** under Section 75 of the RPwD Act, 2016.

3. Dy. Director (Admn), Doordarshan, New Delhi vide letter dated **21.12.2020** submitted that one disciplinary proceedings case is pending against Shri P.G. Baiju, which is yet to be finalized. Besides, one Court Case No. OA 562/2019 filed by Shri Baiju before the CAT, Ernakulam Bench for his claim for regularization is also pending in the CAT at the final stage, therefore, respondent had sought one month additional time for filing the para wise comments however, no response received within stipulated time period. Hence, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.02.2021**.

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4. Respondent vide e-mail dated **04.02.2021** submitted para wise reply and stated that Shri P.G. Baiju was appointed as casual Make-up Assistant at Doordarshan Kendra, Thiruvananthapuram w.e.f. 24.03.1987 and he was not considered for regularization in the liberalized regularization scheme, therefore, he approached the Court. Hon'ble CAT, Ernakulam. Hon'ble Court directed the respondent to consider the adhoc appointment of the applicant as Make-up Assistant and when a vacancy would arise and consider him for appointment on regular vacancy as and when a regular vacancy would become available. They further submitted that arrears pertaining to Transport Allowance amounting to Rs. 40144- and leave encashment 1,32,397/- was already paid to him. They further submitted that Shri Baiju has also filed a Court case bearing OA No. 562/2019 before the Ernakulam Bench of CAT regarding his regularization and pension status whether he is governed by old pension Scheme prior to 2004 or New Pension Scheme. The case is pending for hearing before the Hon'ble CAT, Ernakulam.

5. After considering the respondent's reply dated **04.02.2021** and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.02.2021**.


Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.02.2021**. The following were present:

- None appeared for complainant, however, advocate Shri V.A. Shaji contacted on phone after hearing and informed that due to technical network problem, he could not be connected
- Shri S. Sanjeev, DDG on behalf of respondent

Observation/Recommendations:

6. After hearing the respondent and perusal of documents available including the written submission made by the Ld. Advocate of the complainant on 15.02.2021, Court is *in of* view that matter of regularization and pension status of complainant is sub-judice before CAT, Ernakulam. Therefore, no intervention of this Court is warranted.

7. Accordingly, the Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.03.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11430/1011/2019

Complainant: Smt. Priyanka D. Sonawane
e-mail: <kajalsonawane75@gmail.com>

R-26756
S.V.National Institute of Technology
Through the Director
E-mail: <registraroffice@svnit.ac.in>
Tel: 0261-2201517

..... RESPONDENT

R-26757
Indian Institute of Technology , Goa
Through the Director
E-mail: <pstodirector@iitgoa.ac.in>
Tel: 0832-2490-896

..... RESPONDENT

R-26758
Indian Institute of Technology, Dharwad
Through the Director
E-mail: <pro@iitdh.ac.in>
Tel: 0836 - 2212839

..... RESPONDENT

R-26759
Indian Institute of Science, Bangalore
Through the Director
E-mail: <registrar@iiss.ac.in>
Tel: 080 - 22932444

..... RESPONDENT

R-26760
Goa University, Goa
Through the Registrar
E-mail: <registrar@unigoa.ac.in>
Tel: 0832-2451184

..... RESPONDENT

R-26761
Department of School Education & Literacy
Through the Secretary
E-mail: <maneesh.garg@nic.in>
Tel: 011 - 23386232

..... RESPONDENT

GIST of the Complaint:

Complainant vide letter dated **09.08.2019** inter-alia submitted that respondents are not providing reservation to PwDs candidates while in the recruitment of Group 'A' posts.

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

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

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

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2. The matter was taken up with the Respondent vide letter dated **09.10.2020** under Section 75 of the RPwD Act, 2016.
3. In response, S.V.National Institute of Technology, Surat vide letter dated **12.11.2020** inter-alia submitted that the recruitment was conducted during the year 2020 for Single Cadre post of Registrar, two posts of Dy. Registrar and three posts of Assistant Registrar in Group 'A' wherein 4% horizontal reservation for PwDs was notified by the Institute. Due to non-availability of suitable person with benchmark disability, vacancy has been carried forward to the subsequent Recruitment Cycle.
4. Complainant vide e-mail dated **25.01.2021** inter-alia submitted that she is not able to attend the hearing since she is in the family way and asked to have full bed rest. She has submitted following submissions for hearing purpose: 1. All the Institutes are not following the RPwD Act, 2016 and various orders of Supreme Court regarding fulfilling the backlog since no Institute is providing any evidence in support of their arguments like a copy of roster for PwDs. 2. No Institute has disclosed the PwD roster book on their website, which is mandatory as per the RTI Act. 3. None of the Institutes has a PwD Officer in Group 'A' & 'B' (Non-teaching). 4. Most of the Institute is claiming that they have PwD in Teaching, which comes under Group A, but the Ministry of Education or DoP&T has not issued any guideline for grouping of the Teaching and Non-Teaching Roster for Group 'A' & 'B' position etc.
5. After considering the respondent's reply dated **12.11.2020** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **29.01.2021**. The following were present:

- Shri Subhash Pandey – IIT Goa; SR Gandhi – NIT Surat; Agni Ashwini – Goa University; Sandeep Parikh on behalf of respondent

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Observation/Recommendations:

6. Plethora of Complaints are filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.
7. Whole recruitment cycle can be divided into following parts –
- a) Identification of Posts suitable for PwD candidates.
 - b) Reservation given to Persons with Disabilities
 - c) Issuance of Notification
 - d) Examination Fees
 - e) Examination Process – Facilities provided during examination and Examination Centres
 - f) Relaxed minimum criterion for PwD candidates
 - g) Selection and Non selection
8. Before proceeding further, it is important ^{to list the} ~~to list the~~ objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination.
9. For the present complaint whole summary of the statute is unwarranted, hence, relevant provisions for relevant portions are hereafter identified and mentioned.



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IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

10. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 16-15/2010-DD.III dated 29.07.2013 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

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

11. Addition of any post from this list –

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

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

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

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



RESERVATION FOR PERSONS WITH DISABILITIES

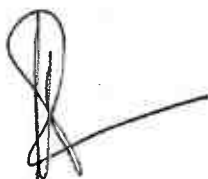
12. This category can be divided into following 6 sub categories –

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

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

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

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



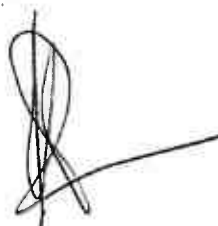
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16. How Vacancies can be Computed—The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under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

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

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

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



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

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

ISSUING OF NOTIFICATION

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

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

EXAMINATION FEES

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



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EXAMINATION PROCESS

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

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

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

- I. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.
- II. At this point relevant provisions related to 'Reasonable Accommodation' need to be mentioned. Section 3 of RPwD Act, 2016 lays down that appropriate government shall ensure reasonable accommodation for persons with disabilities. Reasonable Accommodation is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.
- III. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.



RELAXED MINIMUM CRITERIA

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

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

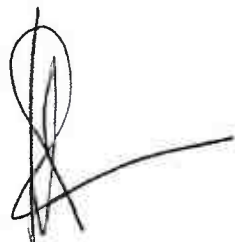
SELECTION ON MERITS

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

DETAILED PROCEDURE FOR MAINTAINING ROSTER

29. Situation – 1 - As on 01.01.2018 or 15.01.2018, if a new cycle begins, the roster points for PwD shall be 1, 26, 51 and 76. The categories are (1% reservation for each)

- (a) Blind and Low Vision;
- (b) Deaf and hard of hearing;
- (c) Locomotor disability including Cerebral Palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) (i) autism, intellectual disability, specific learning disability and mental illness.
(ii) multiple disabilities from amongst persons under Clauses (a) to (d) including deaf-blindness;

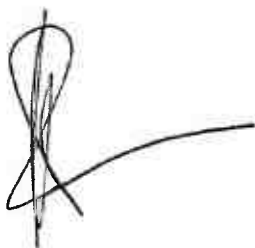


30. Situation 2 - As on 15.01.2018, the cycle has already started and only 1st point is filled in under 3% reservation. Then the roster may be modified for the remaining points i.e. 26, 51 and 76.

31. Situation 3 - As on 15.01.2018, the cycle has already started and two points are filled in i.e. 1 and 34 (under 3% reservation) still the roster can be modified to accommodate the another two points say 51 and 76. The Appointing authority should ensure how best the 4% reservation be implemented from 15.01.2018. The flexibility of filling the reserved points within the blocks i.e. 1-25, 26-50, 51-75 and 76-100 has been provided. The earliest vacancy in the block should be filled in by the PwD applicants, as per the prescribed reservation.

32. To understand more practically, the following examples may help:

- a. The new cycle started on 01.01.2018 and there are 27 vacancies in a group. The points reserved for PwD are 1 & 26. The first vacancy goes to Blind and Low vision i.e. (a) category. The 26th vacancy goes to Deaf and hard of hearing i.e. (b) category. As and when 51 vacancies arise it goes to (c) category and 76th vacancy goes to (d) category.
- b. If the cycle as on 15.01.2018 started already and the first vacancy is filled by VI category, then 26th, 51st and 76th vacancies shall be filled in by the applicants belonging to (b), (c) and (d) category.
- c. If the cycle already started as on 15.01.2018 and the first vacancy was filled in by Hearing Handicapped (HH) category then the remaining vacancies i.e. 26, 51 and 76 as and when arises shall be filled in by (a), (c) and (d) category candidates. The aim of the Appointing Authority should be to fill up the vacancies by the categories for which the points are meant. For whatever reason, the points are filled in by other categories than the one for which they are meant for, by the end of the cycle, all the 4% (points 1, 26, 51 and 76) should be filled in the (a), (b), (c) and (d) categories.
- d. If there are backlog vacancies, they are to be filled in by the categories for which they have been carried forward.



- e. For inter-change of the vacancies, the procedure is laid down in the O.M. dated 15.01.2018.
- f. The 4% is to be calculated on the number of vacancies in a particular group i.e. A/B/C.
- g. The roster is to be maintained group wise i.e. A/B/C.
- h. In Group B and C, it is 4% of total vacancies (not posts). In Group A, it is 4% of vacancies in identified posts.
- i. This is a vacancy based roster and not post based roster.
- j. This is a horizontal roster i.e. the point reserved under 1/26/51/76 may also be a point reserved for SC/ST/OBC/EWS.

33. Hence, this Court recommends that all the Respondent establishments shall comply with necessary guidelines prescribed by various government departments from time to time and mentioned above. Further this court recommends that all the Respondents shall file the compliance report within 90 days from the date of this Order.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.03.2021

706



Extra 115

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12481/1102/2020

Complainant:

Shri Fakhruddin

S/o Shri Rasiduddin

R/o Vill. – Raksa Kala, Post–Danokuiyan,

District-Sant Kabeer Nagar-272126 (UP)

Email: ha0786@gmail.com

R-26717

Respondent:

The Branch Manager,

State Bank of India, Semiriyawan Branch,

Vill Post – Semiriyawan, Tehsil – Khalilabad,

District- Sant Kabir Nagar-272126 (UP)

Email: sbi.15532@sbi.co.in ;

R-26718

1. Complaint made by the Complainant

1.1 Shri Fakhruddin, M-40, a person with 100% Visual Impairment, filed this complaint regarding harassment and misbehaviour in providing banking facilities by the State Bank of India, Semiriyawan Branch, District-Sant Kabir Nagar (UP).

1.2 The complainant submitted that in June, 2020 he went to the respondent branch of the State Bank of India for opening a bank account. He alleged that the Branch Manager of the said bank denied opening a bank account on the ground of being a person with visual impairment. The complainant submitted that he told the branch manager about the RBI Guidelines with regard to provide banking facility to persons with disabilities and furnished a copy of the same, but he denied opening a bank account. After interference of a Social Worker, Shri Ahmad Sahab, a bank account was opened. Now, the bank is not providing him ATM/Debit Card despite his several requests and personal visits in the branch. The complainant further submitted that he has been facing difficulties to withdraw money from the bank without ATM/Debit Card.

Page 1 of 2

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

E-mail: ccpd@nic.in ; Website: www.ccdlsabilities.nic.in

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

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

2. Submission made by the Respondent:

The matter was taken up with the respondent on 18.12.2020 followed by Reminders dated 04.01.2021 and 19.01.2021 for submission of comments, but despite lapse of statutory period, no reply was received from the respondent bank.

3. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**, but none of the parties appeared during the hearing.

4. Observation/Recommendations:

4.1 It was observed that Regional Manager, State Bank of India, Administrative Office Gorakhpur submitted a copy of their letter vide email on the date of hearing informing the respondent branch of the bank that RBI Circular No.200-08/138 dated 04.06.2008 with regard to issue of ATM Card to the persons with visual impairment had already been issued to the respondent branch. In the said circular, RBI has clearly instructed the banks that ATM Card can be issued to the persons with visual impairment. The Regional Manager has advised the respondent branch of the bank, in case ATM card has not been issued to the complainant, urgent arrangement be made to issue ATM Card to the complainant Shri Fakhruddin.

4.2. It is viewed seriously that the respondent branch of SBI is not sensitive to the rights of persons with disabilities as despite having acknowledged the specific direction of RBI to issue ATM Card to persons with visual impairment, the complainant had to face discrimination to get the ATM card issued by the branch.

4.3 Respondent is advised to take expeditious action to issue ATM Card to the complainant Shri Fakhruddin at the earliest; and the Officers and Staff of the Branch be made sensitive so that the legitimate right of person with disabilities to get ATM Card may not be infringed.

4.4 The case is disposed off.

Dated: 16.03.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities

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Extra 117

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12537/1032/2021

Complainant:

Mr. Zaheer Jan, Founder Chairman (STDF),
Child & Disability Rights Activist
Email: infostdfjk2013@gmail.com;
zaheerjan2019@gmail.com

R-26721

Affected Person:

Mr. Ghulam Jeelani Mir, M-29,
a person with 45% Locomotor Disability,
Senior Research Scholar, Department of Biochemistry,
University of Kashmir, Hazratbal,
Srinagar-190006 (J&K); Email: jeelani710@gmail.com

R-26719

Respondent:

Registrar,
University of Kashmir,
Main Administrative Building,
Hazratbal, Srinagar-190006 (J&K)
Email: registrar@kashmiruniversity.ac.in

R-26722

1. Gist of Complaint

1.1 The complainant filed a complaint on 05.01.2021 regarding Eviction Notice issued by the Hostel Warden, University of Kashmir to Mr. Ghulam Jeelani Mir, a Research Scholar with 45% Locomotor Disability to vacate the hostel; and having no Hostel Reservation Policy for Persons with Disabilities in University of Kashmir in accordance with the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016].

1.2 The complainant submitted that he had met two scholars with disabilities who informed that they have been residing in the University Hostel since may 2017 and now the Warden have told them to vacate the hostel because they have completed 3 years. The complainant alleged to have used abusive language and threat by the University authorities. The complainant pleaded that students need

Page 1 of 3

full accessible environment and accommodation to move easily. Living within the premises has helped them a lot. It would not be possible for them to find good accessible accommodation near Kashmir University especially in this Covid-19 pandemic situation.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 12.01.2021 and submitted that Mr. Gh. Jeelani Mir, was accommodated as Guest Scholar on 06.06.2017 in IKS Hostel. As per the policy, the accommodation in IKS Hostel is granted on temporary basis for a maximum period of six month; and the whole time scholars of the University have to apply for regular accommodation in GKRS INN. Since Mr. Jeelani was accommodated on temporary basis he was required to apply for regular accommodation but he did not apply. Giving advantage of his special ability, his temporary accommodation was continuously extended till 31.03.2020. He was served a memo to vacate the hostel by or before 31.03.2020 but he did not comply with the orders of the University and kept his room locked amidst Covid-19 pandemic closure. On opening of the hostel in October, 2020, on his request his accommodation was extended till 30.11.2020, but he did not vacate the hostel. He has been staying in the IKS Hostel for there and half years.

2.2 The respondent further alleged that Mr. Jeelani has violated the hostel rules and created problems for hostel administration; he illegally managed to keep two students of CCPC in his room for which he was served notice. He is still reluctant to leave the hostel room rendering the hostel administration unable to accommodate the deserving special abled scholars.

3. Submissions made in Rejoinder:

3.1 Complainant filed rejoinder on 20.01.2021 and submitted that it was painful for him to come from Baramulla to attend the lab. He had to approach VC for hostel accommodation as in the University of Kashmir there is no policy for reservation of hostel accommodation for students with disabilities.

3.2 The complainant had been directed to submit hostel accommodation fee for one year and the hostel authorities have wrongly considered him as a Guest Scholar. The Warden and GKRS INN Office had assured him full accommodation and also directed him not to apply for any other hostels. In September 2018 both the Warden and the Office staff got transferred in post Article 370 'abrogation', the Provost also got transferred. The newly appointed Warden and Provost shifted their offices into this IKS hostel building, misused their position and occupied the rooms, which otherwise could have accommodated by stranded Ph.D students outside. The two officials



manipulated the hostel rules and accommodated their 16 relatives in the IKS hostel building.

3.3 The complainant objected the modus operandi of the officials charging him as campus 'pollutant' having Scotty to travel from department to hostel, despite knowing that he cannot walk half a kilometre in one go due to his disability. He has been made accused of inviting scholars in his room which is baseless. He has got appointed as Assistant Professor in Higher Education and has also got provisionally selected for Food Technical Officer and has qualified ICMR Scientist B written exam, but he needs to continue his Ph.D to contribute. He stated to be badly affected by the unprofessional behaviour of Provost and Warden. He requested to reinstate his hostel accommodation.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- (1) Mr. Ghulam Jeelani Mir, the complainant; and Ms. Roma Bhagat, Advocate for the complainant
- (2) Prof. Aijaz Sheikh; and Mr. Altaf Hussain, Advocate for the respondent

5. **Observation/Recommendations:**

5.1 Both the parties were heard.

5.2 From the submissions made by both the parties, it was confirmed that the candidate is admissible for hostel allotment as a regular student. Therefore, the Court recommends to allot the hostel accommodation immediately and on first priority till his term of Ph.D completes, with reference to Section 2(y) of the RPwD Act, 2016 which reads as under:

"2. In this Act, unless the context otherwise requires,—

(y) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;"

5.3 Accordingly the case is disposed off.

Dated: 16.03.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

Extra

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12491/1093/2020

Complainant:

Viklang Sahara Samiti Delhi
G-Block, Basti Vikas Kendra,
Mangol Puri, New Delhi-110083
Email: yssd1994@gmail.com
Mobile: 9899615733

Affected Person:

Shri Ashu Chadha, M-36, a person with 70% Mental Retardation,
S/o Shri Harvinder Chadha,
R/o 7, Tarun Enclave, Pitamapura, Delhi-110034,
Mobile: 8368762945

Respondent:

Raksha TPA – Oriental Insurance
Through: Chief Executive Officer,
C/o Escorts Corporate Centre,
15/5, Mathura Road, Faridabad, Haryana-121003
Email: ashish.trivedi@rakshatpa.com;
Ashok.narvat@rakshatpa.com

1. Gist of Complaint:

1.1 The complainant filed complaint regarding less payment made as against the claimed amount under Niramaya Scheme by Raksha TPA – Oriental Insurance in respect of medical treatment of Shri Ashu Chadha, a person with 70% Mental Retardation.

1.2 The complainant submitted that he had filed an application to Raksha TPA for claiming the amount of Rs.54,398/-, but only Rs.15,000/- was paid stating that Shri Ashu Chadha's disability comes under congenital disability and there is provision to pay Rs.15,000/- only. Complainant's contention is that under Niramaya Scheme there is no such provision.

(Page 1 of 4)

2. **Submission made by the Respondent:**

The matter was taken up with the respondent on 21.12.2020 following by reminders dated 05.01.2021 and 20.01.2021. Despite lapse of statutory time, no reply was filed from the respondent.

3. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021**. The following were present:

- (1) Smt. Anita Chadha, mother the affected person
- (2) Dr. Sheena, for the respondent

4. **Observation/Recommendations:**

4.1 Complaint is filed on behalf of a child (hereinafter referred to as 'beneficiary') affected by intellectual disability. It is claimed that the beneficiary, who is subscriber of Niramaya Health Insurance Scheme, suffered from Perianal abscess disease, and was operated upon. Total cost which was claimed by the beneficiary under Niramaya scheme was Rs. 54,398, whereas the Respondent establishment settled the claim for Rs.15,000 only.

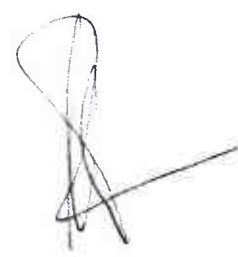
4.2 Complainant submitted that the Respondent establishment must have considered the claim under Sub Section A of Section I of Niramaya' Health Insurance Scheme Revised Benefit Chart. As per Sub Section A of Section I of the scheme subscriber of the policy is entitled for payment of Rs. 40,000.

4.3 Respondent submitted that the case of the beneficiary was considered under Sub Section B of Section I, under which the subscriber is entitled for Rs, 15,000 only and hence he was paid Rs. 15,000 against the claim of Rs. 54,398.

4.4 It is important to consider the two sub heads of Niramaya' Health Insurance Scheme Revised Benefit Chart. Sub-Section A of Section I limits reimbursement to Rs. 40,000 in cases of – **'Corrective Surgeries for existing Disability including congenital disability'**. Sub Section B of Section I limits reimbursement to Rs. 15,000 in cases of – 'Surgery/Hospitalisation'.

4.5 Complainant submits that Niramaya Health Insurance Scheme is a social benefit scheme and hence its terms and conditions must be interpreted liberally.

4.6 This court concludes that the case of the Complainant cannot be covered under Sub Section A of Section I of Niramaya Health Insurance Scheme Revised Benefit Chart. This court agrees that beneficial legislations/rules/policies must



be interpreted liberally, however such exercise of interpretation cannot be carried out by taking into consideration some words of the sentence while leaving other words out of consideration. Beneficiary in the present complaint was operated for Perianal abscess disease, nature of his disability is intellectual disability. The Complainant failed to prove that the surgery for Perianal abscess disease was done to correct the intellectual disability of the Beneficiary. Sentence 'Corrective Surgeries for existing Disability including congenital disability' cannot be interpreted as to mean any surgery whether or not connected with existing disability of the person. Interpretation of word 'surgery' to mean any surgery and leaving words 'corrective' and 'existing disability' would amount to picking and choosing words to give some specific meaning to the phrase or rule of the policy.

4.7 Hence, this court concludes that even by adopting rule of liberal interpretation, facts of the Complaint do not fall under Sub Section A of Section I of Niramaya Health Insurance Scheme.

4.8 During online hearing it was submitted that there is no other insurance scheme for Divyangjan other than Nirmaya Health Insurance Scheme.

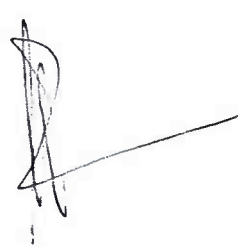
4.9 Section 24 Rights of Persons with Disabilities Act, 2016 mandates that the appropriate government shall formulate schemes related to social security and health of Divyangjan. Section 24 is reproduced below –

24. Social security - (1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the Community ...

(3) The schemes under sub-section (1) shall provide for –

(j) comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Schemes, or any other statutory or Government-sponsored insurance schemes.

4.10 Section 14 of IRDAI Act, 1999 lays down duties, powers and functions of IRDAI. As per the provision it is the duty of IRDAI to promote and regulate professional organisations connected with the insurance and re-insurance business.



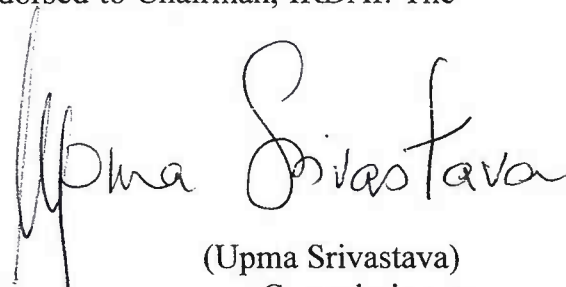
4.11 Considering Section 24 of RPwD Act, 2016 read with Section 14 of IRDAI Act, 1999, it is certain that IRDAI is under statutory mandate to ensure that comprehensive insurance policy is made for Divyangjan.

4.12 Therefore, this court recommends that IRDAI shall issue necessary guidelines to all the insurance companies, private as well as public, to form separate pools for higher risk people and design insurance products which can give comprehensive health cover to Divyangjan.

4.13 Interference of this court is not warranted.

4.14 A copy of these Recommendations is endorsed to Chairman, IRDAI. The case is disposed off.

Dated: 16.03.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities

Copy to:

The Chairman,
Insurance Regulatory and Development Authority of India,
115/1, Financial District, Nanakramguda,
Hyderabad-500032
Email: irda@irdai.gov.in

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सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12545/1011/2021

Complainant:

Dr. Nitesh Kumar Tripathi,
H.No.B-241, Gali No.11, 'B' Block,
Sant Nagar, Burari,
Delhi – 110 084.

versus

Respondent :

Cantonment Board,
(Through the Chief Executive Officer),
Dehuroad.
Pune – 412101.

Disability : 65% locomotor

Gist of Complaint:

The complainant vide his complaint dated 05.01.2021 submitted that the Cantonment Board, Pune had advertisement for recruitment of Medical Professionals vide their Advertisement No. CBDR/ADMIN/AMO Recruitment / 2020-21 on 24.12.2020. The Complainant submitted that not a single vacancy has been reserved for persons with disabilities as per binding provisions under Sec 34 of Rights of Persons with Disabilities Act, 2016 in the posts of Assistant Medical Officer. He submitted that 100 point reservation roster must be maintained and vacancy position number 1, 26, 51 and 76 must be reserved for PwD candidates as per RPwD Act, 2016. All the benefits such as age relaxation, exemption from payment of application fee, single window services for PwDs and accessible examination / interview venue must be provided to the applications with disabilities as per the spirit of Disability Act.

...2/-

2. The Respondent vide their reply dated 10.02.2021 denied the non implementation of Section 34 of RPwD Act, 2016 by them. The Respondent submitted that as per the sanction given by the Central Government, at present there are 4 posts of AMO (Assistant Medical Officer) and one post of RMO (Resident Medical Officer) which include one post of woman in AMO. According to the said sanction 2 AMO are working, thus out of aforesaid 4 sanctioned posts, 2 AMO are already working. The Cantonment has already prepared the roster prior to Rights of Persons with Disabilities Act, 2016 and according to the said roster four posts are being filled up by Cantonment Board Dehuroad. Since the services of AMO falls in the category of essential services and on account of sudden outbreak of Corona Virus, the Cantonment Board has given public notice in 3 local newspapers for filling up the said posts and accordingly applications were received which are under scrutiny. Equal opportunity will be given to all the interested persons to submit their applications which will be taken into consideration by the Cantonment Board while filling up the post. The Respondent submitted that before coming into operation of RPwD Act, 2016, their office has appointed 05 persons with disabilities so as to promote the disabled persons and to give them opportunity in the services of Cantonment Board Dehuroad. The Respondent submitted that the Complainant has not submitted any documents in support of which contention about disability along with certified copies of relevant documents showing their qualification, age and experience. If the same are submitted, the case will be considered along with merit of eligible candidates.

Observation/Recommendations:

3. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent :



....3/-

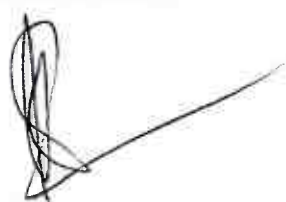
4. As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

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

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

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



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

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

6. As per DoPT OM dated 15.01.2018, it is positive obligation of government establishments to make 100 points reservation roster. Further, as per Section 34 of RPwD Act, 2016, it is mandatory for government establishment to reserve minimum 4 percent of total number of vacancies for PwBDs.

7. Accordingly respondent is recommended to adhere with the provisions of RPwD Act, 2016 and circular issued by Govt. of India for appointment of Persons with Disabilities. It is further recommended to ensure that the rights of persons with disabilities shall not be infringed.

8. Accordingly the case is disposed off.

Dated: 16.3.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12514/1011/2020

Complainant:

Dr. Nitesh Kumar Tripathi,
H.No.B-241, Gali No.11, 'B' Block,
Sant Nagar, Burari,
Delhi – 110 084.

Respondent :

Steel Authority of India Ltd.,
(Through the Chairman)
Rourkela Steel Plant,
Odisha – 769 001

Disability : 65% locomotor

Gist of Complaint:

The complainant vide his complaint dated 17.12.2020 submitted that Steel Authority of India Ltd (SAIL) had published an Advertisement no.BSP-20 (Rectt.)/20-21 dated 23.11.2020 for recruitment of Medical Professionals. He submitted that not a single vacancy has been reserved for persons with disabilities as per binding provisions under Sec 34 of RPwD Act, 2016 in the posts for Medical Specialists and Medical Officers. He submitted that 100 point reservation roster must be maintained and vacancy position number 1,26,51 and 76 must be reserved for PwD candidates. All the benefits such as age relaxation, exemption from payment of application fee, single window services for PwDs and accessible examination / interview venue must be provided to the applications with disabilities as per the spirit of Disability Act.

2. The General Manager I/c (Personnel) vide letter no.GM I/c (Pers)/BSP/2021/106017 dated 19.02.2021 submitted that Bhilai Steel Plant has issued an advertisement for recruitment of 30 posts of Medical Professionals (19 Medical Specialists, 1 Medical Officer (OHS) & 10 Medical Officers) vide advt no. BSP-20(Rectt)/20-21 dated 23.11.2020. In this advertisement, the categories of PwDs suitable for the job was clearly mentioned. Bhilai Steel Plant has been following the rules with regard to reservation for PwD candidates and points 1, 26, 51 and 76 of the roster has been earmarked for persons with benchmark disabilities. Since the issue of notification of RPwD Act, 2016, i.e. 15.06.2017 to 23.11.2020, they have filled only 09 posts in Group 'A'. Further combining the 30 posts of Medical Officers notified by them, the total comes to 39. The locomotor disability has been earmarked for point 51. The Respondent submitted that Bhilai Steel Plant maintains reservation roster for persons with disabilities as per DoP&T's instruction. No application fee is payable by PwD candidates. Further benefits such as age relaxation,

....2/-

qualification relaxation, reimbursement of to & from travel expenses who are shortlisted for the interview and attend the same are extended to PwD candidates. As regards providing high support as defined under section 38 & 41 of RPwD Act, 2016, Bhilai Steel Plant will ensure adherence of the same, as defined under the RPwD Act, 2016. For looking in the matters relating to representation to PwDs, Bhilai Steel Plant has a Liaison Officer for this purpose. The Bhilai Steel Plant have assured that in the future recruitment notification, the revised provisions notified vide gazette notification dated 07.01.2021 with regard to suitability of PwD candidates will be followed. The Respondent further submitted that the selection process for the post of Medical Specialists against their Advt. No. BSP-20(Rectt)/20-21 dated 23.11.2020 have been completed by them with the declaration of results on 16.02.2021. As regards for the post of Medical Officers, it is under process. He submitted that Dr. Nitesh Tripathi on earlier occasions also have registered complaints in this Court. The Respondent further submitted that Bhilai Steel Plant is committed to follow applicable rules / guidelines for PwDs and provides very conducive environment to them not only during selection process but in employment also.

Observation/Recommendations:

3. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent :

4. As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

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



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

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

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

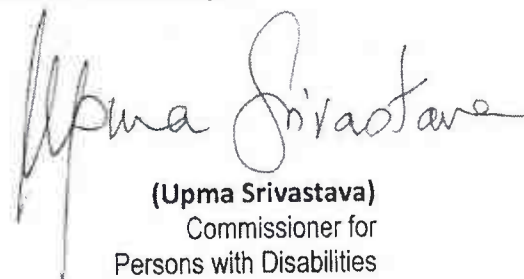
5. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any person with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

6. As per DoPT OM dated 15.01.2018, it is positive obligation of government establishments to make 100 points reservation roster. Further, as per Section 34 of RPwD Act, 2016, it is mandatory for government establishment to reserve minimum 4 percent of total number of vacancies for PwBDs.

7. Accordingly respondent is recommended to adhere with the provisions of RPwD Act, 2016 and circular issued by Govt. of India for appointment of Persons with Disabilities. It is further recommended to ensure that the rights of persons with disabilities shall not be infringed.

8. Accordingly the case is disposed off.

Dated: 18.03.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12574/1011/2021

Complainant:

Shri Gugulothu Nagaraju,
B 12, CMPDI Complex,
Kasthurabha Nagar,
Jaripatka,
Nagpur,
Maharashtra - 440014.

Versus

Respondent :

Indian Oil Corporation Limited,
(Through the Chairman),
Corporate Office,
Plot No.3079/3,
Sadiq Nagar,
J.B. Tito Marg,
New Delhi - 110 049.

Disability : 53% Locomotor

Gist of Complaint:

Shri Gugulothu Nagaraju, the Complainant vide his complaint dated 29.01.2021 submitted that he is presently working as Accountant Gr.A in CMPD, which is a subsidiary of Coal India Limited. He is a person with 53% locomotor disability and belongs to ST category. He had applied for the post of Assistant Finance Officer in Indian Oil Corporation Limited against their Recruitment Advertisement. On the basis of his CA Inter marks, he was shortlisted for interview. He answered correctly all the questions put up before him during the interview. He was sure of his selection as he had all the requisite qualification, experience and skills required for the post interviewed. The complainant submitted that IOL did not declare the results so far and hence he is not aware of how many total number vacancies were advertised, how many persons were appointed and how many candidates belonging to persons with

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disabilities were appointed by the Respondent. The Complainant submitted that this denial of equal opportunity to candidates with disabilities and also caste discrimination to reserved category.

2. The matter was taken with the Chairman, Indian Oil Corporation Limited vide letter dated 03.02.2021.

3. The Executive Director I/c (HR), Indian Oil Corporation Ltd vide letter no. DP/5/5 (Campus) dated 16.02.2021 submitted that Indian Oil Corporation Ltd being a Public Sector Undertaking adheres to all Government Guidelines issued from time to time and is committed to open, fair and transparent recruitment process. The Respondent submitted that there were total 31 vacancies for recruitment of Assistant Finance Officer and vacancies for EWS, OBC (NCL), SC and ST were reserved as per Government guidelines and Presidential directives. In addition 4(Four) vacancies were also reserved for PwD candidates – one each from VH, HH, OH and other categories. In context to present case, the following relaxations were given to candidates from ST and PwD categories.

Sr.No	Category	Minimum %age of marks in qualifying Exam	Upper Age Limit
1	General	55%	30 years
2	ST	50%	35 years
3	PwBD	50%	40 years

The complainant had availed relaxation in age to be eligible to apply for the said recruitment. The interview panel comprised of Subject Expert, HR Expert and OBC, SC/ST, Minority and Lady representatives. All the members involved in recruitment process carried out their responsibilities with due diligence and utmost fairness and based upon final



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assessment, among others, one candidate from OH category was also empanelled for recruitment. The Respondent submitted that the claim of the complainant alleging caste discrimination and not providing equal opportunity to persons with disabilities in the selection process is untenable and wrong.

Observation/Recommendations:

4. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent :

5. As per Section 34 (1) of Rights of Persons with Disabilities Act, 2016, Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

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



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

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

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

6. Accordingly respondent is recommended to adhere with the provisions of RPwD Act, 2016 and circulars issued by Govt. of India for appointment of Persons with Disabilities. It is further recommended to ensure that the rights of persons with disabilities shall not be infringed.

7. The case is disposed off.

Dated: 18.03.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12499/1011/2020

Complainant :

Dr. Anil Sahebrao Kuwar,
Plot No.41, Nagai Colony,
Sakri Tal Sakri,
Dist : Dhule,
Dhule - 424204.

R-26777

Versus

Respondent :

National Institute of Science Education and Research Bhubaneswar (NISER),
P.O. Jatini,
Khurda,
Odisha - 752 050.

R-26777

Disability : 50% locomotor

Gist of Complaint:

The complainant vide his complaint dated 12.12.2020 submitted that he had applied for the post of Assistant Professor in Chemistry subject with Level 12 of the Institute as per the Advertisement notification no. NISER/FA/RCT_A/2019/01 dated 01.02.2019 under PwD quota in National Institute of Science Education and Research Bhubaneswar (NISER). He fulfilled all the eligibility requirements for the said post. His name has been selected for presentation/interaction/interview. He was the only candidate for presentation in Chemistry subject as per the list of eligible candidates. He was asked for his presentation / interview on 10.08.2020 and he attended the presentation/interview via online. It took an hour and 15 minutes. On 04.09.2020 he received a mail from NISER informing him about his non selection to the post of Assistant Professor in their Institute. Till date NISER Institute has not filled up any post of Assistant Professor under PwD category which the complainant feels is gross violation of Rights of Persons with Disabilities Act, 2016.

2. The Registrar, NISER vide letter dated 12.01.2021 submitted that NISER issued advertisement for special recruitment drive for PwD for appointment in faculty positions in various discipline such as Biological Science, Chemical Sciences, Mathematical Sciences, Physical

....2/-

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

E-mail: ccpd@nic.in ; Website: www.ccd disabilities.nic.in

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

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

Sciences, Earth & Planetary Sciences, Computer Sciences, Economics, English, Sociology & Psychology. The Respondent submitted that mere fulfilling the minimum eligibility criteria may not entitle a candidate to be called for interview. Institute reserves the right to fix higher criteria for short-listing of applications for recruitment. The scrutiny of faculty applications has been done by a School level committee chaired by the Chairperson of respective School. The Committee does the screening of applications based upon various parameters i.e., publications in peer reviewed journals, area of research, teaching credentials etc and forward the shortlisted applications to the selection committee for final selection. This is done as per the mandate of NISER to recruit most suitable, brilliant and efficient persons with outstanding Educational background and record as faculty members in NISER. During the process of selection the screening committee after verifying the details of documents and credentials did not find Dr. Anil Sahebrao Kuwar suitable for faculty position in NISER. On analysing the overall performance of the complainant, the committee arrived at a definite conclusion that the complainant may not give justice to the Integrated M.Sc and Ph.D teaching programme of NISER.

3. The Court vide letter dated 02.03.2021 requested the Registrar, National Institute of Science Education and Research, Bhubaneswar to inform the Court the outcome of the Special Recruitment Drive (SRD). The Registrar of the Institute vide letter no. NISER/RO/2020-21/4235 dated 05.03.2021 submitted that " from the total applications received, two candidates have been recommended by the Screening Committee for final selection. The final selection has not yet been completed and process will be resumed after normalisation of the ongoing pandemic situation. The following are the details about the applications against the SRD advertisement.

Total applications received	Applicants shortlisted for the next round based upon the research and academic credentials mentioned in the CV.	Applications recommended for final selection process based upon their performance in the seminar and academic interaction.
75	10	02
		(In addition to this, 03 applicants are under consideration for this round, based on their performance in the seminar and academic interaction after the same is conducted).

Observation/Recommendations:

4. In the light of the documents available on record, the case is disposed off with the following recommendations to the Respondent :



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- a) to provide reservation to persons with disabilities strictly as per provisions under Section 34 of Rights of Persons with Disabilities Act, 2016.
- b) This Court within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules, advises the respondent to be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.

5. The case is accordingly disposed off.

Date : 18.03.2021



(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12513/1023/2020

Complainant: Smt. Rita Kumari, W/o Jangbahadur
e-mail: <jangbahadur12@yahoo.in>

Respondent: The Commissioner
Kendriya Vidyalaya Sangathan, 18
Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016
e-mail: <kvs.estt.1@gmail.com>

Complainant: Shri Jang Bahadur, 50% Locomotor disability

GIST of the Complaint:

शिकायतकर्ता का कहना है कि उनके पति श्री जंगबहादुर, केन्द्रीय विद्यालय नं: 02, गाजियाबाद में पी.जी.टी. (गणित) के पद पर कार्यरत हैं तथा उनका सेवाकालीन प्रशिक्षण 2018 – 19 में ड्यू था परन्तु श्री जंगबहादुर को दिनांक 02.01.2020 से वरिष्ठ वेतनमान दिया गया।

2. The matter was taken up with the Respondent vide letter dated **29.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder no response has been received, therefore, hearing scheduled on 19.02.2021.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.02.2021**. The following were present:

- Shri Jang Bahadur – complainant
- Dr. M.L. Mishra, Assistant Commissioner on behalf of respondent

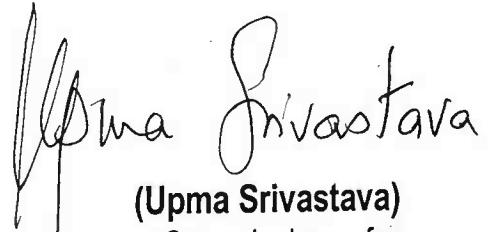
Observation/Recommendations:

3. Both the parties were heard.

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4. The Court is of the view that candidate did not err in for sending recommendations timely for inservice training. It was delayed by the School authority. Therefore, Court recommends that respondent without further delay provide order of sanction for Senior Scale to complainant with effect from 01.08.2019 within a week and submit the compliance report.

5. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.03.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12494/1022/2020

Complainant: Shri Sudheer A.K.
E-mail: <sudeerkunnath@gmail.com>

Respondent: The Divisional Railway Manager
Divisional Office, Southern Railway, Personnel Branch
Salem, Tamilnadu
e-mail: <drm@sa.railnet.gov.in>

Complainant 50% visual impairment

GIST of the Complaint:

Complainant vide complaint dated 09.12.2020 submitted that his wife Smt. Bhavya. V, Track Maintainer IV has been working in Sankiri Durg Station of Southern Railway, Salem Division since 21.09.2016 and she had submitted an application for transfer to Palakkad Division under Spouse category on 26.10.2016 but till date no action has been taken by the concerned Department.

2. The matter was taken up with the Respondent vide letter dated **21.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **27.01.2021**, no response has been received from the respondent. Therefore, the case was listed for personal hearing on **09.03.2021**.

3. Meanwhile, respondent vide letter dated 18.02.2021 inter-alia submitted that Division is having an acute shortage of manpower, Smt. V. Bhavya, Track Maintainer/SSE/P.Way/O/ED will be relieved shortly to PGT Division on her Inter Divisional One Way request transfer subject to the receipt of fresh recruitments from time to time.

4. During the online hearing via Video Conferencing by Commissioner for Persons with Disabilities on **09.03.2021** both parties were absent.

Observation/Recommendations:

5. As per Rights of Persons with Disabilities Act, 2016, Rule position in respect of transfer of persons with disabilities is quoted as under:

Section 20 (5): - *"Non-discrimination in Employment' of the Rights of Persons with Disabilities Act, 2016 provides that the appropriate Government may frame policies for posting and transfer of employees with disabilities."*

6. As per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.

7. This Court recommends that the respondent shall take final decision on the relieving of complainant within 90 days from the date of this order and shall file the compliance report before this court.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 19.03.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12368/1023/2020

Dated: 19.03.2021

ORDER

Whereas Smt. Sneh Lata vide complaint dated **19.09.2020** submitted that she had been working in PNB Housing Finance Ltd since 14th January 2003 but on 2nd September 2020, Company terminated her services due to challenging scenarios. She further submitted that she is 56 years old and remaining period of service was just 04 years therefore she has requested to withdraw the termination letter and restore job or give adequate compensation as there is no adverse allegation/report against her.

2. Whereas the matter was taken up with the Respondent vide letter dated **13.10.2020** under Section 75 of the RPwD Act, 2016.

3. Whereas the PNB Housing Finance Ltd vide letter dated **21.11.2020** inter-alia submitted that Company is facing tremendous financial pressure on account of the severe economic downturn caused by the ongoing COVID-19 and Company was forced to terminate the services of Smt. Sneh Lata and 36 other employees, all on account of purely financial consideration. If so required, the Company may be forced to terminate the services of more employees in the future due to the uncertainties in the prevailing economic climate. They further submitted that during the terms of her employment Smt. Sneh Lata had been issued several warnings in relation to her work and on two occasions, disciplinary proceedings had to be initiated against her.

4. Whereas after considering the respondent's reply dated **21.11.2020** and the complainant's rejoinder dated **16.12.2020**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **15.01.2021**.

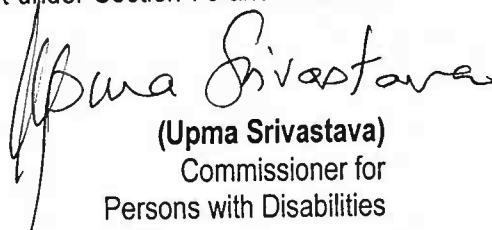
5. Whereas during the online hearing complainant alleged that her services were terminated arbitrarily. Respondent in its reply submitted that as per contract between the Complainant and Respondent, her services could be terminated by serving 3 months' notice. Complainant's service was terminated in accordance with the terms of the contract and the decision was taken under financial constraints. Moreover, Complainant was terminated along with 36 other employees of the Respondent establishment.

6. Whereas during online hearing it was submitted by the Respondent that as on the date of hearing total number of 1,532 employees were working in the Respondent establishment. Out of 1,532 only 6 employees are Divyangjans. 6 is 0.39% of 1,532. Intent of the law makers as evident from Section 34 and 35 of Rights of Persons with Disabilities Act, 2016 is that at least 4% of total workforce of an establishment must comprise of Divyangjans. Clearly, 6 employees are far less than 4% of total workforce of Respondent establishment.

7. Whereas after hearing both the parties and going through the available documents on record, this Court concluded that Respondent establishment has failed to abide by statutory duties in letter and spirit. Therefore, this court recommended that the Respondent establishment shall abate its decision of terminating the Complainant and shall continue her services in Respondent establishment.

8. Whereas the respondent has filed an application dated 22.02.2021, prayed to review/recall/modify/clarify orders dated 25.01.2021.

9. Now, after consideration of all facts and figures in the matter, this Court reiterate its earlier recommendations and ^{does} not accept the submission made by the respondent under Section 76 and 81 of the RPwD Act, 2016. L


(Upma Srivastava)
Commissioner for
Persons with Disabilities

To,

- R-26811
1. The Chief People's Officer, PNB Housing Finance Ltd, 9th Floor Antriksh Bhawan, K.G. Marg, New Delhi – 110085
E-mail: <pnbhfl@pnbhfl.com>
 2. Smt. Sneha Lata, E – 38, Prashant Vihar, Delhi – 110085
E-mail: <ajmani.1963@gmail.com>
- R-26812



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12453/1023/2020

Complainant: Shri Chitranjan, Assistant ESIC Hospital
Joka, Kolkata

Respondent: The Director General
Employees' State Insurance Corporation
Panchdeep Bhawan, Comrade Inderjeet Gupta
(CIG) Marg, New Delhi – 110002
e-mail: <jd-admin2a@esic.in>

Complainant: 50% locomotor disability

GIST of the Complaint:

प्रार्थी का कहना है कि वह ई.एस.आई.सी. अस्पताल, जोका, कोलकाता में सहायक पद पर कार्यरत है तथा श्री समीरन दास, सहायक निदेशक उन्हें लगातार प्रताड़ित एवं अपमानित करते हुए अभद्र भाषा का प्रयोग करते हैं। जिसका विवरण उन्होंने मौखिक रूप से अपने विभाग के प्रभारी तथा चिकित्सा अधीक्षक को दिया था परन्तु फिर भी प्रताड़ना नहीं रुकी। प्रार्थी का आगे कहना है कि कोविड-19 के दौरान उन्हें कार्यालय में व्यक्तिगत रूप से उपस्थित होने के लिए बाध्य किया गया तथा हाज़िरी रजिस्टर भी श्री समीरन दास, सहायक निदेशक के कक्ष प्रथम तल पर है उपस्थिति हस्ताक्षर के लिए उन्हें दिन में दो बार भु-तल से प्रथम तल पर जाना पड़ता है।

2. The matter was taken up with the Respondent vide letter dated **04.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **11.01.2021**, respondent has not submitted reply, therefore, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.02.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on ^{12.03}~~16.02.2021~~. The following were present:

- Shri Chitranjan Poddar – complainant
- None appeared on behalf of respondent


उपमा दीवस

Observation/Recommendations:

3. Complaint of abuse was filed against Office Superintendent and Assistant Director. It is alleged by the complainant that abusive verbal language is used to harass the complainant. No evidence or details of any particular instance are provided by the complainant. Respondent submits that after receiving the Complaint, it conducted investigation in its office and received written notes from other employees of the office who all claim that no such instance was witnessed by any of them.

4. This court recommends that harassment of PwD is a serious issue. Section 7 of Rights of Persons with Disabilities Act, 2016 lays down that the appropriate government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation. Even though no evidence was presented by the complaint to support its claim, this court recommends that respondent shall conduct counselling of the complainant and Office Superintendent and Assistant Director, against whom the Complaint is filed. If, such counselling will not positively impact the relationship of complainant and the two employees against whom the complaints are made then the respondent shall transfer the complainant to head office, away from Office Superintendent and Assistant Director.

5. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 19.03.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12469/1022/2020

Complainant: Shri Syed Amzad Ali
e-mail: <amjadnhpc@rediffmail.com>

Respondent: The Chairman cum Managing Director
NHPC Ltd, NHPC Office Complex, Sector – 33
Faridabad, Haryana – 121003
e-mail: <webmaster@nhpc.nic.in>

Complainant: 45% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **28.11.2020** submitted that he has been working in NHPC, Teesta Low Dam-III, Power Station as a Assistant Manager since 2001 which is mountainous terrain. He further submitted that now he has been transferred to another tough mountainous terrain of Sikkim. In this regard, he had given representation to the respondent through proper channel but it was not considered.

2. The matter was taken up with the Respondent vide letter dated **15.12.2020** under Section 75 of the RPwD Act, 2016.

3. Dy. General Manager (HR), NHPC Ltd vide letter dated **20.01.2021** submitted that most of the Projects/Power Station of NHPC are located in the far flung hilly terrains with projects classified in Hard and Difficult locations therefore, Shri Syed Amzad Ali was transferred from his present location Teesta Low Dam-III, Power Station to Rangit Power Station which is also a soft location.

4. Complainant vide rejoinder dated **28.01.2021** inter-alia requested to change hilly terrain with plain area office.

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5. After considering the respondent's reply dated **20.01.2021** and the complainant's rejoinder dated **28.01.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.02.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on ^{12.03}~~16.02.2021~~. The following were present:

- Shri Syed Amzad Ali – complainant
- None appeared on behalf of respondent

Observation/Recommendations:

6. Complainant has submitted that despite of locomotor disability he has been given posting in station situated in a hill terrain. Hence, he seeks relief of transfer to some other station situated in flat terrain. Respondent submits that all the projects of the respondent establishment are situated in hill terrain and therefore, it is not possible for the respondent to concede to the demands of the complainant.

7. Complainant further submits that he was employed in Darjeeling Station. Situated in hill terrain for 8 years and then was transferred to Rangit Station, again hill terrain, and is posted there since last 4 months.

8. Rights of Persons with Disabilities Act, 2016 lays down provision that the employer is duty bound to take steps to utilise the capacities of divyang employees by providing appropriate environment. Further Section 20 of the Act lays down the provision for providing conducive environment and Reasonable Accommodation to divyang employees. Reasonable Accommodation is defined in Section 2 (y) of the Act. As per the provision Reasonable Accommodation means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

9. Sections 2(y), 3 and 20 are hereafter reproduced –

Section 2(y)- "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others

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Section 3 (2) - The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

Section 20 (2) - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability."

10. Recently Hon'ble Supreme Court explained the importance of concept of Reasonable Accommodation in the judgment of VIKASH KUMAR v. UNION PUBLIC SERVICES COMMISSION; (Civil Appeal No 273 of 2021; judgment dated 12.02.2021) in the following words –

"At the heart of this case lies the principle of reasonable accommodation. Individual dignity undergirds the RPwD Act, 2016. Intrinsic to its realization is recognizing the worth of every person as an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the RPwD Act, 2016 travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realization of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event in providing a legal foundation for equality of opportunity to the disabled."

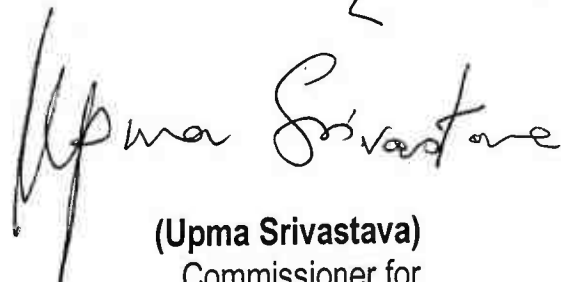
"In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence – whether as students, members of the workplace, participants in governance or, on a personal plane, in realizing the fulfilling privacies of family life. The accommodation which the law mandates is 'reasonable' because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence."

M. K. Srinivasan4...

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11. It is disappointing that in last 10 years Complainant was always been given posting in station situated in hilly terrain without any consideration about the provisions of RPwD Act, 2016. Hence, based upon the legal position adduced above, this court recommends that the respondent shall abide by the principles of 'Reasonable Accommodation' and shall transfer the complainant to any office situated in Faridabad or Lucknow which is not hilly terrain.

12. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 22.03.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12468/1024/2020

Complainant: Dr. Sumit Anand

e-mail: <drsumit05@gmail.com>

Respondent: The Commissioner, North Delhi Municipal Corporation

Dr. S.P.M. Civic Centre, Minto Road

New Delhi – 110002

e-mail: <commr-northdmc@mcd.nic.in>

Complainant: 41% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **07.12.2020** submitted that he has been working as a Doctor in North Delhi Municipal Corporation since 2016 in Urban Health Centre, WEA, Karol Bagh, New Delhi via UPSC. He alleged that neither received any increment since joining i.e. 2016 years nor received 06 months' salary since June 2020 inspite of several verbal and written request to the Department.

2. The matter was taken up with the Respondent vide letter dated **15.12.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **18.01.2021**, respondent has not submitted reply, therefore, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.02.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.03** **16.02.2021**. The following were present:

- Shri Vaibhav Mishra, Advocate on behalf of complainant
- Shri Rajeev Roy Advocate and Shri Paramjeet Chada, Under Secretary on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.

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4. Two issues raised in the Complaint relates to non-payment of salary and forcing the Complainant to attend office during Covid lockdown.

NON-PAYMENT OF SALARY

5. Respondent has submitted that the salary has now been paid to the Complainant at par with non divyang employees holding the same post and rank. Since the issue is resolved, intervention of this court on this issue is not warranted.

ATTENDANCE DURING COVID LOCKDOWN

6. Complainant has submitted various documents substantiating his claim that he attended office during Covid lockdown period. It is an unfortunate incident that the government establishment flouted norms and directives issued by Ministry of Social Justice, DoPT and Ministry of Health & Family Welfare, GOI with respect to Covid lockdown. M/oSJE issued OM No 34-06/2020-DD-III dated 14.09.2020 exempting employees with Disabilities from roster duty due to COVID 19 situation. Prior to this, Ministry of Health & Family Welfare on 04.06.2020 issued Standard Operating Procedure on preventing measures to contain spread of COVID-19 in workplaces exempting divyang employees from frontline duties. On similar lines, DoPT issued OM No 11013/9/2014-Estt.A.III dated 05.06.2020.

7. OM's and SoP issued clearly lay down that divyang employees were exempted from attending office. Hence, this court recommends that the Respondent shall take into consideration the various guidelines and SoP and shall adhere to the same. If any such guidelines will be issued in future than the Complainant and other Divyang employees of the government establishment shall be exempted from attending the office.

8. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 22.03.2021

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12566/1011/2021

Complainant :

Shri Kanai Malgope,
Jamdoba Teliberia,
Onda,
Bankura
West Bengal – 722 144.

R-26915

Versus

Respondent :

Chief Postmaster General,
West Bengal Circle,
Yogayog Bhawan,
No.40/C, Chittaranjan Ave.,
Chandni Chawk,
Kolkata – 700 012.

R-26916

Disability : 100% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 20.01.2021 submitted that he was selected for the post of GDS Packer under West Bengal Postal Circle on the basis of the secondary marks . He was called for document verification on 28.10.2020. He went to verify his documents. He was told by the Inspector that he is not eligible for the post of GDS Packer as he is a person with visual impairment. He submitted that as per RPwD Act, 2016, he has been denied the appointment to the post of GDS Packer. The complainant has requested this Court to look into the matter and take necessary step so that he may be appointed to the post of GDS Packer. s

2. The matter has been taken with the Chief Postmaster General, West Bengal Circle vide letter dated 25.01.2021.

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3. No comments have been received from the Respondent.

OBSERVATION AND RECOMMENDATION:

4. The complainant suffers from 100% Visual Impairment. The grievance of the complainant is against his non appointment despite being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.
5. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.
6. The complainant is fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.
7. Hence, this court recommends that Respondent shall appoint the Complainant as per the test results and shall give him opportunity for at least 6 months. Further if the Complainant is able to carry out his duty efficiently then the Respondent shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.
8. The case is disposed off.

Dated: 22.03.2021


(Upma Srivastava)
Commissioner for
Persons with Disability

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

Case No: 12532/1022/2021 भारत सरकार/Government of India

Complainant: Shri Mahendra Kumar
Tax Assistant
Income Tax Colony,
G-33, Wazir Hassan Road,
Lucknow-22001
E-mail: mahendra1983mishra@gmail.com

Respondent: Principal Chief Commissioner,
Central Goods & Service Tax (CGST),
Lucknow Zone

GIST of Complaint:

The complainant Mahendra Kumar, S/o Shri Swami Dayal, Suffering from Post-Polio Residual Paralysis in Right leg with 40% Orthopedically Disability. The complainant was selected as a Tax Assistant group C post in CBIC (erstwhile CBEC) under GEN (OH) category through Staff Selection Commission in the year 2013. He joined the department on 22.12.2015 at Custom Mumbai, New Custom House, Estate Ballard Mumbai. The complainant has filed a complaint dated 1.1.2021 under the RPwD Act, 2016 regarding his Inter Commissionerate Transfer from Mumbai Zone to Lucknow Zone which is near to his native place i.e. Lucknow, Uttar Pradesh.

2. The matter was taken up with the Respondent vide letter dated 5.1.2021 under Section 75 of the RPwD Act, 2016

3. In response, Joint Commissioner, O/o Chief Commissioner, Central Goods and Services Tax & Central Excise (CGST & C. Excise) Zone Lucknow vide E-mail/dated 2.2.2021 inter-alia submitted that Shri Mahendra Kumar, Tax Assistant could not be considered for ICT Transfer to CCA Lucknow due to non-availability of vacancies in his category. Order dated 14.05.2019 was issued in respect of 19 candidates with break up UR-07 & OBC-12 as there was no vacancy in respect of any other category including Horizontal Reservation for Persons with Disabilities (PwD) candidates ICT order dated 28.02.2020. They further submitted that said order was issued in respect of those candidates who were selected on the basis of available vacancies and on the basis of various attributes based on 100 points (i.e. marks based upon candidates APAR, FIFO based receipt of application, Experience & ground of transfer on Compassionate Ground).

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4. Further, ICT transfers in the cadre of Tax Assistant from other CCAs are considered against Direct vacancies, wherein vertical (as per post based Roaster) and horizontal (as per PwD roaster/Ex-serviceman) both reservation vacancies are calculated. They informed that there was no vacancy in PH (OH) category (under horizontal reservation) in vacancy year 2019, against which ICT was considered by issuing ICT order dated 28.02.2020 of the CCA Lucknow Zone/Region and in the said ICT, Shri Mahendra Kumar, TA of PH (OH) could not be considered due to want of vacancies in his category.

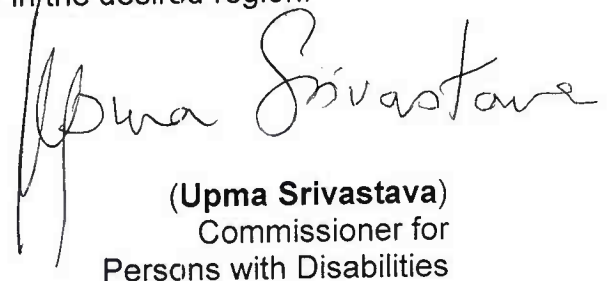
5. The said ICT order dated 28.02.2020 does not contradict the "equality of opportunities of principle of empowerment of persons with disabilities. If there would have been any persons with disabilities. If there would have been any vacancy in his category, his case would have been definitely considered for ICT transfer. There is no such matter of negligence or unsympathetic view towards him or other similar PwD persons.

Observation / Recommendations:

6. In present case this court notes that there is no mandatory requirement of vacancies in that particular category i.e. in PwD Category. The aggrieved person can be adjusted against any vacancy available in that Region/Commissionerate as per his rights under RPwD Act 2016.

7. Hence, this court concludes that by denying ICT, Respondent establishment has violated employment rights of the Complainant. Therefore, this court recommends that Complainant shall be given Inter Commissionerate Transfer at the earliest within a period of 90 days against any available Vacancy position in the desired region.

8. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 31.3.2021

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12563/1022/2021

Complainant: Shri Manoj Kumar, SSA
Kendriya Vidyalaya,
Central Railway Manmad
Maharashtra-423104
Email:manojpgdca2008@gmail.com

Respondent: The Commissioner
Kendriya Vidyalaya Sangathan (KVS)
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016
Email:kvs.commissioner@gmail.com

Complainant 40% Orthopedic Handicapped Disability

GIST of the Complaint:

Complainant vide complaint dated 18.01.2021 inter-alia submitted that he was selected in August 2019 for Sr. Secretarial Assistant by Direct Recruitment of Kendriya Vidyalaya, Sangathan, Headquarter New Delhi, Advertisement no 13 and he was allotted in Central School, Central Railway, Nasik in the West Zone. While in the Kendriya Vidyalaya, Sangathan. He was working as a Junior Secretariat Assistant in Kendriya Vidyalaya Gwalior located in the Central Zone. He belongs to Disable Category. But the Kendriya Vidyalaya Sangathan gave him 1000 km away posting. His rank is 15th in the selection list released by the Kendriya Vidyalaya Sangathan in July 2019. But he has not been received as the first option in the Central Zone. He has been living apart from his family for the last 1.5 years and he is a very low salary employee. Due to this, he cannot come home too soon.

2. The matter was taken up with the Respondent vide letter dated 27.01.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Commissioner (Estt.II/III) Kendriya Vidyalaya Sangathan vide letter dated **15.02.2021** inter- alia submitted that Employee transfers are effected as per transfer guidelines which are defined and transparent. However, due to COVID 19 Pandemic and review of transfer guidelines the Annual Transfer of employees has not been effected in the year 2020. The request of Sh. Manoj Kumar, SSA for transfer from KV Manmad to KV, Agra/Gwalior/Nayagaon CRPF/BSF Tekanpur /Mathura/ Dabra/ Hazaratpur OEF was considered sympathetically by this office but could not be

acceded to in view of above. If he applies for the same as and when Annual request transfers of the year 2021 are effected.

Observation / Recommendations:

4. This Court observes that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the rule position in respect of transfer of persons with disabilities.

"Section 20.(5) 'Non-discrimination in Employment' of the Rights of Persons with Disabilities Act, 2016 provides that the appropriate Government may frame policies for posting and transfer of employees with disabilities."

As per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.

5. On many occasions this Court has noted that the Kendriya Vidyalaya Sangathan does not have the Equal Opportunity Policy which is required and submitted to this Court in terms of Section 21 of the RPwD Act 2016 which reproduced below:

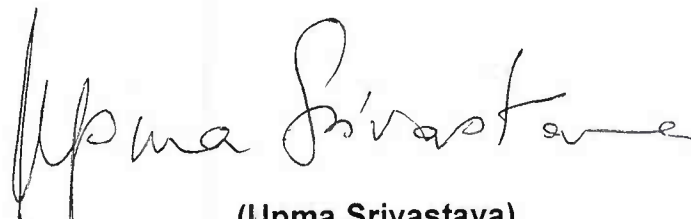
"Section 21. (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

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

6. As per the above rule position, the case of the complainant could have been considered appropriately and posted at the place closest to enable to live with his family.

7. This Court recommends that the Equal Opportunity Policy may be prepared expeditiously taking into account all the persons with disabilities in Kendriya Vidyalaya Sangathan. The respondent is also recommended to post at the place closest to his home to enable to live with his family.

8- This case is disposed off



(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 31.03.2021

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सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12557/1022/2021

Complainant : Shri Pavan Kumar
Senior Secretariat Assistant (SSA)
82/2, Central School Border Security Force Dantiwada,
Banaskatha, Gujrat-385505
Mob : 09523057975
E-mail : pavankmr40@gmail.com

Respondent: : Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi-110016
Phone No : 011-26858570, 26857036
E-mail : kvs.commissioner@gmail.com

Gist of Complaint:

The complainant Pavan Kumar, SSA, vide complaint dated 11-01-2021 suffering from Leprosy Cured (Post Trauma B/L Claw Hand) 52% Disability. The complainant submitted that he is currently serving as Senior Secretariat Secretary (SSA) in Central School Border Security Force, Dantiwada District: Banaskantha Gujarat. The complainant submitted that by direct recruitment advertisement no. 13 of the Central School Organization, New Delhi, in 2019, he was selected for the post of Senior Assistant (SSA) in the Central School, for which the complainant's preference in the maximum selection list was 29. At the time of examining the papers, he was asked by the Central School Organization to fill the order of the zone on the basis of choice for posting.

The complainant further submitted that despite his elevation in the priority list, in the proposal for appointment by the Central School Organization for the above post, he was posted 1800 km from the home district.

The complainant further submitted that by letter dated 17.10.2020 and 29.02.2020 of the Central School, New Delhi, applications were sought for rectification in the place of posting of PwD in which he also applied for rectification in the place of posting in which On his first preference, his place of choice was Patna, even there, the post of Senior Secretariat Assistant is vacant, which is just 100 kilometers away from his permanent residence/native place.

Therefore, the complainant has requested that on the basis of the facts given above and considering the circumstances, Pawan Kumar transfer from Gujarat to Patna KVS should be passed and ordered to be benefited and protected.

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2. The matter was taken up with the Respondent vide letter dated 14.01.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Commissioner, Kendriya Vidyalaya Sangathan (KVS) dated 15-02-2021 submitted that Employee transfers are effected as per transfer guidelines which are well defined and transparent. Appropriate weightage is given to each ground viz-spouse/PH/LTR/DFP/MDG etc. being adduced by the employees for transfer as per transfer guidelines. However, due to COVID-19 pandemic and review of transfer guidelines the Annual Transfer of employees has not been effected in the year 2020.

4. The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 19.03.2021. The following were present:

- | | | |
|-----|--|---------------|
| i) | Shri Pawan Kumar | – Complainant |
| ii) | Dharmendra Patle, Associate Commissioner | – Respondent |

Observation / Recommendations:

5. Complainant submits that he is posted on the post of Senior Secretariat Assistant in the Respondent establishment. Presently he is posted in Banaskantha, Gujrat, whereas he is native of Gaya, Bihar. Further, he submits that at the time of appointment he gave his preference of posting in Bihar. He has prayed before this court to post him in Patna, Bihar office where post of Senior Secretariat Assistant is vacant.

6. Respondent submits that transfer policy of the Respondent establishment is being reviewed. Further, Respondent submits that as soon as the policy would be finalised, Respondent shall be transferred accordingly.

7. DoPT OM No A-B 14017/41/90-Estt. (RR) dated 10 May 1990 and 3.DoPT OM No A-B 14017/16/2002-Estt. (RR) dated 13 March 2002 lays down that employees with disabilities may be posted near their native place. Objective behind the same is to provide divyang employee familiar and conducive environment. The same is mandate of Section 20 of Rights of Persons with Disabilities Act, 2016. The same is reproduced below –

Section 20(2) - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

8. As far as reply of the Respondent is concerned, many similar Complaints have been filed against the Respondent establishment relating to transfer. Respondent files the same reply; however, no policy has been formed by the Respondent till date.



...3...

...3....

9. The review exercise of transfer policy and the transfer policy itself are secondary to the statute passed by the legislature, i.e. Rights of Persons with Disabilities Act, 2016. Mandate passed by the legislature cannot be bypassed by the Respondent establishment by opting for the never-ending review process of transfer policy. Hence, this court recommends that in harmony with the provisions of RPwD Act, 2016 and DoPT OM cited above, the Complainant shall be transferred to Patna, Bihar, close to his native place. Notwithstanding the review process of guidelines getting completed.

10. The Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 31.3.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12587/1022/2021

Complainant: Shri Vikas, PRT
Kendriya Vidyalaya,
Gali No. 3, Indian Colony, Sonipat
Haryana
Email: teenugaur84@gmail.com

Respondent: The Commissioner
Kendriya Vidyalaya Sangathan (KVS)
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016
Email: kvse2section@gmail.com
kvs.commissioner@gmail.com

Complainant : 100% Physical Handicapped

GIST of the Complaint:

Complainant vide complaint dated 14.10.2020, 100% Physical Disability inter-alia submitted that he was selected in August 2019 for Primary Teacher in KVS.

The complainant further submitted that when he filled the form, they said that you can fill your preferred zone, he had filled the north zone, but when the list came up Kendriya Vidhyalaya Sanghathan (KVS) changed his zone while the post in his zone was vacant.

The complainant is 100 percent Physical handicapped and his appointment is in Naxalite area (Datewada) district, Kirandul Chhattisgarh which is 2000 km from Haryana. The parents of the complainant are aged and no one has come with them. The complainant said that there is still a vacant position in his north zone. He has to face a lot of problems day to day life.

Therefore, the complainant has requested that on the basis of the facts given above and considering the circumstances, Vikas Kumar transfer from Kirandul Chhattisgarh to KVS Nahra Sonipat Haryana should be passed and ordered to be benefited and protected.

2. The matter was taken up with the Respondent vide letter dated 1.2.2021 under Section 75 of the RPwD Act 2016.

3 In response, Assistant Commissioner (Estt.II/III) Kendriya Vidyalaya Sangathan vide letter dated 10.03.2021 inter- alia submitted that transfer of teachers are effected as per transfer guidelines, which are well defined and transparent.

...2...

Appropriate weightage is given to each ground viz-Spouse/PH/LTR/DFP/MDG etc. being adduced by the teacher for transfer as per transfer guidelines. Due to COVID-19 Pandemic and review of transfer guidelines the annual transfer of employees has not been effected in the academic year 2020-21. They further submitted that the representation of Shri Vikas, PRT, his request for transfer will be given due highest consideration as per KVS transfer guidelines along with all other similar cases as per the transfer guidelines as and when annual request transfers for the year 2021 are effected.

Observation / Recommendations:

4. This Court observes that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the rule position in respect of transfer of persons with disabilities.

"Section 20.(5) 'Non-discrimination in Employment' of the Rights of Persons with Disabilities Act, 2016 provides that the appropriate Government may frame policies for posting and transfer of employees with disabilities."

As per the DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, the persons with disabilities may be exempted from the routine/rotational transfers and to the extent possible, such persons should be retained at posts where they can contribute efficiently over a long period.

5. On many occasions this Court has noted that the Kendriya Vidyalaya Sangathan does not have the Equal Opportunity Policy which is required and submitted to this Court in terms of Section 21 of the RPwD Act 2016 which reproduced below:

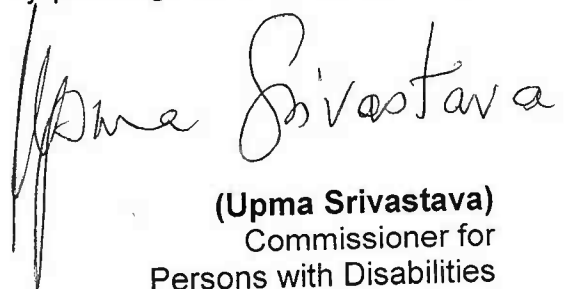
"Section 21. (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

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

6. As per the above rule position, the case of the complainant could have been considered appropriately and posted at the place closest to enable to live with his family.

7. This Court recommends that the Equal Opportunity Policy may be prepared expeditiously taking into account all the persons with disabilities in Kendriya Vidyalaya Sangathan. The respondent is also recommended to post the complainant at the place closest to his home to enable him to live with his family pending its revision of transfer guidelines.

8. This case is disposed off


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 31.3.2021

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1039/1031/2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12549/1031/2021

Complainant:

Shri Ranveer Singh Chauhan,
Flat No.2, Residential Complex,
Shri Dadadev Hospital, Dabri,
New Delhi-110045
Email: ranveerchauhan84@gmail.com
Mobile: 8447827840

R-26950

Respondent:

Principal,
Rajkumari Amrit Kaur College of Nursing,
Lajpat Nagar IV, Near Moolchand Metro Station,
New Delhi-110024
Email: principal@rakcon.com

R-26951

CORRIGENDUM

Please refer to the Observations/Recommendations issued by the Court of Chief Commissioner for Persons with Disabilities (Divyangjan) in Case No.12549/1031/2021. Para 5 of the said Observations/Recommendations has been partially modified and the same be read as under:-

“5. In addition to this the Complainant has also furnished a copy of the email dated 04.12.2020 endorsed to him by the Nodal Officer-PwD, University of Delhi which is addressed to the respondent Nursing College. It has been informed that as per Delhi University policy and practice, the first seat of a block of every 20 seats is to be reserved for persons with benchmark disabilities; and that the program of study i.e. M.Sc. Nursing for which the complainant had applied, has 25 seats. Therefore, 02 seats, which are supernumerary in nature, are to be reserved for Persons with Benchmark Disabilities in such a situation.”

Dated: 31.03.2021

(Upma Srivastava)
Commissioner
for Persons with Disabilities

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सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12462/1024/2020

Complainant: Shri Satyendra Nath Dutta, Section Officer
Department of Empowerment of PwDs
5th Floor, Pt. Deendayal Antyodaya Bhawan
CGO Complex, Lodhi Road, New Delhi – 110003
e-mail: <sn.dutt@gov.in>

Respondent: The Additional Director
O/o the Addl. Director, CGHS (HQ)
M/o Health & Family Welfare, CGHS Dispensary Building
Sector 12, R.K. Puram, New Delhi – 110022
e-mail: <adadminhq.dl@cghs.nic.in>

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **02.12.2020** submitted he is a CGHS beneficiary and for renewal of CGHS card, he had to suffer a lot of problem, therefore, he approached CIC for refund of CGHS contribution from the months of December 2014, January, & February, 2015 and suitable compensation but Commission delivered decision on 13.02.2019 without any relief. He further submitted that again he applied RTI application dated 27.03.2019 to CGHS about refund but they have informed that CGHS does not have such provision.

2. The matter was taken up with the Respondent vide letter dated **11.12.2020** under Section 75 of the RPwD Act, 2016.

3. Assistant Director (Admn), CGHS vide letter dated **20.01.2021** inter-alia submitted that he had applied for renewal of his CGHS card in December 2014 and the CGHS services to Shri Satyendra Nath Dutta during the period of December 2014 to February 2015 for which refund of CGHS subscription is being demanded were not discontinued. He had consulted Dr. CP Gupta on 14.02.2015 and 28.02.2015 and was prescribed medicines were issued to him.

4. Complainant vide rejoinder dated **29.01.2021** inter-alia submitted that he does not remember to have visited Dr. CP Gupta and he was never prescribed COBADEX FORTE by Dr. C.P. Gupta.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.03.2021**. The following were present:

- Shri Satyendra Nath Dutta – complainant
- Dr. V.K. Dhiman, Additional Director (Admn) on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. In light of the facts and material available on record, the reply of the respondent was found satisfactory. There appears no discrimination on account of disability being an administrative issue as a whole.

7. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 31.03.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12592/1021/2021

Complainant: Shri Rajesh, R/o I – 429, Ansari Nagar East

R-26956 AIIMS Campus, New Delhi – 110029

Respondent: The Director, All India Medical Sciences

Ansari Nagar, New Delhi – 110029

R-26957 e-mail: <director.aiims@gmail.com> <director@aiims.edu>

Complainant: 45% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **29.01.2021** inter-alia submitted that he has been working as a Operation Theatre Assistant in AIIMS since 25.03.2012. He alleged that as per existing rule of the AIIMS, he was eligible for next promotion after completing of 05 years regular service but the Institute had given next promotion as a Technician (Operation Theatre). He has requested to direct the respondent to identify promotional post for Group 'B' & Group 'A' under the PwD category in AIIMS, New Delhi in respect of Operation Theater Cadre and promote him under the PwD category.

2. The matter was taken up with the Respondent vide letter dated **04.02.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **05.03.2021**, respondent did not submit any reply.

3. Similar matter was heard on **08.01.2021** in the matter of Shri C.G.Sathyan, Jr. Admn. Officer versus AIIMS, New Delhi and during the hearing Respondent expressed his inability to grant promotion to the Complainant and Respondent denied promotion to the Complainants because of its own fault. Policy of reservation for PwDs exists since year 1989 and became statutory duty by effect of Persons with Disabilities Act, 1995. It is settled principle of law that in adjudication of a case no party is allowed to take benefit of his own wrong (*Commodum ex injuria sua nemo habere debet*) Hence, non-preparation of Reservation Roster is fault of the Respondent and the Complainant cannot be made to pay the cost for it.

4. Hence on this issue this court concludes that Employment rights of the Complainants are being infringed by the Respondent.

5. Hon'ble Supreme Court in the matter of RAJEEV KUMAR GUPTA AND OTHERS VS UNION OF INDIA AND OTHERS [(2016) 13 SCC 153] held that three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts shall be extended. Recently hon'ble Supreme Court upheld the decision of Rajeev Kumar Gupta in SIDDARAJU v. STATE OF KARNATAKA [Civil Appeal No. 1567 of 2017]. This court also passed a detailed reasoned Order settling this issue on similar lines in B. UMA PRASAD Vs. EPFO Case No.11183/1021/2019.

6. Therefore this court recommends that the Respondent shall promote the Complainants to the post of O.T. (Technician).

7. Case is disposed off.



(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 31.03.2021