



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: 12810/1022/2021

Complainant: Shri Sandeep Kumar
Senior Manager (NTPC Ltd)
FF-4, Plot-06, Shakti Khand 3,
Indirapuram, Ghaziabad-201014
E-mail : madhonia@gmail.com
Mobile No : 08826756183

— P30625

Respondent : The Chairman & Managing Director
NTPC Limited
NTPC Bhawan, SCOPE Complex, Institutional Area,
Lodhi Road, New Delhi-110003
Contact No : 011-24360100, 24387000, 24387001
E-mail : ntppcc@ntpc.co.in
Fax No : 011-24361018

— P30626

GIST OF COMPLAINT:

The Complainant vide complaint dated 24.07.2021, submitted that he is physically disabled person having 50% locomotive disability & posted in NTPC Unchahar Raibareli which is 650 KM away from his home district Ghaziabad. He applied for request transfer in MANAS system dated 28.02.2017 for location Dadri (thermal), Dadri (Gas), DBF HQ and two other location, which are 40-60 km away from his permanent address.

The complainant stated that more than five hundred employees transferred to locations of choice exercise by him. More than hundred employees transferred at single location i.e. NTPC Dadri. The complainant has requested to GM (HR), ED (HR) & Director (HR) by meeting in person & mails for consideration of his request for transfer near to his home district.

The complainant has requested to CCPD Court to consider his case with sympathy & mercy and issue suitable instructions to NTPC Ltd. New Delhi for transfer near to his home district so that he may perform his duties with hundred percent efficiency.

2. The matter was taken up with the Respondent vide letter dated 05.08.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager (HR), NTPC Ltd, dated 08.09.2021, submitted that the complainant joined NTPC on 29.04.2016 as Dy. Manager (O&M-Mechanical)/E3 level against Special Recruitment Drive carried out by NTPC and was promoted to E4 level in 2017 and Sr. Manager/E6 level in 2020.

The respondent stated that as per the offer of appointment dated 17.02.2016 issued to the Complainant the place of posting offered to complainant, therein, was Singrauli Super thermal Power Station.

The complainant unconditionally accepted the offer of appointment along with its terms and conditions and agreed to join NTPC on or before 15.04.2016. The complainant dated 19.04.2016 requested to change the place of posting from Singrauli Super thermal Power Station to any of NTPC plants amongst NTPC Dadri, NTPC Unchahar and IGSTPP Jhajjar on the ground that these places are near to Ghaziabad where he is settled with his family.

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The respondent further stated that NTPC Ltd. considered the request of the complainant and his place of posting was accordingly changed from Singrauli to Feroze Gandhi Unchahar thermal Power Station, district Raibareli, U.P.

The respondent further stated that NTPC Ltd. has its presence in more than 40 locations across India and the persons with disabilities are exempted from rotational transfer policy/transfer as far as possible and subject to administrative constraints, efforts are always made to accommodate the requirements of disabled employees.

The respondent further submitted that the complainant of Shri Sandeep Kumar has been considered once at the time of initial appointment and he has been posted to Unchahar based on his choice/request.

4. The complainant filed his rejoinder by email dated 25.09.2021, and submitted that fact provided by respondent are prior to joining of NTPC, he want to mentioned that after receipt offer of appointment, he requested for change place of posting to NTPC DADR & wide reply from NTPC recruitment cell.

He visited NTPC HR recruitment cell corporate office & meet concern dealing officer personally on 19.04.2016 and request for change place of posting to NTPC DADRI on ground of person with disabilities. He was informed that presently there is no vacancy available at NTPC Dadri & assurance was given to him verbally that his request for transfer to NTPC Dadri will be consider in near future whenever vacancies will available at NTPC Dadri Plant.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.11.2021. The following were present:

- i) Shri Sandeep Kumar: Complainant
- ii) Shri C. Kumar, GM (HR), & Shri Bhupesh Kumar, DGM (HR): Respondent

Observations / Recommendations:

1. This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

2. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were



- a. to fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b. To create barrier free environment for Persons with Disabilities,
- c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

3. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

4. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

5. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

6. Issues related to transfer and posting to divyang employees may be divided into three categories -:

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependant.

STATUTORY PROVISIONS AND GUIDELINES

7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.

d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T– This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T– This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T –This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T –This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

8. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang

employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

9. Even in case of employee who serves as care giver of divyang dependant, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

10. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

11. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

12. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020

13. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

14. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

15. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.



16. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

17. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

18. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

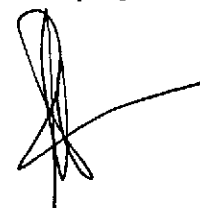
19. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

20. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

21. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

22. **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

23. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal



analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

24. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

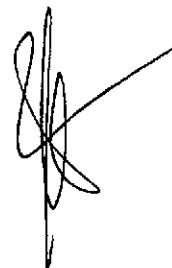
25. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities.—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability."

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

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: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.



38. Special provisions for persons with disabilities with high support.—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

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

26. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

27. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

28. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

PRESENT CASE

29. Complainant submits that his home town is Ghaziabad, Uttar Pradesh while at present he is posted in Unchahar, Raibareli, Uttar Pradesh. He applied for transfer on Respondent's transfer online portal in year 2017. Choices of posting given at that time were – Dadri, Unchahar and Jhajjar. Since then, many other employees got transferred to Dadri but the Complainant was not considered.



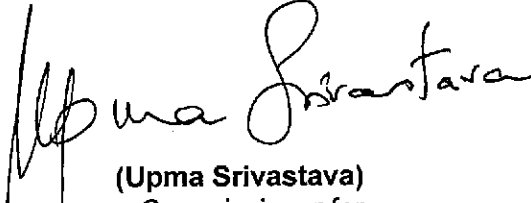
30. Case of the Complainant squarely falls within guidelines issued by DoPT in O.M. No. 14017/16/2002 dated 13.03.2002. as per the O.M. divyang government employees must be posted near to their native place. Further O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T provides that at the time of transfer/posting preference may be given to divyang employees. It is certain from the facts that the first preference submitted by the Complainant was indeed Dadri. It is also certain that there were vacancies in Dadri office of the Respondent establishment. However, Respondent still chose to not post the Complainant to his native place. This Court concludes that the Respondent has violated DoPT O.M. O.M. No. 36035/3/2013, dated 31.03.2014.

31. During online hearing Respondent assured this Court that it will explore all the avenues to post the Complainant to Dadri or to other stations situated near hometown of the Complainant.

32. This Court recommends that the Respondent shall post the Complainant at Dadri office and implement the DoPT guidelines delineated above in letter and in spirit.

33. **Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.**

This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 08.12.2021



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: 12841/1023/2021

Complainant: Shri Bishnu Kumar
Qtr No. NH-3, A122
CISF Colony Vindhyanagar
Post-NTPC Vindhyanagar, Singhrauli
Madhya Pradesh – 486885
E-mail: bishnukumar221976@gmail.com

— 1230662

Respondent: Sr. Commander
Sr. Commandant Office
Central Industrial Security Force
Unit VSTPP, Vindhyanagar, Singhrauli, M.P.
E-mail: <vstpp-sidhi@cisf.gov.in>

— 1230663

Complainant: 90% locomotor disability

GIST of the Complaint:

प्रार्थी श्री बिष्णु कुमार, कांस्टेबल का अपनी शिकायत दिनांक 09.08.2021 में कहना है कि वह केन्द्रीय औद्योगिक सुरक्षा बल में जुलाई 1994 में भर्ती हुए तथा वर्ष 2001 में कार्यअवधि के दौरान दिव्यांग हुए। प्रार्थी का आगे कहना है कि वह वर्तमान में केन्द्रीय औद्योगिक सुरक्षा बल, इकाई वीएसटीपीपी, विन्ध्यनगर में कार्यरत है तथा दिनांक 19.04.2021 को खण्ड मुख्यालय राँची में महानिरीक्षक के कार्यालय में उनका स्टेन्डींग वेलफेयर और रिहैबिलिटेशन बोर्ड हुआ जहाँ उन्हें कहा गया कि जैसे कार्यालय में काम कर रहे हैं वैसे ही करते रहें परन्तु पदोन्नति नहीं दिया जायेगा, यह बोर्ड 05 साल के लिए आपको सर्विस रिटेसन करेगा 05 वर्ष के बाद पुनः इसी तरह बोर्ड होगा अभी पदोन्नति नहीं चाहिए का अण्डरटेकिंग लिया गया। प्रार्थी का आगे कहना है कि वर्तमान में सामान्य बल सदस्य के तरह शिफ्ट ड्यूटी कर रहे हैं तथा अन्य सहकर्मिक/बैंच वाले के तरह पदोन्नति आदि सुविधाएं मिलनी चाहिए।

2. The matter was taken up with the Respondent vide letter dated 23.0-8.2021 under Section 75 of the RPwD Act, 2016.

3. वरिष्ठ कमाण्डेण्ट, के.ओ.सुब इकाई वी.एस.टी.पी.पी, विन्ध्यनगर का अपने पत्र दिनांक 16.09.2021 में कहना है कि दिनांक 01.04.2001 को अवकाश से आने के दौरान एक ट्रेन हादसे में प्रार्थी दिव्यांग हो गये तथा पारिवारिक जिम्मेदारी को देखते हुए बोर्ड द्वारा बल में रखने की सिफारिश की गई एवं sedentary duties like table work, computer related job etc. के लिए सिफारिश की गई साथ ही बोर्ड के दौरान उक्त बल सदस्य के द्वारा निम्नलिखित अंडरटेकिंग दिया *"as I am being retained due to compassionate reasons, will not claim any promotion"*.

4. प्रार्थी का अपने प्रति उत्तर दिनांक 25.09.2021 में कहना है कि उन्हें सामान्य शिफ्ट के तहत ड्युटी दिलावाई जाए।

5. After considering the respondent's reply dated **16.09.2021** 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 **09.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.11.2021**. The following were present:

- Shri Bishnu Kumar – complainant
- Shri S.V. Reddy, Assistant Commandant on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that the year of his Appointment was 1994 and he acquired disability during service in year 2001. Presently he is posted in Vidyanagar. On 19.04.2021 Complainant was compelled to give undertaking to Standing Welfare & Rehabilitation Board whereby the Complainant was compelled to give up his promotion rights. Further the Complainant submits that despite of disability, since 25.07.2021 he is assigned guard duty on gate. Whenever Complaint is filed before the competent Respondent authority within the organisation, threats to downgrade his APAR is issued.



8. Respondent refuted the claims of the Complainant and submits that he acquired his disability while he was on leave hence his disability is not attributable to his service. His continuation on job is on compassionate grounds and hence undertaking was taken from the Complainant. Considering his disability, he was posted in document section. However, he remains absent regularly. His behaviour with colleagues was not congenial. He wasted his office time in watching You-tube videos and on Facebook. After Covid there was shortage of staff and hence he was assigned Gate Duty. Allegation of sanctioning leaves is false. In year 2020, in total 57 days leave was assigned and in year 2021, total 63 days leave was sanctioned. He never filed his grievance before any competent authority. Respondent submits that residential facility only at a distance of 50 meters from his place of work has been provided to the Complainant.

9. Submission of the Respondent that the Complainant's disability is not related to his service because it was outcome of the accident which he met while he was on leave is wrong interpretation of law. It is settled position of law that if any employee acquires disability during service whether during serving hours or while on leave, he cannot be removed from service nor his promotion can be stopped. He cannot be said to be appointed on compassionate basis. Hence any kind of undertaking is contrary to law.

10. Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.

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

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



11. This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016."

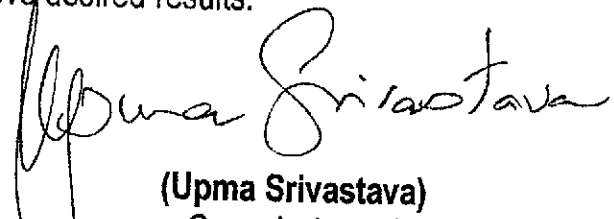
12. This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to divyang employee in comparison with enabled employee. In addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of divyang employee, pre-promotion training, providing assistive aids and devices etc.



13. Physical and social environment are unfortunately designed in such ways that at times consciously and other times unconsciously, Divyangjan are subjected to exclusion, segregation. Misconceptions and preconceived notions relating to divyang employees' incapability to perform job also exist. Concept of Reasonable Accommodation plays a crucial role in removal of such barriers.

14. Further on the issue of assigning of duties, this Court recommends that the Respondent shall post the Complainant in Document Section or assign him some desk job so that he can do optimum utilisation of his energy and achieve desired results.

15. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 08.12.2021



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. 12811/1011/2021

Case No. 12812/1011/2021

Case No. 12813/1011/2021

Case No. 12824/1011/2021

Case No. 12825/1011/2021

Complainant :

In the matter of:-

Ms. Bikki Rani,
WZ-823, Nangal Raya,
New Delhi – 110046

— R30654

.... Complainant No.1

Shri Subodh Patel,
589, Nidhi Colony,
Rithala Village,
Delhi – 110085

— R30655

.... Complainant No.2

Shri Pramod Kumar,
Near Gopal Gift Center,
Hanuman Gadi,
Madinath,
Bareilly - 243001

— R30656

.... Complainant No.3

Shri Surendra Kumar Singh,
73, Ambedkar Colony,
Mahwa,
Distt. Dausa,
Rajasthan – 321608

— R30657

.... Complainant No.4

Shri Vishnu Kumar Jangid,
VPO : Nangal Bairsi,
Dist. : Teh, Dausa,
Rajasthan - 303303

— R30658

.... Complainant No.5

Versus

Staff Selection Commission,
(Through the Chairman)
Block No.12, CGO Complex,
Lodhi Road,
New Delhi - 110003

— R30659

..... Respondent

Disability : 90%, 50% 40%, 70% and 40% locomotor disabilities respectively.

Gist of Complaint:

Ms. Bikki Rani, a person with 90% locomotor disability submitted that she appeared in the SSC CHSLE-2018 Examination conducted for the post of Postal Assistant / Sorting Assistant by Staff Selection Commission (SSC) with Roll No. 2201026406 in July 2019. The result of the Examination was declared on 12.09.2019. She appeared in the Tier-2 Examination on 29.09.2019 and in the Typing Test on 26.11.2020, the result of which was declared on 10.06.2021. The complainant cleared all the tests. She went for Document Verification was held on 24.07.2021. The posts advertised was for candidates with OA, BL, OL, OAL and MW disabilities but after the Document Verification, she was told the Postal Deptt. issued a notification saying that only candidates with OL, LC, DW and AAV disabilities under OH will be allowed to chose the posts of PA and SA.

Shri Subodh Patel, a person with 50% locomotor disability submitted that he cleared both the Tier I and Tier II of SSC CHSLE – 2018 Examination conducted by SSC in July 2019 and 29.09.2019 with Roll No. 2201021858 respectively. He appeared in the Typing Test during November 2020 and the Document Verification was conducted on 24.07.2018. At the time of Document Verification, he was not considered for the post of Postal Assistant inspite of identifying BL in its advertisement. He wasted his 2 years for the examination and not at the final stage the Department has not considered his candidature for the post of Postal Assistant.

Shri Pramod Kumar, a person with 40% locomotor disability that he appeared in the Preliminary and the Descriptive Examination for SSC CHSLE-2018 conducted by Staff Selection Commission (SSC) for the post Postal Assistant (code P-41) on 29.09.2019 with Roll No. 3005100428. After the Typing



Test on 26.01.2020 the Document Verification was held on 22.07.2021, but he was told that he is not eligible for the post of Postal Assistant.

Shri Surendra Kumar Singh, a person with more than 70% locomotor disability (OAL) submitted that appeared in Tier-I, Tier-II and Skill Test in CHSLE-2018 Examination held on 03.07.2019, 29.09.2019 and 26.11.2020 with Roll No. 2407018662 respectively. SSC declared the results and he was shortlisted for the Document Verification on 24.07.2021 where he had to choose his post preferences in various departments/ministries but when he opted the Postal Assistant / Sorting Assistant coded as 'P-41', he was told that as per the new guidelines, he is not eligible for the above referred post.

Shri Vishnu Kumar Jangid, a person with more than 40% locomotor disability (BA) submitted that he cleared the Tier-I, Tier-II and Skill Test held on 12.09.2019, 27.08.2020 and 10.06.2021 of SSC CHSLE-2018 conducted by SSC with Roll No. 2405017530. He was shortlisted for Document Verification on 24.07.2021 where he had to choose his post preferences in various Departments / Ministries but when he opted the post Postal Assistant / Sorting Assistant coded P-41, he was told that as per the new guidelines, he was not eligible for the post.

2. The matter was taken with the Chairman SSC vide letter dated 03.08.2021 and 11.08. 2021.

3. The Under Secretary, SSC vide letter No. 3-2/2019-P&P-I (Vol.I) dated 01.09.2021 submitted that SSC is a recruiting agency which conducts examinations for recruitment for various Group 'B' and Group 'C' posts for filling up the vacancies reported by the indenting Ministries / Departments / Organizations. The total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category, including reservation for PwDs through the system of maintenance of roster, are the exclusive domain of respective indenting Ministries/Departments/Organization. Thus the Indenting



Ministries/Departments/Organizations report the vacancies (Horizontal and Vertical) to the Commission to be filled up by direct recruitment. The Commission does not have any role in the recognition of a particular post either suitable or unsuitable for a particular disability. The SSC has examined the Deptt. of Empowerment of Persons with Disabilities Notification No. 38-16/2020-DD-III dated 04.01.2021 in the light of CHSLE-2018 and decided to implement the same during the document verification of CHSLE-2018. As per the Notification dated 04.01.2021, the Commission considered the following permissible disabilities for the post of PA/SA:-

S.No	Name of Post	Functional Requirement	Suitable category of Benchmark Disability
1.	Postal Assistant / Sorting Assistant	S, ST, W, MF, SE, H, C	a) LV b) D, HH c) OL, LC, Dw, AAV d) ASD (M), ID, SLD, MI e) MD involving (a) to (d) above

In the instant cases, the disabilities of all the five candidates are as follows:

Sr. No.	Name of the candidate	Disability
1	Ms. Bikki Rani	OH-BL
2	Shri Subodh Patel	OH-BL
3	Shri Pramod Kumar	OH-OA
4	Shri Surendra Kumar Singh	OH-OAL
5	Shri Vishnu Kumar Jangid	OH-BA



The Respondent submitted that since disabilities of all the 5 candidates do not fall among permissible disabilities for the post of PA/SA as per Notification dated 04.01.2021, therefore, they are not eligible for the post of PA/SA and the decision of the Commission regarding their eligibility are in order.

4. Ms. Bikki Rani vide her rejoinder dated submitted that Notification of SSC CHSLE-2018 clearly mentioned that all categories are suitable for the post of Postal Assistant. The Notification clearly mentioned about the post suitability for Postal Assistant post on page no. 2 at Sr. No. 4.1.2. According to the new Notification she fulfils all the functional requirements, i.e. S, ST, W, MF, SE, H and C. She submitted that she is suitable for the post of Postal Assistant according to the Post functional requirements.

5. OBSERVATIONS & RECOMMENDATIONS

The Respondent has submitted the correct position of Notification of M/o SJ&E dated 04.01.2021. At serial No. 1269, the post of Postal Assistant is identified suitable for following categories:-

- a) Low Vision
- b) Deaf and Hard of Hearing
- c) One Leg
- d) Leprosy Cured
- e) Dwarfism
- f) Acid Attack Victim
- g) ASD and other Intellectual Disabilities.

Complainants are persons with disabilities with locomotor disability under the following categories :-

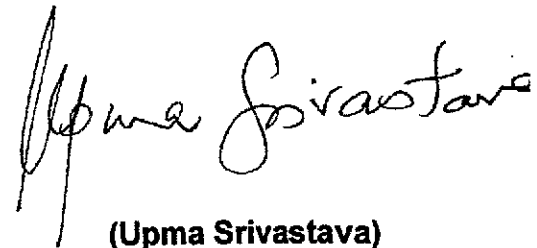
- 1) Both Leg
- 2) One Arm and
- 3) One Arm and One Leg.



Since, all these three categories are not identified suitable for the post of Postal Assistant, no further intervention is necessary in the matter by this Court.

6. The case is disposed off accordingly.

Dated: 09.12.2021



(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. 12800/1011/2021

In the matter of:-

Complainant:

Shri Amarjit Singh Anand,
ANAND's
432-L, Model Town,
Jalandhar – 144003

— P30664

Versus

Respondent

Office of Chief Postmaster General, Punjab Circle,
(Through the Chief Postmaster General, Punjab Circle),
Sandesh Bhawan,
Sector-17E,
Chandigarh – 160017

— P30665

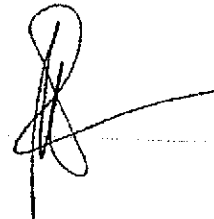
Gist of Complaint:

Shri Amarjit Singh Anand, Expert Member, State Advisory Board, Punjab vide his complaint dated 26.07.2021 submitted that the Chief Postmaster General, Punjab Circle, Chandigarh issued Notification No. RECTT/1-5/2020 dated 10.07.2021 for direct recruitment of meritorious Sports persons under Sports Quota. He submitted that there is violation of Chapter VI Sub Section 33(i), (ii) and (iii), Section 34(i), (a), (b), (c), (d) and (e) of Rights of Persons with Disabilities Act, 2016. The Sportsmen with disabilities are deprived of their rights and empowerment in the recruitment notification referred above. He submitted that the above referred notification requires to be amended and persons with disabilities to be included as per the Act.

1 | Page

2. The complaint has been taken with the Postmaster General, Punjab Circle, Chandigarh vide letter dated 02.08.2021.

3. The Asstt. Director Postal Services (Rectt), Punjab Circle, Chandigarh vide letter No. Rectt/1-5(1)/2021 dated 23.08.2021 submitted that the Chief Postmaster General, Punjab Circle, Chandigarh issued Notification No. Rectt/1-5/2021 dated 10.07.2021 for filling up 54 posts of Postal Assistant/Sorting Assistant and 3 posts of Multi-Tasking Staff in Punjab Postal Circle. The said notification includes sports discipline for persons with disabilities, mentioned at Sr. No.37 of Para 8, i.e. list of sports which qualify the appointment of meritorious sports persons and further application form too indicates declaration to be given by the persons with disabilities. The Postal Directorat vide its letter no. 14-01/2013-PAP dated 14.10.2013, in compliance to DoP&T O.M. No.14034/01/2013-Estt (D) dated 03.10.2013, has forwarded the consolidated instructions issued by the Government from time to time to provide incentives for recruitment, promotion & increment etc. of meritorious sportsmen. The Respondent submitted that Section 33 & Section 34 of RPwD Act, 2016, have been fully complied with. The Postal Directorate has issued the instructions/guidelines in conformity to the instructions/guidelines issued by the Nodal Ministry and Govt. of India. The said instructions are being followed by the Punjab Circle in toto & in true letter and spirit. He submitted that persons with disabilities are duly being considered in accordance with instructions, guidelines issued by Govt. of India, D/o EPwD, DoP&T, Postal Directorate and Amendments, clarifications issued thereunder.



4. The Complainant vide his rejoinder dated 11.09.2021 submitted that the Chief Postmaster General, Punjab Circle, Chandigarh has failed to incorporate reservation to outstanding Sportsmen with disabilities. Hence necessary penalty be imposed on officials concerned and recruitment notification dated 10.07.2021 be cancelled and fresh notification be issued. All applications received be set aside and fresh application with RPwD Act, 2016, reservation be re-advertised.

5. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 28.10.2021.

6. The following persons were present during the hearing ;

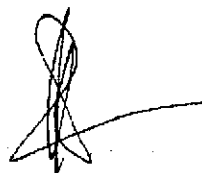
Complainant : Shri Amarjit Singh Anand in Person

Respondent : Shri Balbir Singh, Assistant Director Postal Services (Staff)

Observations & Recommendations

7. Complainant submits that the Respondent issued advertisement dated 10.07.2021 for the post of Postal Assistant; Sorting Assistant and Multi-Tasking Staff. Total number of seats were 57, however no seat was reserved for PwDs.


8. Respondent apprised the Court that by virtue of DoPT O.M. No. 14034/01/2013 Estt(D) vacancies were not reserved for any category whatsoever. Further, Respondent apprised that Divyangjan were not barred from applying for the posts. Para sports participants were eligible to apply.



9. This Court concludes that in the present Complaint, there is no case of discrimination on the basis of disability.

10. The case is disposed off.

Dated : 09.12.2021


(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. 12646/1011/2021

Complainant:

Shri Joyce Chennattussery,
Chennattussery House,
Veroor P.O.,
Changanacherry,
Kottayam,
Kerala -686104.

— P30666

Versus

Respondent :

Staff Selection Commission,
(Through the Chairman),
Block No.12, CGO Complex,
Lodhi Road,
New Delhi -110003.

— P30667

Disability : 50% Mental Retardation.

Gist of Complaint:

Shri Joyce Chennattussery, aged 28 years, a person with 50% mental illness vide his complaint dated 04.03.2021 submitted that in the SSC MTS Examination of 2019, he was shortlisted and disqualified by 3 marks. In the SSC MTS 2021, there was a clear violation of Rights of Persons with Disabilities Act, 2016 as SSC has excluded Autism, Intellectual Disability and Learning Disorder from the list of eligible PwD candidates. The complainant has been denied his right for employment. Being a person with disability he has been ignored every time by everyone due to lack of language ability. He has been fired from all the jobs by the employer due to his disability.

1 | Page

2. The Under Secretary, Staff Selection Commission (SSC) vide letter no. 3-5/2020-P&P-I (Vol.I) dated 09.04.2021 submitted that SSC is a recruiting agency which conducts examinations for recruitment of various Group 'B' and Group 'C' posts for filling up the vacancies reported by the indenting Ministries /Departments/Organisations. Pertinently, the total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category including reservation for Divyangjan through the system of maintenance of roster are the exclusive domain of respective indenting Ministries / Departments / Organizations. Thereafter, they report the vacancies (Horizontal and Vertical) to the Commission to be filled up by direct recruitment. The Commission does not have any role in the recognition of a particular post suitable to attached job profile i.r.o. particular User Department. It has been observed that there are no specific identified permissible disabilities for the post 'Multi-Tasking (Non-Technical) Staff. As such in absence of specific identified permissible disabilities for 'Multi-Tasking (Non-Technical) Staff in the notification dated 04.01.2021, it is not feasible to implement it.

Observation/Recommendations:

3. Number of Complaints are filed before this Court relating to non-implementation of Section 33 of Rights of Persons with Disabilities Act, 2016.

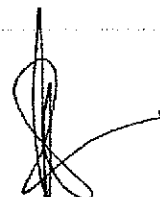
4. Identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the



vacancies reserved in accordance with the provisions of section 34. Ministry of Social Justice & Empowerment (MoSJE) published list of identified posts suitable for Divyangjan in 2013 and in 2021. Identification of posts suitable for Divyangjans is a detailed and conscious exercise conducted by committee comprising Additional Secretary and Joint Secretaries of concerned Ministries. Absence of such list may result into two kinds of situations, i.e. either it may lead to arbitrary action by the establishments or it may result into serious repercussions like accidental deaths or serious life threatening injuries to Divyangjan. Therefore, MoSJE publishes list of posts which are identified suitable for different categories of Divyangjans. These posts are identified keeping in view maximum benefits of the Divyangjans and different kinds of jobs which can be performed by Divyang without endangering their safety and physical comfort. Reason behind identification and publishing the list of identification post is to avoid adverse repercussions.

5. It is imperative to list certain provisions of MoSJE notification dated 04.01.2021 –

- a) Note 2 of the notification 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.
- b) Further, there are two provisions of the notification which deals with posts which are not mentioned in the list issued by MoSJE. Note 3 provides that 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 with such kind of disability with which the person holding the post is suffering. Similarly Note 5 provides that if a post having identical nature and place of job with respect to any identified post, the post should be construed to be identified even if the post has a different nomenclature and/or is placed in a different group.



- c) Note 4 of the notification 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.
- d) Note 6 of the notification deals with a situation where there are more than one list. In case any organisation has separate list of identified posts suitable for Persons with Benchmark Disability then the list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail. Intention of policy maker is to provide maximum benefit to Persons with Benchmark Disabilities by broadening the scope of opportunities which may be availed by Persons with Benchmark Disabilities.

6. Complainant has made allegations with respect to MTS Exam – 2019 and MTS Exam – 2020. Grievance filed with respect to both the examination is common. Complainant alleges that post of MTS is identified suitable for various sub-categories of Intellectual Disability. However, Respondent has failed to reserve the advertised posts for Intellectual Disability candidates.

7. Respondent has replied that it is a recruiting agency which conducts examination for various recruitment of various posts. Issues like total number of vacancies arising in an indenting organisation and reckoning vacancies for particular category falls under the exclusive domain of the indenting organisation.

MTS EXAMINATION – 2019

8. SSC declared results of MTS Exam – 2019 on 31.10.2020, whereas Complaint was filed on 09.02.2021, and MoSJE list of posts identified suitable for Divyang employees was published on 04.01.2021. Complainant has sought relief to implement MoSJE list. Since the list was published after the process of recruitment got over therefore intervention of this Court at this stage is not warranted.

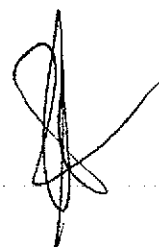


MTS EXAMINATION – 2020

9. SSC issued advertisement for the posts of Multi Tasking (Non-Technical) Staff. Last date for applying for the posts was 21.03.2021. On 04.01.2021, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment issued list of jobs identified suitable for Persons with Disabilities. From the perusal of this list it is clear that there is no post by the name of 'Multi Technical Staff'. 'Multi Technical Staff' is a combined name given to various Group C and D posts like Peon, Office Boy, Attendant etc.

10. From the perusal of the impugned advertisement it is certain that SSC has not mentioned exact name of the MTS post for which the advertisement was issued. Further, list of identified jobs dated 04.01.2021, identifies 1724 Group C posts and 281 Group D posts. All these posts are identified suitable for various mental disabilities like 'Autism Spectrum Disorder', 'Specific Learning Disability', 'Mental Illness', etc.

11. Section 33 and 34 Rights of Persons with Disabilities Act, 2016 provides that appropriate government shall identify posts which can be held by various categories of benchmark disabilities. Further it is duty of every appropriate government to provide reservation in posts in every government establishment. A perusal of the provisions in this Chapter clearly indicates that the posts in different services have to be identified. The object is to determine the categories of posts against which persons with different kinds of disability may be considered for appointment. Hence, not reserving these posts for various sub categories of mental disabilities is in direct violation of Section 33 and 34 of Rights of Persons with Disabilities Act, 2016.

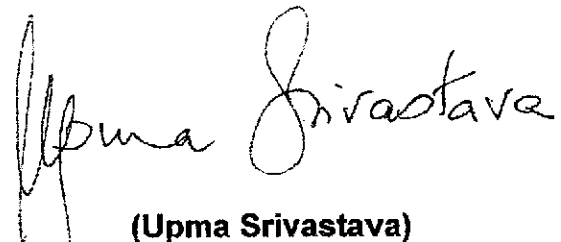


12. This Court agrees with the stand taken by the Respondent that it is exclusive domain of the indenting organisations to reckon the vacancies for identified posts. However, at the same time Respondent cannot elude its duty to ensure that government guidelines are implemented in letter and spirit.

13. This Court recommends that SSC shall ensure that indenting organisations shall implement MoSJ&E list of posts identified suitable for Persons with Disabilities. This Court recommends that the Respondent shall write to all the indenting establishments that their requisitions must be strictly based on MoSJ&E list of identified posts dated 04.01.2021. Further this Court recommends that the Respondent shall issue Corrigendum amending notification issued to advertise MTS Exam – 2020 dated 05.02.2021. Such corrigendum shall identify the posts of MTS suitable for various categories of Persons with Benchmark Disabilities with Intellectual Disabilities in accordance with MoSJE list dated 04.01.2021.

14. The case is disposed off.

Dated: 09.12.2021



(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. 12891/1011/2021

Complainant:

Shri Bishwadip Paul,
30, Dr G.S Bose Road,
Kolkata -700039.

— P30668

Versus

Respondent :

Staff Selection Commission,
(Through the Chairman)
Block No.12,
CGO Complex,
New Delhi-110003

— P30669

Disability : 50% locomotor

Gist of Complaint:

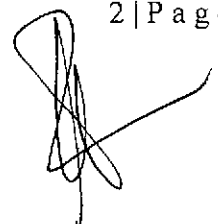
Shri Bishwadip Paul vide his complaint submitted SSC is being openly reluctant to implement the Ministry of Social Justice and Empowerment Notification No. 38-16/2020-DD-III dated 04.01.2021 in the ongoing recruitments done through SSC for central Govt. jobs inspite of the fact that all the Gazettes become effective from the date of its publication. No corrigendum or communication has been intimated from their side in the websites regarding its implementation in the ongoing recruitments like CGL 2020, CHSL 2020, MTS 2020, RRB, NTPC 2019 etc, thereby the pwd candidates like him specially the Both Arms people affected are left in lurch. He submitted that he would also like to highlight that the above suitability has left out proper inclusion of Both Arms people in major posts though they may be satisfying the functional requirements laid down there, as a person with

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less number of fingers who likely falls under BA subcategory fits for majority of the posts but the suitability pattern are resisting them from getting the jobs and this is creating a depression in them.

He has sought the following relief:

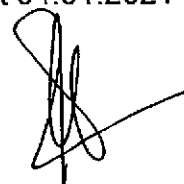
- 1) to direct SSC to implement the latest post suitability standards in the ongoing and future recruitments for Both Arms people as they have released a corrigendum which has left out both arms though the MoSJE notice states BA is suitable for that posts.
 - 2) to bring out reforms as early as possible and allow BA people for recruitments which I think can be solved easily if recruitments are being made based on broad category OH and medical fitness certificate in pre joining formalities rather than sub category of locomotor disability.
 - 3) to allow mandatory typing test exemption and compensatory time to all OH candidates immediately without the need of any extra proformas which SSC takes as many hospitals and doctors deny giving such certificates thereby creating huge harassment and killing the merits of us.
2. The matter was taken up with the Chairman, SSC vide letter dated 24.09.2021.
3. The Under Secretary, SSC vide his reply no. 3-4/2020-P&P-I(Vol.II) dated 11.10.2021 submitted that SSC is a recruiting agency which conducts examination for recruitment of various Group 'B' and Group 'C' posts for filling up the vacancies reported by the indenting Ministries/Departments/Organisations. The total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category, including reservation for PwDs through the system of maintenance of roster, are the exclusive domain of respective indenting



Ministries/Departments/Organizations. Thus, they report the vacancies (Horizontal and Vertical) to the Commission to be filled up by direct recruitment. The commission does not have any role in the recognition of a particular post either suitable or unsuitable for a particular disability. However, the Commission vide letter dated 17.06.2021 has asked all User Departments to examine the Notification No.38-16/2020-DD-III dated 04.01.2021 issued by the D/o Empowerment of Persons with Disabilities for identification of posts suitable for new categories of disabilities and intimate the same to the SSC. Subsequently, Commission issued Corrigendum dated 10.09.2021 for CGLE-2020 on receipt of additional information from the User Departments. The Commission does not have any role in allowing exemption in typing test for a particular category of disability. As far as allowing compensatory time to all OH candidates without the need of any extra proforma, SSC has stated that a compensatory time of 20 minutes per hour of examination is provided by the Commission to the persons with disabilities, who are eligible for scribe, on production of certificate as per relevant proforma, in accordance with guidelines for conducting written examination for persons with benchmark disabilities issued vide O.M. F.No.34-02/2015-DD-III dated 29.08.2018 by Deptt. of Empowerment of Persons with Disabilities

4. The complainant vide his rejoinder dated 21.10.2021 submitted that SSC vide letter No.3-4/2020-P&P-I dated 11.10.2021 missed out strong points regarding their role to seek list for suitable disabilities from respective user departments on time through the latest Gazette No. 38-16/2020-DD-III was published on 04.01.2021. SSC has attached an old letter dated 25.05.2018 regarding seeking of suitable disabilities from user departments which is a point of strong dislike and treatment of PwD candidates. SSC has only

mentioned about the vacancies of CGL-2020 where he had asked for all the ongoing and future recruitments in general which also includes CHSL, MTS, etc. He submitted that the present advertisement issued by SSC of present selection process did not specify the physical requirement and functional classification of each posts despite the same being mandatory to be mentioned against each post which is being identified for reservation for persons with disabilities. The posts are identified as suitable for PwD candidates but still there being no mention of physical requirements being required against the same posts. He submitted that reply from the SSC is seen as a matter of internal conflict between the user departments, SSC and Deptt. of Empowerment of Persons with Disabilities which is causing such a massive level of suffering to PwD candidates especially the both arm sub category. He submitted that his both hands are affected with the case of having less number of fingers but as per all functional requirements mentioned in the Gazette, he is fully fit to perform all the functional requirements and his bilateral hand activities are fully sound in nature, which is clear from the disability certificate. The act of department for not recognizing both arms with less fingers is an instance of open discrimination against the PwD and breach of right to employment and also wrong, illegal and arbitrary. The complainants has requested to please direct both SSC and departments/ministries and also those involved for giving reservation to pwds to give a clear picture of implementation of the latest gazette at the earliest and to release corrigendum regarding the same showing Both Arms(BA) are being reserved in all posts as per latest gazette of MOSJE dt 04.01.2021



Observation/Recommendations:

5. The vacancies advertised before 04.01.2021 are not governed by Ministry of Social Justice and Empowerment notification issued on 04.01.2021. Hence, no intervention of this Court is warranted.

6. The case is disposed off.

Dated: 09.12.2021



(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. 12835/1011/2021

Complainant:

Shri Balamuralikrishna. B,
No.18/45, Drivers Colony,
EH Road,
Korukkupet,
Chennai-21

— P30672

Versus

Respondent :

NLC India Limited,
(Through the Chairman cum Managing Director),
Corporate Office,
Block-1, Neyveli,
Cuddalore Dist.,
Tamil Nadu – 607801

— P30673

Disability : 100% visually Impaired

Gist of Complaint:

Shri Balamuralikrishna B, the complainant had applied for the post of Graduate Executive Trainee (HR) [GET (HR)] under the visually challenged category in response to the advertisement published in NLCIL web page. . His Roll No for the examination was 180278100010. He was shortlisted for the personal interview. He scored 66 marks out of 120 (Qualifying marks for PwD/VH is 52.75 and OBC is 67.25) in the written test. He was just 1.25 marks short of qualifying for the personal interview under the Non- PWD OBC category itself. He was shortlisted under the PWD category and he appeared

1 | Page

for the personal interview on 11.03.2021 in Kilpak, Chennai. The final result of selection for the advertised posts was published on 25.05. 2021 in NLCIL Internet.

He submitted that to his utter shock he found that no visually challenged candidate has been shortlisted in the selection list published in spite of earmarking one vacancy allotted for Visually Challenged candidates in the GET (HR) discipline. He submitted that this is in complete violation of the PwD guidelines for public sector recruitment and an attempt to deprive the PwDs of their right to equal opportunities in employment.

As per the final score list for categories mentioned by NLCIL vide notification mentioned, the minimum cut off for GET(HR) in UR category is 65.47, OBC is 63.57 and 57.90 for SC out of 100 and my written mark as mentioned above is 66 out of 120. This comes to 52.8 without considering interview marks. Unfortunately, he did not check the interview marks on time and at present its not available on NLCIL web page. Considering that even though he had scored 2 marks in a personal interview his total marks goes up to 54.8 which is just 16% less than the UR cut off and just 14% less than the OBC cut off and just 9% less than the lowest possible selected candidate (57.60 in SC category).

The complainant submitted that the above has to be seen in relation to the candidates shortlisted for personal interview based on written test marks. The cut off for UR is 77.25, OBC is 67.25 and SC is 62.0 and PWD -VH is 52.25. It can be seen that a candidate who has scored 33% less marks than a UR candidate has been called for the personal interview and as mentioned



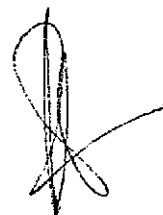
above his written marks is 66 and its just 10 marks (14%) less than the lowest scoring candidate in the UR category. A total of 11 posts (6 HH, 4 OH, 1 VH) has been earmarked as per the advertisement (ref 1) but only 9 (5 HH, 4 OH) posts has been filled.

2. The matter was taken up with the CMD, NLC India Limited vide letter dated 26.08.2021. The Executive Director (HR), NLC India Limited vide letter No. CORP/HR/415/Rectt./2021/01 dated 21.09.2021 submitted that 259 Graduate Executive Trainee positions in different disciplines were notified vide Advt. No. 02/2020. In response to the advertisement, 1,11,059 candidates applied and out of which 59,545 have appeared for the computer based online test conducted in 105 cities at 261 examination centres across India. Shri Balamuralikrishna B with Roll No. 180278100010 has appeared for Computer Based Test for the post of Graduate Executive Trainee (HR) under OBC (NCL) & PwD category and has scored 66.75 marks out of total 120 marks. Shri Balamuralikrishna B has been shortlisted for personal interview for the post of Graduate Executive Trainee (HR) under PwD category VH and appeared for personal interview before the Selection Committee on 11.03.2021. He obtained 05 marks out of total of 20 marks in personal interview. The Respondent submitted that candidates who are scoring minimum qualifying marks of 50% in case of UR/EWS categories and 40% in case of SC/ST/OBC (NCL)/PwD categories individually in Computer Based Test and Personal Interview will only be considered for final selection. The total weightage of marks will be based on 80% for Computer Based Online Test and 20% weightage for Personal interview. The complainant obtained 44.50 marks out of 80 marks in Computer Based Online Test and 05 marks out of 20 marks in personal interview totaling to an aggregate marks of 49.50



marks. However, he has not obtained minimum qualifying marks in personal interview which is minimum of 08 marks out of 20 marks (40% for PwD) and hence he was not considered for final selection. The Respondent submitted that out of 259 candidates for GETs, 09 PwD candidates were selected in various disciplines through horizontal reservation (05 PwD candidates in Mechanical, 02 PwD candidates in Electrical (EEE) and 02 PwD candidates in Control & Instrumentation who have scored minimum qualifying marks in Computer Based Test & Personal Interview separately. In HR discipline one PwD post through horizontal reservation could not be filled due to non-availability of eligible candidates and hence the vacancy will be carried forward as backlog vacancy for future recruitment.

3. The Complainant vide his rejoinder dated 24.09.2021 submitted that as per the advertisement candidates were called for the personal interview in the ratio of 1:6. Likewise 61 candidates were called for the interview for 10 posts in GET(HR) stream. This implies that atleast 6 VH candidates should have been called for 1 post reserved for PwD-VH category. He submitted that there were 2 other visually impaired candidates present with him on 11.03.2021, the day of the personal interview. He submitted that as per NLC's own notion candidates who have secured minimum qualifying marks (40%) in the computer based written test (CBT) are alone called for the personal interview. Unlike CBT marks, the interview marks are subjective in nature and it is purely assigned by the interview committee members. He submitted that only the PwD-VH candidates have been found not suitable for the post (inspite of having reservation) when all other socially and economically backward categories of candidates have been selected). He submitted that any employer under the state cannot debate on the matter of



suitability, when the post has been identified suitable for a PwD candidate of a particular disability and enough PwD qualified candidates of such disability are available for selection. This point gets added emphasis in this case, since the post is identified as suitable for a PwD-VH category by DoP&T and also of the obvious fact being this as an entry level post.

4. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 02.12.2021.

5. The following persons were present during the hearing ;

- 1) Complainant: Shri Balamuralikrishna.B, the complainant.
- 2) Respondent: Sri Syed Nazar Mohammad, Chief General Manager

Observations & Recommendations

6. Complainant submits that the advertisement was issued by the Respondent for the post of – Graduate Executive Trainee. Total posts advertised were 259, out of which 11 were reserved for Divyangjan. Complainant applied for the post and qualified written examination and was called for the interview. However, he was not finally selected. Vacancies reserved for Visually Impaired category were left unfilled.

7. Respondent submits that as per the rules only those candidates were selected who scored minimum qualifying marks in written and interview rounds. Minimum qualifying marks for Unreserved category were 50% and for PwD and SC/ST/OBC minimum qualifying marks were 40%. Complainant scored 5 marks out of 20 in interview rounds. Minimum qualifying marks for PwD in interview rounds were 8 (40% of 20). Since the Complainant could not score minimum qualifying marks in interview rounds hence, he was not



selected in final merit list. Aggregate marks, inclusive of written and interview, scored by the Complainant are 49.50. Out of 11 posts reserved for PwD, 9 were filled and 2 remained vacant and will be carried forward in next recruitment cycle.

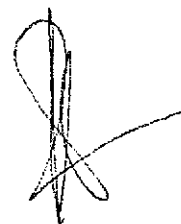
8. During online hearing, Respondent apprised this Court that total number of vacancies reserved were 11 out of which 9 were filled. 2 unfilled vacancies are reserved for 'Visually Impaired' and 'Hard of Hearing' categories.

9. The issue in this Complaint is whether it is appropriate for the establishment to leave a vacancy unfilled despite of the fact that the Divyang candidate qualified all the levels of exam but fell short of 'qualifying marks' in any one of many stages of the recruitment process.

10. To resolve the issue assistance of concept of 'Reasonable Accommodation' is indispensable. Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to Divyang employee.

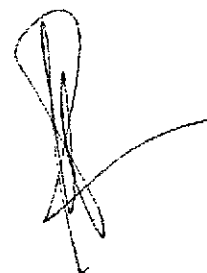
SECTION 2(y) - "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others

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



11. This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with Divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016."



12. This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of Divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to Divyang employee in comparison with enabled employee. In addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of Divyang employee, pre-promotion training, providing assistive aids and devices etc.

13. In the present case Respondent can opt to apply the concept of Reasonable Accommodation and make some changes to accommodate any Visually Impaired candidate who might have qualified all the stages of the recruitment process but failed to get selected because of failing to secure 'qualifying marks' in last round. In the present circumstances 'Reasonable Accommodation' can be applied by relaxing the criterion adopted for recruitment. Since the Respondent found no one suitable hence qualifying marks can further be relaxed to accommodate any candidate who qualified all the stages of recruitment process despite of challenges she/he might have faced because of his disabilities.

14. 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.



15. This Court recommends that in place of keeping the vacancies unfilled, Respondent shall relax the criterion of 'qualifying marks' and shall appoint any meritorious divyang candidate of the same category for which the vacancy is reserved who might have failed to secure 'qualifying marks' despite of clearing all stages of examination.

16. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

17. The case is disposed off.

Dated : 09.12.2021



(Upma Srivastava)
Commissioner for
Persons with Disabilities



Extra

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. 12781/1031/2021

Complainant:

- (1) Shri Zaheer Jan, Founder Chairman (STDF),
Email: infostdfjk2013@gmail.com — 1230909
- (2) Dr Chintanjeet Kour, Email: chintanjeetkour@gmail.com
- (3) Mudasir Shaban, Email: infostdfjk2013@gmail.com
All Child & Disability Rights Activists,
R/o Bemina Hamdaniya Colony, Srinagar-190018

Respondents:

- (1) Director,
Directorate of School Education Kashmir,
Samandarbagh, Near S.P College,
Srinagar – 190001 (Kashmir) — 1230910
Email: dsekjk@gmail.com; dsek-jk@gov.in
- (2) Principal,
Tyndale Biscoe and Mallinson School,
Sheikh Bagh, P.O. Box 403, Sheikh Bagh,
Srinagar – 190001 (Kashmir) — 1230911
Email : principal@tbmes.org; education@tbmes.org
- (3) Principal,
Burnhall School, Gupkar Road, Sonwar,
Srinagar-190001 (Kashmir) — 1230912
Email: Principal@burnhallschool.org; bhscampuscare@gmail.com
- (4) Principal,
Presentation Convent School
Rajbagh Near River Jhelum,
Srinagar -190008 (Kashmir) — 1230913
Email: principal@pchssrinagar.com; secretary@pchssrinagar.com

(Page 1 of 4)

1. Gist of Complaint:

1.1 The complainants filed a complaint dated 22.06.2021 that some parents of Special Need Children approached them in the month of October, 2020 and March, 2021 that some schools in Srinagar did not show any responsibility towards admission of Special Need Children.

1.2 Mr. Sajad, parent of Master Mohammad Ziya, a child with 90% Hearing Impairment, submitted that the Principals of Burnhall School and Tyndale Biscoe & Mallinson School at Srinagar had denied taking admission in their schools. Mr. Syed Muzaffar Shah & Mrs. Nuzhat Qazi, parents of Kum. Syed Minha Muzaffar, a child with 80% Cerebral Palsy, made similar complaints that the Principals of Presentation Convent and Tyndale Biscoe & Mallinson Schools did not consider to take admission of their child in their schools.

1.3 The complainants have claimed for admission of Special Need Children in all schools in Jammu & Kashmir in terms of the provisions under the Rights of Persons with Disabilities Act, 2016.

2. Submissions made by the Respondent

2.1 The matter was taken up with the Principals of all the three schools as mentioned by the complainant including the Director, Directorate of School Education Kashmir.

2.2 Respondent No.2, the Principal, Tyndale Biscoe & Mallinson School, vide reply dated 21.08.2021 inter-alia submitted that after coming into force of Jammu and Kashmir Re-Organisation Act, 2019 (No.34 of 2019) dated 09.08.2019, the Jammu and Kashmir Rights of Persons with Disabilities Act, 2018 (Act XL of 2018) was repealed and in its place, the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] enacted by the Government of India. For smooth and effective implementation of RPwD Act, 2016 in Jammu and Kashmir, the Jammu & Kashmir Rights of Persons with Disabilities Rules, 2021 notified by the Govt. of J&K are at infancy stage to be promulgated. As per the said Rules, the Govt. of J&K is required to appoint Nodal Officer, develop norms for reorganization of special schools and the Board of School Education Jammu and Kashmir is also required to develop training courses and also facilitate training of teachers in basic Braille, Sign Language and Special Education within one year of the notification of the Rules. In view of aforesaid factors, the schools in J&K are unable to grant admissions to children with special needs.



2.3 Further, the complainant, Mr. Zaheer Jan, had also agitated similar issues before the Hon'ble High Court of Jammu & Kashmir by filing a Public Interest Litigation [WP(C) PIL No.12/2020 titled Zaheer Abbas Jan and Others Vs. Union Territory of J&K & Others] which has been decided by the Hon'ble High Court vide Judgment dated 16.02.2021. The complainants have concealed this material fact while filing this complaint. The rights of the parties are governed by the said Judgment, therefore, independent proceedings cannot be initiated against the schools. The operating part of the Judgment is as under:-

“Given the above position obtaining in the matter, we feel that there is no requirement of issuing any specific directions qua the relief claimed by the petitioners in this petition. At the same time, we, while closing this PIL, hope and trust that the authorities concerned in the Government of the Union Territory of Jammu and Kashmir, who are tasked with the duty of ensuring implementation of Central laws relating to the subject matter of the instant PIL, make all efforts to ensure implementation of such laws in letter and spirit. We also make it clear that in case the petitioners still feel dissatisfied with any action or inaction on the part of the authorities of the Government of the Union Territory of Jammu and Kashmir despite application of the relevant Central laws to the Union Territory of the Jammu and Kashmir, they shall be at liberty to approach the appropriate forum as may be available to them in accordance with law.”

2.4 Respondent No.3, Burn Hall Higher Secondary School, Srinagar filed their reply dated 28.08.2021 and reiterated the reply as filed by Respondent No.2. However, they added that the school maintains a calendar for yearly admissions and usually fresh admission process is undertaken in the months of September-October. The complainants had submitted their requests 6 months after the completion of admission process.

2.5 No replies have been filed by the Respondent No.1 and Respondent No.4 despite issue of Final Reminder and lapse of Statutory Time.

3. Submissions made in Rejoinder

3.1 The complainants filed their rejoinder dated 09.09.2021 and denied each and every averments under the replies of respondents; and added that Jammu & Kashmir Rights of Persons with Disabilities Rules, 2021 (J&K RPwD Rule, 2021) have been published on 15.03.2021 by Govt. of Jammu & Kashmir, but Nodal Officer has not been appointed by the respondents as stipulated in Clause 10 of J&K RPwD Rule, 2021). The contention of the respondent that the said rules are at infancy stage holds no water.

3.2 The PIL was filed by the Complainant No.1 before the Hon'ble Court of Jammu & Kashmir for the purpose of the issuance of appropriate guidelines for admission of CWSN which was dismissed by the Hon'ble Court on 16.02.2021 i.e. prior to the notification of J&K RPwD Rule, 2021 on 15.03.2021.

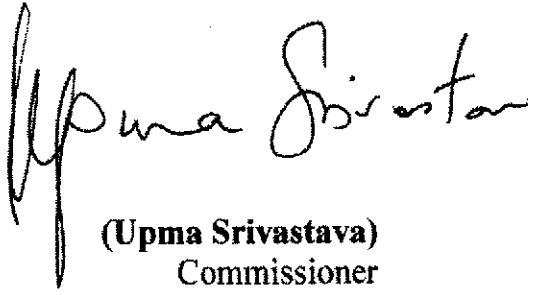
4. Observation/Recommendations:

4.1 In the light of the complaint and reply filed by the respondents, this Court observed that the respondent schools are affiliated with Jammu & Kashmir Board, UT of Jammu & Kashmir under the jurisdiction of State/UT Commissioner for Persons with Disabilities.

4.2 It is further observed that the grievances pertaining to the children with disabilities of Jammu & Kashmir fall under the jurisdiction of Commissioner for Persons with Disabilities, UT of Jammu & Kashmir. Therefore, this case is hereby forwarded to the Director, Social Welfare Department / State Commissioner for Persons with Disabilities (Divyangjan), UT of Jammu & Kashmir for taking appropriate action in this matter.

4.3 Copies of complaint, replies filed by the respondents and the rejoinder filed by the complainants are attached herewith this Order.

Dated: 20.12.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities

Encl.: As above

To

- (1) Director,
Social Welfare, Kashmir,
Block-A, Directorate of Social Welfare,
Old Secretariat, Srinagar; Contact No: 0194-2479645
Email: dirswkmr[at]gmail[dot]com / dirswkmr-jk[at]nic[dot]in
- (2) Commissioner for Persons with Disabilities,
UT of Jammu & Kashmir,
Civil Secretariat, Jammu; Email: cpwdsjk@gmail.com



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. 12620/1011/2021

Complainant:

Shri Somnath Banerjee,
Vill : Kopa,
P.O : Chatra,
Dist. : Birbhum,
West Bengal - 731238

—P30915—

Versus

Respondent :

Staff Selection Commission,
(Through the Chairman)
Block No.12,
CGO Complex,
Lodi Colony,
New Delhi - 110003

—P30916—

Disability : 60% locomotor (Cerebral Palsy)

Gist of Complaint:

Shri Somnath Banerjee, submitted that he has qualified Combined Graduate Level Examination 2018 conducted by the Staff Selection Commission (Government of India) in the Orthopedically Handicapped category. His disability category is **Cerebral Palsy** that is included in Locomotor Disability in the notification of the examination dated 05.05.2018. He went for Document Verification on 28.01.2021 at the Eastern Region Office at Nizam Palace, Kolkata. His **SSC CGLE 2018 ROLL No - 4410009370** and **Registration no is 6300213042**. He gave his post preference sequentially as follows:

1 | Page

1. Inspector of Income Tax
2. Auditor in Controller General of Defence Account
3. Tax Assistant in Income Tax
4. Accountant/Junior Accountant in Department of Post
5. Account/Junior Accountant in Controller General of Account
6. Upper Division Clerk in Ministry of Science and Technology
7. Accountant/Junior Accountant in Ministry of Communication (Department of Telecommunications)
8. Upper Division Clerk in O/O The Director General of Meteorology
9. Assistant in Ministry of Tourism
10. Upper Division Clerk in Central Information commission
11. Upper Division Clerk in Ministry of Textile
12. Upper Division Clerk in Department of Fisheries
13. Upper Division Clerk in Custom, Excise & Service Tax Tribunal

But, when the Verifying Officer started filling up his post preference form in online mode, only "Auditor in Controller General of Defence Account" was taken as his post preference in the online system. He asked the reason for that. At first, the officer told him that they could do nothing against the online system. Later, the Officer told me that as he belonged to Cerebral Palsy category, he can only apply for that one post. The complainant's first objection was that Cerebral Palsy was included in Locomotor Disability and it was not mentioned anywhere in the notification which posts are suitable for Cerebral Palsy candidates. So, it is a sudden whimsical decision of the Commission to deprive cerebral Palsy candidates of their rights.



Secondly, the posts for which he wished to apply for are all Desk jobs and require no physical standard, even OAL (One Arm and One Leg Affected), BL (Both Legs Affected) candidates can apply for these posts. Stopping cerebral Palsy candidates from applying for these posts is really a kind of discrimination against Cerebral Palsy candidates and a violation of equal rights and equal opportunity in public employment enshrined in the Disability Act, 2016. Moreover, while Union Public Service Commission allows Cerebral Palsy candidates in almost all the Group A posts, Staff Selection Commission is allowing them in only three Group B & C posts.

He submitted that he could not apply for all the posts suitable for candidates with locomotor disabilities. It really takes so much time and hard work to crack such an examination. Now, after qualifying the examination if one is told that he is not suitable for the posts he desires to apply for, it is not only disheartening but also a kind of deception and violation of rules.

2. The matter was taken up with the Chairman, Staff Selection Commission (SSC) vide letter dated 01.03.2021 and 04.06.2021 respectively.

3. The Under Secretary, Staff Selection Commission vide his letter no. 3-1/2018-P&P-I (Vol.II) (Pt.) dated 30.03.2021 submitted that SSC is recruiting agency which conducts examinations for recruitment of various Group 'B' and Group 'C' posts for filling up the vacancies reported by the indenting Ministries/Departments/Organizations. Pertinently, the total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category including reservation for Divyangjan through the system of maintenance of roster are in the exclusive domain of respective indenting Ministries/Deaprtments/Organisations. Thereafter, they report the vacancies (Horizontal and Vertical) to the Commission to be filled up by direct

recruitment. The Commission does not have any roles in the recognition of a post suitable to the attached job profile i.r.o. particular User Department. He submitted that the Commission had uploaded the Notification of Combined Graduate Level Examination (CGLE)-2018 on the website of the Commission on 05.05.2018. The Commission vide its letter dated 25.05.2018 asked all the indenting User Departments to identify the suitability of posts for newly identified categories of disabilities as per Rights of Persons with Disabilities Act, 2016 and requested to intimate the Commission in this regard. However, the Commission could collect requisite information from most of the User Departments, in a long span of time. Consequently, on the basis of feedback received from those User Departments, posts identified suitable for the new disabilities have duly been incorporated in the Notice of CGLE-2020 including corrigenda. The Respondent submitted that at the stage of Document Verification (DV) of CGLE-2018, the Commission has decided that as per the provisions of the Notice of the Examination of CGLE-2018, suitability of posts under CGLE-2018 for various disabilities and categories under Rights of Persons with Disabilities Act, 2016 would be determined from the information given by the User Departments for CGLE-2020, which are duly incorporated in Notice of Examination of CGLE-2020 and subsequent corrigendum issued for the said examination.

3. The complainant vide his rejoinder dated 05.04.2021 submitted that Cerebral Palsy is not a new category included in Rights of Persons with Disabilities Act, 2016. Cerebral Palsy has been there since the PwD Act, 1995. He submitted that SSC's decision to conduct document verification of CGLE 2018 as per the suitability of posts mentioned in CGLE 2020 notification dated 29.12.2020 was not communicated to the candidates through any notification. The Commission says that the decision was communicated to the Regional



Offices vide vide letter dated 18.02.2021, but his document verification was conducted on 28.01.2021, i.e. twenty one days before the issue of the said letter. He submitted that therefore, whatever may be the reason, the decision was taken after the completion of his Document Verification. He submitted that on one hand, the Staff Selection Commission states that the Commission has incorporated new categories of disabilities as per Rights of Persons with Disabilities Act, 2016, and on the other hand the SSC refused to implement the new post identification vide notification No. 38-16/2020-DD-II dated 04.01.2021 which is the detailed and comprehensive list as per Rights of Persons with Disabilities Act, 2016. The partial implementation of new norms deprived him of getting a post and put his life and future in peril. He submitted that result of CGLE 2018 was declared on 01.04.2021 and he was not selected as he was not allowed to apply for all posts he desired to apply for.

The complainant vide his another rejoinder dated 16.07.2021 submitted that SSC did not provide any specific and valid reason for which he, being a Cerebral Palsy candidate was not allowed to apply for the 13 posts as mentioned in page (2) above in CGLE 2018. If CGLE 2018 notification dated 05.05.2018 and CGLE 2020 notification dated 29.12.2020 are compared, it is clearly visible that suitable disabled categories for the post namely "Inspector of Income Tax, Tax Assistant in CBDT, Accountant/Junior Accountant in other Ministry/Departments, Senior Secretariat Assistant/Upper Division Clerks in Central Govt. Offices/Ministries other than CSCS cadres" for which he wished to apply for are exactly the same and are not updated as per "Rights of Persons with Disabilities Act, 2016" and new post identification vide Notification No. 38-16/2020-DD-III dated 04.01.2021.



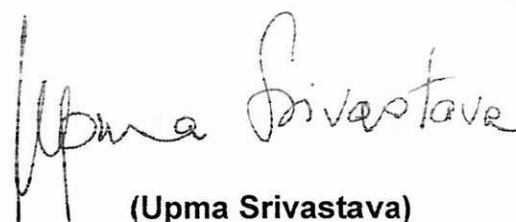
Observation/Recommendations:

4. It was observed that the posts which the complainant wished to apply in Combined Graduate Level Examination 2018 conducted by the Staff Selection Commission are identified posts for persons with Cerebral Palsy in both Acts, i.e. Persons with Disabilities Act, 1995 as well as the Rights of Persons with Disabilities Act, 2016.

The Respondent is recommended to do the needful in its online application mode so that candidates with Cerebral Palsy are not denied their legitimate rights in applying to the posts identified as per Notification No. 38-16/2020-DD-III dated 04.01.2021 of M/o Social Justice and Empowerment.

5. The case is disposed off accordingly.

Dated: 20.12.2021


(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. 12645/1011/2021

Complainant:

Shri Mukesh Gupta,
President,
Northern Railway Physically Handicapped
Employees Welfare Association,
C-5/81, Ground Floor,
Sector-11, Rohini,
Delhi – 110085

— P30912

Versus

Respondent :

Northern Railway,
(Through the General Manager),
Headquarter Office,
Baroda House,
New Delhi - 110001

— P30918

Gist of Complaint:

Shri Mukesh Gupta, the complainant, submitted that their Association took up the matter regarding preparation of Roster Register with the Northern Railway Administration vide letter dated 17.09.2018 followed number of reminders and follow ups. As per the complainant the Northern Railway is not maintaining Roster Register and commutation of vacancies as per DoP&T guide lines. The complainant has requested to take up the following matter with the Northern Railway;

- Roster Register may be prepared by all the appointing authorities (HQ, Divisional Offices including Accounts) in the posts filled by direct

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recruitment from 01.01.1998 to till date as per DOP&T instructions dated 29.12.2005 and 15.01.2018.

- ii) Backlog of vacancies be cleared within a stipulated time as fixed by this Court.
- iii) To Constitute a monitoring committee to check the Roster Register in which atleast two representatives of their Association may be included.
- iv) One copy of the Roster Register may be provided to their Association.

2. No comments have been received from the Respondent.

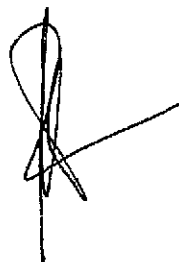
Observation & Recommendations:

3. Sad state of affairs was presented before this Court by the Complainant by virtue of his petition. Complainant submits that the Respondent is not implementing government guidelines relating to reservation and maintenance of PwD roster.

4. Rights of Persons with Disabilities Act, 2016 is the legislation which seeks to guarantee equality in public employment through reservation. Act of the Respondent is evidence of slow and systematic failure of the Respondent in implementing relevant guidelines relating to reservation and maintenance of Reservation Roster.

5. This Court had an opportunity to delineate laws and guidelines related to various aspects of reservation in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021, titled as NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH. The copy of the Order is attached herewith.

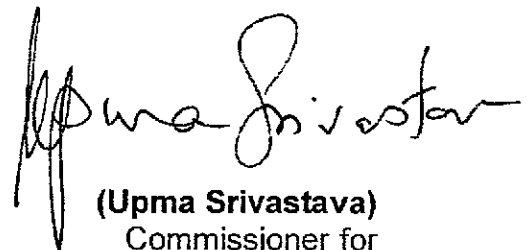
6. Hence, this Court recommends that Respondent shall pursue the Copy of the Order attached along with and shall follow and implement all the guidelines delineated in letter and in spirit.



7. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

8. The case is disposed off accordingly.

Dated: 20.12.2021



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Encl : As above

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

विभाजन 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. 12678/1011/2021

Complainant:

Dr. Neha Nema,
H. No.254/255, Gandhi Vihar,
Near Mukherjee Nagar,
New Delhi – 110 009.

Versus

Respondent :

Central University of Himachal Pradesh
(Through the Registrar)
Camp Office, Near HPCA Cricket Stadium,
Dharamshala,
Dist. Kangra,
Himachal Pradesh – 176 215.

Disability : 50% locomotor

Gist of Complaint:

Dr. Neha Nema, the complainant, a person with 50% locomotor disability vide her complaint dated 26.03.2021 submitted that the Central University of Himachal Pradesh had advertised for recruitment to the post of Assistant Professors in their University. The complainant submitted that she also applied to the post of Assistant Professor but she has not being selected under PwD quota. She also belongs to backward community.

2. The Registrar, Central University of Himachal Pradesh vide letter dated 20.04.2021 submitted that their University had started direct recruitment of Assistant Professors during the year 2011-12. Initially 80 Professors were recruited. The 3% reservation were given at that time to candidates with disabilities and the following candidates were appointed under PH quota.

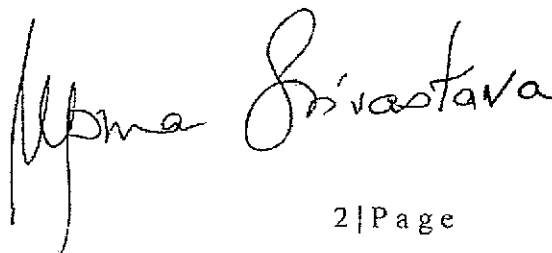
Upma Srastava
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- 1) Dr. Muhammad Atif, Assistant Professor – VH
- 2) Dr. Saima Banu, Assistant Professor – VH
- 3) Dr. Prakrati Bhargav, Assistant Professor - VH

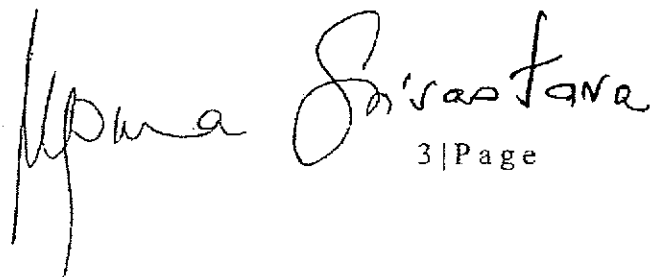
In the year 2019, the University had advertised for filling up of 128 teaching posts under direct recruitment. Out of the total of 128 posts five posts were reserved for persons with disabilities as per 4% reservation quota. Out of 5 posts, 02 posts were reserved for persons with visual impairment and the remaining 03 posts were reserved for persons with locomotor disabilities because in the earlier recruitment the University had utilized the two posts of OH category along with posts of VH category. Hence, the advertisement was given showing reservation of 05 posts of OH category. In the meantime, a case was filed with the Commissioner for Persons with Disabilities, Govt. of Himachal Pradesh by the National Platform for Disabilities Rights and Duties, Chandigarh against the reservation of persons with disabilities in the employment advertisement issued by the Central University of Himachal Pradesh. The Commissioner for Persons with Disabilities, Govt. of Himachal Pradesh vide an order dated 03.06.2019 recommended Central University of Himachal Pradesh to reserve one post for VH candidate out of 05 posts reserved for locomotor disabilities. Thereafter, their University accordingly revised the reservation in posts in the employment advertisement.

OBSERVATIONS & RECOMMENDATIONS

3. 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.



4. 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
5. Before proceeding further, it is important to elicit objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination.
6. 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

7. In an organisation there may be number of posts which can not be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 38-16/2020-DD-III dated 04.01.2021 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

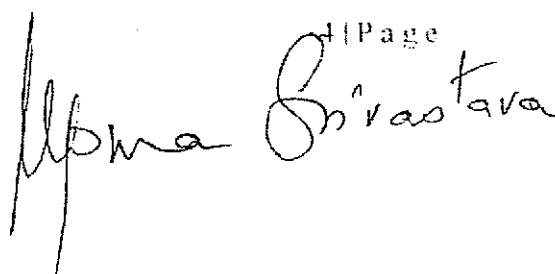
<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

8. 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

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 Anurag Srivastava

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

9 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

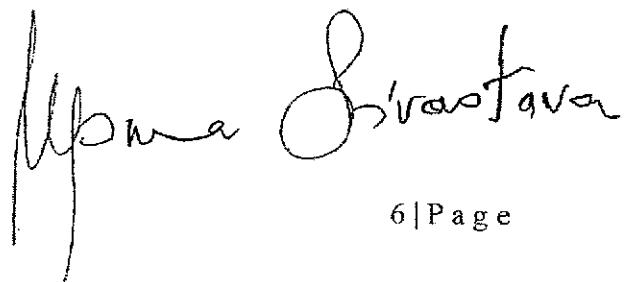
10. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) 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.


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11. 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.

12. 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.

13. 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)

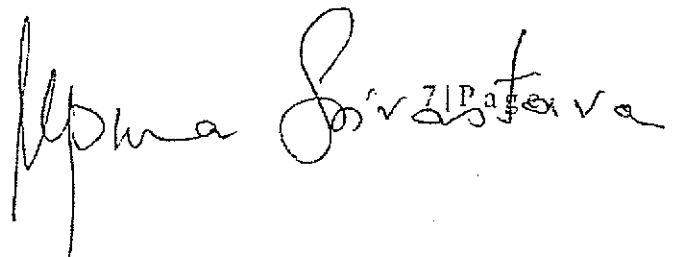


14. Maintenance of roster – Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain group wise vacancy based Reservation Roster Register. Detailed method of maintaining and ear marking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

15. 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 –

- a) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.
- b) 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.
- c) 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.

Anurag Srivastava

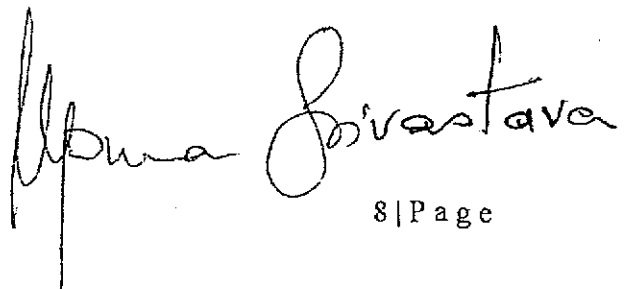
It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.

16. 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

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

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



Anura Srivastava

EXAMINATION FEES

18. 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.

EXAMINATION PROCESS

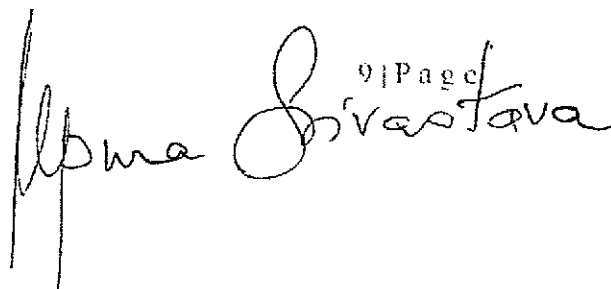
19. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured.

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 PwBLs.

20. 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.

21. 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.

22. 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.

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23. 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.

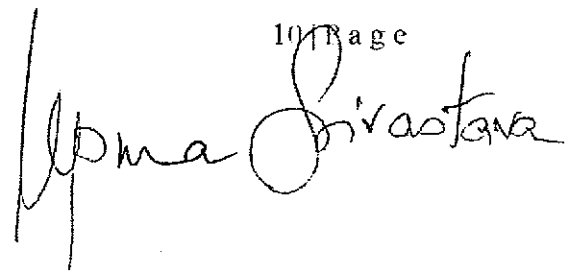
24. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

RELAXED MINIMUM CRITERIA

25. 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.

SELECTION ON MERITS

26. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with bench mark disability is selected on merits without relaxed standards along with

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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

IRREGULARITIES IN THIS MATTER .

27. In the present complaint it is stated that the Respondent Establishment issued advertisement for recruiting various teaching positions in their University. However, the Respondent University did not give reservation for visually impaired persons for the post of Professors and Associate Professors.

28. As stated above, 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.

29. This court concludes that Respondent has failed to fulfill the statutory duties and follow DoPT guidelines with respect to maintenance of reservation roster and reserving vacancies for PwBDs. Therefore, the Court reiterate its earlier recommendation issued in the Case No.11877/1011/2020 dated 18.01.2021 in the matter of Ms. Geetayani Mishra and Central University of Himachal Pradesh. Respondent establishment is recommended to re notify the whole advertisement after calculation of reservation in accordance with Section 34 of RPwD Act 2016 and concerned OMs issued by DoPT.

30. Accordingly the case is disposed off.

Dated: 15.06.2021


(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: 12829/1023/2021

Complainant: Shri Sujit Kumar Sahoo
E-mail: <sujitsahoo787@gmail.com>

— 230902

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

— 230908

Complainant: 45% Locomotor Disability

GIST of the Complaint:

Complainant vide complaint dated 19.07.2021 inter-alia submitted that he joined KVS on 15.10.2018 as Assistant Engineer in Electrical Engineering and he had applied for KVS accommodation on 29.07.2019 but it has been rejected on 09.09.2019. He further submitted that his left knee joint operation has not been sanctioned till now by KVS and he is being harassed by contractual staffs of Works Branch.

2. The matter was taken up with the Respondent vide letter dated 17.08.2021 under Section 75 of the RPwD Act, 2016.

3. सहायक आयुक्त (स्था.1), केन्द्रीय विद्यालय संगठन का अपने पत्र दिनांक 30.09.2021 में कहना है कि प्रार्थी ने अपने आवेदन दिनांक 29.07.2019 द्वारा केन्द्रीय विद्यालय क्रमांक-02, दिल्ली छावनी में टाईप-III/IV/V आवास के लिए आवेदन किया लेकिन उनकी पात्रता टाईप-III आवास के लिए है एवं उस समय आवास उपलब्ध न होने के कारण उनको आवास आवंटित नहीं किया जा सकता जिसकी सूचना उनको कार्यालय ज्ञापन दिनांक 11.09.2019 के द्वारा दे दी गई थी। उसके पश्चात् उन्होंने न तो लिखित रूप से आवास के लिए कभी

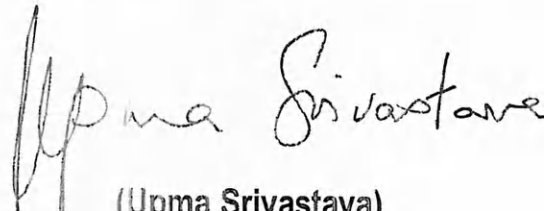
अनुरोध किया और न ही संबंधित अनुभाग में संपर्क किया। आगे कहना है कि दोनों घुटनों के उपचार के लिए अग्रिम राशि के निवेदन को स्वीकृत कर दिया है जोकि सी.जी.एच.एस. के नियमानुसार उनके अस्पताल को सीधे भुगतान की जाएगी। श्री सुजीत कुमार साहू की शिकायत पर आरोपित contractual staffs को एजेंसी द्वारा 02.07.2021 से केविस (मुख्या) में भेजना बंद कर दिया है।

4. प्रार्थी ने अपने प्रति उत्तर दिनांक 21.10.2021 ने अपनी लिखित शिकायत को दोहराते हुए अनुरोध किया है कि उनकी APAR के ग्रेड को बढ़ाए तथा उनको परमानेंट लेटर दिया जाए।

Observation/Recommendations:

5. In Light of the facts and material available on record, the reply of the respondent was found satisfactory, no further intervention is required.

6. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 20.12.2021



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: 12873/1022/2021

Complainant : Shri Lakshmi Narayan Bhui
OS/Security Office
Amardeep Housing Estate, Block-C
Budha, Asansol, Paschim Bardhaman
West Bengal-713301
Mobile No: 09734939480
E-mail: chanchalbhui18@gmail.com

— R30975

Respondent : Sr. Divisional Personnel Officer
Office of the Divisional Railway Manager
Eastern Railway, Asansol-713301
Tel & Fax No: 2304694
Mobile No: 09002023600

— R30976

GIST OF COMPLAINT:

The complainant Lakshmi Narayan Bhui, 45% Physical disability submitted that he is OS/security officer/CLW/CRJ had previously taken mutual transfer from OS/Personnel/ER ASN to CLW/CRJ on April 2018 with Smt. Eva Banerjee, OS and had also declared that "I shall not seek a re-transfer to any other division" but the circumstances back then for him was totally different. Currently, his family has shifted from Chittaranjan to Asansol mainly for study purpose of his child. It is very difficult for him to attend his office in Chittaranjan from Asansol on regular basis as he is also a handicapped person. He had previously applied for mutual transfer with Sri Rajesh Vishwakarma, Os/SM/MDP under Sr. DOM/ER/ASN on July 2018 from CLW/CRJ to ASN Division.

The mutual transfer of service of Shri Rajesh Vishwakarma, OS/SM/MDP with him, duly forwarded by AOM/ASN vide his letter quoted under reference could not be acceded to since he had given an undertaking that he would not seek re-transfer to ASN division before him Inter Railway transfer with another employee dated 04.10.2018.

The complainant further submitted that present scenario transfer is badly needed for him and he beg apology to the administration for that declaration which he took in haste. He also requests the competent authority to look into the matter from humanitarian ground.

The complainant further submitted that on January 14 2021 he has formed a mutual transfer with Amitava Dutta. Again his transfer has been regretted vide Sr. Divisional Personnel Officer, Asansol letter no. 9/EO/Elect./AD/IRMT/21, dated 24.08.2021. Accordantly to RTI reply and search the railway establishment rules there is no such rule that an employee cannot re-transfer to other department of his parent division and no such rule an employee declared he could not re-transfer to other division.

The complainant has requested to CCPD Court to consider his request for mutual transfer to ASN division for his disability grounds.

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)

2. The matter was taken up with the Respondent vide letter dated 24.09.2021 under Section 75 of the RPwD Act, 2016.

3. In response, the respondent Sr. Divisional Personnel Officer vide his letter dated 05.11.2021 submitted that the complainant was never transferred by this administration from Asansol to CLW/Chittaranjan on routine/rotational /administrative ground but on his own request.

The respondent further submitted that the complainant sought transfer out of his own will to CLW and all support was extended to him by the administration to realise the same and he was transferred vide release order dated 10.04.2018. After a lapse of less than 3 months the complainant sought transfer back to this division vide joint application dated 04.07.2018, the same was regretted as he had himself submitted a declaration in that he would not seek transfer to any other division.

The respondent further submitted that such undertakings are taken from all employees, and not just from Shri Bhui. Infact, upon his own request, his transfer to CLW was facilitated as per his choice and convenience. Hence, the claim of Shri Bhui of discrimination against himself, being a handicapped person, is baseless.

4. The complainant filed his rejoinder submitted that he had previously taken mutual transfer from OS/Personnel/ER/ASN to CLW/CRJ on April 2018 with Smt. Eva Banerjee, OS and had also declared that "I shall not seek a re-transfer to any other division" but the circumstances back then for him was totally different. Currently, his family has shifted from Chittaranjan to Asansol mainly for study purpose of his child. It is very difficult for him to attend office in Chittaranjan from Asansol on regular basis as he is also a handicapped person.

The complainant once again requested to CCPD Court to consider his request and give direction to the respondent of mutual transfer to ASN division.

Observation / Recommendations:

1. This Court is inundated with the Complaints related to the issue of transfer. Consequently, this Court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This Court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

2. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

- a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,

b. To create barrier free environment for Persons with Disabilities,

c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

3. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

4. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

5. Since in this order this Court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

6. Issues related to transfer and posting to divyang employees may be divided into three categories -:

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependant.

STATUTORY PROVISIONS AND GUIDELINES

7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.



c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.

d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T– This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T– This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T –This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T –This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

8. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is

progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

9. Even in case of employee who serves as care giver of divyang dependant, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

10. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

11. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

12. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020

13. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

14. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

15. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts

are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

16. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

17. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble Court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and Courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

18. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, Courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

19. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters Court does not sit as Court of appeal, but Court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

20. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

21. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

22. **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

23. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

24. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

25. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities.—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

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: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

38. Special provisions for persons with disabilities with high support.—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

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

26. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

27. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble Court held that the employee must be retained in Jaipur branch even after promotion.

28. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble Court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

PRESENT CASE

29. Complainant is posted at Chittranjan since year 2018. He seeks transfer to Asansol on mutual transfer basis.

30. Respondent informed the Court that in year 2018 Complainant was transferred on his own request and hence an undertaking was taken from the Complainant whereby the Complainant promised to not seek transfer in future, therefore transfer request of the Complainant cannot be acceded to.

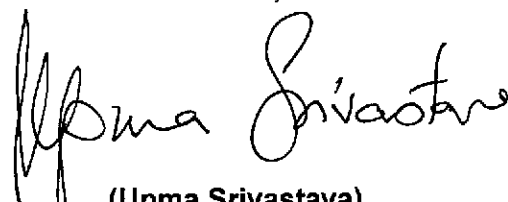
31. Case of the Complainant squarely falls under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T. O.M. lays down that divyang employees may be posted near to their native place. The same guideline was reiterated in O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. In this O.M. it is provided that at the time of transfer/posting divyang employee may be given preference in transfer/posting. Objective of these guidelines is to provide an environment to divyang employee where they can perform and achieve desired results.

32. On the issue of undertaking, this Court concludes that such undertaking is illegal and void since no employee can be forced to forgo those privileges which are extended to other employees. Any such undertaking is in clear violation of equality rights of divyang employees.

33. This Court recommends that the Complainant shall be transferred to Asansol.

34. **Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.**

35. This case is disposed off


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 29.12.2021



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12834/1011/2021

Complainant:

Shri Manjay Kumar Sah,
Vill : Kalyanpur,
Post : Jamin Mathiya,
Thana : Meenapur,
Dist. : Muzaffarpur,
Bihar 843109.

— P30919

Versus

Respondent :

Chairman,
Railway Recruitment Cell,
P. D' Mello Road,
CPM (Conversion) Bldg.,
Wadi Bunder,
Central Railway,
Mumbai, 400010.

— P30920

Disability : 75% visual impairment

Gist of Complaint:

Shri Manjay Kumar Sah had applied for the post of Group 'D' under Registration No. 2481132658 in RRB Central Mumbai. He appeared in the examination on 04.10.2018 with Roll No. 242042090580006 and passed the examination. His Document Verification was done on 23.04.2019 and Medical on 24.04.2019. It is more than 2 years now and still he has not received any communication from RRB Central, Mumbai.

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5th Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364

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

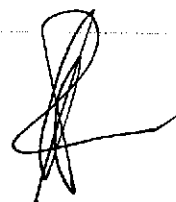
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

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

2. The matter was taken up with Chairman, Railway Recruitment Board, Mumbai vide letter dated 23.08.2021.

3. The Assistant Secretary, Railway Recruitment Board, Mumbai vide email dated 16.09.2021 requested the Court to further correspond with the Chairman, Railway Recruitment Cell (Wadi Bunder), Central Railway, Mumbai in the matter.

4. The Chairman, RRC vide letter dated 05.10.2021 submitted that Shri Manjay Kumar Sah had applied against Centralised Employment Notification No.02/2018 as a Visual Impairment candidate for recruitment in level-1 posts. Out of the total of 4625 vacancies notified, 46 were for VI candidates. Further, out of 46 VI vacancies, 15 were for Blind and 31 for Low Vision. Sub category, i.e., Blind/Low Vision was considered on the basis of information provided by the candidates in online application. Accordingly, as per the assessment, 15+1 stand by Blind and 31+1 stand by Low Vision candidates were called in order of merit from the CBT qualified candidates for document verification by going down the merit to the extent of notified vacancies. Document Verification was held on 23.04.2019. Shri Manjay Kumar Sah was one of the candidates called for Document Verification on 23.04.2019 under visually impaired category. Railway Board vide letter No. E(NG)II/2017/RC-2/1 Policy dated 18.04.2019 advised to examine and re-adjust the distribution to the extent possible to ensure that adequate number of posts are available to be filled in by meritorious Blind candidates under the visually impaired quota. He submitted that Railway Board vide their letter No.P/CR/HQ/RRC/CEN 02/2018 dated 22/04/2019 was requested that as per merit order, 31 blind candidates have to be called and remaining 15 will be from low vision



category. In this scenario, the Railway will not be able to accommodate the Blind candidates against the notified vacancies which are suitable only for low vision and Railway Board was requested to clarify whether their office should strictly go as per the merit within the VI category irrespective of total Blind or Low Vision or whether the candidates should be called within VI as per Railway Board's letter dated 18.04.2019. Since the extent and scope of the specified disability can be known only after medical examination, hence, only 46 visually impaired candidates were called for Document Verification and Medical Examination based on merit/score obtained in the CBT Examination without distinguishing between LV and Blind merit/score at this stage. The 16 Low Vision candidates who were earlier called for Document Verification as per sub-category, i.e. Blind and LV were not considered for further process of recruitment. Shri Manjay Kumar Sah was also one of those 16 candidates who were not considered as per the merit/score obtained in CBT Examination. Shri Manjay Kumar Sah scored 63.76121 marks in CBT and as on date last candidate called for document verification under visually impaired category after the revision is 65.07787. The cut off marks were already been published at their website www.rrrccr.com. Therefore, Shri Manjay Kumar Sah was not considered for further process of recruitment under CEN 02/2018.

5. No comments have been received from Shri Manjay Kumar Sah in response to rejoinder letter dated 18.10.2021.




Observations & Recommendations

6. The Respondent's reply is satisfactory. No further intervention is required in the matter.

7. The case is accordingly disposed off.

Dated: 30.12.2021



(Upma Srivastava)
Commissioner for
Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India
Case No. 12867/1011/2021

Complainant:

Shri Rajeev Kumar,
R/o. 1855, Manohar Pura,
P.O. : Bharatpur Gate,
Mathura,
Uttar Pradesh - 281001

— R30923

Versus

Respondent :

Indian Oil Corporation,
(Through the Chairman)
Corporate Office,
3079/3, J.B. Tito Marg,
Sadiq Nagar,
New Delhi – 110 049

— R30924

Disability : 42% locomotor

Gist of Complaint:

Shri Rajeev Kumar, the complainant, has submitted that Indian Oil Corporation Limited, Mathura Refinery vide its Advt. No. MR/HR/RECT/JEA(ALL INDIA)/2019 dated 07.01.2019 had invited applications for posts of Non-Executive Personnel for its Refinery unit at Mathura, Uttar Pradesh. He had applied for the post of Junior Engineering Assistant-IV (Electrical) [Post Code No.103] with Application No. 5010356004040 and Roll No. 1030852. Out of total of 08 posts, 05 were reserved UR candidates, 02 posts were reserved for SC and 01 post reserved for OBC. After he was shortlisted for interview, he was shortlisted for Medical Examination, but he was not called for Medical Examination. Thus he was

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5th Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364

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

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

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

denied the appointment to the post. He was also not informed about any specific reason for not calling him for Medical Examination.

2. The matter was taken up with the Chairman, Indian Oil Corporation Limited vide letter dated 20.09.2021.

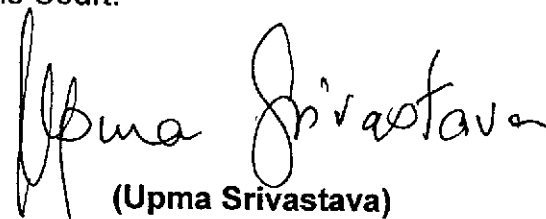
3. The Executive Director (HR), Indian Oil Corporation Limited vide letter No.HRD/FWC/3007-L2/PwBD dated 07.10.2021 submitted that the issue in question is in pursuance to the Advertisement dated 07.01.2019 of Mathura Refinery and is pending before the Hon'ble High Court at Allahabad in writ petition no.12736 of 2021. The Hon'ble Court has also passed an interim order on 28.09.2021 that till 26.10.2021 no fresh appointment shall be made pursuant to the advertisement dated 07.01.2019.

4. The complainant vide his letter dated 29.10.2021 submitted that during the duration of legal proceedings, a seat may be kept reserved for him in the posts advertised in the Advt. No. MR/HR/RECT/JEA(All India) 2019.

Observations & Recommendations:

5. The matter is sub judice before the Hon'ble High Court of Allahabad, therefore, no further intervention is warranted by this Court.

Dated: 30.12.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

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

भारत सरकार/Government of India

Case No: 12783/1021/2021

Complainant: Shri N. Suresh

E-2, Jauhari Nagar, Type – 4 OCF Estate

Avadi, Chennai – 600054, Tamilnadu

E-mail: <nshv2010@gmail.com>

— P30987

Respondent: The DDG, Headquarters

Ordnance Factory Board

10-A, S.K. Bose Road, Kolkata - 700001

E-mail: <ocfav.ofb@nic.in>

— P30988

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant Shri N. Suresh, Jr. Works Manager vide complaint dated **02.07.2021** inter-alia submitted that he was appointed as a Chargeman Gr.II (Clothing Tech) in 2002 and promoted as Chargeman Gr. I on 03.05.2007 instead of 01.04.2006. He alleged that due to this, he lost the following benefits authorized to him:

- Assistant Foreman Promotion was not granted
- Deferment of MACP for 02 more years
- Financial loss due to delayed promotion
- His seniority is fixed below 55 individuals who are junior to him

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(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 **13.07.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **02.08.2021 & 16.08.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **14.09.2021**.

3. Both the parties were heard and during the hearing respondent had requested for an adjournment of three months, so that they can locate the documents and take necessary action. Record of Proceedings dated **04.10.2021** with the advice to the respondent to inform this Court about the action taken by them.

4. After receiving the reply from the both parties, hearing scheduled on **09.12.2021**.

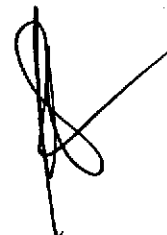
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.12.2021**. The following were present:

- Shri N. Suresh – complainant
- Sri. B.S. Reddy, AGM and Sri Tanzyn Wangyal, DDG on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complainant submits that Ordnance Factory Board sanctioned two posts of Chargeman Gr-II on 27.12.2001. On 23.02.2021 two posts of Chargeman Grade – II (Clothing Tech) and Chargeman Gr – II (Mechanical Tech) were notified vacant. On 11.10.2002 two candidates were appointed through direct recruitment, namely Sri N. Suresh as Chargeman Gr – II (Clothing Tech) and Sri Manoj Pandey as Chargeman Gr – II (Mechanical Tech). Promotion of the Complainant and of Sri Manoj Kumar was due on



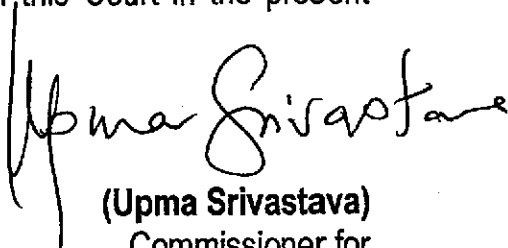
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01.04.2006 to the post of Chargeman Gr – I. Sri Manoj Pandey was promoted on 01.04.2006 however, the Complainant was not promoted on the due date. He was promoted w.e.f. 03.05.2007. Two other employees namely, D. Ghatak and D.K. Pandey were also promoted to Chargeman Gr – I. w.e.f. 02.04.2007. Series of representations were made by the Complainant before the Respondent establishment but the Complainant was not promoted.

7. Respondent submits that Clothing Tech and Mechanical Tech are two different trades. In year 2006 two promotion posts in Mechanical trade were available whereas in Clothing Tech there was no promotion vacancy. Respondent also informed the court that the Complainant was not disabled on the date on which he is claiming promotion. Complainant acquired disability in year 2018 and the date relating to Complaint is 2006.

8. Since the Complainant was not even Divyang in 2006 hence he is not eligible to file the present Complaint before this Court. Hence, intervention of this Court in the present facts is not warranted.

9. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 30.12.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

भारत सरकार/Government of India

Case No: 12882/1023/2021

Complainant: Shri Virendra Pal Singh
E-mail: <p.singh.jadon06@gmail.com>

— P30989

Respondent: The General Manager (HR)
Power Grid Corporation of India Ltd
"Saudamini" Plot No. 02, Sector – 09
Gurugram – 122001 (Haryana)
E-mail: <vksingh@powergrid.in>

— P30990

Complainant: 42% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **05.09.2021** submitted that his disability amount not included in the pension and his basic pay fixation, arrear from 01/01/1994, promotion in S2 from 01/01/1997, disability benefit and G.P.A.I. claim, retirement T.A claim are not given by respondent.

2. The matter was taken up with the Respondent vide letter dated **15.09.2021** under Section 75 of the RPwD Act, 2016. But despite reminders dated **07.10.2021** & **20.10.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **09.12.2021**.

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5th Floor; N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364

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

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.12.2021**. The following were present:

- Shri Virendra Pal Singh - Complainant
- Shri Sudipto Datta, Chief G.M. (HR) on behalf of respondent

Observation/Recommendations:

3. Complainant submits that he joined respondent department on 01.01.1996 and he is receiving pension of previous service since that date. In year 2005 he met an accident. In year 2012 he was issued disability certificate. Grievance is that he gets all the disability benefits except Pension benefits which are given to divyang employees.

4. Respondent submits that he joined the Respondent establishment in 1996 and retired in year 2015. All his retirement dues were settled. Present grievance does not pertain to the Respondent establishment.

5. Complainant has not presented any documents in support of his claims and grievance, hence this Court concludes that intervention in the present Complaint is not warranted.

6. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 30.12.2021



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No: 12856/1023/2021

Complainant: Shri Samar Das – I

59 B, Jheel Road, Dhakuria

Kolkata – 700031

E-mail: <gotenks.gautam@gmail.com>

Mob: 8584999244

— 130985

Respondent: The General Manager

Office of the General Manager (PAF)

Postal Accounts Office, Yogayog Bhawan

P – 36, C.R. Avenue, Kolkata – 700012

E-mail: <paokolkata@gmail.com>

Tel: 033-22120366

— 130986

Complainant: 65% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **19.08.2021** submitted that he is working as a LDC in the respondent organization and since joining, he is being ill-treated and harassed by officers. He further submitted that during COVID – 19 period, he was forced to attend office and overloaded with heavy work, despite several requests.

2. The matter was taken up with the Respondent vide letter dated **07.09.2021** under Section 75 of the RPwD Act, 2016.

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Email: 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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3. Respondent vide letter dated **30.09.2021** inter-alia submitted that Shri Samar Kumar Das has given a written declaration in Bengali script to them regarding withdrawal of his grievance, therefore, respondent has requested to take necessary action accordingly.

4. Complainant vide e-mail dated **27.10.2021** has informed that he was forced to sign a withdrawal documents.

5. After considering the respondent's reply dated **30.09.2021** and the complainant's rejoinder dated **27.10.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.12.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.12.2021**. The following were present:

- Shri Samar Das – I – complainant
- Sri Deepak Lodh; Sri. Neeladari Shekhar, Assistant on behalf of respondent

Observation/Recommendations:

6. Complainant has levied serious charges of harassment against some employees of the Respondent establishment. Employees named by the Complainant are Sunirmal Das, Sr, Accountant; Sukanta Ash, AAO/Admin-I; P.K. Basu, Sr. AO; B.Pattnaik, DDAP; Dayal Nandi, AAO; Dalim Naskar, AO; Pradeep De Sarkar, Sr. Accountant. Complainant submits that these employees make fun of the Complainant's disability and load the Complainant with work which is not suitable according to his disability.



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7. Complainant levied more serious charge that 5 people forced the Complainant to sign the pre-written withdrawal letter. Further, Complainant submits that he was not able to see the face of those 5 people who forced him to sign the letter.

8. It is imperative to delineate some provisions of Rights of Persons with Disabilities Act, 2016. Section 6 of the statute lays down that appropriate government is under obligation to protect Divyangjan from degrading and inhuman treatment. Further Section 20 of the Act provides that appropriate government shall provide barrier free and conducive environment to divyang employees.

SECTION 6 - Protection from cruelty and inhuman treatment - (1) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

SECTION 20 – Non-discrimination in employment– Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

9. Both these provisions can be read together. In order to provide conducive environment, employer is under obligation to protect the divyang employee from torture and degrading treatment. In the facts before this Court, employer not only failed to provide conducive environment but also failed to protect the Complainant from inhuman treatment.

10. This Court concludes that the Respondent is under statutory obligation to implement these provisions in Respondent establishment. Hence, this Court recommends that the




....4....

Respondent shall conduct proper inquiry against the officers named by the Complainant w.r.t. allegations of harassment and shall also conduct enquiry w.r.t. allegations of forcing the Complainant to withdraw his Complaint. This Court further recommends that the Complainant shall be posted in that section within the same office where he is not required to report to the officers named by the Complainant. Respondent is also recommended to conduct counselling of the employees to sensitize them about rights of the divyang employees.

11. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

12. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 30.12.2021



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12878/1021/2021

Complainant: Shri Satyam Babu

E-mail: <satyam_babu123@yahoo.com>

Mob: 09393368626

— R30983

Respondent: The Chairman & Managing Director

Hindustan Aeronautics Ltd (HAL)

HAL Corporate Office, 15/1 Cubbon Road

Bangalore – 560001

E-mail: <corpestb@hal-india.com>

Tel: 080-22320365

— R30984

Complainant: 60% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **08.09.2021** submitted that he had joined HAL, Hyderabad as Executive Trainee (Design) on 20.11.1999 and after completion of training; he was graded as Asst. Engineer (Aero) on 19.11.2000. His carrier growth in HAL as follows:

Grade	Designation	Promoted on
I	Asst. Engineer (Aero)	19.11.2000
II	Engineer (Aero)	01.01.2004
III	Dy. Manager (IT)	01.07.2006
IV	Manager (IT)	01.01.2010
V	Sr. Manager (IT)	01.07.2015

...

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5th Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364

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

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

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

...2....

He further submitted that he attended interviews under Internal Merit Scheme for promotion to the post of Chief Manager in June 2018, June 2019, June 2020 & June 2021 but every year his juniors were promoted and he was denied for promotion.

2. The matter was taken up with the Respondent vide letter dated **16.09.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **14.10.2021** inter-alia submitted that it can be seen in above table that Shri Satyam Babu Ch. has never been denied promotion merely on the ground of disability. They further submitted that as per the Promotion Policy of the Company, selection of Officers under Departmental Promotion Committee (DPC) from Sr. Manager to Chief Manager is considered based on the marks scored in the Performance Appraisal Report for the preceding 03 years and the Interview. Accordingly, the duly constituted Committee assessed the suitability of Shri Satyam Babu for the promotion to the post of Chief Manager. In the assessment, Committee found that the Officer's performance was not satisfactory and hence not recommended for promotion.

4. Complainant vide rejoinder dated **07.11.2021** reiterated his grievance and submitted that in July, 2019 he was transferred to Department of Lean Resource Team as a Senior Manager (Lean), which is non identified post for persons with locomotor disability.

5. After considering the respondent's reply dated **14.10.2021** and the complainant's rejoinder dated **07.11.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.12.2021**.



...3....

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.12.2021**. The following were present:

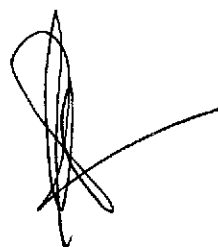
- Shri Satyam Babu – complainant
- Shri Chandrakant K. and Sri Arjun on behalf of respondent

Observation/Recommendations:

6. Complainant submits that he joined HAL on 20.11.1999 as Executive Trainee. After joining till year 2015 he was given promotion on time. Since 01.07.2015 he is holding post of Senior Manager (IT). In year 2018, 2019, 2020 and in 2021, he appeared for interview for promotion to the post of Chief Manager. Promotion was denied each time. With respect to interview conducting in year 2021, Complainant submits that one of the members of the interview team was not present in the interview committee. Further submits that his APARs are 'very good', interview also went very good but despite all this he was not selected.

7. As per promotion policy, criterion for promotion to Chief Manager post is marks scored in interview and score of APAR of previous 3 years. He was denied promotion because interview committee found officer's performance as not satisfactory. Respondent also submitted that since the promotion posts are less in number hence merit was the only criterion and no relaxation was given to the Complainant.

8. It is imperative to mention the concept of Reasonable Accommodation. 'Reasonable Accommodation' is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to

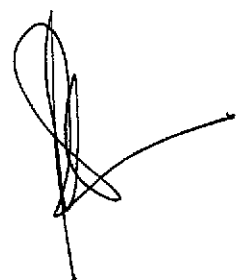


ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.

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

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

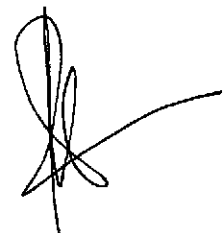
9. This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.



"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016."

10. This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to divyang employee in comparison with enabled employee. In addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of divyang employee, pre-promotion training, providing assistive aids and devices etc.

11. In the present case Respondent shall opt to apply the concept of Reasonable




Accommodation and make some changes to accommodate any divyang employee who is otherwise eligible for promotion. In the present circumstances 'Reasonable Accommodation' can be applied by relaxing the criterion adopted for promotion. Since very few divyang employees are promoted hence in order to provide divyang employees level playing field, relaxation may be extended to divyang employees and such employees may be promoted based on relaxed standards.

12. 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.

13. This Court recommends that the Respondent shall relax the criterion and shall promote any meritorious divyang employee who might have failed as per present criterion.

14. **Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.**

15. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 30.12.2021



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

Case No. 12902/1011/2021

भारत सरकार/Government of India

Complainant:

Shri Ravi Kant Jha,
Jagdishpur,
Jandaha,
Vaishali,
Bihar -844505

— R30921

Versus

Respondent :

Chairman
Staff Selection Commission
CGO Complex, Block No. 12
Lodhi Road,
New Delhi – 110003

— R30922

Disability :

Gist of Complaint:

Shri Ravi Kant Jha submitted that he appeared in SSC Graduate Level 2019 Examination and cleared all the three stages, i.e. Tier1, 2 and 3. On the basis of marks, he was called for Document Verification on 09.09.2021 but he was rejected in DV stating that his disability is not included in SSC Examinations. He was told to visit District Hospital and get another category certificate. Before filling the form he enquired from SSC to know in which category should he fill the form as he is a person having Speech and Language disability. He was told to fill his particulars in other category. When he went to District Hospital, he was told that the Disability Certificate they issued is same as demanded by SSC. He wrote a letter to the SSC Central Region regarding this, but received no reply from them.

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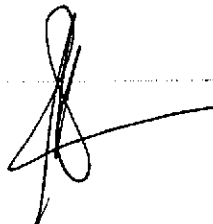
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(Please quote the above file/case number in future correspondence)

2. The matter was taken with the Chairman, Staff Selection Commission (SSC) vide letter dated 06.10.2021.

3. The Under Secretary, Staff Selection Commission vide letter dated 28.10.2021 submitted that SSC is recruiting agency which conducts examinations for recruitment of various Group 'B' and Group 'C' posts for filling up the vacancies reported by the indenting Ministries / Departments / Organisations. The total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category, including reservation for persons with disabilities through the system of maintenance of roster, are the exclusive domain of respective indenting Ministries/Departments/Organisations. Thus, they report the vacancies (Horizontal and Vertical) to the Commission to be filled up by direct recruitment. The Commission does not have any role in the recognition of a particular post either suitable or unsuitable for a particular disability. In the instant case, the candidate is suffering from "Speech and Language disability" which is a "Specified Disability" mentioned at Sr. No. 1(D) in the Schedule of the Act and the same is not covered under Section 34(1) of the Act. Therefore, no post has been identified as suitable for "Speech and Language Disability" by the indenting departments included in the Notice of CGLE-2019. Hence, the decision of SSC CR regarding eligibility of the candidate for the said Recruitment is in order. In the context of "Speech and Language disability" mentioned in Annexure-XIII of the Notice of CGLE-2019, it is mentioned that the Annexure-XIII of the Notice CGLE-2019 is as per "Form-VII" specified under RPwD Rule, 2017.

4. The complainant vide his rejoinder dated 31.10.2021 submitted that he is a person with bench mark disability with "Speech and Language disability". He submitted that SSC is passing the buck to DoP&T and DoP&T to CCPD.



He submitted that being a person with disability, he has a very limited opportunity in Government jobs as well as private sector as 90% of posts are not suitable for them. The private sector does not hire a person with disability easily. He submitted that on the basis of his marks, he was called for document verification on 09.09.2021 and was rejected in Document Verification. In CGLE-2019 Notification, his disability was clearly mentioned. While filling up the application form, he reiterated that he called the office of SSC and enquired under which category he should fill the form as he has Speech and Language disability and he was told to fill in other category. He submitted that he gave four precious years for this examination and at last stage, he was rejected.

Observation/Recommendations:

5. The Court observed that Section 34 of Rights of Persons with Disabilities Act, 2016 does not extend reservation to persons with Speech and Language Disability. Also the same issue is pending before the Hon'ble Supreme Court in W.P. (C) No.1327/2018.

6. The Respondent's reply is satisfactory. No further intervention is required in the matter.

7. The case is accordingly disposed off.

Dated: 30.10.2021



(Upma Srivastava)
Commissioner for
Persons with Disabilities