



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12641/1021/2021 / **P28416**

Complainant: Shri Albert C J
E-mail: <albertmattom@gmail.com>

Respondent: The Chief Postmaster General
O/o the Chief Postmaster General
Kerala Circle, Thiruvananthapuram – 695033
E-mail: <apmgstaff.keralapost@gmail.com>

P28417

Complainant: 45% locomotor disability

GIST of the Complaint:

He is working as Postal Assistant (Savings Bank Control Organization) in Irinjalakuda Head post office, Kerala circle and recently, Hon'ble Supreme Court of India ordered that differently abled persons are eligible for reservation in government jobs irrespective of the mode of recruitment whether it is direct recruitment or promotion in the year 2016 and reaffirmed that verdict recently by a three member bench but respondent vide letter dated 28.05.2020 informed that reservation under PwD category is not applicable in case of promotion by seniority/selection.

2. The matter was taken up with the Respondent vide letter dated **03.03.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Postmaster General (staff), O/o the Chief Postmaster General, Kerala vide letter dated **30.03.2021** inter-alia submitted that reservation for PwD category in promotion is a sub judice matter before the Hon'ble Supreme Court of India and reservation for PwD category in promotion will be considered based on the outcome of the case and consequent orders issued by the DoP&T.

4. After considering the respondent's reply dated **30.03.2021** and the complainant's rejoinder **08.04.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **05.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.07.2021**. The following were present:

- Shri Albert CJ – complainant
- Shri G. Gopa Kumar, ASP (Staff) on behalf of respondent

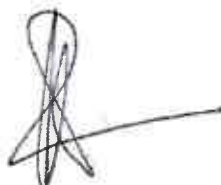
Observation/Recommendations:

5. Both the parties were heard.

6. Complainant submits that he joined Respondent establishment in year 2013. It is alleged by the Complainant that the Respondent establishment has denied to extend reservation in promotion for Persons with Disabilities.

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

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



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

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

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

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



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13. Respondent is also recommended to forward the copy of this Order along with the attachments to Postal Directorate for effective implementation of this Order.

14. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12592/1021/2021

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

AIIMS Campus, New Delhi – 110029

Respondent: The Director, All India Medical Sciences

Ansari Nagar, New Delhi – 110029

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

Complainant: 45% locomotor disability

GIST of the Complaint:

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

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

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

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

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

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

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

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

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

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

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

7. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 31.03.2021

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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 and Empowerment

भारत सरकार/Government of India

Case No. 12485/1011/2020

Complainant :

Shri Manmohan Bajpai,
D-2158, Indira Nagar,
Lucknow - 226016

Versus

Respondent :

Khadi & Village Industries Commission,
(Through the Chairman),
Ministry of MSME,
3, Gramodaya,
Irla Road, Vile Parle (West),
Mumbai - 400 056

Disability : 40% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 30.11.2020 submitted that he wanted to apply for the post of Director and Deputy Director against an Advertisement No.KVIC/Adm./Recruitment/Dir-Dy.Dir(DR)/2(30)/2020-21 of Khadi and Village Industries Commission but KVIC has not provided any reservation to persons with disabilities. The sanctioned strength for the post of Director is 44 and for the post of Deputy Director is 43 and there are many other posts in Group A cadre. The Complainant submitted that in a written reply to the RTI, KVIC has replied that at present no officials of PH category are working in the post of Director and Deputy Director in KVIC. This means that KVIC is not interested to fill up 4% quota reserved for persons with disabilities. He submitted that KVIC is not providing any fee relaxation to PH persons. The complainant has requested to give direction to KVIC to provide proper reservation and relaxed standards to visually and physically challenged to the post of Director and Deputy Director.

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2. The Director (Adm. & HR), KVIC vide letter dated 07.01.2021 submitted that Shri Manmohan Bajpai submitted that the complainant is 40% visually impaired candidate and has applied for the post of Director in KVIC vide Applicant ID No.107484 and also paid an amount of Rs.1500/- towards the application fee. Due to less number of vacancies, i.e. 18 posts of Director and 16 posts of Deputy Director, the 4% reservation (which comes to less than 1) could not be provided to a PwD candidate. The sanctioned strength of Director is 44 and Deputy Director is 43. Apart from the above Group-A posts, there are only two posts which are above, i.e. Deputy Chief Executive Office (Sanctioned strength is 08) and Joint Chief Executive Officer (Sanctioned Strength is 01). Due to non-availability of suitable candidates in the feeder cadre & after exhausting of all channels of recruitment, i.e. deputation including short-term contract (even after 5 attempts), the Ministry of MSME accorded approval to fill up 18 posts of Director and 16 posts of Dy. Director through Direct Recruitment (DR) as a onetime measure. The post of Directors and Deputy Directors are 100% promotional post and at present no PH person is available/working in the post of Director and Deputy Director in the feeder cadres, The allegation made by the complainant is not correct. The post of Directors and Deputy Directors are 100% promotional post and at present due to non-availability of suitable candidates in the feeder cadre & after exhausting of all channels of recruitment, i.e. deputation including Short Term Contract (even after 5 attempts), the Ministry of MSME accorded approval to fill up 18 posts of Director and 16 posts of Dy. Director through Direct Recruitment as a onetime measure. Since the post has not been reserved for PwDs due to less number of vacancies, i.e. less than 1 number, therefore, no relaxation in fee has been provided.

3. The complainant vide his rejoinder dated 15.01.2021 reiterated that KVIC has not given any reservation in the post of Director and Deputy Director in their advertisement. The Respondent has submitted in their reply that the sanctioned strength of Director is 44, Deputy Director is 43, Deputy Chief Executive Officer is 08 and Joint Chief Executive Officer is 01 which means inspite of the total sanctioned cadre strength is 96, KVIC did not give any reservation for PwD candidates in its advertisement.

4. **Hearing :** The case was fixed for video conferencing by the Commissioner for Persons with Disabilities on 16.02.2021. The said hearing has been postponed to 12.03.2021 due to administrative exigencies.

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5. The following persons were present during the hearing on 12.03.2021 ;
- 1) Shri Manmohan Bajpai, the complainant in person.
 - 2) Shri G. Guru Prasanna, Deputy CEO (Admin) and Shri Sandeep Kotey for Respondent.

OBSERVATIONS & RECOMMENDATIONS

6. Respondent issued notification for filling 18 vacancies in the post of Director and 16 vacancies in the post of Deputy Director, both Group A posts. Respondent admitted that no seat was reserved for Persons with Benchmark Disabilities. Respondent submits that reason for not providing reservation was that 4% of 18 and 16 is less than 1 and hence it was not possible to reserve any seat for PwBD candidates.

7. Further, it is also alleged that the Respondent charged examination fees from the PwBD candidates. Respondent submits that since no seat was reserved for PwBD candidates hence, no exemption from payment of examination fees was given to PwBD candidates.

8. Both acts of the Respondent, i.e. non reservation of seats for PwBD candidates and charging of fees from PwBD candidates is violative of settled legal position.

NO RESERVATION FOR PwBDs

9. Clause 2.2 of DoPT O.M. No. 36035/02/2017-Estt (Res), dated 15.01.2018 lays down the formula of calculating total number of vacancies mandated to be kept reserved for PwBD candidates. As per the Clause, 4 percent of total number of vacancies arising in each group of post, i.e. Groups A, B, C and D shall be reserved for PwBD candidates. Respondent committed error in calculating 4% of 18 (vacancies for the post of Director) and 16 (vacancies for the post of Deputy Director) separately. Since both the posts of Director and Deputy Director are Group A posts hence as per Clause 2.2 of the O.M., the Respondent was supposed to calculate 4% of 34 vacancies (18 and 16 vacancies combined). 4% of 34 results in 1.36, hence, as per the formula of calculation laid down in DoPT O.M., Respondent was under obligation to reserve at least 1 vacancy for PwBD candidates.

10. During online hearing it was informed by the Respondent that the impugned recruitment process is not complete yet and assured that the Respondent shall keep 1 seat vacant and will later conduct recruitment process to fill such vacant seat with Persons with Benchmark Disabilities.

CHARGING OF EXAMINATION FEES

11. Respondent admitted that examination fees was charged from all the candidates who applied against the impugned advertisement/notification, irrespective of her/his PwBD category. Respondent reasoned that since no vacancies for PwBD candidates was reserved hence exemption from payment of examination fees was not given.


12. DoPT issued O.M. No. 36035/2/2017-Estt.(Res), dated 23.08.2019. As per Clause 3 of the O.M., PwBD candidates are exempted from payment of application fees and examination fees prescribed in respect of various examinations. Exemption given under the O.M. is not based upon the reservation for PwBD candidates, such exemption is based upon the PwBD status of the applicant, irrespective of number of vacancies reserved for PwBD candidates.

13. Therefore, this court recommends that the Respondent shall revisit the Roster and earmark 1 post of either Director or Deputy Director reserved for PwBDs in accordance with the Roster. Such reserved post shall be filled by the PwBD candidate by separate recruitment process. Further, this court recommends that the Respondent shall refund the amount charged from PwBD applicants.

14. During online hearing Respondent submitted that other vacancies will be filled in near future by mode of promotion. Various Complaints are filed before this court whereby grievances related to reservation for PwBD in promotion and recruitment process are raised before this court and this court has passed Orders delineating various judgments of the Hon'ble Supreme Court and various High Courts and various guidelines issued by DoPT and MoSJ&E, U.O.I. Two such Orders passed by this court namely, **SRI UMA PRASAD v. CEO EMPLOYEES PROVIDENT FUND ORGANISATION; 11183/1021/2019** and **SRI RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EXAMINATION; CASE NO. 12349/1011/2020** are attached herewith. This court recommends that the Respondent shall follow these guidelines before conducting fresh recruitment for PwBD candidates against 1 vacancy left vacant and also follow these guidelines before conducting recruitment process to fill the vacant posts by way of promotion.

15. The case is disposed off.

Dated :01.04.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No. 12349/1011/2020

Complainant: Shri Rahul Kumar Upadhyay, R/o Village Asna Ajeetpur, Mathura Road, Aligarh, Uttar Pradesh – 202 001.

Respondent : National Board of Examinations (Through the Executive Director), Medical Enclave, Ansari Nagar, Mahatma Gandhi Marg, Ring Road, New Delhi – 110 029

Disability : 50% hearing impaired

Gist of Complaint:

The complainant submitted that he has applied for the post of Senior Assistant against the Advt no. 21005/RECT/2020 in National Board of Examination. He appeared in the preliminary examination held on 31.08.2020. The National Board of Examinations shortlisted candidates from general category, OBC, SC and ST category. He submitted that there were number of vacancies in the post of Sr. Assistant, Junior Assistant, Junior Accountant and Stenograph etc., but not a single seat was reserved for persons with disabilities.

2. The Executive Director, National Board of Examinations (NBE) vide letter No.21005/RECT/2020/2940 dated 09.11.2020 submitted that National Board of Examinations issued a Public Notice through their website on 11.07.2020 for filling up of a number of posts in the grade of Senior Assistant, Junior Assistant, Junior Accountant & Stenographer. The selection was to be made through a two stage exercise (i) a Computer based test for short listing of candidates (ii) short listed candidates to be subjected to a skill test, before preparing the final merit list for appointment of candidate. In the advertisement it was also indicated reservations for vacancies of SC/ST/OBC/EWS & PwDs. In the instant case the complainant had applied for the post of Senior Assistant with reference to the above advertisement and appeared in the preliminary Computer Based Test (CBT) held on 31.08.2020. The complainant's contention is that not a single seat was reserved for persons with disabilities and that NBE shortlisted equal to 5 times the number of vacancies from each category in which he was not shortlisted. The PwD candidates were given age relaxation of 10 years for appearing in the Computer Based Test (CBT) as per the instructions issued by the Govt. of India. Based on the results of the Computer Based Test (CBT), a short list of candidates equal to not less than five times the number of vacancies were prepared

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which included PwD candidates also subject to their clearing the CBT. The shortlisted candidates were subjected to a Skill Test held on 18.10.2020 comprising of Type Writing Test, Grammar Correction Test, Drafting Multiple Letters in MS Word, spread sheet package for Senior Assistant/Junior Assistant and Type Writing Test, Accounting, Basic Accounting Technique for Junior Accountant as indicated in the original advertisement. The question of application of reservation of posts for persons with disabilities will come into play only when the final merit list is prepared based on the marks obtained in Computer Based Test (CBT) and the marks obtained in Skill Test conducted on 18.10.2020. The Respondent submitted that Shri Rahul Kumar Upadhyay having Application No. 1001289 and belonging to UR category appeared in the CBT but could not be included in the list of shortlisted candidates based on the marks obtained by him where were far lower than even the marks obtained by the last person from SC/ST/OBC category who were included in the shortlist. In the circumstances, the complainant could not be included in the shortlisted list of candidates even by relaxed standards. The Respondent further submitted that two persons with disability candidates have qualified the Computer Based Test and have appeared in the Skill Test also and will be considered for appointment as per the appropriate reservation for PwD which will be applied in their cases.

3. **Hearings** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 11.12.2020.

4. The following persons were present during the hearing ;

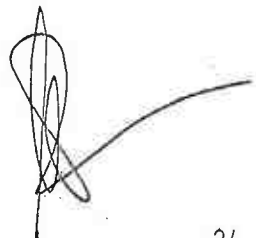
- 1) Shri Rahul Kumar Upadhyay, the Complainant.
- 2) Ms. Ruchira Gupta, Advocate for Respondent.

OBSERVATIONS & RECOMMENDATION

5. 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.

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

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



- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection

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

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

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

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

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

10. Addition of any post from this list –

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

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



- f) Relaxed minimum criterion for PwD candidates
- g) Selection and Non selection

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IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

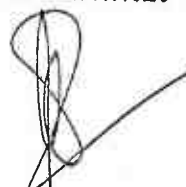
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<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>



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

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

RESERVATION FOR PERSONS WITH DISABILITIES

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

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

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

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

14. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full



justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

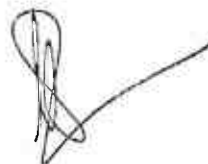
15. How Vacancies can be Computed – The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts 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)

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

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

- 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.

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



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

ISSUING OF NOTIFICATION

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

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

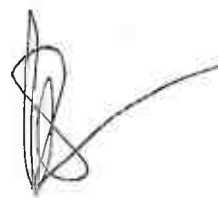
EXAMINATION FEES

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

EXAMINATION PROCESS

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

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



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

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

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

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

RELAXED MINIMUM CRITERIA

28. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates 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

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



30. Respondent establishment issued Advertisement No. 21005/RECT/2020, whereby vacancies for various posts were advertised. Complainant has alleged that reservation for PwBD was not provided. Respondent submitted that in Point (c) of Para 1.1 of the Advertisement in question clearly mentions that Reservation for PwD shall be granted. Point (c) is hereafter quoted –

"Reservation for vacancy of SC/ST/OBC-NCL/EWS as per Govt. of India instructions/rules.

Total number of vacancies are inclusive of number of vacancies for PwD."

31. From the perusal of the advertisement, it is prima facie evident that Respondent has mentioned about reservation for PwBD in casual manner. Language and mode of mentioning reservation for PwBDs is in complete violation of DoPT OM dated 26.11.2012, detailed summary of which is mentioned above in Para 16 of this Order.

32. Therefore, this court recommends that Respondent shall compute the total number of vacancies and shall renotify the advertisement clearly indicating numbers of such vacancies. Respondent is also recommended to indicate clearly whether the posts advertised are suitable for PwBD and also the sub category for which the post is identified suitable. Further Respondent is recommended that while issuing notification again, OMs and relevant provisions of RPwD Act 2016 shall be taken into consideration. Comprehensive summary of the provisions is mentioned hereinabove.

33. The case is disposed off.

Dated: 07.01.2021


(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. 11183/1021/2019

Complainant : Shri Shri B. Uma Prasad, Sr. Social Security Assistant, Employees' Provident Fund Organisation, Office of Regional Provident Fund Commissioner-I, Bhavishya Nidhi Bhawan, Door No.: 58-14-86, Marripalem VUDA Layout, NAD Post, Visakhapatnam, Andhra Pradesh - 530 009.

Respondent: Chief Executive Officer Employees Provident Fund Organisation, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-110 066.

Date of Complaint : 24.05.2019

Gist of Complaint:

Shri B. Uma Prasad, a person with 48% locomotor disability vide his complaint dated 24.05.2019 submitted that he is working as Sr. Social Security Assistant in the Office of the Regional Provident Fund Commissioner-I, Visakhapatnam. He was selected under PH quota. He submitted that EPFO is not implementing the provisions of the Rights of Persons with Disabilities Act, 2016 and thus he is being deprived of the legal right as a person with disability. He is being deprived of his promotion by his establishment. His next promotion is to the post of Section Supervisor. He has made many representations to his establishment, but did not receive any response.

2. The Addl. Central P.F. Commissioner, EPFO, Vijayawada vide letter no. ACC(AP)/ZO(VJA)/SS/Disability/Court/2019/498 dated 18.09.2019 submitted that Shri B. Uma Prasad is working in Group 'C' post seeking promotional reservation to the post of Section Supervisor which is Group 'B' post carrying Grade pay of Rs.4200/-. He submitted that their establishment is maintaining Reservation Rosters for persons with disabilities w.e.f. 01.10.2015. He submitted that as regards the reliance upon the judgement of the Hon'ble Supreme Court in W.P. (Civil) No.521 of 2008 between Rajeev Kumar Gupta & ORs vs Union of India & Ors, by the applicant, the Respondent submitted that it is an individual specific case and the nodal department of the Government of India, i.e. DoP&T has not issued any direction regarding universal implementation of the said Judgement of the Hon'ble Supreme Court by all the Departments of the Government of India. The applicant also had not brought to the notice to the effect of issue of any such direction by the Government of India.

...2/-

3. The complainant vide his rejoinder dated 14.10.2019 submitted that for the post of Section officer in Group-B post, the mode recruitment is only through promotion and hence he is not eligible for the reservation under persons with disabilities quota. He submitted that EPFO is not maintaining the reservation roster for persons with disabilities. It shows that the reservation roster is maintained by his establishment from 01.10.2015 for Telangana State only and the status of reservation roster for the period from 01.01.1996 TO 30.09.2015 is not known. He has requested this Court to order EPFO to strictly follow the PwD Act, 1995 and RPwD Act, 2016, for reservation in Group-B post and extend the benefit to him by way of promotion to the post of Section Supervisor with all other benefits deemed fit in the interest of justice.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 28.07.2020.

4. The following persons were present during the hearing ;

1. Shri Uma Prasad, Complainant.
2. Shri Krishna Choudhary, Addl. Central Provident Fund Commissioner, Andhra Pradesh.

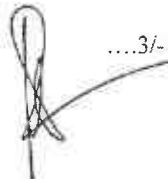
Both the parties were heard.

5. The complainant reiterated his grievance of not being granted promotion to the post of Section Supervisor by duly implementing 3% reservation in promotion . The complainant further stated that the Hon'ble Supreme Court has already given directions but the DoP&T has not issued any administrative instruction for implementation in this regard.

6. The respondent referred to DoP&T O.M. No. 36035/02/2017-Estt (Res). dated 20.06.2017 (copy enclosed) which is about reservation for persons with Benchmark Disabilities. In that OM. in para (2) it states ' the issue of reservation in promotion to persons with disabilities is sub-judice in various cases in the Hon'ble Supreme Court including Civil Appeal No. 1567/2017 titled Siddaraju vs State of Karnataka & Ors and Review Petition (C) No.36/2017.

Observation/Recommendations:

7. There are two issues to be addressed in this matter:

....3/-


1. whether reservation in promotion to Group A and B is applicable for Persons with disabilities (hereinafter mentioned as 'PwD') and can be implemented being a horizontal reservation as against vertical reservation for other categories,
2. whether Government instructions are mandatory to be issued before implementation of reservation for PwD in promotion to Group A and B.

Issue No. 1

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

Issue No. 2

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

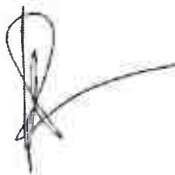
20. First proviso to sub-section (1) of section 34 of the Rights of Persons with Disabilities, 2016 reads as follows:

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

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

22. In this regard it is imperative to mention the judgment of Hon'ble Supreme Court in matter of GOVERNMENT OF INDIA v. RAVI PRAKASH GUPTA: (2010) 7 SCC 626. One of the issues in the case was whether reservation to PwDs under s.33 of 1995 Act can be denied till executive identifies posts for reservation under Section 32 of 1995 Act. Court held that waiting for the executive to identify posts in order to extend reservation to PwDs shall be violation of the intent of the legislature. Relevant Para of the judgment is reproduced below:-

...6/-



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

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

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

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

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

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

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

27. Another issue is that the RPwD Act of 2016 says that reservation for PwBD shall not be less than 4% while the OM dated 29.12.2005 makes provision of only 3%. It needs to be noted that provision of at least 4% reservation has been made in case of direct recruitment. Regarding reservation in promotion, the Act leaves it to the discretion of the appropriate Government.

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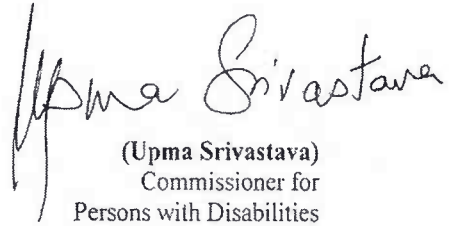


28. The OM dated 29.12.2005 provided that reservation in promotion to the PWD will be available in Group C and Group D posts only. The Supreme Court in the matter of Rajeev Kumar Gupta and others Vs Union of India and others (Supra) held that three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts shall be extended.

29. It is recommended that the respondents may give reservation to persons with benchmark disabilities in promotion in all Groups of posts including Group A and Group B posts in accordance with the order of Hon'ble Supreme Court in the matter of Shri Rajeev Kumar Gupta and others vs Union of India and others. The matter of complainant may be considered by the respondent accordingly.

30. The case is disposed off.

Dated: 30.09.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

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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.12691/1032/2021 | R28445

Complainant:

Shri Jahid Ali,
S/o Shri Ishak Khan,
R/o Village – Muhammedi Nagla Tyor Bujurg Mazra,
Post- Chhatari, District- Bulandshahr, UP – 202397
Email: zahid3amu@gmail.com; Mobile: 9058888253

Respondent:

Registrar,
Aligarh Muslim University, Aligarh-202002
Email: registrar.amu@amu.ac.in

R28446

1. Gist of Complaint:

1.1 Shri Jahid Ali, M-30, a person with 75% Locomotor Disability (both lower limbs) has alleged that the respondent Aligarh Muslim University, Aligarh (AMU) did not launch Special Admission Drive for admission to Ph.D courses for the Session 2019-20 to fill up 02 seats of Ph.D (Hindi) reserved for Persons with Disabilities. These 02 seats of Ph.D (Hindi) were not filled up as the candidates with disabilities including the complainant could only obtain 33 marks and could not obtain the cut off marks (35). The complainant has further alleged that AMU converted these 02 reserved seats into General Category.

1.2 As per the Regulations issued by the University Grants Commission vide Notification dated 27.08.2018 the Special Admission Drive should have been launched by AMU within a month to fill up the remaining unfilled reserved seats for persons with disabilities.

1.3 Para 2 of the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil/Ph.D Degrees) (1st amendment) Regulations, 2018 provides as under:

(Page 1 of 4)

“2. The following proviso shall be added to the clause 5.4.1 of the University Grants Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D Degrees) Regulations, 2016 –

“Provided that a relaxation of 5% of marks (from 50% to 45%) shall be allowed for the candidates belonging to SC/ST/OBC (Non-Creamy layers)/Differently-Abled category in the entrance examination conducted by the Universities.

Provided further that, in spite of the above relaxation, the seats allotted for SC/ST/OBC(Non-Creamy layer)/Differently-Abled categories remain unfilled, the concerned Universities shall launch a Special Admission Drive, for that particular category within one month from the date of closure of admissions of General Category. The concerned University will devise its own admission procedure, along with eligibility conditions to ensure that most of the seats under these categories are filled.”

1.4 The Court of CCPD in Case No.11469/1141/2019 [Shri Safdar Khan Vs Aligarh Muslim University] has already observed and recommended to AMU as under:

“4. This Court observe that the respondent appears to violate Clause 5.4.1 of the University Grants Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D Degrees) (1st Amendment) Regulations, 2018 which provides to launch a Special Admission Drive to fill up the unfilled seats reserved for PwDs in spite of the relaxation of 5% of marks (from 50% to 45%).

5. In view of the facts mentioned above, the respondent is recommended to consider the request of the complainant for admission to Ph.D. (Commerce). The respondent is also advised to follow the guidelines of UGC and fill up the seats reserved for persons with benchmark disabilities in all streams.

6. The case is disposed of.”

2. Submissions made by the Respondent

The respondent AMU in their reply dated 20.05.2021 inter-alia submitted that no special admission drive is being run by the University

with regard to unfilled seats. PwD candidates are being provided a relaxation of 5% in terms of marks in qualifying examination as well as in Entrance Test and 5% reservation in seats.

3. Submissions made in Rejoinder

The complainant in rejoinder dated 22.06.2021 reiterated his complaint.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **06.08.2021**. The following were present:

- (1) The complainant in person
- (2) Prof. Faisal, Assistant Controller

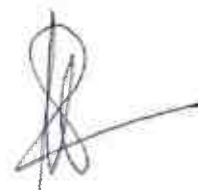
5. Observation/Recommendations:

5.1 Both the parties were heard.

5.2 The present Complaint relates to repeated violation of UGC guidelines by the Respondent. Respondent establishment offers Ph.D. courses in various disciplines. In academic year 2018-19, Respondent conducted admission in Ph.D. (Commerce), along with other disciplines. Some seats which were reserved for PwBD candidates remained unfilled. Respondent did not take any initiative to fill up the seats which remained unfilled despite of clear guidelines issued by UGC with respect on this issue. This court also issued Order dated 16.07.2020 recommending the Respondent to follow UGC guidelines and fill up the seats which remained vacant.

5.3 In the present complaint, issue is same except the fact that present Complaint is related to unfilled seats in Ph.D. (Hindi) in academic year 2020-21. Respondent again failed to conduct any special drive to fill the seats which remained unfilled.

5.4 As per Clause 5.4.1 of University Grant Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D. Degrees), Regulations, as it stands after Ist Amendment dated 27.08.2018, every university has to provide relaxation of 5% marks for divyang candidates in entrance examinations. Further it is provided that if in spite of providing relaxation of 5% marks, any seat allotted to Divyang candidate remains unfilled,



university shall launch 'Special Admission Drive' within 1 month of closure of admissions for General Category.

5.5 In the present facts, seats of Ph.D. (Hindi) remained unfilled, in spite of university providing 5% relaxation in marks. However, Respondent admitted that no special drive was conducted to fill up the seats which remained vacant.

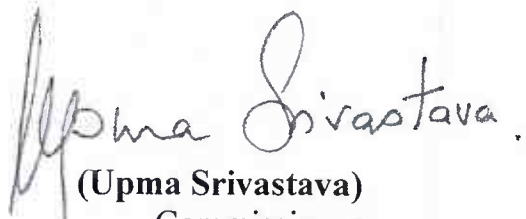
5.6 Respondent has committed act of discrimination with PwBD candidates by not launching 'Special Drive' to fill the seats which remained unfilled. Moreover, callous approach of the Respondent is also evident from the fact that it failed to adhere to the recommendations passed by this court dated 16.07.2020 and also failed to provide reasons for not adhering to the Orders of this Court.

5.7 This is repeated violation of the Respondent establishment. This court is compelled to attract the kind attention of the Respondent to penal provisions of Rights of Persons with Disabilities Act, 2016. Section 89 of the Act provides for punishment upto Rs. 5,00,000 (Rupees Five Lakhs) for contravention of provisions of Rights of Persons with Disabilities Act, 2016. Hence, any person responsible for violation of the provisions of this Act can be tried and punished by special Court of Sessions specified by the State Government under Section 84 of Rights of Persons with Disabilities Act, 2016.

5.8 This court recommends that the Respondent shall launch 'Special Drive' for filling up the seats which were reserved for divyang candidates, which remained unfilled in the course of Ph.D. (Hindi) in academic year 2020-21.

5.9 Accordingly the case is disposed off.

Dated: 23.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12675/1011/2021 /1228451

Complainant:

Dr. Neha Nema,
H. No. E-254/255, 4th Floor,
Gandhi Vihar,
New Delhi - 110009
Email<neha645835@gmail.com>

Versus

Respondent :

Indira Gandhi National Tribal University,
(Through the Registrar),
Amarkantak,
Village – Lalpur,
Dist. – Anuppur,
Madhya Pradesh - 484887
Email<registrar@igntu.ac.in>

1228452

Disability : 50% Locomotor Disability

Gist of Complaint:

Dr. Neha Nema, a person with 50% locomotor disability vide her complaint dated 26.03.2021 submitted that she did not get the benefit of reservation as per the quota for persons with disabilities while applying in Indira Gandhi National Tribal University.

2 The matter was taken up with the Registrar, Indira Gandhi National Tribal University vide letter dated 06.04.2021.

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3. The Registrar, Indira Gandhi National Tribal University vide his rejoinder letter dated 05.08.2021 submitted that 40 posts of Assistant Professors have been advertised through Advt. No.IGNTU/T-01/2020 dated 07.09.2020. Appropriate reservation was given for SC, ST, OBC, EWS and PwD category in the advertisement. Horizontal reservation for PwD category has been given to specified posts. The post advertised in the Deptt. of Journalism and Mass Communication was reserved for OBC category. The said post was not reserved for PwD category. Dr. Neha Nema has applied vide Application Form No.2020105732 for the post of Assistant Professor which was reserved for OBC category only. She has been considered eligible for the post under OBC category and given opportunity to appear in the interview on 12.03.2021 and she has attended the interview online. Based on the recommendations of duly constituted Selection Committee she has not been selected. The respondent in order to implement the government's policy relating to the reservation of jobs for PwD, has followed a detailed procedure in effecting reservation in terms of the provisions of PwD Act, 1995 and its subsequent amendments and maintained the roster for the purpose. As per Rights of Persons with Disabilities Act, 2016, an expert committee with representation of persons with bench mark disabilities has been duly constituted for preparing the Reservation Roster for identification of posts under reserved category. Reservation Roster for persons with benchmark disabilities has been prepared by the expert committee to earmark reservation for teaching positions keeping in view the instruction issued by the MHRD and University Grants Commission. Grievance Redressal Officer has already been appointed in the University considering the mandate of Section 23 of Rights of Persons with Disabilities Act, 2016. Allegations made against the answering respondent are specifically denied. Dr. Neha Nema is misleading



the Hon'ble Court with false information and therefore the present complaint does not contain any merit and substance and is liable to be dismissed in the interest of justice.

4. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 06.08.2021.

5. The following persons were present during the hearing ;

- 1) Dr. Neha Nema, the Complainant in person
- 2) Dr. Samson R Victor for Respondent.

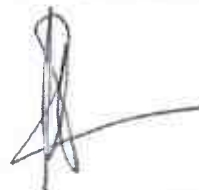
Observations & Recommendations

6. Complainant alleged that Respondent is not extending reservation for PwBDs in direct recruitment for the post of Assistant Professor.

7. Respondent submits that the instant/impugned post was not kept reserved for Persons with Benchmark Disability. The post was kept reserved for 'Other Backward Class' category.

8. Since the post is reserved for Other Backward Class and not for Persons with Benchmark Disability, hence the issue is not in purview of this Court and intervention of this Court is not warranted

9. However, plethora of Complaints are filed before this court relating to the issue of recruitment. This court had an opportunity to delineate laws and guidelines related to various aspects of recruitment process in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021, titled as NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH (Copy enclosed).



10. Hence this Court recommends that Respondent shall pursue the Copy of the Order attached along with and shall follow all the guidelines delineated while conducting recruitment in future.

11. The case is disposed off.

Dated: 23.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities

Encl : As above



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 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.

[Signature]
1 | Page

- 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 –

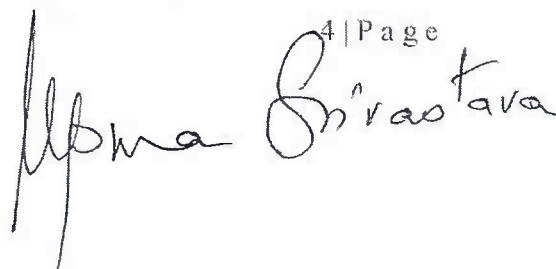
<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

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

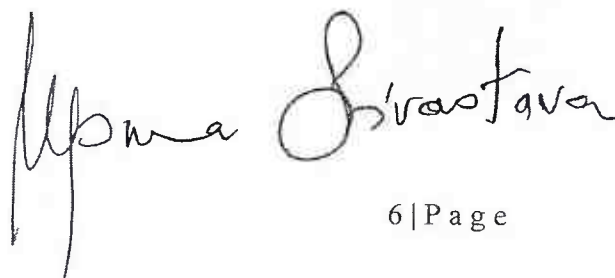
10. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res)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

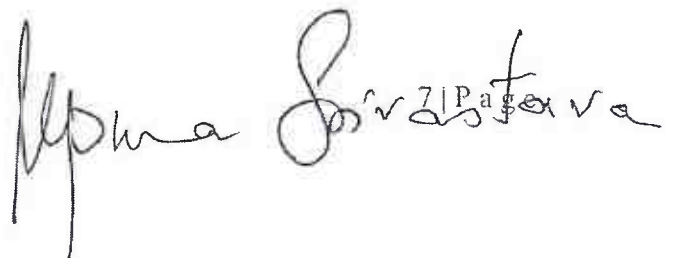
 M. S. Srivastava

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 PwBDs.

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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Hema Srivastava

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.

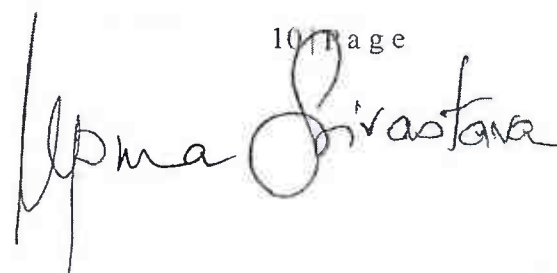
24. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

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 OM's issued by DoPT.

30. Accordingly the case is disposed off.

Dated: 15.06.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार/Government of India

Case No: 12718/1022/2021 / 228466

Complainant : Pramod Kumar
Khalsi
Station Javadroad, Mandal: Ratlam,
Western Railway
Mobile No : 08757961834
E-mail: sharmagraphicsnyg@gmail.com

Respondent : The General Manager
Western Railway,
1st Floor, GLO Building
HQ Office, Churchgate
Mumbai-400020, Maharashtra
E-mail : gm@wr.railnet.gov.in

वरि. मण्डल कार्मिक अधिकारी
कृते मण्डल रेल प्रबंधक (स्था). रतलाम
मंडल रेल प्रबंधक कार्यालय, रतलाम

GIST OF COMPLAINT

शिकायतकर्ता श्री प्रमोद कुमार का अपनी शिकायत में कहना है कि वह 40 प्रतिशत दृष्टिबाधित दिव्यांगजन है तथा पूर्व में दिनांक 03.07.2020 को अंतर रेलवे स्थानान्तरण हेतु आवेदन किया था जिस पर पद रिक्त नहीं होने की वजह से कार्यवाही नहीं हुई। शिकायतकर्ता ने आगे कहा कि सिनियर डीपीओ दानापुर में ईसीआर से बात होने के बाद उन्होंने कहा कि आप दिव्यांगजन कोटे में आवेदन लिखकर भेजे।

शिकायतकर्ता का अपनी शिकायत में कहना है कि दिव्यांगजन होने के कारण उन्हें कम दिखाई देता है तथा गाँव आने जाने में बहुत असुविधा होती है धर में बड़ा होने के कारण परिवार का पुर्व रूप से ध्यान नहीं रख पाता हूँ।

अतः शिकायतकर्ता ने निवेदन किया है कि उन्हें रतलाम मंडल से आरा स्टेशन डिविजन दानापुर ईसीआर में करवाने की कृपा की जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 31.05.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. वरि. मण्डल कार्मिक अधिकारी, मंडल रेल प्रबंधक कार्यालय, रतलाम (प.रे.) का अपने पत्र दिनांक 05.07.2021 में कहना है कि श्री प्रमोद कुमार पुत्र श्री अयोध्या सिंह : खलासी (वाणिज्य), जावदरोड रतलाम मण्डल द्वारा पूर्व में स्वयं के अनुरोध पर स्थानांतरण (दिव्यांगजन के आधार पर) रतलाम मण्डल से प. दीनदयाल उपाध्याय नगर (मुगलसराय) मण्डल हेतु आवेदन दिया था, जिसे 21.11.2018 को उचित कार्यवाही करते हुए मुगलसराय मण्डल को अग्रणी कर दिया गया था। परंतु आज दिनांक तक संबंधित मण्डल से उनके द्वारा सहमति या असहमति से संबंधित कोई पत्र प्राप्त नहीं हुआ है।

प्रतिवादी का आगे कहना है कि श्री प्रमोद कुमार द्वारा रतलाम मण्डल से दानापुर मण्डल (पूर्व मध्य रेलवे) स्वयं के अनुरोध पर स्थानांतरण (दिव्यांगजन के आधार पर) हेतु आवेदन भेजा गया था, जो इस कार्यालय को प्राप्त नहीं हुआ था। स्टेशन अधीक्षक जावद रोड के द्वारा 20.06.2021 को कर्मचारी से आवेदन प्राप्त कर इस कार्यालय को भेजा गया है, जिसे सक्षम अधिकारी के अनुमोदन से दिनांक 28.06.2021 का रतलाम मण्डल से दानापुर मण्डल (पूर्व मध्य रेलवे) हेतु अग्रणी किया है। दानामुर मण्डल से सहमति प्राप्त होने के बाद कर्मचारी को कार्यमुक्त करने हेतु आवश्यक कार्यवाही की जा सकेगी।

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

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

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

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

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

4. The complainant has not submitted any comments against the rejoinder.

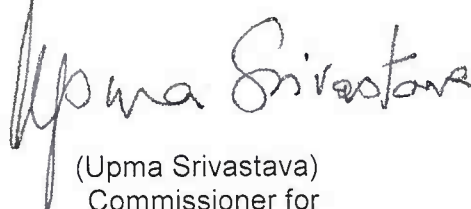
5. **Observation /Recommendations:**

i) Main issue concerns transfer of the Complainant to Danapur division of the Respondent establishment. Respondent submits that Complainant's application for transfer from Ratlam division to Danapur division was received on 20.06.2021. Respondent forwarded the application along with requisite documents to Danapur division by letter dated 25.06.2021 for receiving approval from Danapur division.

ii) DoPT OM dated 31.03.2014 in Para H lays down that practice of considering choice of place of posting in case of Persons with Disabilities may be continued.

iii) Respondent is recommended to consider Complainant's transfer considering the guidelines laid down in DoPT O.M. dated 31.03.2014. Copy of this Order may be forwarded to Danapur division for expediting approval and implementation of transfer orders.

6. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



सत्यमेव जयते

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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. 12604/1141/2021

128476

Complainant:

Shri Sanjib Kumbhar
S/o Shri Durjyodhan Kumbhar
At/PO: Salepali, Via: Jarasingha,
Dist: Balangir – 767067 (Odisha)
Email: sanjibkumbhar1986@gmail.com

Respondent:

Member Secretary,
Rehabilitation Council of India (RCI)
B-22, Qutab Institutional Area, New Delhi – 110018
Email: rehabstd@del3.vsnl.net.in

128477

1. Gist of Complaint

1.1 Shri Sanjib Kumbhar, M-35, a person with 50% Speech & Hearing Impairment filed a complaint regarding not issuing Registration Certificate as Special Educator by RCI.

1.2 The complainant submitted that he completed B.Ed in Special Education (Distance) from Karnataka State Open University in 2014. He had applied for RCI Registration more than 07 times but RCI rejected his application every time. He is currently working as a Special Educator in a Special School and feels that if he does not get registration from RCI his 06 years would be wasted and his future would be in darkness.

2. Submission made by Respondent (RCI)

On taking up the matter RCI filed their reply, dated 11.03.2021 and submitted that in the absence of non-receipt of approved Study Centre and list of pass out students from Karnataka State Open University (KSOU), it is difficult to register the students. Further, it has no relevance with the disabled candidate.

(Page 1 of 4)

3. Submission made in Rejoinder

3.1 The complainant in his rejoinder dated 19.03.2021 furnished a copy of the letter No.5-172/RCI/RTI-3430 dated 16.09.2020 issued by RCI in reply to query under RTI; and submitted that RCI had registered 25 number of candidates from KSOU of the same batch. Further, if it was so, RCI should have given notice to the students not to take admission in KSOU. This is the matter between KSOU and the RCI what is the fault of the students; they are playing with the future of the students.

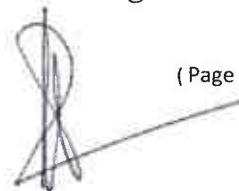
4. Reply sought from both RCI and KSOU

Considering upon the Reply filed by RCI and the Rejoinder filed by the Complainant, both RCI and KSOU were advised to by this Court to submit their comments specifically clarifying that if the 25 number of candidates from KSOU of the same batch could be issued registration certificates why not to the complainant/student.

5. Reply submitted by KSOU

5.1 KSOU filed their reply/comments vide letter dated 03.05.2021 and submitted that B.Ed Special Education in four disability disciplines were offered by KSOU from 2007-2012 in collaboration with RCI as per MoUs dated 16.03.2007 and 23.07.2012. As per MoU, each year Apex Advisory Committee Meetings were held in which two senior representatives of RCI (Chairperson and Member Secretary) were part of the committee. RCI had agreed, as per MoU, to give registration under CRR for students who complete B.Ed Special Education from KSOU.

5.2 KSOU established Study Centres as per KSOU norms in consultation with RCI (as most of study centres suggested by RCI were offering Diploma level programmes in Special Education in Karnataka) and RCI never raised any objections concerning Study Centres from 2007-2012; and has given registration to all students who had completed B.Ed Special Education. It is in 2013, RCI started raising objection about Study Centres but the students had already completed the courses and final examination. Therefore, it was not possible to change the study centre or choose new Study Centre as KSOU did not offer any courses after 2015 due to non-cooperation of RCI. KSOU had published the list of approved study centres in the prospectus and a copy of the same was sent to RCI. RCI had never asked KSOU to change its study centres from 2007-2012, received 10% fees from KSOU for its support which included registration of



students under CRR as per MoU. RCI raised study centre issue only after completion of MoU period.

5.3 It is not possible to follow newly formed norms of RCI applying to the previous batches of students (2007-12) as the students had already completed B.Ed Special Education and most of them are teachers already working in Special/Inclusive Schools.

6. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.07.2021**. The following were present:

- (1) Shri Sanjib Kumbhar, the complainant and his representative Shri Prakash Samal
- (2) Shri Subodh Kumar, Member Secretary, RCI for Respondent No.1
- (3) Dr. Indumati Rao; for KSOU

7. Observation/Recommendations:

7.1 All the parties were heard.

7.2 Crux of the Complaint lies in the conflict of two establishments, Karnataka State Open University ('KSOU' in short) and Rehabilitation Council of India ('RCI'). Complainant alleged that he pursued his B.Ed. in year 2014 from Karnataka State Open University. Thereafter, he applied for registration in RCI. His registration was rejected.

7.3 RCI has submitted that Registration of Divyangjan is in suspension because such registration can only be done by RCI when KSOU shall make available list of students who pursued their degree/diploma from colleges recognized by KSOU. Further, RCI submits that list of colleges/institutions/study centres recognized by RCI is also not made available by the KSOU.

7.4 KSOU by its letter, dated 03.05.2021 submitted the list of all the pass out candidates. Further, KSOU submitted that till year 2012 RCI never raised the issue with respect to recognized colleges/institutions/study centres. Only in 2013, such issues were raised. During online hearing KSOU also ensured that it shall make available all the necessary documents to RCI.

7.5 The issue is not directly related to disability; however, this court cannot turn blind eye on the sufferings of Divyangjan for no fault on their part. Inactions being of RCI and KSOU over so many years have resulted into a



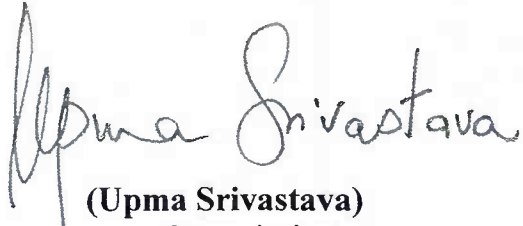
situation in which price of inaction is paid by Divyangjan who pursued B.Ed. from KSOU.

7.6 Section 20 of Rights of Persons with Disabilities Rights, 2016 lays down that government establishments shall not discriminate with divyang employees in matter of employment. Employment of Divyangjan is sine qua non in achieving aims and objectives as laid down in Preamble of Constitution and RPwD Act, 2016. Employment empowers Divyangjan to make their own choices, to gain respect and individual autonomy in society. Hence, inaction caused by any government establishment because of procedural irregularities and their inability to sort out their conflict/problem is a serious issue and hinders in effective recognition and enforcement of rights of Divyangjan.

7.7 Hence, this court recommends that RCI and KSOU shall resolve the dispute amicably. On the assurance provided by KSOU, this court further recommends that KSOU shall provide RCI, list of all the necessary documents which are required by RCI to provide registration to divyang students. Further, both the establishments shall explore more avenues to resolve the dispute as soon as possible. Further, this court recommends that if options to resolve the issue fail within a period of three months, then RCI shall grant registration to divyang candidates as per records available with them only and no longer wait for any certification from KSOU. This is the only way out to help the PwDs get their certificate & then get a job for which they are waiting since years without any fault on their part.

7.8 Accordingly the case is disposed off.

Dated: 24.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

Extra

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12741/1102/2021 | R28478

Complainant:

Shri Ved Prakash Singhania,
National Federation of the Blind,
Lucknow, R/o D-51, Sector-9, Vijay Nagar,
Ghaziabad-201301 (UP);
Email: singhaniavedp@gmail.com;
Mobile: 9873344098

Beneficiary/Affected Person:

Shri Ayaz Husain & Smt. Sajda Begam,
Vill + Post: Sarawa,
Tehsil: Shikarpur, District-Bulandshahar-203395 (UP)
Mobile No.8006837540

Respondent:

- (1) Branch Manager,
UCO Bank, Shikarpur Branch,
Vill. + Post: Shikarpur,
District – Bulandshahar-203395 (UP)
Email: shikar@ucobank.co.in
- (2) General Manager, UCO Bank,
Head Office: 6th Floor, 10, B.T.M Sarani,
Kolkata-700001
Email: hocompliance.calcutta@ucobank.co.in

1. Gist of Complaint:

The complainant filed a complaint on 13.04.2021 that Shri Ayaz Husain, a completely blind teacher had opened a joint bank account with his wife Smt. Sajda Begam on 'Either/Survivor' basis with UCO Bank Shikarpur Branch, District Bulandshahar (UP) around 6 months ago. The complainant alleged that the Branch Manager destroyed his entire chequebook in his presence with the reason that the bank account should be opened as 'Former/Survivor' basis, as per their Head Office circular. On the other hand no such instructions were

(Page 1 of 4)

circulated by Indian Bank Association in this regard, as other banks are opening joint account of blind customers with his/her spouse on 'Either/Survivor' basis. Further, the complainant was verbally advised to visit branch personally for each transaction whereas the complainant has to remain in school till 1600 Hrs and he is unable to approach Bank in business hours.

2. The matter was taken up with the Branch Manager, UCO Bank, Shikarpur Branch, District Bulandshahar UP) [Respondent No.1]; and with the General Manager, UCO Bank, Kolkata [Respondent No.2].

3. Submissions made by the Respondents

3.1 Respondent No.1 filed their reply dated 07.07.2021 and submitted that as per their internal circular dated 10.09.2008 issued by their HO, a visually impaired person can open account either singly/jointly with any person of his/her choice (whom he/she considers reliable and who may be competent to contract and should not be visually impaired person). However, the mode of operation in such accounts will be 'Former or Survivor' and the visually impaired person shall be the 1st name account holder. Due to an inadvertent error the operation in the joint SB account of Shri Ayaz Hussain was allowed by the Bank on 'Either or Survivor' basis. As soon as the bank realised the error/mistake, the mode of operation in the joint SB account of Shri Ayaz Hussain was changed to 'Former or Survivor' basis.

3.2 Regarding destroying of entire cheque book, the respondent No.1 denied and refuted and submitted that since the conversion of the Single SB Account to Joint SB Account of Shri Ayaz Hussain and Smt. Sajda Begum, the Branch had issued only one cheque book which is still in existence though Smt. Sajda Begum had made use of certain cheques out of the cheque book, but the remaining cheque leaves are in operation.

3.3 In the month of March, 2021, Smt. Sajda Begum had visited the Branch and made requisition for issuance of a multicurrency cheque book with her signature only. She was advised by the Branch to come along with her husband Shri Ayaz Hussain as he is the 1st name account holder the said joint SB account. Smt. Sajda Begum and Shri Ayaz Hussain instead of approaching the Branch making a requisition for issuance of the cheque book, lodged this complaint, hence the Branch was unable to process any request.

3.4 The Bank has issued its circular with mode of operation in visually impaired person account as 'Former or Survivor' to protect customer from any loss in future as well as to mitigate its operational loss.



4. No reply was filed by the Respondent No.2 despite reminders and lapse of statutory period of notice.

5. Submissions made in Rejoinder

The complainant in rejoinder dated 14.07.2021 added that the said Joint SB Account was smoothly operational with clause 'Either or Survivor' and the customer had no complaint. The said account was categorized as 'Former or Survivor', violating relevant guidelines of IBA and RBI as well. The customers are still of their opinion that their joint account must be kept operational with clause 'Either or Survivor' basis in terms of IBA and RBI guidelines. The 2nd account holder, i.e. Smt. Sajda Begum was denied for banking service by the Bank.

6. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **06.08.2021**. The following were present:

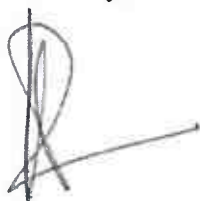
- (1) None for the complainant
- (2) Adv. D.K. Sharma for the Respondents

7. Observations & Recommendations:

7.1 Complaint is filed on behalf of Sri Ayaz Hussain, hereinafter called as 'beneficiary'. Complainant submits that the beneficiary and his wife maintain joint bank account in branch of Respondent establishment. Grievance of the Complainant is that earlier mode of operation of the account was 'Either or Survivor' which was later changed to 'Former or Survivor'. Prayer of the Complainant is to change the mode of operation to 'either or survivor'. Complainant also submits that to issue new cheque book, Respondent is insisting on physical presence of the divyang beneficiary in the bank.

7.2 During online hearing, Respondent explained meaning of both the modes of operation. As per the Respondent, 'Either or Survivor' means any one of the two persons who are holding joint account can perform transactions, whereas, 'Former or Survivor' means only that person can perform transactions who is named first and only after his/her death second one can perform the transaction.

7.3 Respondent further submitted that as per guidelines issued by Indian Banking Association, in case of joint bank account of Visually Handicapped no particular mode of operation was prescribed. To protect the interest of divyang bank holders, UCO bank issued guidelines whereby, mode of operation was prescribed as 'Former or Survivor'.



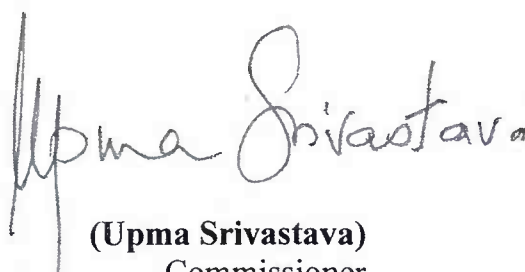
7.4 This court is satisfied with the reply of the Respondent. Financial interest of the divyang beneficiary can be best protected if mode of operation will be 'former or survivor'. When the mode of operation would be 'former or survivor', divyang beneficiary would be able to monitor his account. Such monitoring will not be possible if mode of operation would be 'either or survivor'.

7.5 With respect to issue of cheque book, Respondent submits that divyang beneficiary comes to the bank regularly. New cheque book can be issued only when some formalities will be completed by the divyang beneficiary. This court is satisfied with the Reply of the Respondent. It is utmost duty of the Respondent to protect financial interests of the divyang beneficiary. In order to abide by this duty, and to protect the divyang beneficiary from financial fraud and cheating, Respondent cannot allow any other party to operate divyang beneficiary's bank account.

7.6 Hence this court concludes that Complainant has not made out any case of discrimination with divyang person. This court recommends that to carry out functions for which presence of divyang beneficiary is indispensable, Respondent may explore the option of sending bank employee to residential accommodation or to the work place of divyang beneficiary. Further, this court recommends that the Respondent shall also abide by the Rules and Directives for customers with special needs and Persons with Disabilities, issued by Indian Banking Association and RBI.

7.7 Accordingly the case is disposed off.

Dated: 24.08.2021


(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. 12746/1011/2021 | 128482

Complainant:

Dr. Anil Sahebrao Kuwar,
Plot No.41, Nagai Colony,
Sakri Tal Sakri,
Dist. : Dhule,
Maharashtra – 424 204

Versus

Respondent :

Indian Institute of Technology
(Through the Registrar)
Gandhinagar,
Palaj,
Gujarat – 382355.

128483

Disability : 50% locomotor disability

Gist of Complaint:

Dr. Anil Sabebrao Kuwar submitted that he had applied for the post of Assistant Professor in Chemistry with level 12 as per the Rolling Recruitment advertisement dated 18.01.2021 of IIT-Gandhinagar. He attended the formal interaction on 25.05.2021 via online mode. He received an email from IIT Gandhinagar on 04.09.2021 informing him of no further processing of the post of Assistant Professor. His academic and research presentation and final interview still remain. Till date the Institute has not filled up any post of Assistant Professor under PwD category in their Institute.

1 | Page

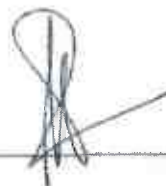
2. The matter was taken up with the Registrar, IIT-Gandhinagar vide letter dated 15.06.2021.

3. The Registrar, IIT-Gandhinagar vide letter dated 13.07.2021 submitted that Dr. Kuwar applied for the position of Assistant Professor in the discipline of Chemistry of IIT-Gandhinagar on 18.01.2021 in PwD category vide application no. CH21-8. In an earlier instance, Dr. Kuwar was found not suitable by the Institute for the same position in January 2020. Dr. Kuwar had then made an appeal in CCPD against his non selection but CCPD vide Judgement in Case No. 12350/1011/2020 disposed off the case on 24.12.2020. A preliminary interaction (through Video Conference) was done with Dr. Kuwar on 25.05.2021 by the Faculty Search Committee of the Institute. But, even before his candidature was assessed by the Selection Committee, Dr. Kuwar filed an appeal to the Director/Registrar of the Institute vide email dated 04.06.2021 and also to CCPD as well as to the Chairman, National Commission for Backward Classes. In response to their reply, Dr. Kuwar had informed them vide his email dated 24.06.2021 that he has accepted the response of the Institute.

4. A copy of Respondent reply dated 13.07.2021 was sent to the complainant vide letter dated 23.07.2021 for submission of his comments. However, no comments have been received from the complainant so far.

Observation/Recommendations:

5. In terms of **Section 34 of the Rights of Persons with Disabilities Act, 2016:**

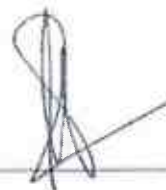


"Section 34.(1) Every appropriate Government shall appoint in every Government establishment, not less than four percent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one percent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one percent for persons with benchmark disabilities under clauses (d) and (e), namely:-

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

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

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



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

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

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

6. As per instructions issued by **Department of Personnel & Training**, Govt. of India vide **O.M. No.36035/02/2017-Estt(Res)** dated **15th January, 2018**:

"2. QUANTUM OF RESERVATION

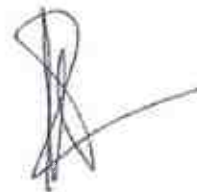
2.1 In case of direct recruitment, four per cent of the total number of vacancies to be filled up by direct recruitment, in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.



2.2 Against the posts identified for each disabilities, of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent, under clauses (d) and (e), unless otherwise excluded under the provisions of Para 3 hereinafter:- (a) blindness and low vision; (b) deaf and hard of hearing; (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy; (d) autism, intellectual disability, specific learning disability and mental illness; (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness.

3. EXEMPTION FROM RESERVATION

If any Ministry/Department in the Central Government considers it necessary to exempt any establishment or any cadre or cadres fully or partly from the provisions of reservation for persons with benchmark disabilities, it shall make a reference to the Department of Empowerment of Persons with Disabilities giving full justification for the proposal, who having regard to the type of work carried out in any Government establishment by notification and subject to such condition, if any, as may be specified in the notification, in consultation with the Chief Commissioner for Persons with Disabilities (CCPD) may exempt any Establishment or any cadre(s) fully or partly from the provisions of reservation for persons with benchmark disabilities."



7. As per **Section 2(y)** of the **Rights of the Persons with Disabilities Act, 2016** reasonable accommodation has to be provided to persons with disabilities as quoted under:

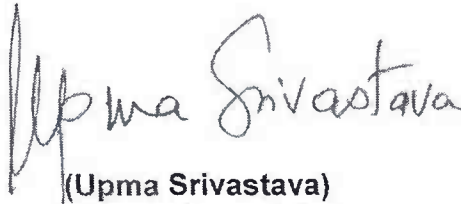
"Section 2.(y) – "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others."

8. Though it is understood that the decision of the Scrutiny-cum-Selection Committee is final so far as selection and appointment of faculty is concerned yet by providing reasonable accommodation (as per above provision) to persons with disabilities in terms of slightly relaxed standards at the time of interview when all other eligibility requirements are being met would be in the fitness of things. This would ensure that a person with disability gets employment as well as the vacancy does not remain unfilled.

9. The respondent are recommended to adhere to the provisions of the Rights of Persons with Disabilities Act, 2016 and Government instructions as quoted above without fail.

10. The case is disposed off.

Dated : 24.08.2021


(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. 12663/1011/2021/R28484

Complainant:

Ms. Meera V.U.,
T.C. 15/1927, Near Ganapathy Temple,
Vazhuthacaud,
Thiruvananthapuram – 695014

Versus

Respondent 1:

University Grants Commission,
(Through the Chairman)
Bahadur Shah Zafar Marg,
New Delhi – 110 002

R28485

Respondent 2:

National Testing Agency,
(Through The Chairperson),
C-20, 1A/8, Sector-62,
IITK Outreach Centre,
Noida – 201 309.

R28486

Disability : 75% Visual Impairment

Gist of Complaint:

Ms.Meera V.U submitted that National Testing Agency has discriminated candidates with disabilities in UGC-NET Exam on the ground of caste. The results published by NTA for May 2020 UGC-NET Examination is against the provisions of the RPwD Act, 2016. In their notification they claim that they are giving reservation / relation in marks to PwD category on the

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basis of RPwD Act whereas they have not given 5% reservation in higher education to PwD category as per Section 32 of the RPwD Act, 2016. She has sent e-mails to NTA, UGC and registered her grievance on Public Grievances Portal but received no reply or action on it. The complainant has requested this Court to take urgent steps to protect the rights of persons with disabilities as per RPwD Act, 2016 and give 5% reservation on higher education to PwDs irrespective of caste based reservation.

2. No comments have been received from Respondent No. 1, i.e. UGC.

3. The Joint Director, National Testing Agency vide letter no. NTA/Exams/UGC-NET/PwD/2021 dated 28.05.2021 submitted that NTA has been entrusted by the University Grants Commission (UGC) with the task of conducting UGC-NET which is a test to determine the eligibility of Indian nationals for 'Assistant Professor' and 'Junior Research Fellowship and Assistant Professor' in Indian universities and colleges. The methodology for allocating slots through horizontal reservation to the 'persons with disability' has been adopted in preparing the result of June 2020 UGC-NET as per Paragraph 3 of Memorandum No.36035116191-Estt.(SCT) issued by Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Govt. of India dated 18th February 1997 regarding 'Reservation for the physically handicapped persons in Group A and B posts/services under the Central Government'. It is clearly spelt out in the Order issued by DoP&T that the horizontal reservation for PwD category cuts across vertical reservation for categories like General, SC, ST etc. The Judgement of the Supreme Court of India in the Indira Sawhney case has also been taken into cognizance in the DoP&T order. The aggrieved has misquoted the said Judgement of the Supreme Court of India. It is thus established that the National Testing Agency (NTA) has followed the norms of the Government of India while applying horizontal reservation for 'Persons with Disability' among categories like General, SC, ST, OBC (Non Creamy Layer) & EWS for which vertical reservation has been applied in preparing the result of June 2020



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UGC-NET. The Respondent submitted that Ms. Meera V U had although been a candidate of UGC NET June 2020 with Application No. 200510319438, Roll No. KL1750900357, she has been absent from this exam, as evident from the Score Card. She has applied again for UGC NET December 2020 Cycle.

Observation/Recommendations:

4. Plethora of Complaints are filed before this court relating to the issue of recruitment including reservation in recruitment process. This court had an opportunity to delineate laws and guidelines related to various aspects of recruitment process in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021, titled NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH.
5. This Court is satisfied with the reply of the Respondent. Interference of the Court in the present complaint is not warranted. However, Respondent may pursue the Order of this Court dated 15.06.2021 in case no. 12678/1011/2021 delivered in the matter of Ms Neha Nema vs Central University of Himachal Pradesh attached herewith for future reference in all reservation matters for persons with disabilities.
6. The case is disposed off accordingly.

Dated: 24.08.2021


(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. 12716/1011/2021 | 1228487

Complainant:

Shri Vasu Dev Sharma ,
H. No.1(A), Roura Sector-3,
Distt. Bilaspur,
Himachal Pradesh-174001.

Versus

Respondent

Department of Personnel & Training,
(Through the Secretary)
Ministry of Personnel, P G and Pensions
Government of India, North Block,
New Delhi - 110 001

1228488

Disability : 60% visually impaired

Gist of Complaint:

The complainant vide his complaint, dated 20.05.2021 submitted that his son Dr. Vishv Mohan, a person with 60% visual impairment came out successful in CSE-2014 examination and was recommended by UPSC for appointment in IAS in the year 2015. He submitted that it gave him a major blow when they faced biases in the disguise of unfit medical status due to negligent/arrogant doctors having nexus. They challenged the same before the Central Administrative Tribunal and thereafter approached the Hon'ble High Court of Delhi. In pursuant to WPC No.:12481/2018 titled "Vishv Mohan vs DoP&T & Others' Hon'ble Delhi High Court directed for re-examination of his son's disability at AIIMS-Delhi. After the medical re-examination at AIIMS, it was observed this Dr. Vishv Mohan possesses poor vision of 6/60 in

1 | Page

both his eyes which is legal blindness under RPwD Act. The detailed medical report which contained the extent of visual disability was sent by AIIMS to DoP&T with reference to Diary No. 1363073/19/CR. The complainant submitted that DoP&T had suppressed/hide the detailed medical report which clearly certified that his son is sixty percent (60%) visually impaired with reference to DoP&T Diary no. 1363073/19/CR making his son entitled for appointment in IAS. Only after the intervention of Hon'ble CIC on 09.03.2021 in response to his RTI application, they received its copy after three years. The complainant has prayed to pass an order holding and declaring that the petitioner is a person with visual disability having visual acuity of 6/60 and therefore 'legally blind' as per Section 2(b)(ii) of PwD Act, 1995 and entitled to be appointed in IAS 2015 batch against the disabled quota as 'Special Case' forthwith.

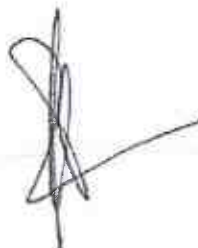
2. The matter was taken up with the Secretary, DoP&T vide letter dated 25.05.2021 but no communication has been received from the Respondent.

Hearing : A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 04.08.2021.

3. The following persons were present during the hearing ;

1. Complainant in person.

2. Respondent: Shri Anshuman, Under Secretary on behalf of Respondent.



Observation/Recommendations:

4. During online hearing Respondent submitted that Complainant's son, who is beneficiary in the present complaint has filed the same case before Hon'ble Delhi High Court vide Writ Application No 574/2020, which is pending before the Hon'ble Court.
5. Since the matter is sub judice, hence, interference of this court is not warranted.
6. The case is disposed off.

Dated: 24.08.2021


(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. 12618/1011/2021 1228489

Complainant:

Shri Prashant Pandey,
B-1/204, Cheryl Apartment,
Downtown,
Kharadi,
Pune – 411014

Versus

Respondent :

State Bank of India,
(Through the Deputy General Manager)
Central Recruitment & Promotion Dept.,
Corporate Centre,
Atlanta Building, 3rd Floor,
Nariman Point,
Mumbai – 400021

1228490

Disability : 50% Autism Spectrum Disorder

Gist of Complaint:

Shri Prashant Pandey, a person with 50% Autism Spectrum Disorder submitted that IBPS in its advertisement no. CRPD/PO/2020-21/12 for the post of Probationary Officer has not included the category Autism Spectrum Disorder (ASD) under Specific Learning Disability. When enquired IBPS about the reasons for not including this disability in their advertisement, they replied that they have identified only three categories, i.e. Specific Learning Disability, Mental Illness and Multiple Disabilities suitable for the post of Probationary Officer. He submitted that IBPS conducts examinations for the same posts for other banks and they have clearly mentioned and included Autism Spectrum Disorder (ASD) for the same post. The complainant has

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

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

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

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

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

requested for adding Autism Spectrum Disorder (ASD) in their future advertisements.

2. The matter was taken up with the Deputy General Manager, State Bank of India vide letter dated 01.03.2021.

3. The General Manager, State Bank of India, Corporate Centre, Mumbai vide letter no. CRPD/AK/PO/2020-21/799 dated 19.03.2021 submitted that reservations for persons with disabilities in the vacancies for the recruitment of Probationary Officers is provided by the Bank in terms of the provisions of Rights of Persons with Disabilities Act, 2016 and the relevant Government Guidelines. The Office Memorandum F. No.34-24/2016-DD-III dated 15.05.2018 issued by the Ministry of Social Justice and Empowerment also empowers individual organizations to identify posts suitable for various categories of persons with disabilities pending notification of any centralized list. Incompliance of these above guidelines and pending issuance of a centralized list by the Government of India, an internal Committee was constituted by the Bank for categorization of posts in the Bank for persons with disabilities mentioned in clause (d) and (e) u/s 3491) of the RPwD Act, 2016. The Respondent submitted that banks are custodians of public money and it is essential that the candidates recruited by the Bank possess the basic abilities to perform the job in the bank including that of the officers/clerk. The internal committee constituted by the Bank carried out thorough deliberations on the matter and held detailed discussions with renowned experts in the field including top Medical Practitioners, NGOs and with the National Institute of Mental Health & Neurosciences (NIMHANS), Bengaluru. On the basis of the report submitted by the Internal Committee, it was found that persons with the following categories of disabilities, as defined under clause (d) and (e) u/s



34(1) of RPwD Act, may carry out the job requirement of general officers including that of a Probationary Officer;

- a) Specific Learning Disability (SLD)
- b) Mental Illness (MI)
- c) Multiple Disabilities amongst above details LD, VI, HI, SLD & MI

The Respondent submitted that they initiate periodic review of the identified posts at an interval not exceeding three years. The State Bank of India is sensitive and committed to the welfare of persons with disabilities. Appropriate number of vacancies are kept reserved by the Bank for different categories of PwD candidates with benchmark disabilities. Additionally he submitted that the bank extends relaxations / facilities to persons with disabilities in the PO recruitment.

- a) Relaxation of 10 years in maximum eligible age.
- b) Relaxation of 5% in minimum qualifying marks in Main Examination and Group Exercise & Interview.
- c) Relaxation in maximum permissible number of attempts.
- d) Waiver of application fee.
- e) PwD candidates having limitations in writing including that of speed is allowed to avail the undernoted facility during examinations for recruitment of Probationary Officers subject to production of medical certificate:

- i) Extra time of 20 minutes for every 1.00 hour of test and
- ii) Facility of Scribe.

4. The complainant vide his rejoinder dated 01.04.2021 submitted that as per his knowledge no separate PwD certificate is issued as a mental illness under (d) and (e) category and Autism comes under that category only. He requested for a rectification in the next recruitment advertisements of SBI.



OBSERVATIONS & RECOMMENDATION

5. 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.

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

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

7. Before proceeding further, it is important to elicit objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that



Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination and are given equal opportunity.

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

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

9. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 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>

10. **Addition of any post from this list –**

a) (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



04.01.2021 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

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

(b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 04.01.2021, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.

(c) Point 4 of the notification dated 04.01.2021 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.

RESERVATION FOR PERSONS WITH DISABILITIES

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

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

12. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the



cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

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

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

15. How Vacancies can be Computed – The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that



the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts 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)

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

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

- 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.

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

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

ISSUING OF NOTIFICATION

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

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is

Identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.

- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.

EXAMINATION FEES

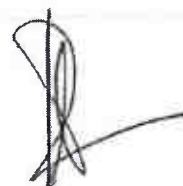
21. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.

EXAMINATION PROCESS

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

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

24. Scribe – Para IV, V and VI of the OM lays down detailed guidelines related to Scribe/Reader/Lab Assistant. In these paragraphs exhaustive



guidelines are provided as to when it is mandatory and when discretionary to provide for Scribe/Reader/Lab Assistant. Similarly, Para VIII contains guidelines with respect to mode of answering the questions asked.

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

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

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

RELAXED MINIMUM CRITERIA

28. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates 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

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

30. Respondent's contention that disability of 'ASD' was not identified suitable for post of Probationary Officer is violative of Notification No. 38-16/2020-DD-III dated 14.01.2021 issued by M/o SJ&E. Note No. 6 of the notification lays down that if government establishment has a separate list of identified post, then the one having wider range of identified categories would prevail.

NOTE 6 : *This list will be the principal list in respect of the posts identified suitable for persons with benchmark disabilities. However, in case a list of post is separately identified by any Central Government establishment, the list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail.*

31. After going through the documents submitted by both the parties, it is observed that the Respondent Bank has not included the Autism Spectrum Disorder (ASD) as disability for the post of Probationary Officer. Autism Spectrum Disorder (ASD) is a disability identified for the post of Probationary Officer at Sr. No.270 of Group 'A' of Notification No. 38-16/2020-DD-III dated



04.01.2021 of Ministry of Social Justice and Empowerment. Hence, the contention of the complainant is correct.

32. Therefore, this court recommends the Respondent to issue corrigendum or to re-issue the advertisement after reserving vacancies for Divyang candidates with Autism Spectrum Disorder (ASD) for the post of Probationary Officer.

33. The case is disposed off accordingly.

Dated : 24.08.2021.


(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 and Empowerment

भारत सरकार/Government of India

Case No. 12647/1011/2021 | 1228491

Complainant:

Ms. Payal Masihi,
House No.6, PG Path,
Via Ashok Path,
Bhatia Bastee,
Kadma,
Jamshedpur,
Jharkhand – 831005.

Versus

Respondent :

Staff Selection Commission,
(Through the Chairman),
Block No.12,
CGO Complex,
Lodhi Road,
New Delhi – 110 003

1228492

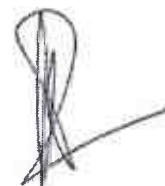
Disability : 45% Thalassemia

Gist of Complaint:

Ms. Payal Masihi, a person with 45% Thalassemia vide her complaint dated 04.03.2021 submitted that she has been suffering from Thalassemia by birth and going through the blood transfusion every month. She submitted that she had cleared all the Tiers (i.e. 1,2,3, CPT/DEST) of the CGL-2018 Examination conducted by the Staff Selection Commission and was called for Document Verification, but her candidature was rejected on the basis of her disability. She was also told that Thalassemia is not covered for the post applied by her. The complainant's contention is that when she was issued

the certificate for Thalassemia then why her disability has not been identified for certain posts.

2. The Director, Staff Selection Commission vide letter no. 3-1/2018-P&P-I(Vol.III) dated 01.04.2021 submitted that the Commission conducts the Combined Graduate Level Examination for filling up of various Group 'B' and Group 'C' posts in different Ministries / Departments / Organisations, i.e. User Department. The role of the Commission is to collect category-wise vacancies along with details of suitability of posts for disabilities as reported by the user department. Number of vacancies, quantum of reservation and suitability of posts for disabilities are decided by the User Department. The complainant is suffering from 'Thalassemia' disability which is a Specified Disability mentioned at Sr. no. 4(b)(ii) (i.e. Disability caused due to Blood disorder) in the schedule of the Act. However, the same is not covered under Section 34(1) of the Act. Therefore, no post has been identified as suitable for "Thalassemia" disability by the Indenting Departments included in the Notice of CGLE 2018. Hence, the decision of the Commission regarding eligibility of the candidate is in order. Whereas the implementation of 'Equal Opportunity Policy' under Section 21 of RPwD Act, 2016 as well as Grievance Redressal Officer under Section 23 of RPwD Act, 2016 is concerned, Staff Selection Commission has appointed a Nodal Officer for redressal of grievances related to the persons with disabilities.



Observation/Recommendations:

3. Section 34 of Rights of Persons with Disabilities Act, 2016 provides for reservation of vacancies for different categories of Divyangjan;-

Section 34 of RPwD Act, 2016 is reproduced below :-

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

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

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

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

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

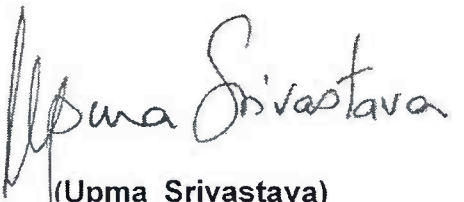
disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability

4. From the reading of the provision it is certain that although Thalassemia is recognized as specific disability but reservation under Section 34 is not extended to this category of disability as per Rights of Persons with Disabilities Act, 2016. It is also emphasized that a writ petition was also filed in the Hon'ble Supreme Court to extend benefits of reservation to Divyangjan of Thalassemia category. In an unreported Order dated 14.01.2019 bench headed by the then Chief Justice dismissed the petition.

5. Hence this Court concludes that there is no case of discrimination on the ground of disability and violation of Government of India instructions in this regard.

6. The case is disposed off accordingly.

Dated: 24.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12668/1023/2021 **128493**

Complainant: Shri Vishal Kumar Gupta
e-mail: <Vishal.Kumar11@sbi.co.in>

Respondent: The Chairman
State Bank of India, State Bank Bhawan
Madame Cama Road, Nariman Point, Mumbai – 400021
E-mail: <agmphr.lhokol@sbi.co.in>

128494

Complainant: 50% locomotor disabilities

GIST of the Complaint:

Complainant vide complaint dated **22.03.2021** submitted that he is working as a Deputy Manager in State Bank of India, Darjeeling Branch and he has been discriminated in Work Place by Sr. Officers. Even he has written a complaint to Complaint redressal cell in their Organisation but he was not given justice. He has submitted the following points:

- (i) On 12.02.2020, the words used by Shri Amrendra Kumar Singh then Regional Manager RBO-III, Siliguri who has now been elevated as Deputy General Manager and posted at Corporate Office Mumbai, on asking for Bereavement Leave in SBI Darjeeling Branch was very insulting and has deeply pained him. This incident has not been addressed by State Bank of India, Grievance Redressal Cell even after 3 complaints on 23.03.2020, 13.07.2020 and 16.11.2020.
- (ii) When Investigation started on the Complaint filed by him on 23.03.2020 to Sanjeevani HR, Corporate Centre, Mumbai the first thing done by Controller was that he called all staff of his SPS Jalapahar Branch personally and provoked them to file a Complaint Against him. Therefore three staff of his Branch filed the Complaint on the same day on request of Regional Manager RBO-III, Siliguri.

....2....

- (iii) He had applied for Disability Allowance on 02.07.2019 but after many requests it has not been approved. On 20.05.2020, Bank had sent a letter to Safdarjung Hospital for Verification of his Certificate.
- (iv) Now his PH Conveyance Allowance has been stopped because of old disability certificate. Therefore during COVID time, he was forced by officers to make the new Disability Certificate and after One Month of waiting, he was handed over a Disability Certificate which had no difference in degree of Disability with old disability certificate.
- (v) After Completing necessary formalities of the Disability Certificate he joined the Branch from 16.10.2020 during the COVID-19 period and submitted the new Disability Certificate but till date my PH-Conveyance has not been started.
- (vi) He has requested that his PH Allowance should be started from the date of joining i.e. 01.03.2011 as Left Hemipareses is a case related to Weakness in Muscles and belong to OH Category as soon as possible with all interest. I
- (vii) Punishment should be awarded to all those who have humiliated him and hurt his dignity and himself respect:
- (viii) written apology from Mr. Amrendra Kumar Singh, (Deputy General Manager), SBI that he will not speak in such tone and language with anyone etc.

2. The matter was taken up with the Respondent vide letter dated **23.03.2021** under Section 75 of the RPwD Act, 2016.

3. In response, General Manager (North Bengal & Sikkim), State Bank of India vide letter dated **20.04.2021** inter-alia submitted that the after investigation, it was found that allegations made by the complainant were not substantiated and found not correct. They further submitted that the matter of PH allowance/conveyance allowance was examined, it was observed that his disability certificate at the time of his appointment does not reflect



....3....

...3.....

that he is orthopedically handicapped, therefore, the Bank decided to refer the matter to medical authority to obtain their recommendation and after receiving the recommendation from the medical authority vide certificate dated 24.09.2020 has released the entire PH allowance w.e.f. the date of issuance of the disability certificate i.e. 24.09.2020 as per the Govt. Guidelines.

4. Complainant vide rejoinder dated 04.06.2021 inter-alia submitted that if the Bank said that he did not belong to the OH category then his whole appointment in SBI would be null and void. It seems that he is not satisfied with the reply.

5. After considering the respondent's reply dated **20.04.2021** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **20.07.2021** but due to administrative exigencies hearing rescheduled on **22.07.2021**.

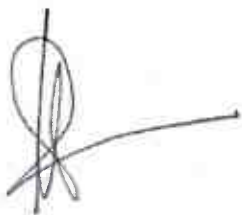
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.07.2021**. The following were present:

- Shri Vishal Kumar Gupta – complainant
- Shri Niraj Prasad on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Grievances raised by the Complainant can be divided into four major heads – disability allowance, forced to attend office during lockdown, time taken to dispose off his complaints and ill treatment of the Complainant. Complainant submits that he applied for disability allowance on 2 July 2019. By letter dated 20 May 2020, respondent establishment asked the Complainant to get renewed disability certificate, meanwhile his allowance was suspended. Afterwards, when the complainant submitted renewed disability certificate dated 24.09.2020, his Disability Allowance was granted to him from the date of issuance of renewed disability certificate, i.e. 24.09.2020.



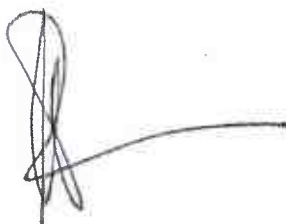
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8. Complainant also submits that he was forced to attend office during lockdown period. His wife was threatened that the complainant would be posted away from his native place if he will not attend office. Complainant filed complaints with the appropriate authorities of the respondent establishment. However, inordinate delay was caused to dispose of his applications.

9. Respondent countered the allegations and submitted that the bank was willing to grant disability allowance to the Complainant since the date on which application was filed. Complainant was asked to submit fresh disability certificate because it was no-where mentioned in the certificate that he was orthopedically handicapped. Disability mentioned in this certificate was physical disability. Thereafter, physical disability allowance was granted in his favour from the date of issuance of renewed disability certificate, i.e. 24.09.2020. Delay in redressing his complaint was caused because of covid-19 lockdown and merger of some branches of the bank. No officer of the bank asked other employees of the bank to file counter complain against the complainant.

10. Two issues on which this court is inclined to interfere are issue of attendance during Covid 19 and disability allowance. Divyang employees of government establishments were exempted from attending office during Covid – 10 period. DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by O.M. dated 14.06.2021 and is still in force. Respondent is bound by the guidelines of DoPT and hence, cannot compel the Complainant for attending office.



....5....

11. Another issue is that of disability allowance. Respondent granted disability allowance from the date of submission of renewed disability certificate, rather from the date of application. Complainant's cause arose on the date on which he applied for the disability allowance.

12. This court recommends that the Respondent shall form an inquiry committee to look into allegations relating to compelling the Complainant to attend office inspite of the DoP&T instructions quoted above. Further, disability allowance shall be issued in favour of the Complainant from the date on which he applied for the same in the instant case i.e. w.e.f. 02.07.2019 in view of correct submission made by the complainant.

13. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12709/1021/2021

1228495

Complainant: Shri Hemant Jayantilal Shah
E-mail: <hemantshah@recl.in>

Respondent: The Chairman & Managing Director
Rural Electrification Corporation Ltd
Core – 4, Scope, Complex, 7, Lodhi Road, New Delhi
E-mail: <reccorp@recl.nic.in>

R 28496

Complainant: 90% locomotor disability

GIST of the Complaint:

Complainant Shri Hemant Jayantilal Shah, Dy. General Manager vide complaint, dated **20.04.2021** submitted that his junior has judged his Annual Performance Reports (APRs) for FY2016-17 with untenable bad comments therefore, he has requested to the respondent vide letter dated 22nd October 2019 that APR rating for FY206-17 should be revised upward and be granted promotion with effect from 01st July 2017 but no action has been taken. He has requested that (a) All the Annual Performance Reports (APRs) of Complainant's written with malice intention may please be scrapped (b) Complainant may be granted promotion with effect from 01st July 2017 to next higher grade with all financial benefits.

2. The matter was taken up with the Respondent vide letter dated **24.05.2021** under Section 75 of the RPwD Act, 2016. But despite Reminder dated **02.07.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **04.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.08.2021**. The following were present:

- Shri Hemant Jayantilal Shah – complainant
- Shri Rajesh Raj, G.M. (HR) on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant has raised three issues related to transfer, reservation in promotion and APR he submits that employee who was junior to the Complainant judged the annual performance of the Complainant, he spoiled the APR for year 2016-17 because he intended to get promotion before the Complainant. Further, Complainant submits that he was transferred from Mumbai to Vadodara.
5. Respondent submits that he has been reinstated to Mumbai. Hence, issue of transfer has been settled amicably and needs no interference of this court.
6. On the issue of APR Respondent submits that in Regional Offices of the Respondent establishment, Chief Programme Manager of the establishment becomes head of office. All the employees report to him even if this employee is of equal rank. In the case of Complainant, same procedure was in place. Further, Respondent submits that the Complainant was not treated unfairly because even in case of enabled employees of Respondent establishment, annual performance is judged by the head of office even if he is of equal rank. Complainant's annual performance was also judged by the head of office who is of rank equal to that of the Complainant. Further, Respondent submits that APRs of the Complainant and other employees were further reviewed by 'Executive Authority' and 'Reviewing Authority' as per the established procedure, hence there was no discriminatory treatment with the Complainant.
7. This court is satisfied with the Reply of the Respondent. Interference on the issue of APR is not warranted.
8. On the issue of reservation in promotion, it is indispensable to note that RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with



Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision. Judgement delivered in RAJEEV KUMAR GUPTA case was upheld by Hon'ble Supreme Court recently in STATE OF KERELA VS LEESAMMA JOSEPH, decided on 28.06.2021.

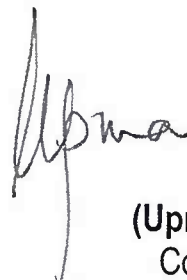
9. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific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

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

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

12. In view of the clear directions of the Hon'ble Supreme Court and as in the enclosed Orders, this court recommends that the Respondent shall pursue the Orders attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 and judgments of Hon'ble Supreme Court of India delineated in the Orders attached.

13. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12723/1023/2021 | 128499

Complainant: Shri D.B. Lohakare
741, TPT Coy ASC (CIVGT)
C/o 99 APO, Bangdubi, West Bengal

Respondent: The Director
Director General Personnel & Services
Integrated HQ of MOD (Army), DHQ PO
Sena Bhawan, New Delhi – 110011
E-mail: <webmaster.indianarmy@nic.in>

128500

Complainant: 54% locomotor disability

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत में कहना है कि वह यूनिट 741 टी.पी.टी., बेंगलूरु वेस्ट बंगाल में सफाईकर्मी के पद पर कार्यरत है जहाँ श्री एन.के. गुप्ता, ओ.सी. अधिकारी अवकाश के दिन प्रार्थी से युनिट या अपने घर पर काम करवाते हैं प्रार्थी का आगे कहना है कि इन्कार करने पर उच्च अधिकारी उन्हें प्रताड़ित करते हैं।

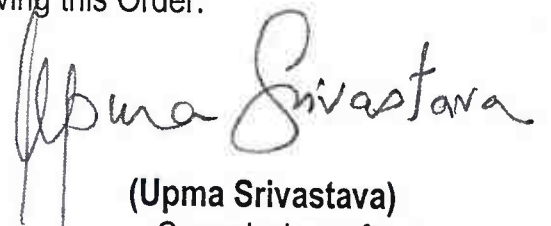
2. The matter was taken up with the Respondent vide letter dated **24.05.2021** under Section 75 of the RPwD Act, 2016. But despite Reminder dated **02.07.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **04.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.08.2021**. The following were present:

- Shri D.B. Lohakare – complainant
- Respondent – absent

Observation/Recommendations:

3. Complainant has filed grievance related to harassment. Complainant submits that he is assigned work which are inhumane and of degrading nature. Complainant further submits that the Respondent has denied to grant him leave.
4. Respondent neither submitted its reply despite of repeated reminders, nor appeared before the court during online hearing. Respondent's act of not filing Reply is evident of its tepid attitude.
5. Section 6 of Rights of Persons with Disabilities Act, 2016 mandates that appropriate government shall take measures to protect Divyangjan from inhumane and derogatory treatment. Further, Section 20(2) of the Act, mandates that government establishments are duty bound to provide barrier free and conducive environment to divyang employees.
6. Hence, this court recommends that Respondent shall conduct counselling of the reporting officers of the Complainant. Further, Respondent shall conduct enquiry into the issue of assignment of demeaning work and work other than assigned to the complainant and shall submit its report to this court within 3 months of receiving this Order.
7. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12699/1023/2021

1228492

Complainant: Shri Vijay Kumar Rajak, UDC
Dr. Hari Singh Gour Vishwavidyalaya
Sagar, Madhya Pradesh
E-mail: <vijayrajakutd@gmail.com>

Respondent: The Registrar
Dr. Hari Singh Gour Vishwavidyalaya
Sagar, Madhya Pradesh
E-mail: <registrar@dhsgsu.edu.in>

1228498

Complainant: 45% Locomotor disability

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 31.03.2021 में कहना है कि वह डॉ. हरीसिंह गौर केन्द्रीय विश्व विद्यालय, मध्य प्रदेश में अपर श्रेणी लिपिक के रूप में कार्यरत है तथा उनकी पुत्री को विश्वविद्यालय द्वारा प्रचलित विश्वविद्यालय कर्मचारी कोटे एवं स्पोर्ट्स कोटे के अधीन बी.ए. एवं एल.एल.बी. आनर्स प्रथम वर्ष सत्र 2020-21 में प्रवेश से वंचित किया गया। प्रार्थी का आगे कहना है कि उन्होंने उक्त विषय पर माननीय उच्च न्यायालय, मध्य प्रदेश में याचिका दायर की जो कि उच्च न्यायालय द्वारा निर्णय हेतु सुरक्षित रखी गई है। प्रार्थी का आगे कहना है कि कोविड-19 अवधि के दौरान उन्हें प्रतिदिन कार्यालय में उपस्थित होने के लिखित आदेश दिये गये। प्रार्थी का आगे कहना है कि विश्वविद्यालय द्वारा उन्हें दिनांक 22.03.2021 को कारण बताओ नोटिस जारी किया गया, जबकि प्रार्थी ने किसी भी प्रकार से विश्वविद्यालय के आदेश की उल्लंघन नहीं की।

2. The matter was taken up with the Respondent vide letter dated 13.04.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Registrar, Dr. Harisingh Gour Vishwavidyalaya vide e-mail dated 16.06.2021 submitted that complainant's daughter had applied for admission in B.A. L.L.B

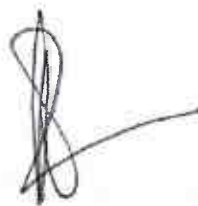
(Hons) under OBC (NCL) category and also claimed under Sports Quota and Employees wards Quota but her sports achievement did not fall under the category prescribed in the Admission Brochure 2020-21 and there was no Employees Quota prescribed either in the University Ordinance or in the Admission Brochure 2020-21. The Complainant's daughter by scoring 120 marks could not find place in the merit list either under UR category or under OBC (NCL) category and could not get admission in the aforesaid course. In this regard, she also approached Hon'ble High Court of MP at Jabalpur vide Writ Petition No. 3479/2021 but said Writ Petition was dismissed by the Hon'ble Court. They further submitted that the complainant is the Senior Ministerial Cadre Employee (UDC Cadre) posted in the Department of Law of the Vishwavidyalaya and as such the Head of the Department did not allow him to work from home during the Unlock Phase-I so that the work of the Department might not be affected. This was done in good faith keeping in view the interest of students and not to harass the Complainant. The Complainant is an employee of the University and being the employee he is bound to follow the Central Civil Services (Conduct) Rules, 1964. But the Complainant in utter violation of the said rules attempted to exert undue pressure on the University Administrative for admission of her daughter in B.A. LL.B Course by directly communicating with media and getting published misleading information regarding prevalence of admission under employees' quota for last 5 years in the Vishwavidyalaya.

4. प्रार्थी ने अपने प्रति उत्तर दिनांक **01.07.2021** में निवेदन किया है कि विश्वविद्यालय द्वारा जारी कारण बताओ नोटिस को निरस्त करवाया जाए।

5. After considering the respondent's reply dated **16.06.2021** and the complainant's rejoinder dated **01.07.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **20.07.2021** but due to administrative exigencies, hearing rescheduled on **22.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **22.07.2021**. The following were present:

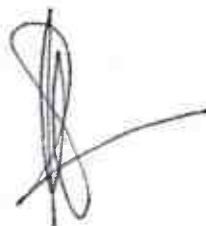
- Shri Vijay Kumar Rajak, UDC
- Brij Bhushan Sharma, Deputy Registrar



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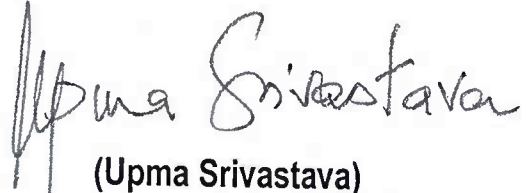
Observation/Recommendations:

6. Both the parties were heard.
7. Complainant submits that he was compelled to attend office during Covid lockdown. In its reply, Respondent countered the submission by stating that the Complainant was asked to attend office not during Covid lockdown but during Unlock-1, starting from 03 June 2020. Further, Respondent submitted that the Complainant belonged to senior management cadre, i.e. Upper Division Clerk. Hence, he was not allowed to perform 'work from home' during unlock phase – 1.
8. Submissions of the Complainant are contrary to guidelines issued by DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by O.M. dated 14.06.2021 and is still in force.
9. Hence, this court concludes that Respondent's act of compelling the Complainant is violative of DoPT guidelines.
10. Complainant also raised issue related to allocation of work. Complainant alleges that the nature of work allocated to him is detriment for his health, considering the nature of his disability.
11. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it mandatory for the government establishments to provide conducive environment to divyang employees.



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12. Hence, this court recommends that the Respondent shall not compel the Complainant to attend office during Covid as per various OMs issued by DoP&T and shall allocate work which is suitable for him considering his disability.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



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: 12591/1023/2021

R28501

Complainant: Shri Sandeep Sharma
House No. 56, 3rd Floor Right Side
Tyagi Mohalla Chattarpur, Near Axis Bank ATM
New Delhi - 110074
E-mail: <sandeepsharma@ircon.org>

Respondent: The General Manager (HRM)
Ircon International Ltd, Corporate Office
C - 4, District Centre, Saket, New Delhi - 110017
e-mail: <cmdsectt@ircon.org>

R28502

Complainant: 50% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **01.02.2021** has requested on following points: (i) due to bias/irrelevant transfer order issued against him he has faced financial loss in order to shift family from Bilaspur to Siliguri and coming from Siliguri to New Delhi for joining Corporate Office. The entitled financial support as per the company's rule should be provided. (ii) APARs intentionally downgraded should be reviewed and revised (iii) promotion decisions from AM/HRM to DM/HRM to be reviewed (iv) transfer to nearby native place i.e. Sivok Rangpoo Project, Siliguri.

2. The matter was taken up with the Respondent vide letter dated **03.02.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **05.03.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **09.04.2021**. During the hearing, representative of the respondent had sought extra time and case adjourned to **20.04.2021, 01.07.2021 & 04.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.082021**. The following were present:

- Shri Sandeep Sharma – complainant
- Adv. Debarshi Bhadra and Shri Kabir Hussain, Legal Officer on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant submits that he joined Respondent establishment in March 2017. In 2019 he was transferred to Bilaspur, Chattisgarh. In Bilaspur, work was not assigned and he was declared 'surplus staff'. Complainant submits that Respondent did not even provide desk and computer. Thereafter, he requested for transfer to native place, i.e. Siliguri, however, by order dated 29.05.2019, he was transferred to Corporate Office, New Delhi. Complainant's grievance is that at the time of transfer to Delhi, a post was vacant in Siliguri and some other employee was transferred there APAR downgraded twice with objective of denying promotion. Complainant further submits that in 2021, promotion from the post of Assistant Manager to Dy. Manager also denied.
5. Two major points of grievance raised by the Complainant are related to his transfer to New Delhi, rather than Siliguri, which is his hometown and second issue is related to denial of promotion.
6. On the issue of transfer, Respondent submits that Complainant himself, vide email dated 11.03.2019, requested to transfer him to either Siliguri (hometown) or Corporate Office, New Delhi. His demand was acceded to and he was transferred to New Delhi. He also filed complaint in CCPD, vide Complaint No. 11147/1022/2019, whereby he sought relief from CCPD to transfer to either Siliguri or New Delhi. Since his demand to transfer him to New Delhi was acceded to hence fresh demand to transfer him to Siliguri has been denied. Since the transfer was done on demand hence transfer benefits were not given. On the issue of promotion, Respondent submitted that reason for downgrading APAR was bad



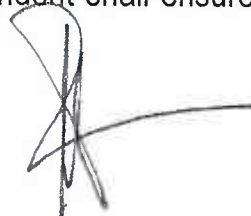
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performance and quarrelsome attitude. Further, because of Complainant's quarrelsome attitude, a lady officer also filed a complaint against him. Moreover, APR is given 15% weightage only while considering promotion. Other relevant factors are seniority (20%), service record (55%) and educational qualification (10%). DPC took all these factors into consideration and on the basis of all these factors he was denied promotion.

7. Right to practice any profession is a fundamental right, guaranteed under Part III of Indian Constitution. This right is guaranteed to Divyang citizens of this country, along with others. In context of special needs of divyang employees, this right is further strengthened by Right of Persons with Disabilities Act, 2016 and various other guidelines issued by Government of India from time to time. Section 20 of the Act, lays down that Government establishments are duty bound not to discriminate with divyang employees and also duty bound to provide conducive environment, barrier free environment and reasonable accommodation to divyang employees of the establishment. Before RPwD, Act 2016, DoPT issued O.M. dated 31.03.2014 whereby guidelines for providing certain facilities to divyang employees were prescribed. Objective of the statute and guidelines is to provide an environment to divyang employees in which they can utilise their capacity to optimum level and can perform as desired by them.

8. Similarly, DoPT O.M. dated 10.05.1990, read with another O.M. of DoPT dated 13.03.2002, lays down that divyang employees shall be posted at or near their native place. Respondent submits that the Complainant was posted in New Delhi on his choice, however, during online hearing Complainant submitted that New Delhi was his second choice. First choice of the Complainant was Siliguri.

9. This court concludes that for effective implementation of employment rights of the Complainant, detailed enquiry in the issues raised by the Complainant is indispensable. Hence, this court recommends that the Respondent shall constitute a 3 members Review Committee. The Committee shall review both the issues of promotion and transfer, raised by the Complainant. Further, it is recommended that the Respondent shall ensure that the

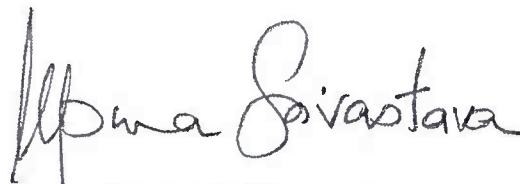


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members of the Committee shall not comprise any person who was involved in the decision on the issue of promotion or transfer, related to which the grievance has been filed. Moreover, with objective of saving time and resources, this court further recommends that the present Complaint of the Complainant be considered as Complaint filed before the 'Review Committee' of the respondent. Complainant shall not be compelled to file fresh Complaint before the Review Committee. A compliance report alongwith the report of the Committee with action taken may be submitted to this Court within three months of issue of this order.

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12616/1021/2021 | R2853

Complainant: Shri Satish Damodar Bagwe
E-mail: <satish.bagwe1103@gmail.com>

Respondent: The Managing Director
State Bank of India
Madam Cama Road, Nariman Point, Mumbai – 400021
E-mail: <dmd.cdo@sbi.co.in>

R28504

Complainant: 53% locomotor disability

GIST of the Complaint:

Complainant vide complaint, dated 19.02.2021 inter-alia submitted that Shri Satish Damodar Bagwe at present working as Asstt. General Manager, Vigilance Department, State Bank of India, Local Head Office, 3rd Floor, C – 5 Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051. He met with major Road Accident on 12/09/2001 while on official duty. The accident caused injuries all over body from head to leg. Consequent upon accident, he was under medical treatment for major period from 12/09/2001 to 01/09/2002 at Ruby Hall Clinic, Pune, Maharashtra and PD Hinduja Hospital, Mahim, Mumbai and was under physiotherapy treatment at residence for major period from 02.09.2002 to 23.12.2003. During this period and thereafter Bank has neglected the fact that he met with major accident whilst on official duty and could not attend examination/interviews conducted. Even bank has not given any letter for examination/interviews for the period even though he was eligible for promotion. Bank is merely saying that he was given opportunities which is not supported with documentary evidences. Thus bank is not justified in refusing promotions for which he is eligible as he has performed well and satisfy all criteria. But bank has advised him that as per promotion policy of SBI, there is not reservation for Physically Handicapped person in promotions which is contradictory to Government guidelines for reservation for promotion to Physically Handicapped person in Public Sector Bank. He has performed exceedingly well even after accident whilst on official duty. He also attended office without break even home during entire period from March 2020 to January 2021.

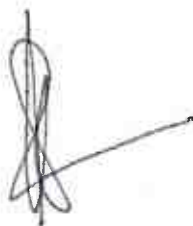
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2. The matter was taken up with the Respondent vide letter, dated **23.02.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Chief General Manager, State Bank of India vide letter, dated **03.04.2021** inter-alia submitted that neither the provisions of said Act nor any office memorandum issued by the Government of India or promotion policy of the Bank, stipulate any reservation for the persons with disability. The complainant is claiming back date effect of promotion to SMGS-IV for year 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09 as against his promotion, which he received on 17.07.2009 and for promotion to SMGS-V with back date effect of 30.03.2017. Complainant made a presentation in the year 2018, which was duly replied by the Bank vide letter dated 03.03.2018. Shri Satish Bagwe is eligible for promotion to TEGS-VI in the current promotion year i.e. 2021-22 and his name is included in the Zone of consideration list published by Cadre Management Department, Corporate Centre on 15.03.2021. The Bank humbly submits that the complainant can not raise the dispute of his promotion with back date effect once the complainant has accepted his promotion to SMGS-IV & SMGS-V without any protest and Doctrine of Promissory Estoppel would set in and he can not raise any dispute with regard to promotion to SMGS-IV, which he accepted in the year 2009. Respondent reiterated that since there is no reservation policy in promotion either under the Act or under any of the Government of India guidelines or promotion policy of the Bank, the complaint of complainant deserves to be dismissed as lacking any merit and substance. The Bank reserves its right to give additional submission on production of fresh documents by the complainant.

4. The complainant in his rejoinder dated **20.04.2021** showed his dissatisfaction towards the respondent's reply.

5. After considering the respondent's reply dated **03.04.2021** and the complainant's rejoinder **20.04.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **07.07.2021**.



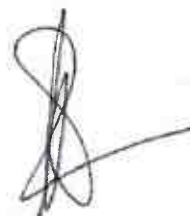
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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.07.2021**. The following were present:

- Shri Satish Damodar Bagwe – complainant
- Annapurni Venkatesh, AGM Law and GM Goel, G.M. on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.
7. Complainant submits that the Respondent establishment has denied to extend reservation in promotion for Persons with Disabilities.
8. Respondent submits that the Complainant was promoted even without extending reservation in promotion.
9. Further, Respondent submits that reservation in promotion is not extended for Persons with Disabilities because as per Section 34 Proviso of Rights of Persons with Disabilities Act, 2016, reservation in promotion shall be in accordance with such instructions as issued by appropriate government from time to time. Respondent submits that the 'appropriate government' in the present case is Department of Personnel & Training ('DoPT'). Since DoPT has not issued any instructions on this point hence, Respondent cannot extend reservation in promotion to Persons with Disabilities.
10. RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision. Judgement delivered in RAJEEV KUMAR GUPTA case was upheld by Hon'ble Supreme Court recently in STATE OF KERALA VS LEESAMMA JOSEPH, decided on 28.06.2021.



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

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

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

14. In view of the clear directions of the Hon'ble Supreme Court and as fully detailed in the enclosed Orders, this court recommends that the Respondent shall puruse the Orders attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the provisions of Rights of Persons with Disabilities Act, 2016 and judgments of the Supreme Court of India, deliniated in the Orders attached.



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15. Respondent is also recommended to forward the copy of this Order along with the attachment to Postal Directorate for effective implementation of this Order.

16. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2021

End: As above



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11958/1011/2020 **R28568**

Complainant :

Shri Akash C.V.,
Room No.106,
DQA(WP) DGQA,
H-Block, DHQ,
Nirman Bhawan,
New Delhi – 110 011

Versus

Respondent 01:

Director General of Personnel,
Engineer-in-Chief's Branch,
Integrated HQ of MoD (Army),
Kashmir House, Rajaji Marg,
New Delhi – 110 011.

R28569

Respondent 02:

Union Public Service Commission,
(Through the Secretary)
Dholpur House,
Shahjahan Road,
New Delhi - 110069

R28570

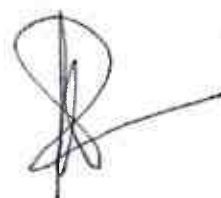
Disability : 45% Hearing Impairment

Gist of Complaint:

Shri Akash C.V, the complainant vide his complaints dated 05.03.2020 and 11.12.2020 submitted that IDSE cadre is an organized Group 'A' cadre under Military Engineering Service, Ministry of Defence and total sanctioned cadre strength is 1038 as per S.R.O.9 dated 16.03.2016. As per Engineering Service Examination Rules 2020, IDSE cadre posts are identified suitable for OA and HH category under PwD reservation. However, as on date MES has not reserved any vacancy for HH person and exclusively granted the provision of reservation for OA person under PwD reservation. It is also learned that there is no HH person available in Group A post in MES. The matter has been highlighted before MES through CPGRAMS portal vide his grievance application No.MODEF/E/2020/00692 dated 05.03.2020 reminder dated 05.08.2020 and requested them to amend the recruitment requisition for ESE 2020 as per the reservation roster. The complainant has prayed for the following;

2/-

- i) To direct UPSC to recruit HH person against the vacancy for OA person under PwD reservation in ESE 2020.
 - ii) To insist MES to calculate 1% backlog vacancies in Group 'A' posts from 01.01.1996 against total reported vacancies from 01.01.1996. and report the backlog vacancies for HH persons in next recruitment.
2. No reply from the Respondent received.
3. The Respondent No.2 vide its reply dated 20.01.2021 submitted that the Commission conducts Engineering Services Examination as per the Rules of the Examination which inter-alia contain the list of Services/Posts identified suitable for persons with Benchmark Disability category along with the physical requirements and functional classifications. The vacancies along with category-wise composition (SC/ST/OBC/EWS/PwBD) to be filled up on the basis of the Examination are furnished by the Cadre Controlling Authorities (CCAs) of the participating Services of the Examination. The Commission finalizes the result and recommends candidates after consolidating the vacancies (stream-wise :- Civil Engineering, Mechanical Engineering, Electrical Engineering and Electronics & Telecommunication Engineering) furnished by the CCAs concerned. Vacancies in respect of the Indian Defence Service of Engineering is reported by Ministry of Defence. The Commission has no role in calculation of vacancies, earmarking of such vacancies amongst different categories of candidates including PwD category or for that matter distribution of PwD vacancies amongst sub-categories. This strictly falls within the ambit of the CCA concerned. Thus the complaint as well as the relief sought therein falls in specific domain of the Ministry of Defence (IDSE) and the Commission has no role in the matter.
4. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 19.02.2021.
5. The following persons were present during the hearing ;
1. Shri Akash C.V., the complainant in person.
 2. None represented Respondent No.1,
 3. None represented Respondent No. 2.
6. The complainant was heard during the hearing.



7. The Court directed Respondent No. 1 to file a written reply to the Court within 15 days of issuance of the Record of Proceedings.

8. As no reply has been received from Respondent No.1, an online hearing has been scheduled on 20.04.2021 at 3:00 p.m and the said hearing was postponed in view of lockdown due to COVID-19 pandemic. Finally the parties were heard through online hearing on 01.07.2021.

9. The following persons were present during the hearing on 01.07.2021;

- 1) Shri Akash C.V., complainant in person.
- 2) Shri Ravinder Agar, Advocate for Respondent No. 1
- 3) Shri Ajay Kumar Jain, Director (Cadre & Management) and Shri Nitin Bhardwaj, Nodal Officer, Ministry of Defence (Respondent No.2)

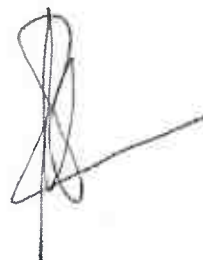
OBSERVATIONS & RECOMMENDATIONS

10. Complainant has submitted that since 2011 till 2020, vacancies in various branches of Engineering have been advertised. Respondent reserved seats for Divyangjan, however, each time reservation was given to Locomotor Disability Divyangjan and no vacancy was ever reserved for subcategory of Hearing Impaired.

11. Respondent No. 1 submits that the irregularity was identified and requisition sent to UPSC in year 2020 was amended in year 2021.

12. This court receives number of complaints whereby irregularities in recruitment examination process are pointed out. This court takes this opportunity to delineate various guidelines issued by Government of India on following issues related to recruitment examination –

- 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



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

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

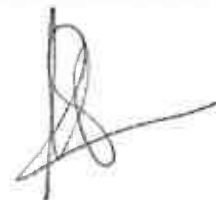
14. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 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>

15. Addition of any post from this list –

- a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that the list in which jobs suitable for Divyangjan are identified, 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 04.01.2021 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

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



- b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 04.01.2021, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.
- c) Point 4 of the notification dated 04.01.2021 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

16. 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

17. 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.

18. 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.

19. 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



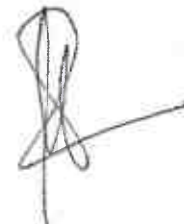
or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

20. 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)

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

22. 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 subsequent 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 of a person other than from the persons with disabilities.

23. 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.

24. 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

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

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

EXAMINATION FEES

26. 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

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


28. 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.

29. 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.

30. 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.

31. 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.

32. 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

33. 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.

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

SELECTION ON MERITS

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

DETAILED PROCEDURE FOR MAINTAINING ROSTER

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

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

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



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

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

- a) The new cycle started on 01.01.2018 and there are 27 vacancies in a group. The points reserved for PwD are 1 & 26. The first vacancy goes to Blind and Low vision i.e. (a) category. The 26th vacancy goes to Deaf and hard of hearing i.e. (b) category. As and when 51 vacancies arise it goes to (c) category and 76th vacancy goes to (d) category.
- b) If the cycle as on 15.01.2018 started already and the first vacancy is filled by (a) category, then 26th, 51st and 76th vacancies shall be filled in by the applicants belonging to (b), (c) and (d) category.
- c) If the cycle already started as on 15.01.2018 and the first vacancy was filled in by Hearing Handicapped (HH) category then the remaining vacancies i.e. 26, 51 and 76 as and when arises shall be filled in by (a), (c) and (d) category candidates. The aim of the Appointing Authority should be to fill up the vacancies by the categories for which the points are meant. For whatever reason, the points are filled in by other categories than the one for which they are meant for, by the end of the cycle, all the 4% (points 1, 26, 51 and 76) should be filled in the (a), (b), (c) and (d) categories.
- d) If there are backlog vacancies, they are to be filled in by the categories for which they have been carried forward.
- e) For inter-change of the vacancies, the procedure is laid down in the O.M. dated 15.01.2018.
- f) The 4% is to be calculated on the number of vacancies in a particular group i.e. A/B/C.
- g) The roster is to be maintained group wise i.e. A/B/C.
- h) In Group B and C, it is 4% of total vacancies (not posts). In Group A, it is 4% of vacancies in identified posts.
- i) This is a vacancy based roster and not post based roster.



- j) This is a horizontal roster i.e. the point reserved under 1/26/51/76 may also be a point reserved for SC/ST/OBC/EWS.

40. This Court perused notification dated 07.04.2021 issued by Respondent No.2. It is certain that the notification was issued on the basis of requisition sent by Respondent No. 1. In the notification, post of Indian Defence Service Engineers is identified suitable for 'PD' and 'OA' categories. In the same notification it is mentioned that abbreviations used are as per M/o SJ&E notification dated 29.07.2013. Moreover, 'PD' is indicated as 'Partially Deaf'. There is irregularity in the notification. Since notification was issued on 07.04.2021, hence Respondents should have used terms which are mentioned in M/o SJ&E Notification dated 04.01.2021 or in Rights of Persons with Disabilities Act, 2016. M/o SJ&E Notification dated 29.07.2013 has been replaced by Notification dated 04.01.2021, hence it is irregular to use terms mentioned in 2013 Notification.


41. Terms 'Partially Deaf' is neither mentioned nor defined in M/o SJ&E Notification dated 04.01.2021 or in RPwD Act, 2016. RPwD Act, 2016 in its schedule categories Hearing Impairment in two categories, i.e. 'Deaf' and 'Hard of Hearing'. Similarly, M/o SJ&E Notification dated 04.01.2021 mentions terms 'Hard of Hearing' and not 'Partially Deaf'.

42. Hence, this Court recommends that Respondent No.1 shall identify post as per M/o SJ&E Notification dated 04.01.2021. Moreover, Respondent shall use terms which find mention in RPwD Act, 2016 and M/o SJ&E Notification dated 04.01.2021. Further, this Court recommends that the Respondent No.1 shall amend the requisition sent in the year 2020 and re-send the requisition to Respondent No.2. After receiving amended requisition, Respondent No.2 shall issue necessary corrigendum amending Notification dated 07.04.2021.

43. This Court further recommends that the Respondent No.1 shall always keep in consideration the above-mentioned guidelines and rules while sending requisition to agencies responsible for conducting recruitment examinations.

44. The case is disposed off accordingly.

Dated: 26.08.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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

केस संख्या : 12711/1022/2021 **R28572**

के मामले में

शिकायतकर्ता : श्रीमति धर्मवती,
 माता श्री सुमित कुमार,
 132, गांव - ताजपुर खुर्द,
 डाखना छावला, नई दिल्ली-110071

संपर्क नंबर : 08368073302

बनाम

प्रतिवादी : रेलवे बोर्ड
 (द्वारा -सचिव),
 रेल मंत्रालय, रेल भवन,
 नई दिल्ली - 110001

R28573

GIST OF COMPLAINT

शिकायतकर्ता श्रीमती धर्मवती ने अपनी शिकायत में कहना है कि उनका बेटा 53 प्रतिशत शारीरिक दिव्यांग है तथा वह सहायक कार्य प्रबंधक के पद कार्यरत है। शिकायतकर्ता ने आगे कहा है कि वह ज्यादा देर तक खड़ा होकर अपनी ड्यूटी करने में असमर्थ है एवं बैठकर कार्य करने में समर्थ है। शिकायतकर्ता का आगे कहना है कि उनके बेटे को कोर्ट के आदेश केस स. 6610/1022/2016/डी622 दिनांक 23.12.2016 के अनुसार कोफमो, तिलक मार्ग में स्थानांतरित किया गया था और वर्तमान में शिकायतकर्ता का बेटा कोफमो कार्यालय जो कि तिलक मार्ग पर स्थित है कार्यरत है। रेलवे बोर्ड स्थानांतरण आदेश द्वारा तीन ऑफिसर्स के स्थानांतरण किए गए हैं। जिसमें से शिकायतकर्ता के बेटे को जो कि शारीरिक रूप से दिव्यांगजन है का स्थानांतरण 2200 कि. मी दूर पुनः आईसीएफ (ICF), चेन्नई कर दिया है।

शिकायतकर्ता ने आगे कहा है कि उनके बेटे की धर्म पत्नी भी केंद्रीय भण्डारण निगम (भारत सरकार का उपक्रम) नई दिल्ली में कार्यरत है और उसे मानसिक (epilepsy) संबंधित बीमारी है तथा उस बीमारी का इलाज मेंदाता हॉस्पिटल, गुरुग्राम में चल रहा है, और उसको दवाई दिलवाना व उसकी निरंतर देखभाल करना बहुत जरूरी है।

शिकायतकर्ता ने आगे कहा है कि वह एक वृद्ध महिला है तथा स्पाइडन प्रॉब्लम से ग्रसित है तथा उन्हें भी बार-बार इलाज के लिए हस्पताल जाना पड़ता है।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उनके दिव्यांग बेटे के चेन्नई स्थानांतरण को दिव्यांगता और स्पाउस आधार पर नियमानुसार तुरत परभाव से रोक (स्टे) कराने का अनुरोध करती है।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.04.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. शिकायतकर्ता ने पत्र दिनांक 07.06.2021 को सुचित किया है कि उनके बेटे को रेलवे बोर्ड द्वारा चेन्नई आदेश रद्द करके उसे उत्तर रेलवे कार्यालय बड़ोदा हाउस नई दिल्ली कार्यालय में स्थानांतरण कर दिया है। अतः शिकायतकर्ता ने पुनः निवेदन किया है कि संबंधित रेलवे बोर्ड के अधिकारियों को निर्देश दे कि दिव्यांगजनों के कल्याण के लिए भारत सरकार द्वारा जो भी आदेश जारी किए जाते हैं उनके समुचित अनुपालन के लिए रेलवे बोर्ड द्वारा भविष्य के लिए योजना / पालिसी बनाई जाए ताकि सभी दिव्यांगजन कर्मचारी/अधिकारी अपने अधिकारों से वंचित न रहें।

[Signature]

4.

Observation /Recommendations:

i) Rights of Persons with Disabilities Act, 2016 in its preamble lays down the objectives which are sought to be achieved by the legislation. Some of the objectives are 'Non-discrimination', 'Equality of Opportunity' and 'Full and Effective Participation and Inclusion in Society'. To achieve these objectives certain rights are conferred and recognized by the Act and authorities are established and entailed with certain duties. One such Chapter is Chapter IV which deals with Rights and Duties with respect to Skill Development and Employment. Section 20 of the Act, which falls in Chapter IV lays down that government establishment shall not discriminate with persons with disability in any matter relating to employment. 'Discrimination' is a wide term which is defined in Section 2(h) of the Act. As per the definition, 'discrimination' means any act of restriction or exclusion which impairs or nullifies the enjoyment of all human rights and fundamental freedoms at par with other human beings who do not belong to PwD category. Definition further lays down that denial of reasonable accommodation is also discrimination. 'Reasonable Accommodation' is defined in Section 2(y) of the Act. It means necessary and appropriate modification and adjustments made to ensure that Persons with Disabilities can enjoy their human rights and fundamental rights equally at with others.

ii) Further Section 3 of the Act lays down that appropriate government shall take steps to ensure reasonable accommodation for Persons with Disabilities. Combined reading of Section 20 and Section 3 of the Act taking into consideration various definitions in Section 2, manifests the intention of the legislature. In order to make sure that Persons with Disabilities can enjoy their basic fundamental rights equally with others, appropriate government is duty bound to make necessary changes and modifications.

iii) Further, DoPT OM No. A-B 14017/41/41/90 dated 10.05.1990, lays down that employees with disabilities may be given preference in transfer to or near their native place. The objective of the OM is that employees with disabilities may be precluded from hardships which come along with inter-state transfer because of change in social and linguistic differences. Any person with Disability may find it difficult to quickly adapt to such changes because of hardships he has to face because of disability.

iv) Further DoPT OM No. 36035/3/2013-Estt.(Res), dated 31.03.2014, which provides in Para H that divyang employees may be exempted from rotation transfer policy/transfer and may be allowed to continue in the same job. Objective of the O.M. is to provide conducive environment to divyang employee where she/he can achieve desired performance.

v) This court recommends that the Respondent shall retain the Complainant at Delhi Office and shall cancel the transfer Orders in accordance with legal provisions and guidelines listed above.

5. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12710/1023/2021 **1228574**

Complainant: Shri Upesh Kumar
Attender, Canara Bank, Shahdara

Respondent: The Managing Director & Chief Executive Officer
Head Office, Canara Bank, Jeevan Prakash Building
113-I, JC Road, Bengaluru, Karnataka - 560002
E-mail: <rajakrishnan.r@canarabank.com>

1228575

Complainant: 50% Locomotor disability

GIST of the Complaint:

प्रार्थी श्री युपेश कुमार का अपनी शिकायत दिनांक 13.04.2021 में कहना है कि वह केनरा बैंक, शाहदरा में बैंक अटेंडर के पद पर कार्यरत है जहाँ उनको ब्रांच मैनेजर परेशान करते हैं स्थानांतरण की धमकी देते हैं।

2. The matter was taken up with the Respondent vide letter dated 24.05.2021 under Section 75 of the RPwD Act, 2016.

3. The General Manager, Canara Bank, Bengaluru vide letter dated 06.07.2021 inter-alia submitted that they deny all the allegations made by the complainant as there is no iota of truth in same. They further submitted that after investigation, it was observed that complainant was allotted with only light work and he himself had requested for transfer.

4. After considering the respondent's reply dated 06.07.2021 and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 11.08.2021.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.08.2021. The following were present:

- Complainant - absent
- Shri Sarvana, AGM (Legal) on behalf of respondent


Observation/Recommendations:

5. Complainant submits that Branch Manager of the Respondent establishment, Shri Ashok Verma and his attendant Shiv, tease the Complainant for not being able to perform some jobs like making of slip bundles. Due to challenges presented before the Complainant because of nature of his disability, some jobs cannot be performed by the Complainant. Further, Complainant submits that both the persons named above threaten to transfer him to branch situated in remote areas.

6. Main cause of grievance of the Complaint was the branch manager. His transfer to some other branch has eliminated the cause of Complaint. However, this Court is inclined to recommend that the Respondent shall conduct counselling to sensitize all the employees of the branch where Complainant is employed. Such sensitization drives may be conducted by the Respondent on regular basis in offices and branches of the Respondent establishments.

7. Moreover, this Court also attracts the kind attention of the Respondent to the issue of rotational transfer of divyang employees. With an objective to provide conducive environment to divyang employee where she/he can achieve desired performance, DoPT O.M. No. 36035/3/2013-Estt.(Res), dated 31.03.2014, provides in Para H that divyang employees may be exempted from rotational transfer policy/transfer and may be allowed to continue in the same job.

8. This Court recommends further that the Respondent shall take note of the O.M mentioned above for future reference and shall exempt divyang employees from rotational transfer.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12724/1011/2021

Complainant:

Shri Girithar T.A.
4-175, Jangalapuram Road,
N. Puduppatti,
Namakkal,
Tamil Nadu – 637020

....Complainant

Versus

Respondent :

Indira Gandhi Centre for Atomic Research
(Through the Director)
Department of Atomic Energy,
Kalpakkam,
Tamil Nadu – 603102.

....Respondent

Disability : 90% locomotor disability

Gist of Complaint:

Shri Girithar T.A., a person with 90% locomotor disability vide his complaint dated 20.05.2021 submitted that he is currently pursuing final year B.Tech Metallurgical and Materials Engineering in National Institute of Technology, Tiruchirappalli. He wanted to apply in the direct recruitment of Indira Gandhi Centre for Atomic Research (IGCAR) for the post of Technical Officer/C Group 'A' post against their Advt. No. IGCAR/02/2021. He submitted that there are no physical requirements /medical standards mentioned in the advertisement and no reservation allocated for PwDs with benchmark disability. In the online application it is mentioned that "PwD candidates are not eligible to apply for this post". Therefore, he could not even apply for the post online which is denial of reservation. He has requested to consider his candidature for the above mentioned post irrespective of the closure date of application, i.e. 14.05.2021.

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2. The matter was taken with the Director, Indira Gandhi Centre for Atomic Research vide letter dated 28.05.2021.

3. The Chief Administrative Officer, IGCAR vide letter dated 28.06.2021 submitted that 03 posts in Technical Officer/C (Group 'A'), 04 posts in Work Assistant/A (Group 'C') and 04 posts in Canteen Attendant (Group 'C') has been reserved for PwDs as given below.

Post Code	Post Name	Benchmark Disabilities Considered
TOC-02 to TOC-08, TOC-11 and TOC-12 (Excluding TOC-01, TOC-09 & TOC-10)	Technical Officer /C	a) Hard of Hearing (HH) b) One Arm (OA), One Leg (OL) in Orthopedically Handicapped. c) Dwarfism (Dw) and d) Acid Attack Victim (AAV)
AUX-03	Work Assistant/A	a) Low Vision (VH) b) Hard of Hearing (HH)
AUX-04	Canteen Attendant	c) Orthopedically Handicapped (OH), Dwarfism (Dw) & Acid Attack Victim (AAV) d) Autism Specific Disability (ASD), Intellectual Disability (ID), Specific Learning Disability (SLD) & Mental Illness (MI)

The Respondent submitted that the candidates willing to apply for any of the advertised posts should possess the required educational qualification as on the crucial date, i.e. 14/05/2021 whereas the complainant willing to apply for the post of Technical Officer/C (Metallurgy) has not yet completed his Graduation in the respective field. Hence, the complainant is not eligible to apply for the said post. Besides, Metallurgy is not identified for persons with disabilities.

4. The complainant vide his rejoinder dated 20.07.2021 submitted that the Respondent's statement that radiological nature being carried out in IGCAR, the posts TOC-1(Atmospheric Science/Meteorology), TOC-9(Mechanics) & TOC-10 (Metallurgy) are not suitable for

persons with disabilities. He submitted that it is not clear how radiation specifically affects persons with disabilities. The complainant raised his concern in making the post TOC-10 Metallurgy not eligible for PwDs by the Respondent. He further submitted that in the Advt. No.IGCAR/02/2021 on page 13 Section VIII, under General Instructions point 4 says "The eligibility criteria including the age, educational qualification and period of experience as prescribe in the advertisement will be determined with reference to the last date of receipt of applications' but in their reply dated 28.06.2021 they have mentioned that candidate should possess the required educational qualifications as on the crucial date, i.e. 14.05.2021 which seems an irrational statement to reject his candidature.

5. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 24.08.2021.

6. The following persons were present during the hearing;

- 1) Complainant: Shri Girithar T.A. in person
- 2) Respondent: Shri K.R. Seturaman, CAO on behalf of Respondent.

Observations & Recommendations

7. Complainant submits that the Respondent issued notification for various Group A post. Complainant applied for the post of Technical Officer/C – Metallurgy discipline. Total number of Group A posts advertised by the Respondent were 46 and no post was reserved for PwBD. Respondent further alleged that he was not even able to fill up examination form because, while filling up online form, message box popped up informing that PwD candidate is not eligible for applying for the post.

8. After receiving notice of this Court, Respondent reviewed the matter and reserved 03 posts for PwBDs in Group A vacancies. Regarding Complainant's submission that he was not able to fill up online form, Respondent submitted that considering the radiological nature of



activities which are carried by the Respondent, posts of Technical Officer of 3 disciplines are not identified for PwBDs. These 3 disciplines are – Meteorology, Mechatronics and Metallurgy. Complainant could not apply because Metallurgy discipline is not identified suitable for PwBD. Respondent further submitted that the Complainant did not possess minimum educational qualification of graduate degree hence he was not even eligible for applying for the post. Cut-off date for determining educational qualification was closing date of online form, i.e. 14.05.2021. Complainant did not possess graduation degree, hence was not eligible.

9. Since Respondent has reviewed the matter and has reserved more than 4% of Group A vacancies hence, this issue is settled. Issue which remains is relating to exemption of 3 disciplines which are Meteorology, Mechatronics and Metallurgy. Respondent has not submitted any document or reason to support the contention that why these 3 disciplines have been exempted.

10. During online hearing it was submitted that the Respondent referred to list of posts identified suitable for Persons with Disabilities dated 04.01.2021 issued by M/o SJ&E. Post of Technical Officer finds no mention in the list of Group A posts. Hence, Respondent exempted 3 disciplines namely, Meteorology, Mechatronics and Metallurgy. Decision to exempt these disciplines was not based upon recommendation of M/o SJ&E or of any expert committee constituted in this behalf.

11. Kind attention of the Respondent is invited to Note 6 of the M/o SJ&E which provides that the list published by M/o SJ&E is principal list and empowers Central Government establishments to publish their own list.

12. Hence, this Court concludes that exemption of 3 disciplines in the post of Technical Officer because this post does not find mention in M/o SJ&E list is bereft of any reason.

13. Plethora of Complaints are filed before this Court relating to the issue of recruitment. This Court had an opportunity to delineate laws and guidelines related to various aspects of recruitment process in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021,



titled as NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH. Copy of the Order is attached along with.

14. Since the Complainant did not possess minimum educational qualifications as on the cut-off date hence, intervention of this Court is not warranted on the issue of Complainant's eligibility for applying for the post.

15. With respect to issue of identification and exemption of Technical Officer/C, this Court recommends that the Respondent shall identify this post and other posts for different categories of disabilities only on the grounds of functional requirements for such posts. Further this court recommends that the Respondent shall pursue the Copy of the Order attached along with and shall follow all the guidelines delineated while conducting recruitment in future.

16. The case is disposed off.

27.08.2021

Encl : As above


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

Extra

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12614/1021/2021

Complainant: Shri Ramanuj Tiwari
116/24, Purani Basti Ram Lla School
Village – Rawatpur, Kanpur Nagar,
Kanpur Nagar, Uttar Pradesh – 208019

Respondent: The Directorate General
Ministry of Housing & Urban Affairs
Central Public Works Department
A – Wing, Room No. 101, Nirman Bhawan, New Delhi

Central Public Works Department
Through the Directorate General
A-Wing, Room No. 101, Nirman Bhawan, New Delhi
E-mail: <cpwd_dgw@nic.in>

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उनकी नियुक्ति सी.पी.डब्लू.डी., कानपुर में चतुर्थ श्रेणी के पद पर दिनांक 21.08.1996 में हुई थी तथा नियुक्ति के समय उन्होंने राष्ट्रीय दृष्टिहीन संस्थान द्वारा प्राप्त टाइपिंग टेलीफोन ऑपरेटर का प्रमाण पत्र जमा करवाया था जो कि सर्विस बुक से गायब कर दिया गया। प्रार्थी का आगे कहना है कि उनके जूनियर श्री राजेन्द्र प्रसाद को दो बार पदोन्नति मिल चुकी है परन्तु उन्हें आज तक पदोन्नति नहीं दी गई जबकि वह एम.ए. पास हैं।

2. The matter was taken up with the Respondent vide letter dated 22.02.2021 under Section 75 of the RPwD Act, 2016. But despite reminder dated 19.03.2021, no response has been received from the respondent. Therefore, hearing scheduled on 05.07.2021.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 05.07.2021. The following were present:

- Shri Ramanuj Tiwari - complainant
- Shri Aman Gupta, Executive Engineer and Shri Vimal Kumar, Chief Engineer, Chandigarh Branch on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant submits that he was appointed in Respondent establishment on 21.08.1996. Since his appointment he has not been promoted even once. His junior Rajendra Prasad Kashyap, who got appointed on the same post, has been promoted twice.
5. Respondent submits that the complainant was not promoted because prior to 2012 there was no provision for promotion in recruitment rules of the respondent establishment except for promotion by departmental exam. Rajendra Prasad Kashyap qualified departmental exam and hence was promoted twice.
6. This Court concludes that non promotion of the complainant is violation of RPWD Act, 2016. It is admitted by the respondent that the promotion was denied to the complainant because of fault in recruitment rules of the respondent establishment. Promotion must be done according to seniority of the employees. It is astonishing that an employee who is part of respondent establishment since 25 years is not being promoted even once. Respondent establishment cannot hide behind faulty recruitment rules. It was the duty of the respondent establishment to amend the recruitment rules and promote the employees.
7. Hence this Court comments that the respondent shall:-
 - a) Check the records of the establishment and even if the name of the complainant appears in extended panel promote the complainant as soon as possible.



b) Give special pre promotion training to all Divyang employees, for passing departmental exams.

8. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2021



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12602/1024/2021

Complainant: Ms. Mini Goyal
D/o Late Shri Rakesh Kumar Goyal
T-14/2, DLF Phase 3, Gurugram
E-mail: <minigoyal3184@gmail.com>

Respondent: The CMD
South Eastern Coalfields Ltd
Seepat Road, Bilaspur, Chhatisgarh - 495006
E-mail: <cmd.secl.cil@coalindia.in>

Complainant: 90% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **03.02.2021** submitted that his father was retired on 31.03.2013 as a Dy. Chief Engineer (E&M) Central Stores, SECL, Chhatisgarh and he expired on 25.10.2020. Thereafter, being an only disabled child of the deceased, her name was supposed to be in PPO but it was not done by the Department/pension issuing authorities.

2. The matter was taken up with the Respondent vide letter dated **11.02.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager, South Eastern Coalfields Ltd vide letter dated **20.03.2021** submitted that matter has been taken up with concerned CMPFO Commissioner, Bilaspur and they have informed that as per the CPMS-1998 those children who attain the age of 25 years are not entitled for children pension (disabled case is silent in the scheme and her father's monthly arrear pension from Feb 2020 to his death i.e. October 2020 was calculated and settled for an amount of Rs. 2, 40, 856/- to be deposited in her given bank account.

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4. After considering the respondent's reply dated **20.03.2021** and the complainant's rejoinder **23.03.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **20.04.2021** but due to Lockdown, hearing rescheduled on **01.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **01.07.2021**. The following were present:

- Ms. Mini Goyal – complainant
- Shri A.K. Saxena, General Manager on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complaint is related to non-payment of Family Pension. Complainant's father was the employee of Respondent establishment and retired from the service in April 2013. Later on 25.10.2020 he left for his eternal adobe. Complainant applied for grant of family pension on the grounds of disability, which was rejected by the Respondent.

7. Respondent has submitted that Complainant's claim was rejected under Coal Mines Pension Scheme, 1998 ('CMPS' for short). As per the Respondent, CMPS is silent on the issue of granting family pension to disabled child of the deceased pensioner/employee. Hence, the claim of the Complainant was rejected in absence of rule in CMPS.

8. Respondent's submission cannot be accepted. Though CMPS is silent on the issue of granting family pension to disabled child, rules on this issue are well defined in CCS Pension Scheme, 1972 and OMs issued by Government thereafter. This court has received several Complaints on the issue of Family Pension and hence, this court had an opportunity to delineate rules and guidelines on the issue of granting Family Pension to disabled child.



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9. Rule 54 of CCS (Pension) Rules, 1972 lays down provisions for Family Pension. Sub Rule 6 of Rule 54 contains provision relating to time period for which Family Pension is payable. As per the provision, Family Pension is granted in favour of son of Government Servant till the age of 25 years maximum. Similarly, in case of daughter of Government Servant, maximum period for which Family Pension is granted is till marriage or re-marriage of such daughter or until she starts earning her livelihood. However, second Proviso carves out the exception to the above rule. As per the Proviso, Family Pension is granted to son or daughter of Government Servant for life if following conditions are fulfilled –

- a) Such daughter/son is suffering from physical/mental disability; and
- b) The disability is such so as to render her/him unable to earn livelihood; and
- c) Inability to earn the livelihood is evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child.

10. **ISSUE** – Whether certificate declaring the disabled daughter/son as 'unable to earn livelihood' is necessary?

11. It is pertinent to note here that, as per Rule 54, such certificate is necessary before allowing Family Pension. The same was held by CAT, Bombay Bench in matter of Sri Shamson Robinson Khandagle v. Union Of India; 2013 SCC OnLine CAT 436. Tribunal held that Disability Certificate alone is not requisite certificate to make the applicant eligible for Family Pension. Applicant in this case produced certificate of 60% disability and pleaded that certification of 60% disability alone proves his inability to earn livelihood. Tribunal rejected this contention.



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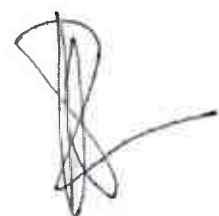
12. **ISSUE** - Who will issue the certificate declaring the person 'unable to earn livelihood' OR who will decide issue of inability to earn livelihood?

13. Two O.M.s, O.M. No. 1/18/01-P&PW(E), dated 30.09.2014 and O.M. No. 1/18/01-P&PW(E), dated 05.11.2015 sheds light on the history and clarify the issue. Prior to O.M. dated 30.09.2014, competent authority to issue disability certificate for the purpose of family pension was 'Medical Officer' not below the rank of 'Civil Surgeon'. Later the position was changed and Medical Board comprising of Medical Superintendent and two other members was made competent authority to issue disability certificate replacing 'Civil Surgeon'. Subsequently by O.M. dated 30.09.2014, it was decided that for issuing disability certificate the competent authority would be as specified in the guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010. For the purpose of issuing disability certificate for 'Multiple Disabilities', Medical Board was retained as competent authority.

14. Subsequently, by O.M. No. 1/18/01-P&PW(E), dated 05.11.2015, the rule was formed that in addition to authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010, competent authority to issue disability certificate would also be any hospital or institution specified as Medical Authority by state or central government for the purpose of Persons with Disabilities Act, 1995. Hence, as per the two notifications competent authorities to issue disability certificate are –

- a. Medical Board in case of 'Multiple Disabilities' only;
- b. Authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010;
- c. Any hospital or institution specified as Medical Authority by state or central government for purpose of issuing disability certificate.

15. **ISSUE** – Can Appointing Authority decide to grant family pension by itself, in absence of Disability Certificate?



16. With respect to Appointing Authority, word used in the rule is SATISFY. Rule DOES NOT SAY that Appointing Authority can decide whether the applicant can earn his livelihood or not. Further, the rule says that such satisfaction has to be evidenced by the Certificate issued by the Medical Board.

17. This position was made clear by Gujrat High Court in the matter of Naresh Bansilal Soni v. Union of India; 2016 SCC OnLineGuj 654. In this case Appointing Authority stopped Family Pension on the ground that the beneficiary did not produce 'living certificate'. Later he was denied the benefit on the ground that he was present in person before the Appointing Authority and he looked physically abled to earn his livelihood. Court held that decision of Appointing Authority that beneficiary can earn his livelihood, is arbitrary. Court held that in order to preclude Appointing Authority from taking arbitrary decisions, Rule lays down that such satisfaction has to be evidenced by the Disability Certificate. Hence, subjective decision of authority is illegal and arbitrary.

18. It was held in a case reported as Narsi SambunathSuval v. G.M. Western Railways; 2015 SCC OnLine CAT 1584 by CAT, Ahmedabad that such certificate cannot be issued even by the private hospital. CAT decided that such certificate would be valid ONLY if it is issued by the prescribing authority.

19. **ISSUE** – When it can be deemed that the person is earning his livelihood?

20. O.M. No. 1/17/2019 P&P W (E), issued by Ministry of Personnel Public Grievances and Pension, dated 08.02.2021 settled the issue. As per the OM such disabled child shall be deemed to be not earning her/his livelihood if her/his overall income from sources other than family pension is less than the entitled family pension at ordinary rate and the dearness relief admissible thereon, payable on death of Government servant or pensioner concerned.

21. However, O.M. does not absolve the child from producing medical certificate declaring him 'unable to earn livelihood'. Para 4 of the O.M. lays down the same. As per the Para, it is mandatory to produce medical certificate.



22. **ISSUE** – If the employee/pensioner or her/his spouse did not furnish or intimate the details of the divyang child to Pension Sanctioning Authority during their lifetime and after the death of such employee/pensioner or her/his spouse, divyang child claims family pension, whether benefit of family pension can be extended to divyang child in such case?

23. O.M. No 1/2/09-P&PW(E), dated 30.12.2009 established the basic rule that non intimation of details of divyang child by the employee/pensioner or her/his spouse does not make such child ineligible for family pension.

24. Further O.M. No. 1/18/2001-P&PW(E) dated 25.01.2016 laid down that even if divyang child obtains disability certificate after death of employee/pensioner or her/his spouse, benefits of family pension can be extended to the child on the basis of such certificate if a) the authority is satisfied that the child is unable to earn his livelihood and b) the child was suffering from the disability on the date of death of employee/pensioner or her/his spouse. The same O.M. reiterates the rule position established in O.M. 1/18/01-P&PW(E), dated 30.09.2014 that in case the child produces disability certificate of permanent disability, issued prior to the death of employee/pensioner or her/his spouse then the child need not to obtain disability certificate afresh. Hence, litmus test in such situation is that whether or not the child was suffering from disability on the date of death of the employee/pensioner or her/his spouse.

25. **ISSUE** – Procedure if family pension is granted to guardian of divyang child because of child's minor age or intellectual disability.

26. O.M. No 1/04/06 -P&PW(E) dated 31.07.2006 clears the position that in case the pension is granted to the guardian of divyang child the guardian has to produce certificate issued under National Trust Act, 1999 for his nomination/appointment for grant of family pension.



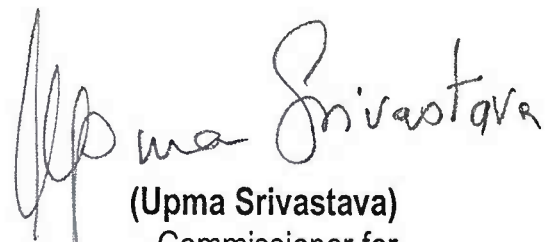
27. Further, another issue which is particular to this case is whether CCS Pension Rules, 1972 will supersede CMPS, 1998?

28. It is settled and well accepted principle of law that special law on subject always supersedes general law; *Generalibus Specialia Derogant*. CMPS, 1998 are special rules with respect to people employed in Coal Mines, these rules are not special with respect to Divyang employees. Rule 54 of CCS Pension Rules, 1972 and subsequent guidelines (delineated above) are special law laid down to protect the rights of Divyang Employees. Hence, issue of Family Pension to disabled child must be governed by CCS Pension rules, 1972.

29. Moreover, CMPS, 1998 do not contain any provisions which prohibits or denies granting family pension to divyang child of the pensioner/employee. As admitted by the Respondent, CMPS, 1998 is silent on this issue. Therefore, if an issue is not addressed by CMPS, 1998 then in order to fulfil the mandate of Rights of Persons with Disabilities Act, 2016, Respondent shall follow to CCS Pension Rules, 1972 and guidelines issued thereafter which are mentioned above in preceding paragraphs of this Order.

30. This Court recommends that the case of the Complainant shall be considered by the Respondent under CCS Pension Rules, 1972 and guidelines of the government issued thereafter.

31. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12732/1023/2021

Complainant: Smt. Kakali Ganguly
W/o Tarun Kumar Ganguly
Sr. Section Engineer Office Eastern Railway
PO Durgapur, Dist. Burdwan – 713201
E-mail: <kakali.ganguly@yahoo.co.in>

Respondent: The General Manager
Eastern Railway, 17, Netaji Subhash Road
Fairlie Place, Kolkata – 700001
E-mail: <gm@er.railnet.gov.in>

Complainant: Shri Tarun Kumar a person with 40% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **01.06.2021** submitted that her husband Shri Tarun Kumar Ganguly is working in Sr. Section Engineer Office, Eastern Railway and her husband wants work from home as per circular issued by competent authority but Welfare Inspector, Sri Siddhartha Chakraborty is continuously harassing and pressurizing him to attend office.

2. The matter was taken up with the Respondent vide letter dated **07.06.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **05.07.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **11.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **11.08.2021**. The following were present:

- Smt. Kakali Ganguly – complainant
- Shri Biswanarayan Banerjee, APO on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.

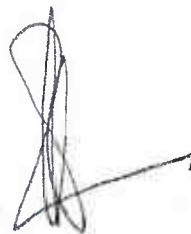
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4. Complainant alleges that the Respondent compelled him to attend office during Covid – 19 exemption period. Complainant levelled these allegations against 'Welfare Inspector' and 'Permanent Welfare Inspector'. Further, Complainant further alleges that the two officers threatened him to mark him on 'Leave without Pay' if he would avail 'work from home'.

5. Respondent submitted during online hearing that the Welfare Inspector was reprimanded. Complainant was not compelled to attend office. He was allowed to do work from home. After receiving the Complaint, Respondent cross checked the records with Controlling Office and found that except for 01.06.2021, Complainant was allowed to do work from home. With respect to 01.06.2021, Respondent submits that the Complainant himself submitted in writing that he did not perform any job on that day, further he also did not apply for leave. Hence, Respondent marked him on 'Leave without Pay' for 01.06.2021.

6. Respondent made commitment during online hearing to cancel 'Leave without Pay' and regularise Complainant's leave for 01.06.2021 as this is not in line with Government rules and regulation. He should have been asked to take leave or the respondent could have adjusted on day absence against available leave in his account.

7. This Court recommends that the Respondent shall fulfil its commitment through leave or by obtaining in writing his reasons for not performing 'work from home' on 01.06.2021. Further, this Court attracts kind attention of the Respondent to O.Ms. issued by DoPT relating to exemption from attending office. DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by latest O.M. dated 14.06.2021 and is still in force.



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8. This Court recommends that the Respondent shall refer the above delineated O.Ms. in the present case and shall abide by these O.Ms. and other latest guidelines of DoPT in cases which may arise in future.

9. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2021



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12743/1022/2021

Complainant : Shri Anil Kumar
Assistant Audit Officer
HOS No. CDCDD8013062
House No. 662, Sector 32A,
Chandigarh
Mobile No : 07680989996
E-mail: kumar.ak222@gmail.com
Respondent : Director General of Audit,
Defence Services, L-II Block, Brassey Avenue
New Delhi-110001
E-mail : dgads@cag.gov.in
Contact No : 011-23094219, 23093672, 23092583, 23094669
Fax: 011-23092301

GIST OF COMPLAINT

The complainant Shri Anil Kumar, Assistant Audit Officer (AAO), vide complaint dated 03.05.2021 submitted that he is suffering from 54% physical disability. The complainant was working in Chandigarh Office (PDA, DS). The complainant stated that he have been transferred from Chandigarh office to New Delhi Office (DGA, Navy, New Delhi) vide office order no. 071 dated 15.04.2021.

The complainant stated that he has three baby girls under the age of 03 years including twin on second time. He has also the responsibility of his aged ailing parents. His father is a diabetic patient and his mother is also suffering from gall bladder stone.

The complainant submitted that some of his colleagues of other offices have been retained on the same station where they have desired to retain but after written request he could not be retained in Chandigarh office where as Chandigarh office have deficiencies of AAOs.

The complainant humble requests to CCPD to retain his transfer/posting at Chandigarh office (Principal Director of Audit, Defence Services), Chandigarh.

2. The matter was taken up with the Respondent vide letter dated 15.06.2021 under section 75 of the RPwD Act 2016.

3. In response, Director of Audit, Shri P.C.S. Negi, Defence Services, New Delhi vide their letter no: 632/A. Admn/4722/AK dated 07.07.2021 Inter-alia submitted that as per transfer and posting policy approved by the C&AG office, the officer in ordinary circumstances, would be transferred to another station on promotion to the post of AO and AAO.

Shri Anil Kumar, AAO at the time of promotion has given following five choices of his preference through PDA Chandigarh:

i) Chandigarh ii) Delhi iii) Jammu iv) Meerut v) Dehradun

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

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

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

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

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

Shri Anil Kumar was promoted as AAO on 15.04.2021 and posted to New Delhi which was his first choice. He was relieved from Chandigarh office 16.04.2021 vide order dated 16.04.2021 and he reported for duty in DGA (Navy), New Delhi on 19.04.2021. It is to be noted that he did not send an appeal/representation regarding his posting order, nor did he avail joining time. After joining at DGA (Navy), New Delhi he has sent a representation through mail on 08.05.2021. Representations are discussed and decided by the transfer & posting board, which generally meets once in 2-3 months. The transfer & posting board has not met since he made his representation. Those retained in present station were due to administrative and other reasons as per decision of the transfer and posting board.

4. The complainant in their rejoinder dated 27.07.2021 by email submitted the following facts:-

i) The complainant stated that inspite of deficiencies of Asstt. Audit Officers (AAO) in Chandigarh office, his letter/request could not be considered.

ii) The complainant further submitted that some candidates of same batch, have been promoted on the same station/in the same city where they were already posted. The reply submitted by DGA, DS, New Delhi dated 07.07.2021; those who were retained in present station were due to administrative and other reasons as per decision of the transfer & posting board.

iii) The complainant is facing so many difficulties in New Delhi while travelling by bus and metro train. The complainant is approaching to PA of DGA, DS New Delhi since last 3 months that he wants to meet with DGA so that he can make a verbal request regarding his transfer to Chandigarh but nobody want to meet him.

iv) The complainant most humbly requested to consider his request/grievance sympathetically and favour his transfer/posting at Chandigarh in O/o Principal Director of Audit, Defence Services, Chandigarh.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.08.2021. The following were present:

- i) Shri Anil Kumar – Complainant
- ii) D. D. Tripathi, Senior AAO – Respondent

6. **Observations & Recommendations:**

i) Complainant submits that after promotion the Complainant was transferred from Chandigarh to New Delhi while other enabled officers in the organisation are retained in same location even after promotion. Complainant further submits that because of personal problems like ailing parents and infant children, he is facing difficulty in shifting from Chandigarh to New Delhi.

ii) Respondent countered the submissions made by the Complainant and submits that as per transfer policy of the Respondent establishment officer is transferred from one location to another on promotion. Complainant was promoted and was asked to submit his choices for transfer. First choice given by him was Chandigarh, where he was posted at that time, second was New Delhi. Since he could not be posted at same location after promotion hence, he was posted to New Delhi. Further it is submitted that those officers who were retained at their present location were retained due to administrative and other reasons.

iii) During online hearing Respondent further submitted that Complainant was transferred to New Delhi by Order dated 15.04.2021. He joined in New Delhi office on 16.04.2021, i.e. on very next day of the transfer. It was further submitted that in establishment there is a procedure to challenge Transfer Orders. Any employee aggrieved with the Transfer may challenge the same before Appellate Authority. Complainant did not opt to challenge his transfer before the Appellate Authority and approached this court.

iv) Submissions of Respondent contains merit. Complainant should have opted to approach the Appellate Authority to challenge the Transfer Order. Presence of such procedure promotes efficient administration and early dispensation of justice.

v) This Court recommends that the Complainant shall present his Complaint before the Appellate Authority, which is recommended to reconsider transfer of the Complainant as per DoPT O.M. No. 36035/3/2013-Estt.(Res), dated 31.03.2014, which provides in Para H that divyang employees may be exempted from rotation transfer policy/transfer and may be allowed to continue in the same job. Objective of the O.M. is to provide conducive environment to divyang employee where she/he can achieve desired performance. Respondent is further recommended to find avenues, such as transfer by exchange etc, to retain the Complainant in Chandigarh office.

7. This case is disposed off.

(Upma Srivastava)

Upma Srivastava
Commissioner for
Persons with Disabilities

Dated: 27.08.2021