



JUNE

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

Case No. 12487/1011/2020 भारत सरकार/Government of India

In the matter of:-

#### Complainant:

Dr. Rudresh S.M.,

No.583, 3<sup>rd</sup> Main,

Syndicat Bank Layout,

Herohalli,

Begaluru – 560 091.

Email<rudreshsm@gmail.com>

Phone : 09060409010.

Versus

#### Respondent :

National Institute of Mental Health & Neuro Sciences (NIMHANS),  
(Through the Director)

Hosur Road,

Bengaluru – 560 029

Email : [dirstaff@nimhans.ac.in](mailto:dirstaff@nimhans.ac.in)

Disability : 50% Locomotor Disability

#### Gist of Complaint:

Dr. Rudresh S.M., the complainant vide his complaint dated 29.11.2020 submitted that NIMHANS, Bengaluru had invited applications for the posts of Associate Professor of Neurovirology, Assistant Professor of Neurovirology & Assistant Professor of Neuromicrobiology (Group-A posts). He paid the application fee of Rs.7,080/- and appeared for the interview for all the above mentioned posts on 23.11.2020 at the Directors Chamber, NIMHANS, Bengaluru. After the interview, he called up the Personnel Section to know if PwD quota has been reserved or not. He was told by the official that as it was not mentioned in the notification, it may not be considered and it is left for the committee to decide. He was told that

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

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

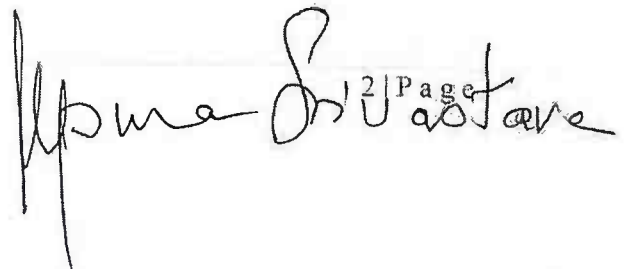
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

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

only one Professor in the Dept. Of Psychiatry is working under PwD category. He received information under RTI that pwds are given reservation for all the Departments of NIMHANS except Neuroanaesthesia and Neurocritical Care, Neurosurgery and Neurology. They have not given equal opportunity to compete in other subjects which are identified for PwDs.

2. The Registrar, NIMHANS, Bengaluru vide letter dated 12.01.2021 submitted that there were about 19 employees belong to different cadres presently working at their Institute. Since the year 2013 a total of 25 employees with disabilities have retired from the Institute services. Their Institute conducted special recruitment drive for PwD candidates in the year 2015. Since 2005, the Institute has issued several notifications for Assistant Professor of Health Education, Psychiatric Social Work and Clinical Psychology posts, but no suitable candidate has applied for the said posts. The processing fee charged from the candidates applying for various posts at NIMHANS is governed by the provisions of Schedule VII of NIMHANS Act, 2013 (Regulations). The Respondent submitted that NIMHANS is following roster for PwDs as per DoP&T orders and providing 4% o the total number of vacancies to be filled up by direct recruitment in the cadre strength in each group. The present recruitment notification dated 01.09.2020 disputed by the complainant consists of a total number of 11 posts belonging to six different departments. Out of which, only four departments are identified as suitable for PwD candidates such as Ayurveda, Neurovirology, Neuromicrobiology and Transfusion Medicine. These posts are advertised to be filled on priority due to Corona Pandemic.

3. The Complainant vide his rejoinder dated 21.02.2021 submitted that only one employee in Faculty Cadre, Medical in Group 'A' is working and the rest all are in other groups whereas the Respondent in the reply submitted that a total of 19 employees in different cadres and different groups are working NIMHANS. He submitted that if NIMHANS had followed the entire roster properly then many Group A PwDs faculty would have been working there by now. The complainant submitted that NIMHANS has given all the notifications dating 2005 till 2019.

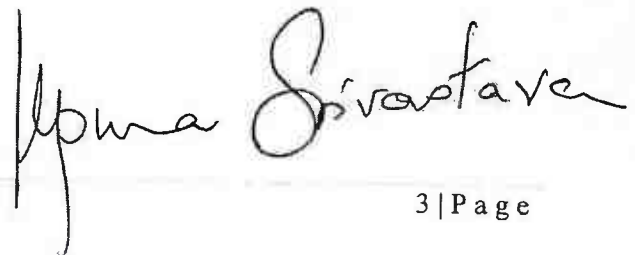
 2 Page

He submitted that it is very much obvious that NIMHANS is persistently keeping Asst. Prof of PSW and Asst Prof of Health Education for PwD candidates in most of the notifications. He submitted that he has never come across any PG entrance examinations reserving MD seats in PSW and Health Education subjects for PwD candidates. If NIMHANS is restricting its PwD posts only to these two departments' suitable candidates will not be available because none of the PwD Doctors in the PSW & Health Education subjects will be available at any point of time. He further submitted that many of the Govt. Medical Colleges in their direct recruitment, they reserve particular subjects for PwDs, instead they give equal opportunity for any PwD candidate who is appearing for the interview in identified specialty. The NIMHANS is intentionally reserving only these two posts and curbing the opportunity for many PwD Doctors who are qualified in the subjects identified by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment. He submitted that he was an eligible candidate with sufficient experience, publication & research projects and he appeared for identified posts in Neurovirology & Neuromicrobiology but NIMHANS has not considered him in their interview process as a PwD candidate but they treated him as a general candidate.

4. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.04.2021. The said hearing has been rescheduled to 16.04.2021 at 3:00 p.m. due to administrative reasons.

5. The following persons were present during the hearing ;

- 1) Dr. Rudresh S.K, in person
- 2) Dr. B.S. Shankaranarayana Rao, Registrar for Respondent.

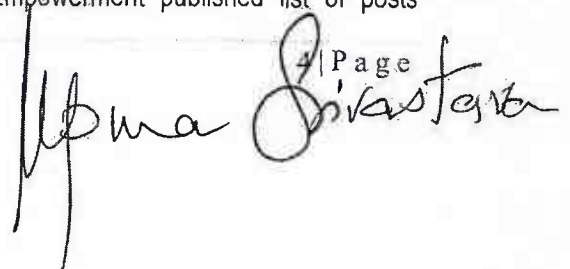


### OBSERVATIONS AND RECOMMENDATIONS

6. Respondent's reply is manifestation of disgraceful attempt to avoid duties and responsibilities set forth in Rights of Persons with Disabilities Act, 2016. After perusal of documents submitted by the parties this court identified two major issues namely, a) Whether examination fees charged by the Respondent establishment is in conflict with legal position on the point; b) Identification of posts.

7. Entrance Exam fees – Complainant alleged and Respondent accepted that entrance fees was charged from the Complainant. Respondent submits that it was done in accordance with the rules and by-laws of the Respondent establishment. This is in complete violation of DoPT OM. Such by-law is illegal. DoPT issued OM No. 36035/2/2017 – Estt.(Res), dated 23.08.2019 as per the OM Persons with Benchmark Disabilities are exempted from payment of examination fees and application fees prescribed for competitive examinations held by various recruitment agencies. The only pre-requisite foisted in the OM is that the exemption is available only to such persons who would otherwise be eligible for the appointment to the post on the basis of medical fitness prescribed for the post. Hence, it is not important if the post is or is not reserved for Persons with Disabilities. If such post is identified suitable for any sub category of Persons with Disabilities, then it means that the persons with such disability is exempted from payment of examination fees, irrespective of the fact the post is reserved or not reserved for Person with Disabilities.

8. Identification of the Post - Respondent submits that it has identified various departments for the purpose of extending reservation. This is in complete violation of law on two counts, first, departments are not identified suitable for Persons with Disabilities. Posts are identified suitable. Secondly, Ministry of Social Justice and Empowerment published list of posts

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identified suitable for Persons with Disabilities dated 04.01.2021. Note 2 and Note 6 of this notification are important for this Complaint. Note 2 lays down that the list is only indicative and not exhaustive. Departments/Establishments may add posts to this list. Further, Note 6 prescribes that Departments/Establishments which has separate list of posts identified suitable then in such case list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail.

9. Hence, it is certain that the objective of the Notification issued by MoSJ&E, is to increase the participation of divyang employees and to make the establishments and departments more inclusive. Hence, the identification list prepared by Respondent establishment in the present Complaint cannot be in violation of the identification list of MoSJ&E dated 04.01.2021.

10. This court receives various Complaints related to irregularities in recruitment process. This court passed an Order in one such Complaint, delineating rule position on the issue. Copy of the Order dated 12.01.2021, in one such Complaint, titled as GEETAYANI MISHRA v. MANIPUR UNIVERSITY; Complaint No – 11878/1011/2020, is attached herewith.

11. This court recommends that Respondent establishment shall examine the Order attached herewith and study the delineated rule position. Further this court recommends that after detailed study of the rule position, the Respondent establishment shall re-notify the vacancies in accordance with the rule position. Further, the Respondent shall file the Compliance Report with respect to this Order within 6 months of receiving this Order.

12. The case is disposed off.

Dated: 15.06.2021

  
(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. 11878/1011/2020

Complainant : Ms. Geetayani Mishra, Dr. Bhimrao Ambedkar College, Yamuna Vihar, Main Wazirabad Road, Yamuna Vihar, Delhi – 110 094.

Respondent : Manipur University (Through the Registrar), Canchipur, Imphal-795003

Disability : 45% locomotor

**Gist of Complaint:**

The complainant vide her complaint dated 12.03.2020 submitted that Manipur University has advertised for recruitment of 52 posts of Professors, Associate Professors and Assistant Professors in different departments of their university through Advt. No. 01/2020 on 30.01.2020 but no posts were reserved for persons with disabilities.

2. The Registrar, Manipur University vide letter no. MU/5-124/2013/FCY dated 02.12.2020 submitted that Manipur University follows 200 point Roster System. As per roster system, the University reserves one post of Associate Professor in Life Science for persons with disabilities out of 52 posts of Professor/Associate Professor/ Assistant Professor vide Advertisement No. 1/2020 dated 30.01.2020.

3. **Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.

4. The following persons were present during the hearing :

- 1) Dr. Om Mishra, On behalf of the complainant.
- 2) Prof. W.C. Singh, Registrar, Manipur University, for Respondent.

**OBSERVATIONS & RECOMMENDATIONS**

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

....2/-

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

<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



- 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.

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.

18. 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

19. 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

20. 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

21. 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.

 ...6/-



SELECTION ON MERITS

28. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with 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

**IRREGULARITIES IN THIS MATTER :**

29. In the present Complaint it is stated that the Respondent Establishment issued advertisement for recruiting Professors, Associate Professors and Assistant Professors against 52 vacancies. However, the Respondent Establishment reserved only 1 vacancy for PwBDs. Respondent submitted that in its establishment 200 points reservation roster is made and as per the roster system only 1 vacancy is kept reserved.

30. At the outset, two irregularities can be pointed out –

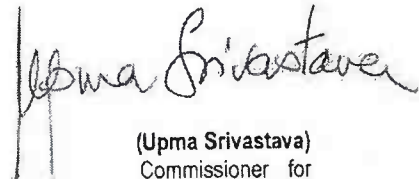
- a) 200 points reservation roster;
- b) Less than 4% reservation for PwBDs.

31. 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.

32. This court concludes that Respondent has failed to fulfil the statutory duties and follow DoPT guidelines with respect to maintenance of reservation roster and reserving vacancies for PwBDs. Therefore, this court recommends that the Respondent shall re calculate the vacancies and shall reserve 4% of the vacancies for PwBD candidates. Respondent establishment is recommended to re notify the whole advertisement after calculation of reservation in accordance with Section 34 of RPwD Act 2016 and concerned OMs issued by DoPT.

33. The case is disposed off.

Dated: 12.01.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



सत्यमेव जयते

JUNE

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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: 12569/1022/2021

Complainant: Shri Aneet Kumar Vishwakarma  
Jawahar Navodaya Vidhyalaya (NVS)  
Jaswantpura Jalore, Rajasthan  
Mob: 08382826395  
E-mail: [aneetk786@gmail.com](mailto:aneetk786@gmail.com)

R-27567

Respondent: The Commissioner  
Navodaya Vidyalaya Samiti,  
B-15, Institutional Area, Sector 62,  
Noida, Uttar Pradesh-201307  
Phone No: 0120-2405968, 69, 70, 71, 72, 73  
E-mail: [commissioner.nvs@gov.in](mailto:commissioner.nvs@gov.in)

R-27568

### GIST OF COMPLAINT

The complainant Aneet Kumar Vishwakarma S/o Lt. Shri Suresh Chandra Vishwakarma, 100 % Visual Impairment submitted that he is currently working as an Assistant Professor for English in the Jawahar Navodaya Vidyalaya, Jaswantpura Jalore, Rajasthan.

The complainant submitted that his wife is also a Visually Impaired person & working in Punjab and Sindh Bank and lives alone. His father has also passed away. The complainant further submitted that he had already submitted an application for transfer to JNV, Maharajganj (UP) but till date no action has been taken by NVS.

Therefore, the complainant has requested that on the basis of the facts given above and considering the circumstances, the transfer of Shri Aneet Kumar Vishwakarma from Jawahar Navodaya Vidyalaya Jaswantamura Jalore Rajasthan to Jawahar Navodaya Vidyalaya Maharajganj.

2. The matter was taken up with the Respondent vide letter dated 28.01.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Shri Vikram Joshi, Dy. Commissioner (Pers), O/o Navodaya Vidyalaya Samiti, vide letter no: 4-2/2021-NVS (Estt.II)/6282 dated 25.02.2021 inter-alia submitted "on affidavit" that Aneet Kumar Vishwakarma S/o Lt. Shri Suresh Chandra Vishwakarma, TGT (English) presently posted at JNV, Jalore (Rajasthan) filed a complainant/representation dated 22.1.2021 requesting inter alia to transfer at JNV.

*[Signature]*

Maharajganj (UP) on the ground of that his wife is working in Punjab & Sindh Bank and both of them are visually impaired. They can lead normal life with the help of each other, if he could be transferred to JNV, Maharajganj (UP).

4. The respondent has submitted the following comments/reply on the part of the department/NVS.

(i) Shri Aneet Kumar Vishwakarma jointed as TGT (Eng) at JNV, Jaswantpura, Jalore Rajasthan w.e.f 26.10.2017. According to the transfer policy & provision contained under para 6 of transfer guidelines dated 2.4.2018, request application for transfer of new employees will invariable be entertained only after completion of probation period at his/her first place of posting.

(ii) The complainant is requesting for transfer to JNV, Maharajganj (UP) under PH category. But, fact is that there is no post of TGT (Eng) vacant at JNV, Maharajganj (UP). Two posts of TGT (Eng) are sanctioned in the Vidyalaya JNV, Maharajganj, at present both of the posts are neither "actual" nor "deemed vacant".

(iii) The respondent further submitted that according to the provisions of transfer policy, an employee shall be eligible for seeking request transfer only on completion of mandatory tenure of 10 years (in normal cases). Adhering to the provision of transfer policy, both the post of TGT(English) at JNV, Maharajganj(UP) will be declared "deemed vacant" only after completion of mandatory tenure of 10 years from the date of his/her joining.

(iv) In order to follow the guidelines/directives issued from time to time by the Govt. of India, Ministry of Personnel, Public Grievances and pensions, Department of Personnel and Training, appropriate consideration has been accorded for the persons with disabilities "Divyangjan" in the transfer policy as well as guidelines for transfer placing them under highest priority category.

(v) The transfer of the employees of the NVS is being effected through Automation process strictly in accordance with the provisions of transfer policy and guidelines enumerated to this effect vide notice dated 22.12.2015, 2.4.2018 & 7.5.2019.

(vi) The respondent further submitted that differently abled employees, employees suffering from serious ailment/disease including their spouses and children as mentioned in Transfer policy, transfer of working husband/wife to one station for unification with spouses or nearby station will not be covered under transfer counts keeping in view the Government orders in their favour. Officials were asked to opt for choice places for transfer against vacancies (i.e. actual and deemed). Deemed vacancies are those where present incumbents had completed more than the normal tenure (i.e. 10 years) prescribed in the Transfer Policy.

*Alpna Sivastava*

In view of the aforesaid conspectus, it appears that according to the provision of the transfer policy & guidelines, claim of the applicant to transfer him at a specific choice station i.e. JNV, Maharajganj (UP) has no substance & merit.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 16.04.2021. The following were present:

- i) Shri Aneet Kumar Vishwakarma, Complainant
- ii) Shri Krishan Gaur, Section Officer (Establishment –I)

6. **Observations & Recommendations**

- a) Complainant is working as a teacher in Respondent establishment. At present he is posted in Jaswnatpur, Jalore, Rajasthan. He seeks his transfer to Maharajganj, Uttar Pradesh or some other district near Maharajganj, which is his hometown.
- b) Respondent submits that the Complainant participated in Transfer drive conducted in year 2020, whereby he applied for transfer to either Gorakhpur or Faizabad, Uttar Pradesh. Further, it is submitted by the Respondent that the Complainant is on his probation period and as per the rules of the Respondent establishment, transfer request can be considered only after completion of Probation Period. During online hearing it was informed by the Complainant that he wishes to get transferred to either Maharajganj or Faizabad.
- c) 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 under 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.

*Alpna Srivastava*



- d) 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.
- e) 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.
- f) The provisions of the Act and GOI instructions prevail over the transfer rules of the respondent. It becomes even more pertinent given the fact that the complainant is 100% Visually impaired and needs the care and protection of his family.
- g) Hence, this court recommends that Respondent establishment shall urgently consider the transfer application of the Complainant even though the rule of the Respondent establishment lays down that such application cannot be considered if the applicant-employee is serving his probation period. Secondly, this court recommends that since the Complainant has expressed his interest in transfer to Faizabad and Respondent establishment submitted during online hearing that vacancies are available in Faizabad hence Respondent establishment shall transfer the Complainant to Faizabad, Uttar Pradesh, within three months of these orders.

7. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.6.2021





सत्यमेव जयते

JUNE

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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: 12570/1022/2021

Complainant: Smt. Nisha Kumari  
 Helper  
 Employee No: 27229804367  
 Office TL (Train Light)  
 EC Railway Sonpur, Bihar  
 E-mail: [amardeepsrivastava4072@gmail.com](mailto:amardeepsrivastava4072@gmail.com)

R-27 569

Respondent: The General Manager (Personal)  
 Eastern Central Railway  
 Hajipur, Bihar  
 E-mail: [gm@ecr.railnet.gov.in](mailto:gm@ecr.railnet.gov.in)  
 Ph: 06224-274728

R-27 570

## GIST OF COMPLAINT

The complainant Smt. Nisha Kumari, vide complaint dated 24.1.2021 submitted that she is suffering from 80% Visual Impairment. The complainant submitted that she is currently serving as Helper under SSE TL (Train Light), Barauni Sonpur Division. The Complainant has applied vide transfer application dated 30.7.2020 from Sonpur Division to Danapur Division. She sent the application to Danapur division from Sonpur Division on 28.8.2020 for acceptance of her transfer. She has requested to CCPD to take prompt and necessary action on her grievance.

2. The matter was taken up with the Respondent vide letter dated 02/02/2021 under Section 75 of the RPwD Act 2016. But despite reminder dated 05.03.2021, respondent did not submit any reply, therefore, hearing was fixed on 09.04.2021.

3. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 09.04.2021. The following were present:

- Complainant's husband on behalf of the complainant
  - Shri Ashok Kumar, Sr. DPO, Jaunpur for Respondent
4. Both the parties were heard.

## Observations &amp; Recommendations:

- Complainant is 80% Visually Impaired and is working as a helper in Respondent's establishment. Complainant is posted in Barauni, Sonpur and seeks transfer to Danapur division, on account of her family circumstances who are three children and a dependent husband and mother.
- Respondent stated that the file related to the transfer of the Complainant has been forwarded to Danapur division. Final decision to transfer the Complainant will be taken by the Danapur division.

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](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://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)

iii) Section 20 of Rights of Persons with Disabilities Act, 2016 lays down that every government establishment shall provide barrier free and conducive environment to employees with disabilities.

iv) Delaying the issue of transfer is contrary to the mandate of RPwD Act, 2016. Objective of the legislation is to provide conducive environment to employees with disabilities so that their skills can be utilised up to maximum extent. Particularly in the present facts of the case, where the Complainant is 80% Visually impaired, the Respondent should have considered the transfer request more empathetically and quickly as she needs the support of her family.

v) Respondent's submission that transfer file of the Complainant has been forwarded to Danapur Division lacks substance, as both Sonpur division (where the Complainant is posted at present) and Danapur divisions are part of the Respondent establishment, i.e. East Central Railways. Hence, delay in deciding the case of the Complainant is antithetical to the mandate of the RPwD Act, 2016.

vi) This court recommends that the Complainant shall be transferred to Danapur division within a period of one month of receipt of these orders and compliance report shall be filed by the Respondent establishment within that period.

5. This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.6.2021



सत्यमेव जयते

Extra

June.

(18)

## 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: 12601/1023/2021

Complainant: Shri Vinod Kumar  
E-mail: <vavinod225@gmail.com>

Respondent: Dy. Commissioner  
Navodaya Vidyalaya Samiti  
Regional Office, 7/24, Gomti Nagar Extension  
Near Police Head Office, Shaheed Path  
Lucknow – 226010

R-27611

Dy. The Commissioner  
Navodaya Vidyalaya Samiti  
Bay No. 26 – 27, Sector – 31, Chandigarh – 160030

R-27612

Complainant: 50% Locomotor disability

## GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 28.01.2021 में कहना है कि उनकी नियुक्ति कला शिक्षक के रूप में नवोदय विद्यालय समिति में दिनांक 02.08.2013 में दिव्यांग कोटे के तहत हुई थी तथा वर्तमान में वह हरिद्वार में कार्यरत है। प्रार्थी का आगे कहना है कि उन्होंने दिनांक 02.02.2015 को दुगुना परिवहन भत्ते हेतु अपने विभाग को आवेदन दिया था परंतु अभी तक कोई कार्रवाई नहीं हुई।

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

3. Dy. Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Lucknow vide letter dated 25.03.2021 inter-alia submitted that the complainant was informed vide letters dated 27.01.2021 & 22.02.2021 that Medical Certificate submitted by him is not valid as the same was not in accordance with the policy and in response, complainant vide letter dated 19.03.2021 has informed that he will try to validate his medical certificate and he is satisfied with the action taken in the matter.

4. प्रार्थी का अपने पत्र दिनांक 06.04.2021 में कहना है कि विभाग द्वारा वर्तमान में की गई कार्यवाही से वह संतुष्ट है तथा उन्होंने अनुरोध किया है कि नियमानुसार दुगुना यात्रा भत्ता पूर्व की तिथि 02.08.2013 से दिलवाए।

*[Signature]*  
Sivastava

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)


5. After perusal of the documents available on record, it is recommended to the respondent to follow necessary government instructions and implement the same for all employees who are persons with disabilities. As per the rule position in respect of Double Transport Allowance, as per the Department of Expenditure, Ministry of Finance, OM No. 21-1/2011-E.II (B) dated 5<sup>th</sup> August, 2013 is as under:

*".....Double Transport Allowance shall be allowed to an orthopaedically handicapped Government employee if he or she has a minimum of 40% permanent partial disability of either one or both upper limbs or one or both lower limbs OR 50% permanent partial disability of one or both upper limbs and one or both lower limbs combined....."*

6. In terms of aforesaid instructions, the complainant is eligible for double transport allowance in view of the valid disability certificate, on the basis of which he was appointed against a vacancy reserved for a disabled person.

7. This Court recommends payment of transport allowance at double the normal rate from the date of appointment of the complainant in Navodaya Vidyalaya Samiti.

8. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for Persons with Disabilities

Dated: 15.06.2021





सत्यमेव जयते

Extra

JUNE

18

## 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: 12585/1023/2021

Complainant: Shri S. Murugan, Sr. Engineer  
CDAC, Thiruvananthapuram  
e-mail: <gansm255@yahoo.com>

Respondent: The Director General  
Centre for Development of Advanced Computing  
Pune University Campus, Ganesh Khind, Pune – 411007  
E-mail: <dg@cdac.in>

R-27613

R-27614

The Executive Director  
Centre for Development of Advanced Computing  
Vellayambalam, Thiruvananthapuram – 695003  
E-mail: <magesh@cdac.in>

Complainant: 60% visual impairment

### GIST of the Complaint:

Complainant vide complaint dated **27.01.2021** submitted that he has been working as Sr. Engineer with CDAC, Trivandrum since 24.04.2017 and his grievance is related to non-issuing of "No Objection Certificate" by CDAC for Joining Ph.D (Part Time-External) in NIT, Uttarakhand or NIT, Calicut.

2. The matter was taken up with the Respondent vide letter dated **03.02.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Director (HRD), CDAC vide letter dated **03.03.2021** inter-alia submitted that every year in the month of December, the HR Department of C-DAC, Trivandrum invites application for sponsorship/grant of study leave/permission for acquiring higher qualifications by part-time studies for employees who fulfil the criteria stipulated in the guidelines. Shri Murugan Salvam had submitted an application dated 16.12.2019 seeking



permission to pursue PhD as a distance education programme at NIT, Hamirpur. On examining the case, Standing Committee found that there is no such distance education programmes for PhD available in NIT, Hamirpur. Hence, the Committee did not consider the application. His another request vide e-mail on 28.07.2020 for granting NOC to apply for doing PhD at NIT Uttarakhand but there was no provision to receive application before the month of December. For the academic year 2021-22, he had also submitted the application for NOC. However, this time also he failed to clear the screening of the Standing Committee since he was not eligible as per the guidelines.

4. After considering the respondent's reply dated **03.03.2021** and the complainant's rejoinder dated **18.03.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.04.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.04.2021**. The following were present:

- Shri S. Murugan – complainant
- Shri Roy Verghese on behalf of respondent

**Observation/Recommendations:**

5. Both the parties were heard.

6. Complainant is Visually Impaired (60%) and is employed as engineer in Respondent establishment. He alleges that the Respondent establishment is refusing to grant him 'No Objection Certificate' for pursuing higher studies.

7. Respondent submits that application for grant of NOC for higher studies are considered only in the month of November and December. Since the Complainant filed the application in month of July hence the same was rejected by the Respondent. Further, Respondent submits that due to past service record, the application of the Complainant has been rejected.

8. After perusal of the documents and arguments submitted by both the parties, this court concludes that Respondent's claim that the application was rejected because of past service record lacks merit. Respondent has submitted that some irregularities were committed by the Complainant during previous deputation, but has failed to prove any relationship between the irregularity committed previously and present application of the Complainant to pursue higher studies. This court concludes that the two issues are remote and both are unconnected. More over, the application submitted earlier than the due month could have been considered.

9. Issue needs to be examined under the light of Section 2(y), 3(1), and 3(5) of Rights of Persons with Disabilities Act, 2016.

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

**SECTION 3(1)** - The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

**SECTION 3(5)** - The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

10. In order to fulfil its duties under Section 3(1), appropriate government has to provide reasonable modifications and adjustments, or 'Reasonable Accommodation'. These modifications and adjustments are necessary in order to bring Persons with Disabilities at par with other members of the society.

11. Therefore, this court recommends that taking into consideration the indomitable spirit of the Complainant to pursue higher studies and upgrade himself despite his adversities as well as in view of the legal provisions delineated above, the Respondent shall examine the application of the Complainant and grant NOC to the Complainant for pursuing higher studies.

12. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 15.06.2021



Extra JUNE 21

## 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: 12584/1023/2021

Complainant: Shri Pawan Kumar Mittal  
E-mail: <pkmsbi1962@gmail.com>

Respondent: The Chief General Manager (HR)  
State Bank of India, Corporate Centre  
State Bank Bhawan, 16<sup>th</sup> Floor, Madam Cama Road  
Mumbai – 400021  
e-mail: <rm4.ao2delhi@sbi.co.in>

Complainant: 40% Locomotor disability

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 27.01.2021 में कहना है कि वह भारतीय स्टेट बैंक, भुच्चो कलौं शाखा, बठिंडा, पंजाब में उप प्रबंधक के पद पर कार्यरत है तथा उनको बैंक के अधिकारियों विशेष कर श्री पवन कुमार गोयल, रीजनल मैनेजर, श्री सुनील कुमार सिंह, मुख्य मैनेजर एवं श्री राम किशन प्रबंधक द्वारा दिव्यांग होने के कारण उत्पीड़ित किया जा रहा है तथा कोरोना महामारी के दौरान, work from home की मांग करने पर उनका स्थानांतरण कर दिया गया। प्रार्थी ने निवेदन किया है कि उक्त अधिकारियों के खिलाफ उचित कार्रवाही की जाए।

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 03.03.2021, no response has been received. Therefore, the case was listed for personal hearing on 09.04.2021.

3. In the meanwhile, General Manager (FIMM Network), State Bank of India vide letter dated 14.03.2021 inter-alia submitted that no instances of discrimination or harassment by the officers named have been found and bank has always given disability benefits to the Complainant.

*Pawan Sivasava*

....2....

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.04.2021**. The following were present:

- Shri Pawan Kumar Mittal – complainant
- Shri Babu Khaan, DGM and Shri Pawan Kumar Goel, AGM on behalf of respondent

**Observation/Recommendations:**

4. Both the parties were heard.

5. Complainant raised two issues through its Complaint. First, it is alleged by the Complainant that he has been transferred out of Bhatinda. Secondly, it is alleged that he is being subjected to torture and harassment by his seniors, namely, Sri Pawan Kumar Goyal, Regional Manager; Sri Sunil Kumar Goyal, Chief Manager Bhatinda and Sri Ram Kishan, Manager, HR.

6. Respondent submits that no instances of discrimination or harassment by the officers named have been found. Further, Respondent submits that the Respondent has always given disability benefits to the Complainant. Complainant joined the Respondent establishment in year 1983 and was never transferred out of Sriganganagar branch till 2008. After 2008, the Respondent was transferred on his own request.

**TRANSFER OUT OF BHATINDA**

7. Section 3 of Rights of Persons with Disabilities Act, 2016 lays down that the appropriate government shall take steps to utilise the capacities of persons with disabilities. The provision is further buttressed by Section 20 of RPwD Act, 2016, which lays down that the appropriate government shall provide barrier free and conducive environment to employees with disabilities. Intention of the legislature finds strength in DoPT O.M.36035/3/2013-Estt. (Res) dated 31.-3.2014. as per Para H of the OM, persons with disabilities are exempted from routine transfer and are allowed to continue in the same job where they would have achieved the desired performance.

*M. Pawan Kumar Goel*

.....3.....

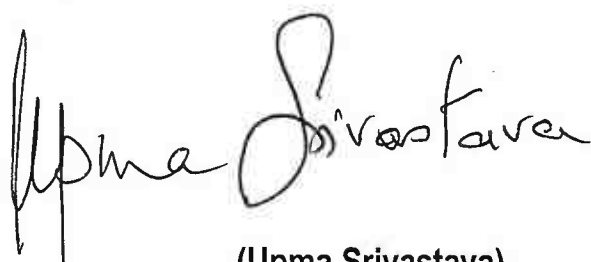
**DISCRIMINATION AT WORKPLACE**

8. Complainant has submitted that certain officers of the Respondent establishment have intentionally conspired to transfer the Complainant to locations outside Bhatinda in order to cause hardship to the Complainant. Complainant could not produce substantive proof to support the claim. The Respondents also did not state anything about any inquiry being done on the complaint of the complainant to establish whether really any harassment was done or not. They have also not mentioned any reasons for transferring out of Bhatinda.

9. It is the utmost duty of the Respondent establishment to create awareness with respect to rights of Persons with Disabilities. Section 39 of RPwD Act, 2016 lays down that the appropriate government shall conduct, encourage, support or promote awareness campaigns and sensitisation programmes to ensure that the rights of persons with disabilities are protected. Further, Section 7(1)(d) lays down that in order to protect persons with disabilities from all forms of abuse and violence and exploitation, appropriate government shall create awareness.

10. Hence, this court recommends that on the issue of transfer, the Complainant, without being displaced from Bhatinda, shall be assigned a new team of Supervisors/Seniors not comprising officers named in the Complaint. Further, the Respondent shall conduct counselling sessions of the officers named in the Complaint.

11. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for Persons with Disabilities.

Dated: 15.06.2021





सत्यमेव जयते

Ex 78

24

## 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: 12588/1023/2021

R-27624

Complainant: Shri Devinder Singh  
S/o Sujan Singh  
Email: sujansingh@live.in

Respondent: The Chairman, Punjab & Sind bank,  
Head Office, Rajendra Place,  
New Delhi-110008  
Email: ho.hrd@psb.so.in

R-27625

Complainant 80% Visually Impairment

### GIST of the Complaint:

Complainant vide complaint dated **02.02.2021** inter-alia submitted that he is working at the Punjab & Sind Bank. He is facing trauma because of the non-congenial behaviour of bank employees towards him, because of this he slipped into depressive phase during the time he was posted at PSB Complex branch and consequently he resigned from the bank on 10.07.2019. He also wished to state for kind information the fact that he was transferred from PSB Complex Jalandhar branch to PSB GTB Nagar branch in complete violation of the principle of natural justice as well as the laid guidelines of the govt. of India pertaining to transfer of Person with Disabilities, as this transfer was made within 10 months from his prior transfer from Zonal Stationery Depot Jalandhar to PSB Complex Jalandhar Branch which was effected on 29.08.2018. The PSB GTB Nagar Branch is far off than PSB Complex and it would have been more difficult for him. He further submitted that his second transfer within 10 months of his previous transfer was unfair. After he had resigned from the bank his father already submitted from time to time to keep the bank informed about his absence from duty on Medical grounds. Punjab & Sind Bank now he has served Show Cause Notice is making false allegation against him that he has not completed his notice period.

2. The matter was taken up with the Respondent vide letter dated **03.02.2021** under Section 75 of the RPwD Act, 2016. Despite reminder dated **04.03.2021**, no response has been received from the respondent. Therefore, it has been decided to hold a personal hearing on 09.04.2021.

Upma Srivastava

**Hearing :** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.04.2021**. The following were present:

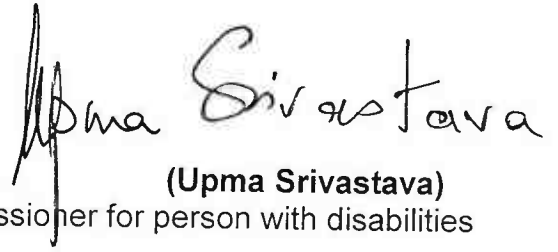
- Representative of the complainant - Shri Amardev Singh
- Respondent- Absent

**Observations & Recommendations**

3. Complainant submits that even though he resigned from the Respondent establishment, he was not given a formal relieving letter. Further, he alleged that the Respondent establishment did not clear the dues of the Complainant, post resignation.
4. During online hearing it was informed that the Respondent establishment has given relieving letter to the Complainant. However total amount of Rs. 2,53,788.13 is yet to be cleared by the Respondent bank.
5. Respondent establishment deserves appreciation for granting relieving letter to the Complainant. However, this court expects similar efforts from the Respondent establishment with respect to clearance of dues, as that amount is of great benefit to a disabled person who gave up his job due to frequent transfers by the bank.
6. This court recommends that the Respondent establishment shall examine the claims of the Complainant with respect to dues, delineated as below –
  - i) Arrear Amount = Rs. 1,41,375.14
  - ii) Encashment of PL (Privileged Leave) = 1,04,989.39
  - iii) Leave Encashment Arrears = Rs. 7,423.60
7. This court recommends that the Bank shall examine the claim of arrears expeditiously and settle them immediately if not done so far already. The Bank should also have been much more empathetic to need of a person with disability and taken all efforts in time with letter and spirit of the RPwD Act 2016 ~~and taken all steps to~~ retain the complainant in service. Dignity of self employment of a PwD is extremely significant and the RPwD Act's provisions provide for giving reasonable accommodation to such persons to help retain them in service. However, it appears that the same could not be achieved in this matter. Hence, once the resignation has been given and accepted, this court recommends to clear all financial dues immediately.

*Mpwa Srivastava.*

8. The Case is disposed off.

  
(Upma Srivastava)  
Commissioner for person with disabilities

Dated: 15.06.2021



सत्यमेव जयते

Ex-29

(27)

## 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: 12530/1021/2021

Complainant: Shri S. Kailasam, General Secretary  
All India Deaf Bank Employees Association  
A-1, New No. 43 (Old No. 22), Car Street  
Near Parthasarathy Temple, Triplicane, Chennai – 600005  
E-mail: <aidbea87@gmail.com>

Respondent: The Chief General Manager (HR)  
State Bank of India, Corporate Centre  
State Bank Bhawan, 16<sup>th</sup> Floor, Madam Cama Road  
Mumbai – 400021

Complainant filed by All India Deaf Bank Employees Association.  
Disabilities percentage of beneficiary not mentioned.

### GIST of the Complaint:

Complainant vide complaint dated **28.12.2020** has submitted that State Bank of India had conducted examination for their working sub-staff members for promotion to clerical cadre on 22.11.2020 and final results were declared on 18.12.2020. As many as 589 sub-staff members in Karnataka Zone were promoted to Clerical Cadre and their category was clearly mentioned in the list as SC, ST, OBC and General. He alleged that Bank has neither provided reservation in promotion nor maintaining 100 points reservation roster for PwDs and violating several Sections of RPwD Act, 2016. They have sought relief as – (i) Stay order in promotion in all Clerical Cadre for the promotion year 2020-21 for which the result declaration dated 18.12.2020. (ii) promotion of Deaf Sub staff Member Shri Jayaraju G.

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

3. In response, Dy. General Manager & CDO, State Bank of India vide letter dated **17.02.2021** submitted that as per proviso to Section 34 (1) of the RPwD Act, 2016, there is no provision of reservation in promotion and para 07 of DoP&T OM dated 15.01.2018 very explicitly provides the reservation for PwDs in direct recruitment only. They

*Alpna Srivastava*

....2.....

further submitted that Bank is maintaining 100 point reservation roster and Bank is not violating Section 03 and 20 of the RPwD Act, 2016. As regard Sri Jayaraju G PF, he is a SC employee and as per the policy of Bank, he has been imparted pre promotional training from 19.10.2020 to 21.10.2020 and 09.11.2020 to 10.11.2020. The incumbent at no point of time made a request during the training to provide for sign language interpreter. On his request this will be provided in future.

4. After considering the respondent's reply dated **17.02.2021** and the complainant's rejoinder dated **18.03.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.04.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.04.2021**. The following were present:

- Shri S. Kailasam – complainant
- Shri D.B. Yedukkar, AGM on behalf of respondent

#### **OBSERVATIONS & RECOMMENDATIONS**

5. Complaint is filed by the Complainant alleging that the Respondent establishment has denied to extend reservation in promotion for Persons with Disabilities. It is also alleged that pre promotion training was not given to the Complainant and the Respondent is not maintaining 100 points reservation roster.

6. 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.

*Upma Sircotava*



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7. 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.

8. 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).

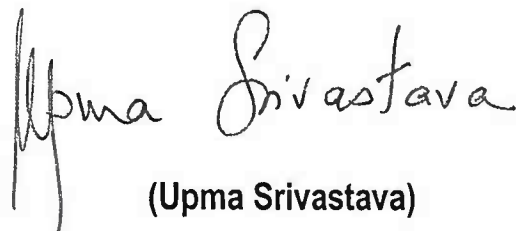
9. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of Hon'ble Supreme Court and High Court.

10. 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.

*Umapa Srivastava*

11. 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 Supreme Court in Rajeev Kumar Gupta and others Vs Union of India and others.

12. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 15.06.2021



JANE

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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. 12576/1011/2021

**Complainant:**

Shri Dhiraj Dhananjay Sarda, R-22575  
937, Sahivaji Chowk,  
Dist. : Rahuri,

Ahmednagar,  
Maharashtra

Email : <dhiraj.sarda7777@gmail.com>

Versus

**Respondent :**

Food Corporation of India,  
(Through the Chairman & Managing Director), R-22576  
16-20, Barakhamba Lane,  
New Delhi – 110 001

**Disability** : 53% Multiple Disability [ 53% Locomotor + 53% Hard of Hearing]

**Gist of Complaint:**

Shri Dhiraj Sarda, aged 26 years, a person with 53% multiple disability vide his complaint dated 22.01.2021 submitted that he has passed the examination to the post of AG III (General) in Food Corporation of India against their Advt. No.01/2019-FCI category-III of West Zone, Mumbai. His Document Verification has been completed by FCI on 13.02.2020 without any issues but he has not received his Regional Allotment Letter from FCI so far. He submitted that earlier he was selected for the post of Watchman against FCI's Advertisement in 2018. At that time his candidature was accepted.

*[Signature]*

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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)

2. The Dy. Genl. Manager (CLO), FCI vide their letter no. 44(2)/CCPD-1/LC/2021/105 dated 02.03.2021 submitted that Shri Dhiraj Dhananjay Sarda with Roll No. 2041014167 had applied for the post of Assistant Grade-III (General) and was selected with the rank under PwBD-B-1. During the document verification, it was noticed that the physical disability mentioned in the disability certificate of the complainant did not match with the applied category. Hence, the benchmark disability mentioned for the vacancy was not as per the physical requirements of the candidate. Therefore, his candidature was not considered. The complainant had represented this before the concerned FCI Office, i.e. Zonal Office (West), Mumbai. The Respondent submitted that the Disability Certificate reproduced by the candidate is currently being reviewed by them and the final decision in this regard shall be intimated to the complainant.

3. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 06.04.2021. The said hearing was rescheduled to 16.04.2021 at 3:00 p.m due to administrative reasons.

4. The following persons were present during the hearing ;
- 1) Shri Dhiraj Dhananjay Sarda in person present.
  - 2) Shri R.L. Meena, DGM, FCI for Respondent.

**Observations & Recommendations**

5. Complainant applied for the post of Assistant Grade – III. He was selected under the category PwBD-B-1. Complainant alleges that though he has been selected, he has not yet received Allotment Letter.

6. Respondent submits that the Complainant passed the recruitment examination, however during documents verification stage it was found that

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the sub category of physical disability he mentioned in the examination form was different from the disability he was actually suffering from. Respondent submitted that it was clearly mentioned in the advertisement that PwDs with 'Locomotor Disability' or 'Hard of Hearing' were eligible for applying for the post. However, the Complainant suffered from 'Multiple Disability'. Therefore, the candidature of the Complainant was rejected at the stage of documents verification. After rejection for the first time, the complainant represented his case before 'zonal office, which is considering the application of the Complainant.

7. Complainant suffers from Multiple Disability (Locomotor disability and Hard of Hearing) upto the extent of 53%. It is an established fact that the Complainant has passed the recruitment examination conducted for the post. This fact is manifestation of hard work and determination of the Complainant, despite the disabilities.
8. Further, 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 the most important being '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.
9. Section 3 of the Act lays down that appropriate government shall take steps to ensure reasonable accommodation for Persons with Disabilities.

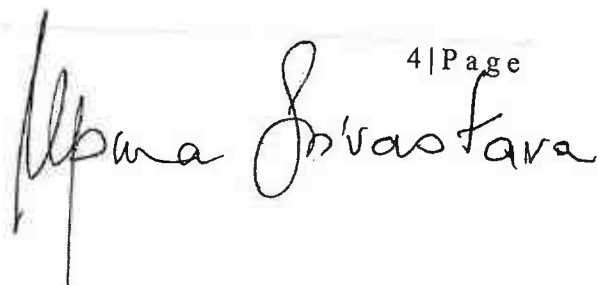
*Upma Srivastava*



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. For the purpose of achieving the objective of economic independence of the disabled persons, Section 2(y) of the Act defines "Reasonable Accommodation" the 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.

10. 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.

11. This court also attracts the kind attention of the Complainant towards List of Posts identified suitable for Persons with Disabilities. Ministry of Social Justice and Empowerment has published list of posts identified suitable for Persons with Disabilities dated 04.01.2021. Entry No. 90 of the list identifies Post of Assistant Grade (General) suitable for Person suffering from Multiple Disabilities. Therefore, even though advertisement did not mention persons suffering with 'Multiple Disabilities' eligible for the post, Respondent can take into consideration the MoSJ&E list dated 04.01.2021 while deciding the Complainant application which is still pending before Zonal Office of the Respondent establishment.



12. The Respondent passed an examination in spite of the challenges the two disabilities presented before him. This court recommends that the Respondent shall on considerations of compassion and provisions of the RPwD Act, 2016 as mentioned in paras 8 & 9 above consider the Complainant's application favourably, which is pending before the Zonal Office, in light of MoSJ&E List of identified posts dated 04.01.2021.

13. The case is disposed off.

Dated: 16.06.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



(Recd 22 JUNE)

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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.

R-27571

Versus

**Respondent :**

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

R-27572

**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.

*Neha Srastava*  
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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)

- 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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Hema Srivastava

post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.

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

#### **RESERVATION FOR PERSONS WITH DISABILITIES**

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

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

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

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

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

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



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

  
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### 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.

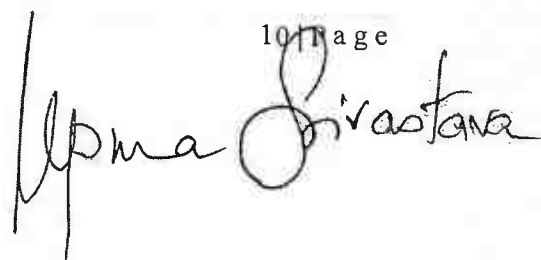
24. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

#### **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 OMs issued by DoPT.

30. Accordingly the case is disposed off.

Dated: 15.06.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



(47)

## 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. 11877/1011/2020

Complainant: Ms. Geetayani Mishra, A-471/10, Part-I, Sonia Vihar, Delhi – 110 094

Respondent : Central University of Himachal Pradesh (Through the Registrar), Dharamshala,  
Distt: Kangra, Himachal Pradesh-176 215.

Disability : 45% locomotor

## Gist of Complaint:

The complainant vide her complaint dated 12.03.2020 submitted that Central University of Himachal Pradesh vide its Employment Notice No. 006/2019 dated 28.11.2019 has advertised for appointment to various teaching positions in their University. She applied for one of these posts. The University did not give reservation for visually impaired persons for the post of Professors and Associate Professors. The University did not given reservation to VH persons in their earlier Employment Notice No. 001/2019 dated 09.05.2019 also.

2. The Registrar, Central University of Himachal Pradesh vide letter dated 11.12.2020 submitted that their University had started direct recruitment of Assistant Professors during the year 2011-12. Initially 80 Professors were appointed. 3% reservation were given at that time to candidates with disabilities and the following candidates were appointed under PH quota.

- i) Dr. Muhammad Hafeez, Assistant Professor – VH
- ii) Dr. Saima Banu, Assistant Professor – VH
- iii) Dr. Pragati Bhargav, Assistant Profesor - VH

In the year 2019 the University had advertised for 128 teaching posts under direct recruitment. Out of which the University had given 5 posts under reservation for persons with disabilities. Out of 5 posts, 02 posts were reserved for person with visual impairment and the remaining 3 posts were reserved for persons with locomotor disabilities because during the initial appointment, the University had used the quota earmarked for OH candidates for the appointment of VH persons. Therefore, during the current appointments the seats reserved for VH were converted to OH category before advertising for teaching posts by the University. Hence, the advertisement was given showing reservation of 05 posts for OH category. In the meantime, the 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 employment advertisement issued by the Central University of Himachal Pradesh. The Commissioner for Persons with

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Disabilities, Govt. of Himachal Pradesh vide an order on 03.06.2019 to the Central University of Himachal Pradesh recommended it to reserve one post of VH candidate out of 05 posts reserved for locomotor disabilities. Thereafter, their University accordingly revised the reservation in posts in their 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.

#### 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. 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>

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 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.

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

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

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

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

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.

#### 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.

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 benchmark disability is selected on merits without relaxed standards along with other candidates. He will not be adjusted against the reserved shared the vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability

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 fulfil the statutory duties and follow DoPT guidelines with respect to maintenance of reservation roster and reserving vacancies for PwBDs. Therefore, this court recommends that the Respondent shall re-calculate the vacancies and shall reserve 4% of the vacancies for PwBD candidates. Respondent establishment is recommended to re-notify the whole advertisement after calculation of reservation in accordance with Section 34 of RPwD Act 2016 and concerned OMs issued by DoPT.

30. Accordingly the case is disposed off.

Dated: 18.01.2021

  
(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. 12559/1040/2021

### Complainants:

- (1) Mr. Masoom Reza;  
Room Number 2, Alama Boys Hostel (Campus B),  
Gate Number 4, Jamia Millia Islamia  
Delhi-110025  
Email: [ryder.masoom@gmail.com](mailto:ryder.masoom@gmail.com)

R-27674

- (2) Mr. Zuhaib Ahmad Khan;  
Email: [zkhan5919994@gmail.com](mailto:zkhan5919994@gmail.com)

### Respondent:

Jamia Millia Islamia,  
Through: Registrar,  
Jamia Nagar, New Delhi-110025  
Email: [Registrar@jmi.ac.in](mailto:Registrar@jmi.ac.in)

R-27675

### 1. Gist of Complaint

1.1 Mr. Masoom Reza, a 4<sup>th</sup> year B.A. LLB (hons) student; and Mr. Zuhaib Ahmad Khan, a B.A. (Hons) student at Jamia Millia Islamia (JMI), both persons with 100% Blindness filed complaints on 12<sup>th</sup> and 13<sup>th</sup> January, 2021 respectively regarding mandate issued by the JMI to write answers to the questions in own handwriting by students with blindness in open book exam scheduled to be held from 22.01.2021; and not implementing the Guidelines for conducting written exam for Persons with Benchmark Disabilities.

1.2 The complainants submitted that their exams were scheduled on 22.01.2021 and the mock tests were scheduled on 15.01.2021 and alleged that the accessibility concerns had not been taken care of by JMI despite having been sent countless mails to many JMI officers highlighting all the concerns; even they did not get any response. The Mock Test was scheduled on 15.01.2021, therefore, they sought urgent intervention of this Court.

1.3 The complainants raised the following issues:

- (i) They wanted to give their exams by themselves through computer (in typed mode). All other universities have given this arrangement to students with visual disabilities in 'open book exam' and Jamia should also make this

*Mona Sivasatava*  
(Page 1 of 5)

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](mailto:ccpd@nic.in) ; Website: [www.ccd disabilities.nic.in](http://www.ccd disabilities.nic.in)  
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)  
(Please quote the above file/case number in future correspondence)

'reasonable adjustment' for students with visual impairment to give exams as per the mandate of the Rights of persons with Disabilities Act, 2016 and the scribe guidelines.

(ii) At Point 5 of the 'Open Book Notice notified on 03.01.2021 by JMI' mandates that examinee will write the answers to the questions in 'own handwriting' on A-4 size white papers. Being a student with visual disability, they cannot write on paper. Additionally, they did not have any facility of scribe in their village to write their exams and people are also unwilling to assist due to the COVID-19. Therefore, they preferred to take their exams on computer in typed mode and in all their previous semesters, they had given their exams on the computer in typed mode.

(iii) The complainants/students required question papers in accessible/readable format such as doc/docx so that they could access/read them properly. In the Mock exam, the questions were not accessible through the screen reader.

(iv) In the Mandate issued by JMI on 03.01.2021, it is mentioned under the Open Book notice that students with visual disabilities will get 5 hours and non-disabled students will get 4 hours to complete the exam.

(iv) It was very unfortunate that despite their several mails for procuring accessible books of their syllabus, they did not get from JMI even a single book of that semester to study. Being students with visual disabilities, they have to rely upon various assistive instruments for reading the books etc. and looking for any study material here and there.

(v) University of Delhi and Banaras Hindu University have also followed 'Open Book method' and provided 6 hours to persons with visual disabilities. Furthermore, in accordance with the government scribe guideline, students with visual disabilities must be given 20 minutes extra per hour; therefore, if non-disabled students are given 4 hours, students with visual disabilities must be given at least 5 hours and 20 minutes to complete the exam.

(vi) At Point 4 of the Mandate dated 03.01.2021, it is mandatory to scan the Bar code given on the screen before uploading the answer sheet in the exam. It is totally inaccessible. The question papers appeared on the screen in the Mock exam was also not at all readable through the Screen Reader.

1.4 The complainants prayed that –

- (i) JMI should allow them to take their exams on computer in typing mode and make reasonable adjustment to make question papers in accessible/readable format such as doc/docx so that they could access/read them properly.

- (ii) JMI should ensure that the process of uploading and downloading of the questions papers and answer sheets must be accessible through 'Screen Reader' so that they could navigate smoothly.
- (iii) At least 6 hours time be provided to each student with visual disabilities to complete the exam so that they can take their exam in a proper manner.
- (iv) Reasonable adjustments be made so that they could take their Mock exam and get themselves familiar with the portal.
- (v) JMI could also devise another mechanism taking into the accessibility concerns and allow students with visual disabilities to send the answer sheets through a separate E-mail ID of the university and the question papers will be sent by the university to their Email ID.

## 2. Submission made by the Respondent

2.1 On taking up the matter, the respondent filed their reply dated 15.02.2021 and inter-alia submitted that JMI had resolved all the above mentioned grievances of the complainants/students and to facilitate the Divyang in the on-going online open examination 2020-21, a revised guideline for "Online Open Book Examination" was issued vide Notification No.COE/Exam/20/2021 dated 28.01.2021 which was uploaded on the website of the JMI on 01.02.2021 for the information to all the concerned students.

2.2 The respondent furnished a copy of the revised guidelines dated 28.01.2021 notifying as under:

- (i) The Divyang Students shall have the maximum time limit of 06 hours to upload the answers scripts on the students' portal at [www.imicoe.in](http://www.imicoe.in).
- (ii) The Divyang Students may also upload the typed answer script in PDF Format on the above stated students' portal.
- (iii) There is no mandatory provision of scanning the BAR Code/Or Code to upload the answer script.

## 3. Submissions made in the Rejoinder

3.1 The complainants in their rejoinder dated 17.03.2021 submitted that JMI did not respond to their requests made during the period 03.01.2021 to 15.01.2021; and started taking notice after the intervention of this court as the notice of the court was served on 18.01.2021; and after that JMI issued revised guideline on 28.01.2021. It clearly depicts the very lackadaisical approach of the JMI towards the concerns/grievances of the students with disabilities.

3.2 Their first exam started from 22.01.2021 and the revised guideline was issued on 28.01.2021 which was put on the website on 01.02.2021. But during this period,

their 03 exams were already over. "The formal permission" was given only after 01.02.2021 otherwise they were in the lurch. The right was shown as a charity.

3.3 Although, JMI had stated that the notice was made public on 01.02.2021, but, no modification had been done in the examination portal highlighting the same. Like other guidelines, the modification of that effect should have been done on the examination portal.

3.4 The examination portal was not at all accessible for persons with visual impairment through screen reader, despite repeatedly raising of this issue.

3.5 The questions papers were not readable through a screen reader on the exam portal.

3.6 The complainants reiterated their prayers adding that the exam portal of JMI must be made accessible for students with visual impairment. Further, in examination guidelines issued by JMI, specific concerns of students with disabilities must be addressed; and the guidelines of conducting written exams issued by the Government must be followed.

**4. Hearing:** The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on **16.04.2021**. The following were present:

- (1) Shri Masoom Reza and Shri Juhaib Ahmad Khan, complainants
- (2) Shri Fazail Ahmed Ayyubi, for the respondent

**5. Observation/Recommendations:**

5.1 Both the parties were heard.

5.2 Complainant submitted that certain initiatives were taken by the Respondent establishment for conducting online examination during CoVid-19 pandemic, however, these steps were not adequate for addressing challenges faced by divyang candidates, particularly those suffering from Visual Impairment. Moreover, when the Complainant raised certain issues, Respondent resolved them only after mock examination was already conducted.

5.3 Respondent submitted that when the Complainants contacted the Respondent, a technical team was assigned the task to address the technical issues faced by the Complainants. For better outcome, the Complainants were personally contacted on phone. Respondent submits that all the efforts were made to address the issues faced by the Complainant.

5.4 Efforts made by the Respondent deserved appreciation. However, Respondents fell short of expectations by not resolving the issues in time. Respondent could have identified and resolved the issues on their own. Moreover, such issues could have been addressed by the Respondent before the mock exam was conducted.



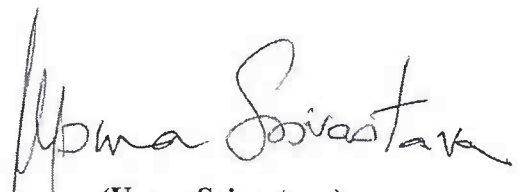
5.5 Attention of the Respondent is attracted to guidelines issued by Ministry of Social Justice & Empowerment dated 29.08.2018. As per point XV of the OM, online examination should be conducted by the Respondent in accessible format i.e. websites, question papers and all other study material should be accessible as per the international standards laid down in this regard.

5.6 Even during online hearing certain complaints were made by the Complainant alleging that the online examination conducted are not in accessible format.

5.7 Therefore, this court recommends that subject to Covid-19 protocols, Respondent shall organize a meeting with Complainant, either online or offline as the case may be. Respondent shall note and resolve the problems raised by the Complainants. Thereafter, the Respondent shall revise the guidelines for conducting online examination. Such revised guidelines shall be in congruence with MoSJ&E OM dated 29.08.2018 and a copy of the same may be sent to this Court for perusal.

5.8 Accordingly the case is disposed off.

**Dated: 25.06.2021**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities





सत्यमेव जयते

Ex 29

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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: 12596/1023/2021

Complainant: Shri N.R Das

Ex Supdt, Central Warehousing Corporation,

New-look apartment,

M.M.G.S Marg, Dadar East, Mumbai 14

Email: alkadas1961@gmail.com

Respondent: The Chairman & Managing Director,  
Central Warehousing Corporation

"Warehousing Bhawan", 4/I, Siri Institutional Area

August Kranti Marg, Hauz Khas, New Delhi-110016

Complainant 50% locomotor disability

## GIST of the Complaint:

Complainant vide complaint dated **02.02.2021** inter-alia submitted that he is working in Central Warehousing Corporation, Corporate Office, Warehousing Bhawan, 4/I, Siri Institutional Area, August Kranti Marg, Hauz Khas, New Delhi-110016. He says that he is being mentally tortured and harassed by issuing issue order like posting a locomotor disable person at second floor office of CFs, D-Node Office having no lift facility, posting at gate having shift duty with relieving liabilities far away at CFs, Kalamboli from his POR, Dadar. Again biased office order to shift him from Cw, M.S.Jetha, near to his POR, Dadar to CFS, D node, Uran, approx 100km far from POR at Dadar with the knowledge that his wife is working at Mumbai, So he is unable to shift his POR, thus he must take VRS, 03 years before his normal retirement in the year 2022. According to him, he has lost his salary for three years that is approximately Rs.45 lakhs only. And also lost employees contribution in pension fund and benevolent fund. Also receiving very less pension from the month of January 2021 as a retired superintendent. He has requested to compensation of Rs 50 lakhs, directly to be transferred to his state bank of India account registered with central warehousing corporation for salary/ payment purpose.

2. The matter was taken up with the Respondent vide letter dated 08.02.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Dy General Manager (Personnel), Central Ware Housing Corporation, vide letter dated **25.02.2021** inter- alia submitted that Shri NR Das remained posted in Mumbai Complex (i.e. his home station) for about 22 years since his joining CWC in 1987. After being reverted back from deputation with Warehousing Development and Regulatory Authority, New Delhi in 2012, he remained posted in Mumbai Complex till his voluntary retirement on 31.12.2019. He further submitted that the Corporation has mated out preferential treatment to Shri NR Das considering his 'divyangjan' status. He was provided regular promotions, up-gradations and increments regularly. His place of posting always remained Mumbai throughout his service despite the Corporation having all India transferable job policy. He himself opted to go on deputation to WDRA, New Delhi which was far away from his place of residence. On his reversal from deputation he was again posted at Mumbai till his voluntary retirement from the services of the Corporation. He also submitted that Shri

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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)

NR Das has sought compensation of 50 lakhs in his representation. In this regard it is submitted that Shri NR Das has taken 'Voluntary Retirement' from his services of the Corporation citing reasons that 'he is finding it difficult to attend due to his ill health'. There is no mention, what so ever, in his application that he is taking voluntary retirement due to any kind of harassment from CWC. Further, he has also accepted all the retirement benefits without any further demand at any stage.

4. The complainant vide rejoinder dated **18.03.2021** reiterated his comments as mentioned in original compliant.

**Hearing :** The case was heard via Video Conferencing by Commissioner for persons with Disabilities on 23.04.2021. The following present:

- Niradri Ranjan Das – Complainant
- Central Warehousing Corporation- Respondent

#### **Observations and Recommendations**

1. Complainant alleges that he was not granted disability leave and given posting in New Delhi. He submits that feeling harassed by these acts, took voluntary Retirement.
2. Respondent submits that the Complainant was posted in Mumbai office of the Respondent establishment during his service period and transfer to New Delhi office on his own request. Further, he did not file any application for redressal of complaint related to disability.
3. Complainant has not presented any copy of the Complaint which he might have forwarded at the time of taking Voluntary Retirement. Moreover, there is no legal provisions which allows employee's posting at one place only for whole of his life. This Court does not find any instance of discrimination on the basis of disability, hence, intervention of this Court in the present Complaint is not warranted.
4. The Case is disposed off.



(Upma Srivastava)  
Commissioner for persons with Disabilities

Dated: 25.06.2021

Encl: As above



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: 12600/1023/2021**

Complainant: Shri Pradeep Kumar  
e-mail: <kmr.pradeep@gmail.com>

Respondent: The Regional P.F. Commissioner – I  
Employee's Provident Fund Organization  
Bhagirathi Complex, Near Circuit House  
Karam Toli, Ranchi (Jharkhand) – 834001  
E-mail: <ro.ranchi@epfindia.gov.in>

R-22678

The Regional P.F. Commissioner – 2  
Employee's Provident Fund Organization  
MIG A/39, Snehshila, Housing Colony, Near Bartand  
Bus Stand, Dhanbad (Jharkhand) – 826001

R-22679

Complainant: 75% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **05.02.2021** has submitted the following requests as under: (a) to stop additional video recording with audio taping of him as being inhuman and illegal and as clear violation of Section 6 (2) of the Act. (b) to stop overriding the section 47 of Act with FR 56 (J) or any other rules related to termination of service prematurely. (c) to provide assistant for carrying out his routine personal care/work at his work place. (d) to restore normal promotion as Section Supervisor (e) to issue direction to the authority concerned for posting him at District Office Dhanbad etc.

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, Regional P.F. Commissioner-I, EPFO, Jharkhand vide letter dated **26.02.2021** inter-alia submitted that the petitioner has been working at District Office,

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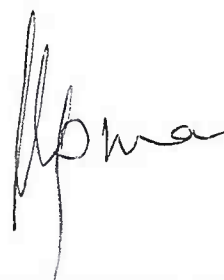
Dhanbad for the last 30 years and the petitioner has always been considered by every DPC and recommended for promotion whenever he was in the Zone of consideration and found fit but all three offers of promotions and his non-acceptance of promotion on each occasion, since 2012 has shown inability to move outside Dhanbad. On every occasion he has cited his deteriorating physical condition, his mother having a house at Dhanbad, illness of mother and unmarried young sister living with him as the reasons for his inability to move outside Dhanbad. Respondent no. 01 has never met the petitioner nor had any interaction with him. They further submitted that demand of complainant that a post of Section Supervisor can be created at Dhanbad could not be accepted because the respondent no. 01 has no power to create any post.

4. Regional P.F. Commissioner-II, EPFO, Dhanbad vide letter dated **08.03.2021** inter-alia submitted that Shri Pradeep Kumar, SSSA has been working since 1990 at Dhanbad and all allegations levelled by the complainant are false. They further submitted that the Screening committee recommended retirement of Shri Pradeep Kumar, SSSA under FR 56 (j) and Rule 48 of Central Civil Services (Pension) Rules, 1972 - after perusal of APAR for the year 2018 - 2019 which shows that the official is not able to discharge the work assigned to him properly and he gets his official work done through an outsider who is not an official of EPFO.

5. After considering the respondent's reply dated **08.03.2021** and the complainant's documents, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **13.04.2021** but due administrative exigencies hearing re-scheduled on **23.04.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.04.2021**. The following were present:

- Adv. Prashant Kumar on behalf of complainant
- Sri Vikas Anand (R.P.F. Commissioner) and Sri Rajesh Kumar Verma on behalf of respondent

 Vikas Anand  
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**Observation/Recommendations:**

6. Both the parties were heard.

**OBSERVATIONS**

7. Complainant filed following Complaints –

- a) Respondent has initiated review process of the Complainant under Fundamental Rule 56(j).
- b) Respondent has installed CCTV camera to video record each and every action of the Complainant in office hence subjecting him to research.
- c) Respondent in order to deny promotion to the Complainant, promoted and transferred him to Ranchi office which is situated on 4<sup>th</sup> floor of the building and hence not accessible for the Complainant who is wheel chair bound.

All the points of grievance are dealt with separately.

**REVIEW PROCESS UNDER FR 56(j)**

8. Complainant alleges that review process under FR 56(j) initiated against him by the Respondent violates Right against Discrimination guaranteed under Section 3 and Section 20 of Rights of Persons with Disabilities Act, 2016. On the other hand, Respondent submits that it is the prerogative of the appropriate authority to retire a government employee subject to the conditions laid down in the rule. Respondent submits that the Complainant having attained the age of 55 years and also having completed 30 years of service is eligible for screening under FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972. Hence, meeting of the Screening Committee was held on 24.02.2020, wherein the Committee recommended retirement of the Complainant under FR 56(j). Thereafter, the matter was sent to Review Committee, which decided that the Complainant must be given chance to improve his performance and must be kept under observation and if his performance does not improve, he may be considered for Compulsory Retirement under FR 56(j). Reasons behind Review Committee decision, as admitted by the Respondent in its Reply are –

*Upma Shrivastava*



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- a) Apart from Memorandum dated 18.09.2019, there is no other documentary evidence against the Complainant;
- b) Though there are adverse remarks in the APAR, the grading given is 'good'.

Further, Respondent contends that since right of the Respondent under FR 56(j) is absolute hence, Complainant has no locus to challenge the same.

9. Text of FR 56(j) reads as "The Appropriate Authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right to retire any government servant ...." Hence, it is certain that the right of Appropriate Authority under FR 56(j) is absolute. However, exercise of this right can not be arbitrary. The rule itself says that this right can only be exercised if the appropriate authority opines that such compulsory retirement is in public interest. Hence, before exercise of this right the Appropriate Authority must make a reasonable decision based upon facts and this particular situation.

10. Further, term 'absolute' does not mean that such decision cannot be challenged by the aggrieved party. Hon'ble Supreme Court in UNION OF INDIA v. COL. J. N. SINHA; (1970) 2 SCC 458, held that power under FR 56(j) can be exercised subject to conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. **It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.**

11. This gives rise to a question, i.e. whether performance of a divyang employee can be reviewed/screened under FR 56(j); if yes then what can be its extent?

12. Strictly speaking, divyang employees are not immune from review under FR 56(j). However, it does not mean that provisions of Rights of Persons with Disabilities act, 2016 can be overlooked. Judgment of Hon'ble Supreme Court in KUMAL SINGH v. UNION OF INDIA; (2003) 4 SCC 524 is relevant on the point. Hon'ble court held that statute made for

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the benefit of Persons with Disabilities shall have supremacy over other laws dealing with employment issues. Court held that in construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Further, the apex court held that the Act is special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them, it being a special enactment, doctrine of *generaliaspecialibus non-derogant* (general provision does not derogate the specific provision) would apply.

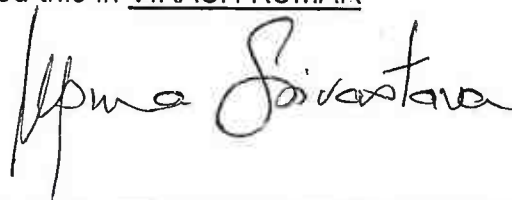
13. Therefore, criterion for reviewing the performance of divyang employee cannot at par with enabled employee. While reviewing the performance of the divyang employee, the employer must give space to principles of reasonable accommodation and evaluate the performance on relaxed standards.

14. Term 'Reasonable Accommodation' is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016.

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.

15. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality.

16. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.



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*"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities.....Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Ac 2016.*

17. Therefore, review of the Complainant's performance must be done in accordance with the relaxed standards of evaluation and in accordance with the true spirit of the aforesaid quoted Judgements.

18. Further, three facts admitted by the Respondent in its written reply are contrary to the recommendation of Screening Committee to Compulsory Retire the Complainant under FR 56(j). Respondent in its written reply admitted that the Complainant was given 'good' grading in APAR of year 2018-19 and 2019-20. Secondly Respondent has admitted that apart from Memo dated 18.09.2019, there was no documentary evidence against the Complainant. Lastly, Respondent has admitted that the Complainant was given promotion in year 2020. It is hard to articulate that why the employee who was given promotion was suddenly considered for 'Compulsory Retirement' because of bad performance record.

19. Hence, this court concludes that recommendations of Screening Committee to Compulsory Retire the Complainant under FR 56(j) fails the test of 'public interest' and cannot be implemented.

#### **INSTALLATION OF CCTV CAMERAS**

20. Respondent admitted that CCTV camera has been installed to monitor the activities of the Complainant. Respondent's reason for doing the same is that some oral Complaints have been received against the Complainant alleging that he performs his official duties through third party. Hence, in order to know the truth CCTV camera has been installed to monitor the activities of the Complainant.

*Upma Srivastava*

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21. In case a veracious Complaint is filed against any employee then it becomes right of the employer to investigate the issue and ascertain the truth. However, Respondent cannot and should not adopt such investigative measures which amount to degradation of a human being. Act of installing CCTV camera in order to monitor the activities of the employee is blatant violation of right to privacy of the employee. Every employee with disability has reasonable expectation of privacy. Though every employer has right to conduct investigation into complaint alleged, such investigations cannot be conducted which breach the basic human rights upholding dignity of the employee. Time to time surprise monitoring can also serve the purpose of such investigation.

22. Hence, this court concludes that act of installing dedicated CCTV camera for monitoring the Complainant every minute violates right of non discrimination with Persons with Disabilities.

#### **POSTING IN OFFICE SITUATED ON 4<sup>th</sup> FLOOR**

23. Complainant has alleged that he was promoted and transferred to the office situated on the 4<sup>th</sup> floor. Since, he is wheelchair bound hence the office was not easily accessible for him and hence he had to deny the promotion.

24. Respondent has submitted that the Complainant was transferred and posted in Ranchi office. All the floors of the office building in Ranchi are in occupation of the Respondent and that complainant has been regularly refusing promotion. Hence, Complainant's allegation that office of the Respondent was not accessible for the Complainant is false.

25. This court concludes that the Complainant has not presented any fact to show that he was posted on the 4<sup>th</sup> floor of the building. If the whole building is in occupation of the Respondent, then in absence of any proof, it cannot be presumed that the Complainant was posted on higher floors and not on the ground floor.

*Upma Srivastava*  
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**RECOMMENDATIONS**

26. This court recommends that the review of the Complainant under FR 56(j), is not in public interest as they are based on such standards which are similar to those which are adopted for review of persons without disabilities of the Respondent establishment. Further, this court recommends that the Respondent shall not adopt inhumane methods to investigate into allegations made against the Complainant and therefore shall not install CCTV camera dedicated to monitor the activities of the Complainant.

27. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 25.06.2021





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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: 12556/1021/2021**

Complainant: Shri Deewan Singh  
Poliya ka Nagala,  
Shive Nagar, Dhanauli  
Agra-282001  
Email: asmdeewansingh@gmail.com

Respondent: The General Manager  
Northern Railway  
Headquarters Office,  
Baroda House, New Delhi  
Email: gm@nr.railnet.gov.in

Complainant 40% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **08.01.2021** inter-alia submitted that he is working at Agra Fort Station. His appointment was admitted in grade pay 2800 to the post of assistant station master in Agra Division under special Divyang Quota. Deewan Singh got first appointment on 1/11/2013. Despite being in divyang quota he did not get promotion in divyang quota. While the first list of promotion was in grade pay 4200 on 31/12/2015 in which SC/ST category was promoted and same as happened in 4600 grade pay. He got 4200 grade pay under the 7 CPC on 1/1/2016. Whereas his first promotion should have been in 4200 grade pay in 2 years and second promotion in 4600 grade pay which was not done. Regarding this he has been written a letter 3 times to ask his promotion. After that he replied "there are no guidelines of the Railway Board regarding reservation in promotion under the disability quota.

2. The matter was taken up with the Respondent vide letter dated **15.01.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Divisional Personnel Officer, North Central Railway vide letter dated **17.02.2021** inter-alia submitted that Ministry of Railways has identified post to be manned by person with disabilities at the recruitment stage to honour the mandate of the PwD Act. Prior to this, DoP&T had issued instructions for providing 3% reservation for PwD in the post filled by promotion also. These orders were not implemented by Ministry of Railways in view of operational requirements. It is also brought out here that the promotion to Sh. Kamal Kumar is pertained with CAT/ NDLS order dated 30/04/2004 in OA No 2279/2003 filed by Northern Railway Physically Handicapped Employees Welfare association.

4. After considering the respondent's reply dated **17.02.2021** and the complainant's rejoinder dated 05.03.2021, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **02.04.2021**, but the administrative exigencies hearing reschedule on **16.04.2021**.

*Upma Sinastava*

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 16.04.2021. The following present:

- Deewan Singh - Complainant
- Shri Shailendra Kumar, CLA on behalf of respondent

### **Observations & Recommendations**

5. Complainant submits that he was appointed on the post of Assistant Station Master in year 2013. Subsequently he was promoted to higher grade pay in year 2016. At the time of promotion, no reservation in promotion for Persons with Disabilities was given. Later, in year 2017 his second promotion was due, however, Respondent again denied reservation in promotion to PwBDs and he was denied promotion.

6. Respondent submits that DoPT issued instructions for providing reservation for PwBDs in promotion, however, these Orders were not implemented by the Respondent in view of operational requirements. Therefore, Complainant was not given reservation in promotion.

7. The main issue is that of reservation in promotion. 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.

8. 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).

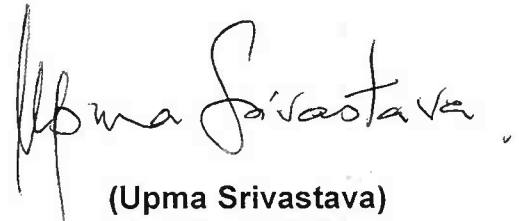
9. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of hon'ble Supreme Court and High Court.

10. 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.

*Uma Srivastava*

11. 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 Supreme Court in Rajeev Kumar Gupta and others Vs Union of India and others.

12. The case is disposed off.



**(Upma Srivastava)**

Commissioner for persons with Disabilities

Dated: 25.06.2021

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: 12593/1023/2021**

Complainant: Shri Santanu Kumar Sahoo

R-27683 E-mail: <santanusahoo1953@gmail.com>

Respondent: The Commissioner

Kendriya Vidyalaya Sangathan (KVS), 18, Institutional Area

R-27682 Shaheed Jeet Singh Marg, New Delhi – 110016

e-mail:<kvse2section@gmail.com>

Complainant: Shri Sujit Kumar Sahoo, 45% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **01.02.2021** submitted that his son Shri Sujit Kumar Sahoo had joined K.V.S. on 15.10.2018 as Assistant Engineer in Electrical Engineering under PwD quota. Although he was engaged as Electrical Engineer but he has been compelled to serve both Civil and Electrical Engineering in a mixed capacity. He alleged that Shri BBS Pachauri, Superintending Engineer and Shri Anil Kumar Agrawal, Executive Engineer are involving in conspiracy against his son as they are involved in financial irregularities against which his son has acted as a whistle blower. He has requested to allow his son to work in a peaceful environment till the probation period comes to an end.

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**, no response has been received from the respondent. Therefore, hearing scheduled on **13.04.2021** but due to administrative exigencies, hearing rescheduled on **23.04.2021**.

*Upma Srivastava*



**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.04.2021**. The following were present:

- Shri Sujit Kumar Sahoo – complainant
- Sri Anurag Bhatnagar, Assistant Commissioner (Estt.-1) on behalf of respondent

### **OBSERVATIONS & RECOMMENDATIONS**

3. Both the parties were heard.

4. Complainant submits that he is Electrical Engineer and he was appointed on the post of Electrical Engineer in Respondent establishment. However, in order to harass the Complainant, he has been asked to perform duties of Civil Engineer. Further, gradings in his APARs were also reduced with sole intention of harassment. It is also alleged that probation period of the Complainant has also been extended arbitrarily.

5. Respondent replied that there is no strict division of duties assigned to engineers of different fields. Some functions of Electrical and Civil Engineers overlap hence, the Complainant was assigned with some duties of Civil Engineer. Respondent submits that reason for extending probation period is that the Complainant does not perform the duties assigned to him.

6 Section 20 (1) and (2) mandates that the government shall not discriminate with Persons with Disability in any matter related with employment and that reasonable accommodation and conducive environment shall be provided to employees with disability. Instrumental role of employment opportunities in empowerment of Persons with Disabilities was explained by Hon'ble Supreme Court in UNION OF INDIA v. NATIONAL FEDERATION OF THE BLIND; (2013) 10 SCC 772

*"50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community."*

*Praveen Srivastava* ....3....



7. Hence this court recommends that in order to provide conducive environment to Complainant. Respondent should act empathetically in confirmity with the letter & spirit of Rights of Persons with Disabilities Act, 2016 and review the issue of extension of probation period. Further, Respondent is recommended to not assign duties for which the Complainant was not appointed. All efforts should be made by the respondent to provide a conducive working environment which helps the complainant to complete his probation successfully.

8. Case is disposed off.



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

Dated: 25.06.2021



सत्यमेव जयते

Ex-2

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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: 12603/1023/2021

Complainant: Shri Sita Ram Meena, Qtr. No. 12/2, Type-P, Range Hills Estate MH  
Qtrs, Kirkee, Pune – 411020  
E-mail: <sitarammeena2014@gmail.com>

Respondent: The Brigadier, Commandant Bombay Engineer, Group & Centre Kirkee,  
Pune – 411003  
E-mail: <civestbegkirkee@gmail.com>

Complainant: 60% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **25.01.2021** submitted that he had applied for the post of Civilian Store Keeper Grade III in Bombay Engineer Group & Centre, Pune under Ex-serviceman and ST quota and after qualifying written test and he was called for interview on 08.03.2011. At that time, he was directed to produce PwD certificate and the same was verified along with other relevant certificates after that appointment order was issued in his favour for the post of Civilian Store Keeper III (Ex-Serviceman/ST) category. At the time of joining duty in the month Nov. 2011, he was directed to undergo medical examination and accordingly, Doctor correctly certified that there was no bodily infirmity except 'NIL' in relation to employment. He further submitted that Department has issued Memo to him on 14.09.2019 alleging that he produced fake/false Medical documents dated 30.09.2011 and hiding the fact of being physically handicapped candidate for the post of reserved for Ex-serviceman/ST candidate.

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

3. Respondent vide letter dated **08.03.2021** inter-alia submitted that the as per the advertisement published in the Employment News dated 22 – 28 May 2010, the post of

*Upma Srivastava*

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Civilian Store Keeper-III was reserved Ex-S'man in (ST) category only. Shri Sita Ram Meena had submitted medical certificate and medical report dated 30.09.2011 countersigned by him, certifying as a FIT candidate without any bodily infirmity and ability to use all his limbs despite being 60% a person with disability, when this discrepancy in documents was noticed the individual was issued departmental Memo as per CCS Rule 1965.

4. After considering the respondent's reply dated **08.03.2021** 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 **13.04.2021** but due to administrative exigencies, hearing rescheduled on **23.04.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.04.2021**. The following were present:

- Shri Sita Ram Meena – complainant
- Col. R.K. Singh on behalf of respondent

**Observation/Recommendations:**

5. Both the parties were heard.

6. Respondent establishment issued advertisement for vacancy 'Civilian Store Keeper'. Complainant submits that he applied for the post, participated in selection procedure. He qualified written examination held on 07.11.2010 and thereafter was called for an interview by letter dated 15.02.2011. Thereafter, he was declared successful and was appointed by Appointment Order dated 23.09.2011. Later his service was terminated by Order dated 21.11.2020. Complainant alleges that the termination is discrimination with Person with Disability and hence his service must be restored.

7. Respondent submits that service of the Complainant was terminated because at the time of appointment he was Person with Disability and despite of the fact, he submitted a false certificate of medical fitness which **declared him physically fit to perform the duties**.

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8. Both the Complainant and Respondent submitted relevant documents and this court had an opportunity to examine the same. No party disputed the veracity of the documents submitted by the other.

9. Advertisement issued by the Respondent clearly shows that post of Civilian Store Keeper was **not** reserved for Persons with Disabilities. Complainant submits that he applied for the post of Civilian Store Keeper which was not reserved. Advertisement nowhere bars the Person with Disability from applying for the post. Moreover, Ministry of Social Justice & Empowerment ('MoSJE') issued lists of jobs identified suitable for Persons with Disabilities. The list was notified first time in year 2013. Entry No. 159 of Annexure C of the Notification dated 29.07.2013 identifies the post of Store Keeper as suitable for Person with Disability, for category 'One Arm' and 'One Hand'. Second list was published by MoSJE in 2021, vide Notification dated 04.01.2021. Entry 1486 of this list also identifies the post of 'Store Keeper' as suitable for Person with Disability, for category 'One Arm' and 'One Hand'. Moreover, Notification also lays down that even if the list does not identify any post suitable for any particular category and person belonging to that category is successfully discharging his duties, such post is automatically identified suitable for that category.

10. Complainant is successfully discharging his duties since 2011 hence, even though the post was not reserved for PwD category, Complainant did no wrong in applying for the post of Store Keeper.

11. Other issue is that of production of 'Medical Certificate' dated 30.09.2011. The certificate declares him fit for discharging duties of 'Civilian Store Keeper'. Though, the Certificate does not mention his disability, it can not be interpreted as 'False Statement' made by the Complainant. Certificate declares him fit for discharging duties of Civilian Store Keeper in the office of the Respondent establishment. The certificate was not of general nature. Hence, the certificate must be interpreted liberally. Hon'ble Supreme Court in case of SANT RAM v. RAJINDER LAL; (1979) 2 SCC 274 held that welfare legislation must be interpreted in a third World perspective favouring the weaker and poor class. It has also

Upma Sivasava<sup>4</sup>...

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been laid down in the case of labour legislation that courts should not stick to grammatical constructions but also have regard to 'teleological purpose and protective intendment of the legislation. Interpretation of labour legislations should be done by the courts with more concern with the colour, the context and the content of the statute rather than its literal import. This Complaint being filed by Divyang, must also be decided as per same principles.

12. Moreover, issue of employment of Divyangjan also needs to be addressed. Chapter IV of Rights of Persons with Disabilities Act, 2016 recognises employment rights of Divyangjan. Section 20 (1) and (2) mandates that the government shall not discriminate with Persons with Disability in any matter related with employment and that reasonable accommodation and conducive environment shall be provided to employees with disability. Instrumental role of employment opportunities in empowerment of Persons with Disabilities was explained by Hon'ble Supreme Court in UNION OF INDIA v. NATIONAL FEDERATION OF THE BLIND; (2013) 10 SCC 772

"50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community."

13. Therefore, this court recommends that the Respondent shall revoke the termination of the Complainant and restore his service immediately and send a copy of the reinstatement orders to this Court. All due benefits like salary & other allowances etc should also be remitted to complainant, the termination being illegal.

14. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 25.06.2021





सत्यमेव जयते

Ex 724 (75)

## 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: 12562/1023/2021**

Complainant: Shri Mukesh Kumar Saxena  
Gadiyana Chungi, Nigohi Road Nai Basti  
Shahjahanpur – 242001, Uttar Pradesh  
E-mail: <sangeetasaxena5836@gmail.com>

Respondent: The General Manager  
Rifle Factory Ishapore, P.O. Ishapore Nawabgunj  
Distt. 24, Parganas, West Bengal – 743144  
E-mail: <rfl.ofb@nic.in>

Complainant: 40% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **12.01.2021** submitted that his first disability certificate was issued by the Dr. B.N. Bose Sub Division Hospital, West Bengal on **04.06.1998** when his father was in service. But after retirement of his father, family was shifted to their hometown i.e. District Shahjahanpur where his medical certificate was reviewed by CMO District Hospital Shahjahanpur, U.P. on **11.03.2019** and found worst condition and certified that *the holder of handicapped certificate is unable to earn for his livelihood*. Thereafter above disability Certificate was also submitted to the respondent organization. He further submitted that after the death of his father, he had applied for family pension. But in response, respondent had informed that disability certificate issued by Dr. B.N. Bose Sub Divisional Hospital was verified for genuineness and disability condition and according to the Hospital *"the nature of disability conditions progressive and he is able to earn his livelihood"*, hence family pension was denied by the respondent. Complainant alleged that why his latest disability certificate issued by Medical Board of District Hospital, Shahjahanpur was not reviewed.

*Apna Sivastava*

2. The matter was taken up with the Respondent vide letter dated **22.01.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Additional General Manager, Rifle Factory Ishapore vide letter dated **19.02.2021** submitted that Shri Babooram Saxena, Ex-employee of was superannuated on **30.04.2005** and on **21.09.2006**, the said pensioner applied for inclusion of his disabled son's name in pension record with a disability certificate from Dr. B.N. Bose S. Hospital, Barrackpore. After death of the pensioner on **19.02.2019**, Shri Mukesh Kumar Saxena applied for dependent family pension on 03.07.2019 and his disability certificate was forwarded to the Dr. B.N. Bose S, Hospital for verification. In response, they have informed that *"disability certificate is genuine and the nature of disability conditions progressive and he is able to earn his livelihood."* Therefore, based on the verification report and extant Govt. Rules, his case was rejected. They further submitted that meanwhile a new disability certificate from District Hospital, Shahjahanpur dated 11.03.2020 and 07.05.2020 has been submitted by Shri Mukesh Kumar on 27.05.2020 and 31.07.2020 respectively but it was observed that the same has been issued after death of deceased Govt. employee which is not in consent with existing Govt. Orders.

4. प्रार्थी का अपने प्रति उत्तर दिनांक **13.03.2021** में कहा है कि महाप्रबंधक राईफल फैक्ट्री, ईशापुर ने केवल बी.एन.बोस मेडिकल कालेज ब्यैरकपुर द्वारा सन् 1998 में जारी प्रथम विकलांगता प्रमाण-पत्र का वेरिफिकेशन करवाया जबकि पिता के जीवनकाल में जिला अस्पताल, शाहजहाँपुर द्वारा दिनांक 18.10.2016 को जारी विकलांगता प्रमाण-पत्र तथा उसी संदर्भ में बाद में जारी अन्य 02 प्रमाण पत्रों का सत्यापन मुख्य चिकित्सा अधिकारी, शाहजहाँपुर से करवाना चाहिए था क्योंकि प्रार्थी की वर्तमान परिस्थिति की सम्पूर्ण जानकारी जिला चिकित्सालय, शाहजहाँपुर के विशेषज्ञ चिकित्सक एवं विकलांगता प्रमाणन बोर्ड के समक्ष उपलब्ध है।

5. After considering the respondent's reply dated **19.02.2021** and the complainant's rejoinder **13.03.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.04.2021**.

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**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.04.2021**. The following were present:

- Shri Mukesh Kumar Saxena – complainant
- Shri R.N. Mathey, Joint General Manager on behalf of respondent

### **OBSERVATIONS & RECOMMENDATIONS**

6. Both the parties were heard.

7. Complaint is related to grant of family pension. Complainant submits that he applied for family pension and to support his claim, he submitted Medical Certificate dated 07.05.2020, which declared him unable to earn his livelihood. However, Respondent is denying him benefits of family pension.

8. Respondent submits that father of the Complainant was an employee of the Respondent establishment. He superannuated on 30.04.2005 and died on 19.02.2019. after the demise of the employee, his son, the Complainant applied for extending the benefits of family pension to him. To support his claim, he submitted Disability Certificate issued by Dr. B N Bose Hospital, Kolkata dated 04.06.1998. Respondent forwarded the certificate to the hospital for verification and received information vide letter dated 20.03.2020 from the hospital that the Complainant is 'able to earn his livelihood'. Respondent submits that as per the information received from the authority which issued disability certificate the complainant can earn his livelihood hence, benefits of family pension were not extended to him.

9. This court receives Complaints related to denial of Family Pension, therefore this court is compelled to delineate the legal provisions which govern issue of Family Pension.

10. 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

*Mona Sivasava*<sup>4</sup>....

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 of 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.

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

12. 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.

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

14. 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

*Uma Srivastava*



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.

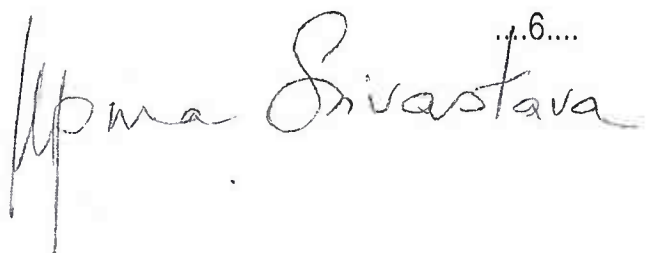
15. Subsequently, by O.M. No. 1/18/01-P&PW(E), dated 05.11.2015, the rule was formed that in addition to authorities specified in guidelines issued by the M/o Health & Family Welfare vide Notification No. S 13020/1/2010, dated 18.06.2010, competent authority to issue disability certificate would also 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.

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

17. 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 Competent Authority.

18. 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

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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.

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

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

21. 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.

22. 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.

23. **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?

24. 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.

 Upma Sivastava.....7.....

25. 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 whether or not the child was suffering from disability on the date of death of the employee/pensioner or her/his spouse.

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

27. 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.

28. In the present Complaint, the Complainant submitted three Disability certificates to buttress his claim of Family Pension. First one is dated 04.06.1998. This certificate declares disability of the Complainant as 40% of permanent nature, hence, this case is covered under Para 4 of O.M. issued by Ministry of Personnel, P.G. & Pensions dated 25.01.2016. Since, the certificate issued prior to the death of the employee declares the Complainant as permanently disabled hence he need not to obtain the Disability certificate afresh.

29. However, this does not resolve the issue of 'ability to earn livelihood'. Respondent relied on the Disability certificate dated 04.06.1998 to reach to conclusion with respect to 'ability to earn livelihood'. O.M. issued by Ministry of Personnel, P.G. & Pensions dated 25.01.2016 does not mention that the disabled dependant must not be able to earn



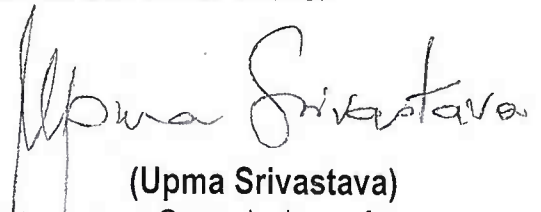
livelihood on the date of issuance of Disability Certificate. O.M. lays down that Disability Certificate issued after the death of the employee must declare the beneficiary dependant as disabled on the date of death of the employee. Perusal of the OM makes it clear that cut off date prescribed for determining disability is date of death of pensioner/employee or her/his spouse whichever is later. However, same criterion of cut off date is not applicable for determining ability to earn livelihood. Relevant paras of the O.M. are reproduced below –

*"3. A disability certificate issued after the death of the pensioner/employee or his/her spouse for the disability which existed before their death may be accepted by the appointing authority if he is satisfied that a) it renders him or her unable to earn his livelihood and b) the child was suffering from the disability on the crucial date, i.e. on the date of death of employee/pensioner or her/his spouse, whichever was later."*

30. Therefore, the decision of the Respondent which is based upon the Complainant's ability to earn livelihood in 1998 is not in accordance with the relevant O.M. mentioned above.

31. Hence, on the basis of guidelines issued by the government from time to time, this court concludes that the Complainant is not required to prove his disability afresh, Disability Certificate produced in 1998 is sufficient for the purpose. Secondly, Respondent cannot consider 1998 as cut-off date for determining ability to earn livelihood, instead, such cut-off date must be 07.05.2020, i.e. the date of latest Disability Certificate produced by the Complainant. This court recommends that the Respondent shall decide the issue of extending Family Pension benefits in accordance with the guidelines delineated above.

32. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 25.06.2021



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. 12436/1014/2020

In the matter of:-

#### Complainant:

Shri K. Shadak Alee,

S/o K. Md. Bhashu,

H. No.3-22, Nossam (Post),

Sanjamala (Mandal),

Kurnool District,

Andhra Pradesh – 518145.

Email <shadakaleek@gmail.com>

Mob : 09490218619

Versus

#### Respondent :

Indian Institute of Science Education and Research Thiruvananthapuram,

(Through the Registrar)

CET Campus,

Thiruvananthapuram,

Kerala – 695016.

Email : <registrar@iisertvm.ac.in>

Phone : 0471-2778009 / 8044 / 8028.

**Disability :** 60% locomotor

#### Gist of Complaint:

The complainant vide his complaint dated 19.11.2020 submitted that has completed his Ph.D from the University of Hyderabad in the year 2013. He worked as a Postdoctoral Fellow at Tata Institute of Fundamental Research in Mumbai from April 2013 to April 2016. He had applied for the post of Assistant Professor against the 'Special Recruitment Drive for PwDS' in IISER, Thiruvananthapuram. He was shortlisted for the interview and attended the same on 24.12.2015 and he was selected to the post of Assistant Professor on contract basis

*Upma Srivastava*

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)



vide Offer Letter No. R-20011/5/15-HR dated 28.01.2016. He joined the Institute on 25.04.2016 for a period of three years as per the contract. After completion of three years of contract, his contract was extended for another one year after review. During this period one of his research proposals that he had submitted to the Council of Scientific and Industrial Research, CISR was approved with a grant of Rs.20 lakh. In the meanwhile he applied for a regular position under PwD category in the faculty against recruitment advertisement but he was not selected for the regular position. His appointment on contract basis continued upto 31.04.2020. The contract was discontinued from 10.02.2020 but later it was extended until 31.08.2020. He has requested the Court to cancel the termination order and allow him to continue to function with all his built in disabilities.

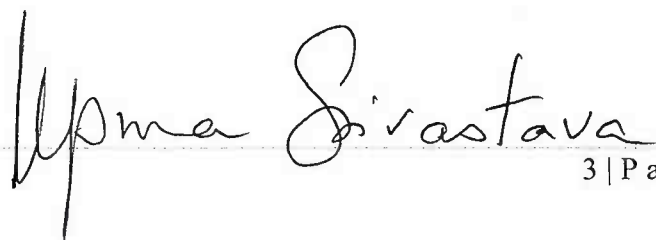
2. The Registrar, IISER Thiruvananthapuram vide letter dated 13.01.2021 submitted that the appointment of Dr. K. Shadak Alee as an Assistant Professor was purely on Contract basis under Special Recruitment Drive for PwDs in the School of Physics. This was meant to enable him to earn experience in teaching assignments. It was written in the terms of the Appointment that the Special Recruitment Drive can be terminated with one month's notice by either party before the closure of the contract. Dr. Shadak Alee joined IISER-TVM on April 26, 2016 and is fully aware of the terms and conditions of his contractual engagement with IISER-TVM for a 3-year initial tenure that would provide him ample scope for gaining experience in teaching. The initial 3-year contract expired on April 26, 2019. The contract was extended by 6 months based on a request by Dr. Shadak Alee. This also expired on October 24, 2019. At the time of extension of the contract, Dr. Alee was advised to apply for a permanent position at IISER-TVM in the upcoming next recruitment notification. Dr. Alee had applied for the post of Assistant Professor (Grade-I). He was interviewed on December 18, 2019 by a selection committee but candidature of Dr. Alee was not recommended by the selection committee.

  
Roma Sivasatva



3. The Complainant vide his rejoinder dated 06.02.2021 submitted that after the interview he was not offered a regular appointment. But prior to the interview, he had obtained a research grant of Rs.20 lakhs from Council of Scientific and Industrial Research (CSIR). This project period will be completed only by June 2022. But the termination of the contract has disrupted the project execution. At the time of joining IISER on contract basis, he had the post-doctoral experience of 3 years from TIFR-Mumbai. Later, by the time of the interview in 2019, he also had an experience of more than 3.5 years as Assistant Professor Grade-II (on contract) at IISER-Thiruvananthapuram. This aforesaid total experience is adequate for offering him regular appointment as Assistant Professor under the existing instructions on the subject. During the entire period of contract appointment including extensions, he was never told that his performance as a teacher and researcher was not up to the mark. In that case, he would have immediately reciprocated with necessary improvements wherever required to the satisfaction of the Institute authorities. He has prayed for the following relief:

- i) Absorption as Assistant Professor on regular basis as it was done in a similar two cases. One person in School of Physics without postdoctoral experience at the time of entry on contract and another person in School of Biology with only one year of postdoctoral experience at the time of entry on contract. They were subsequently absorbed in regular positions in the "Faculty Recruitment-2019". These two persons joined the Institute much before his joining and their absorptions were in continuation of the contract period. While they were absorbed, he was not recommended for absorption despite his having longer period of research experience, both within IISER and outside.
- ii) Permission to complete the ongoing funded project and guiding Ph.D students.
- iii) Grant of admissible pay and allowances for the period of four months for which he was allowed to work in IISER on condition of no pay.



4. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 06.04.2021. The said hearing was postponed to 13.04.2021 due to the election to the Kerala Legislative Assembly. The hearing fixed on 13.04.2021 was postponed to 23.04.2021 due to administrative exigencies.

5. The following persons were present during the hearing ;

- 1) Shri K. Shadak Alee, the complainant in person.
- 2) Shri S. Hariharakrishnan, Deputy Registrar for Respondent.

#### **Observations & Recommendations**

6. Complainant submits that he was appointed on the post of Assistant Professor in Respondent establishment on contract basis. During his tenure as Assistant Professor his record was outstanding. He submitted various research papers, initiated and completed various research projects and guided students. Further, Complainant submits that several projects initiated by him are unfinished and Respondent establishment has terminated his contract.

7. Respondent did not dispute the academic record of the Complainant. It is submitted by the Respondent that the objective of the contract was to give teaching exposure to the Complainant. Contract of the Complainant expired in October 2019, however it was extended twice in November 2019 and December 2020, to complete the unfinished projects. Further, Respondent submits that process of regular appointments on the post of Assistant Professor was initiated and candidates were selected, however, vacancy reserved for Divyang candidate remained vacant because no candidate was found suitable.

8. Chapter IV of Rights of Persons with Disabilities Act, 2016 recognises employment rights of Divyangjan. Section 20 (1) and (2) mandates that the government shall not discriminate with Persons with Disability in any matter related with employment and that reasonable accommodation and conducive environment shall be provided to employees with disability. Instrumental role of employment opportunities in empowerment of Persons with Disabilities was

*Uma Srivastava*

explained by Hon'ble Supreme Court in UNION OF INDIA v. NATIONAL FEDERATION OF THE BLIND; (2013) 10 SCC 772

*“50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.”*

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

*“54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities “by providing appropriate environment”. Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y)*

*Upma Srivastava*


*incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Ac 2016."*

10. Keeping position vacant adds to impending human resource crises and also denies employment opportunity to a skilled unemployed person. Moreover, in the present complaint, professional record of the Complainant is satisfactory, hence Respondent establishment must consider to relax the standards for appointment to the post of Assistant Professor on which the Complainant was initially appointed.

11. Therefore, considering the time for which the Complainant was employed on contract basis and professional record of the Complainant, this court recommends that the Respondent shall consider the appointment of the Complainant on relaxed standards, against the post which remained vacant.

12. The case is disposed off.

Dated: 25.06.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



सत्यमेव जयते

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Ext 22

## 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. 12605/1040/2021

### Complainant:

Shri Rajat Bidhuri  
14467, Mandoli Road,  
North East Delhi-110032  
Email: [rajatgujjar1996@gmail.com](mailto:rajatgujjar1996@gmail.com)  
Mobile: 8700974562

R-22691

### Respondent:

Staff Selection Commission (NR),  
Through: Regional Director,  
Block No.12, 5<sup>th</sup> Floor, CGO Complex,  
Lodhi Road, New Delhi-110003  
Email: [enquirysscnr@gmail.com](mailto:enquirysscnr@gmail.com); [rdsscnr@gmail.com](mailto:rdsscnr@gmail.com);

R-22692

### 1. Gist of Complaint

1.1 Shri Rajat Bidhuri, M-22, a person with 100% Visual Impairment, filed a complaint regarding not being allowed to sit in the written examination (SSC CHSL 2019, Tier-II) held on 14.02.2021 and misbehaviour by the officers of SSC (NR) at the Examination Centre Sarvodaya Kanya Vidyalaya, Sadar Bazar, Delhi Cantt [Regn.No.50000407671; Roll No.2201043777].

1.2 The complainant submitted that at the time of filling online form to appear in SSC CHSL 2019 exam, due to technical reasons, 'Yes' option had not been filled up for availing the facility of Scribe. For this, the complainant had submitted a written request before the SSC and SSC had allowed the complainant/candidate to avail the facility of scribe in the written exam (Paper-I) held on 19.03.2020 at the examination centre – ION Digital Zone IDZ-1, GT Karnal Road, Nangli Puna, Delhi with Roll No.220104377. The complainant had cleared that exam.

*Puna Srivastava*  
(Page 1 of 4)

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

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in); Website: [www.ccdisabilities.nic.in](http://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)



1.3 In Paper-II exam of SSC CHSL 2019 held on 14.02.2021 at the examination centre – Sarvodaya Kanya Vidyalaya, Sadar Bazar, Delhi, the officers of SSC did not allow him to appear in the exam with scribe and he was told to take his exam without Scribe. The complainant due to his blindness was unable to take his exam without Scribe.

1.4 When the officers of SSC did not allow the complainant to appear in the exam with Scribe, the complainant, with the help of his father, called police for help but he was not allowed. The complainant also alleged that he and his scribe were misbehaved with by the staff of the examination centre.

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

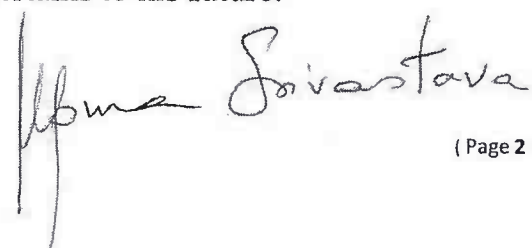
2.1 Respondent in their reply dated 03.03.2021 submitted that the facility of Scribe either own or SSC Scribe is given by SSC as per the provisions mentioned in the notice of the each examination subject to the option for the same being given by the candidate in his/her application form. The complainant/applicant had not opted for Scribe/Own Scribe in his CHSL 2019 Application Form. Accordingly, his request for availing the facility of own scribe was not allowed. Even if, a candidate has not opted for the scribe in his application form and is unable to appear in the exam without a scribe, the facility of scribe is provided by SSC at the Venue on humanitarian ground, if available at the venue.

2.2 Since only 15 candidates who had opted for scribes were scheduled at the same venue and they all had opted for own scribe, no scribe was arranged from SSC/Venue. Hence, there was no possibility of providing a scribe by the SSC or allowing him to have his own scribe because of his not opting for the same.

2.3 The allegation of misbehaviour by SSC Officials is totally false, the complainant was duly apprised about the whole scenario by the SSC Officials.

## **3. Submission made in Rejoinder**

The complainant in his rejoinder dated 17.03.2021 has requested for hearing in this case as this matter pertains to his future.



**4. Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.04.2021**. The following were present:

- (1) Shri Rajat Bidhuri, complainant in person
- (2) Shri R. Chakrapani, U.S. (Examination) for the respondent

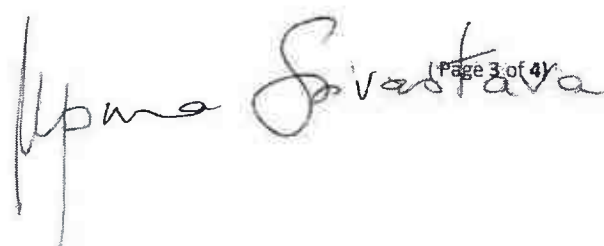
**5. Observation/Recommendations:**

5.1 Both the parties were heard.

5.2 Complainant submitted that he applied for CHSL Exam – 2019, conducted by Staff Selection Commission ('SSC' for short). At the time of filling of form, he could not apply for scribe facility. The same was brought to the notice of the Respondent. Respondent, provided scribe facility during first stage of the exam, but did not provide for the scribe facility during second stage of the examination.

5.3 Respondent submitted that the Complainant did not subscribe for the scribe facility at the time of filling of the form. Moreover, as per the scheme of the Respondent, even if the candidate does not apply for the scribe and asks for the same on the day of exam, Respondent provides the scribe facility to the eligible candidates. Respondent further submitted that scribe to the Complainant was not provided because on the examination centre of the Complainant, there were total 15 candidates who applied under the category of Visually Impaired and all the 15 candidates opted to bring their own scribe, hence no scribe was available on the examination centre of the Complainant and, therefore, the facility could not be provided to the Complainant.

5.4 This court took serious note of the fact that despite of clear guidelines by Ministry of Social Justice & Empowerment ('MoSJE' for short) on facility of scribe, Respondent could not arrange for the same on the examination centre. The gross error on the part of the respondent is clearly established. MoSJE issued guidelines dated 29.08.2018, vide O.M. No. 34-02/2015-DD-III. Para IV of the guidelines states that facility of scribe has to be given compulsorily to Persons with Benchmark Disability in the category of 'blindness'. Further, Para V of the same guidelines

Upma S. Vastava

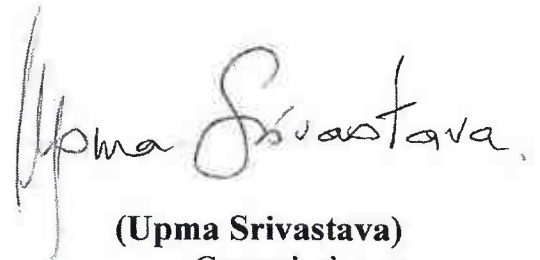
makes it compulsory for the examining body to form panels of scribes at district and state levels.

5.5 It is certain from the facts of the present complaint that there was no scribe present at the examination centre on the day of examination centre. Respondent could have taken proactive steps to ensure that facility of scribe was extended to the Complainant had they been truly interested in implementing the RPwD Act, 2016 and helping a Person with Disability to gain dignity through employment. However, and unfortunately, since the examination process is now complete and it is not possible to conduct re-examination, no relief can be granted to the Complainant in the present case. A well deserved opportunity has been denied for no fault of the complainant.

5.6 This court reprimands and recommends that in future the Respondent shall follow MoSJE guidelines dated 29.08.2018, vide O.M. No. 34-02/2015-DD-III, while conducting entrance examinations. Respondent in its written reply has submitted that it allows scribe facility even when the request is made at the examination centre. Hence, this Court recommends that scribe must be readily available at examination centres even if no candidate has made request for the same.

5.7 Accordingly the case is disposed off.

**Dated: 25.06.2021**



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



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12657/1011/2021

### Complainant:

Shri Shivalal Kodecha,  
Salu Ji Ka Tala,  
Baytu Panji,  
Barmer,  
Rajasthan – 344034.

R-27761

Versus

### Respondent :

Railway Recruitment Cell,  
(Through the Chairman)  
Western Railway,  
Parcel Depot,  
Alibhai Premji Road,  
Grant Road (East),  
Mumbai – 400 007

R-27762

**Disability :** 86% Multiple Disability ( 80% OH + 50% Low Vision)

### Gist of Complaint:

Shri Shiv Lal Kodecha, a person with 86% multiple disability vide his complaint dated 12.03.2021 submitted that he had applied for the post of Group 'D' under disability quota against recruitment advertisement no. CEN 02/2018 of Railway Recruitment Cell, Western Railway. He came out successful in the examination and was called for document verification on 20.04.2019. He was told that as there was mismatch of his Online Biometric details his candidature could not be considered. He inquired personally about the denial of his appointment with the RRC-Western Railway at Mumbai and also wrote number of letters to them, but with no result.

Upma Srivastava


2. The Chairman (RRC), Western Railway vide letter dated 12.04.2021 submitted that the complaint of Shri Shivlal Kodecha has been examined. The candidate was called for Document Verification and his biometric attendance was taken in which the biometric details of the candidate did not match. As per the procedure the cases wherein there is mismatch of Online Biometric details, such cases are then sent to Retired Government Examiners of Questioned Documents (GEQD) for examination of the documents. Also the GEQD authority has certified that both writings on the documents taken during CBT and during Document Verification did not match. Hence, as both the biometric details and as well as the handwriting did not match, the candidature of the candidate was cancelled.

**Observation/Recommendations:**

3. As per the documents available on record and procedure adopted by the respondent for verification as mentioned in the reply, this Court does not find any discrimination on the ground of disability and violation of any provisions of Rights of Persons with Disabilities Act, 2016.

4. The case is disposed off accordingly.

Dated: 30.06.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities