



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 5470/1023/2015

Complainant : Dr. Divya Singh, Flat No.601, Vinayaka Apartment, Kadru,Ranchi, Jharkhand – 834 002

Respondent : Director Rajendra Institute of Medical Sciences, Baraitu,Ranchi, Jharkhand –834 009

Gist of Complaint:

Dr. Divya Singh, a person with 70% locomotor disability vide her complaint submitted that she has been appointed as Sr. Resident by RIMS, Ranchi on 26.11.2012. Her tenure as Senior Resident was going to end on 25.11.2015. Her appointment was permanent. However, the post of Sr. Resident is a tenure post of three years. She submitted that she can be kept as Asst. Professor or other equivalent post but not as Sr. Resident after three years. She had acquired her disability during her service at RIMS, Ranchi and she needs to be protected under Section 47 of Rights of Persons with Disabilities Act, 2016. The management of RIMS, Ranchi had shown sometime back their inclination to absorb her as Asst. Professor but she had been denied this benefit. She submitted that she can be kept on supernumerary post till availability of the post of Asst. Professor.

2. The Director, Rajendra Institute of Medical Sciences, Ranchi vide letter dated 22.04.2016 submitted that Dr. Divya Singh had been appointed as Sr. Resident Doctor in the Pediatric Department for a term of 3 years w.e.f. 26.11.2012. Dr. Divya Singh while going to Delhi for appearing in DM Neonatology examination met with an accident and she was absent on duty. She was granted permission for said leave vide O.M. 7524 dated 05.11.2015. After her completion of three years tenure on 25.11.2015, she was relieved of her duties. The post-facto approval towards the expenses incurred for her treatment was approved by the State Level Council meeting held on 15.12.2015. Apart from this, further she has been allowed vide O.M. No. 267 dated 15.01.2016 to work in the paediatric department in Deptt. of Cardiothoracic in RIMS Ranchi against a vacant post. It was further submitted that the request of the complainant for her appointment on supernumerary post will be put up in the next meeting of Executive Council for approval.

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employment. Earlier she had also made representations to all authorities concerned at RIMS and the Govt. of Jharkhand. Her case came up for discussions in the RIMS Governing Body earlier on 21.11.2015 and she was given appointment letter no. 267 dated 15.01.2016 informing her that she has been allowed to work as Sr. Resident for six months and her services will be terminated automatically after expiry of six months. She joined her duty on 18.01.2016 and as per letter of RIMS Ranch, her services may be terminated on 17.07.2016. Earlier her services was terminated by RIMS on 25.11.2015. RIMS has implemented the decision of the Governing Body Meeting held on 21.11.2015 partially only so far. It had also been decided in the said meeting that during the intervening period of six months, vacancy for a suitable post be created for her permanent employment which has not been done so far. She had requested this Court to help her get employment as a permanent Astt. Professor and to reimburse expenses of Rs.9,11,143/- incurred on her treatment / rehabilitation

Hearing : 04.08.2020

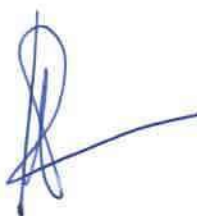
4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 04.08.2020.

5. The following persons were present during the hearing ;

- 1) Mr. Makeswar Singh, Father of the complainant.
- 2) None for the respondent.

6. The father of the complainant was heard. He informed that on 28.07.2020, the respondent had deposited an amount of Rs.6,71,215/- only as reimbursement towards medical expenses claim of Rs.9,11,143/-. He further stated that the complainant had been appointed against the post of Medical Officer in Rajendra Institute of Medical Sciences (RIMS), Ranchi. As such both the grievances of the complainant as per original complaint have been addressed. The father of the complainant further stated that the candidature of his daughter was not considered against the post of Assistant Professor reserved for O.H. quota, though she was a single applicant and she had appeared for the interview. She had great difficulty in meeting the needs of her calls of nature and for this purpose she needed privacy/ separate room with an accessible wash room. He further stated that the complainant had not got salary for last two months.

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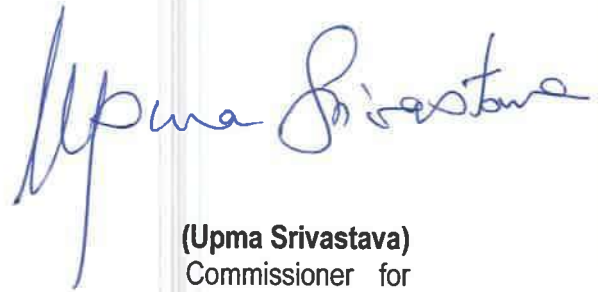


Observation/Recommendations:

7. The Court noted that in the earlier two hearings in the matter on 16.08.2019 and 22.11.2019, none from both the sides was present. It is appreciated that the respondent has finally given relief against the reimbursement of medical expenses and appointment as Medical Officer. Given the genuine need of privacy on account of disability, this Court directs that private and accessible wash room facility shall be provided to the complainant immediately by the respondent. She shall also be given her pending salary and shall be duly considered against vacancies reserved for persons with disabilities. A compliance report may be sent to this court within 90 days of receipt of this order.

8. The case is disposed of.

Date : 11.08.2020



(Upma Srivastava)
Commissioner for
Persons with Disabilities



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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. 9376/1022/2018

Complainant : Ms. S. Sri Dharani, D/o. Shri S.S.S. Prasad, 4-92/3/2/104, Sri Lekha Enclave, Beside E. Seva Center, Chandanagar, Telangana – 500 050.

Respondent : Life Insurance Corporation of India, (Through the Chairman & Managing Director), 1st Floor, Yogakeshema Central Office, Jeevan Bima Marg, Nariman Point, Mumbai – 400 021

Date of Complaint : 19.02.2018

Gist of Complaint:

Ms. S. Sri Dharani, a person with 50% multiple disabilities submitted that her father is an employee of LIC of India and is posted at Zaheerabad Branch in Telangana. Her father is her caregiver. She is studying in a junior college near her home and her father used to drop her at school every day. At that time, her father was working at LIC, BHEL branch which is near to her home. For her convenience, he bought a flat in Chandanagar, Hyderabad. He was promoted in 2016 and posted at Zaheerabad. She was not at degree 1st level in college then. The college is far away from her home and there is problem in transportation to her college. Her father made representation to the LIC of India Divisional Office for his transfer near to his home town in Secunderabad, but got no response from LIC. The complainant had requested this Court to intervene in the matter so that her father could get transfer to LIC of India BHEL Branch.

2. The Add. Executive Director (Personnel), LIC vide letter no. PER/ADM/PWD/1920/650362/80 dated 10.04.2019 submitted that Shri S.S.S. Prasad was a Record Clerk. On his promotion to the post of Assistant, he was posted to Zaheerabad Branch which is a Mofussil Branch at a distance of 80 Kms from Hyderabad. Shri Prasad accepted his promotion as Assistant and is working at Zaheerabad Branch from 11.04.2016. He was given the convenient posting on promotion taking into account the special needs of this daughter. Shri Prasad was posted at BHEL Branch in the previous cadre of Record Clerk from 07.06.1999 to 10.04.2016. The Respondent submitted that the posting on promotion of an employee is purely based on administrative reasons and office exigencies and not executive as a vindictive measure against an individual employee. Their Hyderabad Division (Nodal Division) will examine the consideration of this transfer to BHEL Branch in the current round of transfers depending upon the various factors including seniority and other factors which are prevailing in the Division as per practice.

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3. The complainant vide her email dated on 12.09.2019 submitted that her father got promotion. Her father's ranking in the list of promotees was 2. But when the posting list was released on 24.03.2016, they were shocked to find that few employees got their postings within Hyderabad City (within 2-3 Km distance) and her father who as at no.2 in the rank of promotees was posted to a place which is 80 Kms away from their place of residence. Her father had to join his new place of posting. During the year 2016-17, 2017-18 and 2018-19 her father was given transfers. In 2018-19 round of transfers, her father was given transfer but posted to a branch which is 22 Km away from their residence instead of given BHEL, CB-20 or CB-11 which are near to his residence. Her father is subjected to a variety of difficulties deliberately. Instead of resolving their grievance, he is subjected to more difficulties by the vindictive attitude of the management. She has requested for posting her father to BHEL Branch.

Hearing : 04.08.2020

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 04.08.2020.

5. The following persons were present during the hearing ;

- 1) Ms. S. Sri Dharani, the complainant.
- 2) Mr. C. Madhu, Secretary (P & IR), LIC, on behalf of the respondent.

Both the parties were heard.

Observation/Recommendations:

6. The complainant informed the Court that the grievance had been addressed as the complainant's father had been transferred to BHEL Branch in June, 2020 as asked for.

7. The case is disposed of.

Date : 11.08.2020


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भारत सरकार/Government of India

Case No. 10576/1021/2018

Complainant : Mhd. Gouse Attar, Bandiwade Base, Patthar Pod Galli, C.B.T., Hubballi, Karnataka – 580 020

Respondent : South Western Railway, (Through General Manager), Bangalore Division, Gadag Road, Hubli, Karnataka – 580020

Gist of Complaint:

Shri Mohd. Gouse Attar, a person with 85% locomotor disability vide his complaint dated 05.11.2018 submitted that he was appointed as Khalasi at Carriage repair work shop of South Western Railway, Hubli on 19.11.1988 under Disability Quota. The Direction has been made to provide or implement 3% reservation to persons with disabilities in promotion in Group 'C' and 'D' post but it was not being implemented by his establishment. He was promoted every time under general quota as follows:- in 1992 as helper, in 2005 as skilled, in 2011 as tech-II and in 2015 as tech-I. He has requested to effect his promotion from 1992 onwards as per Disability Quota. He submitted that his promotion must be effective from 1992 according to Disability reservation quota

2. The Dy. CPO/Hq & Wel, South Western Railway vide his letter no. SWR/P.483/IV/Mech/Misc (pilot) dated 09.04.2019 has submitted that the complainant is working as Tech-1, Fitter of Bogie 'A' Shop Central Workshop, Hubli. He was appointed as Helper on 19.11.1988 at Central Workshop, Hubli. In his entire service, he got three promotions on normal channel of promotions. The Respondent submitted that the Railway had been giving a chance for promotion to the persons with disabilities on their turn and suitability to higher grades posts and the complainant had not been discriminated in his promotions. He submitted that a separate 100 point reservation roster is maintained for effecting 3% of reservation for persons with disabilities against Group 'C' and erstwhile Group 'D' posts which were filled by direct recruitment element and there are no instructions or guidelines from Railway Board for effecting 3% reservation in promotion.

3. The complainant vide his rejoinder dated 03.06.2019 reiterated that he got three promotions in his entire service on normal channel of promotion. He further submitted that his establishment has made no provision to provide reservation to persons with disabilities and also has not maintained the roster for promotion.

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Hearings : 06.11.2019, 20.12.2019 and 04.08.2020

4. During the hearing on 16.11.2019 the complainant submitted that he was appointed as Khalasi at Carriage Repair Work Shop of South Western Railway, Hubli on 19.11.1988 under PH quota. He has always been promoted under general quota. On 09.09.1992, he was promoted as Khalasi Helper, on 04.04.2005, he was promoted to the post of Fitter-III, on 17.10.2011, he was promoted as Fitter-II and on 17.02.2015 as Fitter-I. He has requested his establishment to give him promotion effective from 1992 under disability quota.

5. The Learned Counsel for the Respondent requested for two weeks time for submission of their reply and the Court directed the Respondent to submit their version well before the next date of hearing.

6. During the hearing on 20.12.2019 he reiterated the submissions made by him in his original complaint. He further submitted that he was deprived of promotion under Ph quota and requested for his promotion effective from 1992 under PH quota.

7. The Respondent did not submit their submissions as advised to them during the hearing on 06.11.2019. The Learned Counsel for the Respondent requested for few more days to submit their comments.

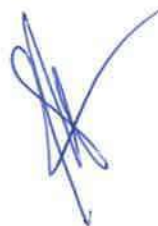
8. Considering the disability of the complainant, the Court advised him to refrain from attending the next hearing if he is finding difficulty to attend the same and instead he may authorize somebody to plead the case.

9. The case was finally heard through video conferencing by the Commissioner for Persons with Disabilities on 04.08.2020.

10. The following persons were present during the hearing;
- 1) Mohammed Gouse Attar, the complainant.
 - 2) Mr. Surendra Suryan, Advocate, for the respondent.

Both the parties were heard.

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11. The complainant stated that he had not got his due promotions against vacancies reserved for persons with disabilities as respondent did not maintain a proper reservation roster for persons with disabilities. If the respondent had been doing so, he would have been promoted to the post of Senior Technician in the year 2008 itself.

Observation/Recommendations:

12. The Court took a very serious view of no response from the side of the respondent in the earlier hearings held on 06.11.2019 and 20.11.2019. In this hearing also the respondent stated that they do not have full information about the matter and requested to postpone the hearing again. The Court directed that a written submission may be made by the respondent latest by 11.08.2020.

13. Accordingly, the respondent submitted their reply vide email dated 10.08.2020, wherein it is inter alia submitted that "there is no provision in Indian Railway Establishment Code (IREC) or Indian Railway Establishment Manual (IREM) which are only the statutory service rules by which the Railway employees are bound to be governed, to provide reservation in promotion of persons with disabilities."

As per rule 213 A, Chapter-2, Section-B of IRME Vol.I "There shall be no discrimination in the matter of promotion merely on ground of physical disability. This will apply to the categories of staff who have been recruited from the open market against the vacancies reserved for recruitment of physically handicapped and the staff who have acquired disability during service and are absorbed in suitable alternative employment as per provision contained in Chapter-XII. Such staff will be considered for promotion on their turn based on their eligibility and suitability along with others in the selection/suitability/trade test, for promotion to higher grade post."

"Accordingly persons with disabilities are being given chance for promotion on their turn and suitability of higher grade post. The complainant will be considered for higher promotion as and when his turn will come.

It would also be pertinent to mention that the DoPT itself has issued a office memorandum dated 16.02.2018 stating that the matter relating to recruitment, promotion and seniority in respect of Ministry of Railways do not fall within the jurisdiction of the DoPT. We need not refer to all the documents referred to because it is apparent from a bare reading of the Allocation of Business Rules-1961, that the service conditions of the employees of the Railways are governed by the rules framed by the Railways which will not only include the IREC but also the IREM".

14. On perusal of the reply the Court does not find the clarification as to why the complainant has not been given the benefit of reservation for persons with disabilities as he was appointed on PH quota. Here the complainant's contention that in absence of reservation roster he loses his seniority is quite convincing. Therefore, the respondent is recommended to prepare a reservation roster from the year 1996 and revisit the case of the complainant for calculation of seniority as per the reservation roster for persons with disabilities.

Date : 17.08.2020


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भारत सरकार/Government of India

Case No. 11286/1023/2019

Complainant : Shri Ghanshyam Kumawat, S/o Shri Mohan Lala Kumawat, Kumawat Ki Bagichi, Ward No.1, Nayabas, Tankarda, Chomu, Jaipur – 303 702.

Respondent : Bharat Sanchar Nigam Limited, (Thru Chairman & Managing Director), Bharat Sanchar Bhavan, Harish Chandra Mathur Lane, New Delhi – 110 001.

Gist of Complaint:

Shri Ghanshyam Kumawat, a person with above 40% locomotor disability submitted that he was recruited as Junior Telecom Officer (JTO) through 'Special Recruitment Drive' for pwds under JTO SRD-2011 Batch. Approximately 200 JTOs were recruited in this batch and they got their appointment in the year 2012. This recruitment was done on JTO RR-2001 (Recruitment Rules) against backlog vacancies of 2007 and 2008 batch. On joining as JTO his basic pay was fixed at Rs.16,400/- without grant of 5 increments on the minimum of revised E1 scale. He submitted that JTOs recruited in 2007 & 2008 batch and Junior Accounts Officer (JASo) for which result declared in April 2010 were granted 5 increments on E1 scale. He submitted that JTOs recruited in 2007 & JTOs-2008 batch are getting the benefit of 5 increments and they also got the arrears for previous period. He submitted that they are on the verge of getting 3rd PRC and the issue of grant of E1+5 increments has not been resolved till now. The complainant has prayed for extending the following interim relief till finalization of pay scale of JTO as provided to physically fit JTOs and JAOs of batches 2007, 2008 & 2010 without finalization of pay scale.

- E1+5 increments may be extended since their appointment with all arrears to all JTOs recruited through 'Special Recruitment Drive (SRD)-2011 for persons with disabilities against backlog vacancies and
- Compensation for mental and physical harassment of persons with disabilities by violating the rules.

2. No reply from the Respondent was received.

Hearing : 04.08.2020

3. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 04.08.2020.

4. Present:

- 1) Mr. Ghanshyam Kumawat, the complainant.
- 2) Ms. Manitombi, DGM (Estt.), BSNL, for the respondent.

Both the parties were heard.

Observation/Recommendations:

5. The Court took a very adverse view of the respondent's attitude in not furnishing any reply to the letters of this Court dated 09.07.2019, 02.09.2019, 15.10.2019 and 27.11.2019. It was only in response to the notice of hearing fixed on 04.08.2020, that a reply from the respondent was received dated 30.07.2020.

6. The complainant reiterated his points in the complaint and requested parity in pay-scale with the regular JTOs recruited against advertisement issued in 2007-2008.


7. The respondent explained that in the case of the complainant, he along with others was recruited only in 2012 against the advertisement issued in 2011 for filling the backlog vacancy of persons with disabilities for the year 2007-2008. The pay-scale in the year 2007-2008 was pre-revised pay-scale of Rs.9850-14600, whereas the pay-scale in the year 2011-2012 was revised pay-scale of Rs.16400-40500. The issue of parity in pay-scale was taken up by the respondent (BSNL) with the Department of Public Enterprises and the Department of Telecommunication, but it was not agreed to.

8. *A copy of the reply dated 30.07.2020 received from the respondent is enclosed for ready reference of the complainant.*

9. The case is disposed of.

Dated : 11.08.2020

Encl : As above.


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भारत सरकार/Government of India

Case No. 11318/1022/2019

Complainant : Shri Hanumant Shukla, C/o. Smt. Saroj Pandey, W/o. Shri Sushil Kumar Pandey, Sarla Farm, Sitaram Colony, Near C-Tech School, Gola Ka Mandir, Gwalior – 474 005.

Respondent : Bank of Maharashtra, (Thru Managing Director & CEO), Central Office, Lok Mangal, 1501, Shivaji Nagar, Pune, Maharashtra – 411 005

Gist of Complaint:

Shri Hanumant Shukla, a person with 60% locomotor disability vide his email dated 07.07.2019 submitted that he is working as Deputy Manager with the Bank of Maharashtra at its Gola Ka Mandir branch in Gwalior, Madhya Pradesh under Bhopal Zone since Aug. 2016. He was selected under persons with disabilities quota. He has requested for his transfer to his native place, i.e. District Balrampur or Gonda, Ayodha/Lucknow.

2. The Dy. General Manager, Bank of Maharashtra vide letter no. AX-1/HRM/TRF/2019 dated 11.09.2019 submitted that the complainant was appointed in the Bank of Maharashtra on 08.08.2016 in the post of Probationary Officer and was posted at Bhopal Zone. Their Bank's presence is very scarce in other cities. In spite of this constraint, the complainant was posted at Bhopal Zone which is in proximity to this native place. The Respondent submitted that the request of the complainant will be considered as per the policy of the Bank, whenever he is eligible for transfer.

3. The complainant vide his rejoinder dated Nil submitted that he never claimed that he was transferred to other Zones after posting, instead he was transferred to three different branches within Bhopal Zone located about 600 Km apart. The Head Office of the Bank is located in Pune and being a nationalized bank it has got a large number of branches in Lucknow Zone. He submitted that there are several officers who had been transferred and posted at Lucknow Zone against the policy of the government and even the policy of the bank in the past. But when it comes to provide convenience to a person with disability like him, the bank does not follow the well defined policies and guidelines issued by Govt. of India regarding their postings and transfers. He has requested for his posting to his home town which is located in Lucknow Zone.

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Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 04.08. 2020.

4. The following persons were present during the hearing ;

- 1) Mr. Hanumant Shukla, the complainant.
- 2) Mr. Ravi Shankar, Assistant General Manager, Bank of Maharashtra, for the respondent.

Both the parties were heard.

5. The complainant working as Deputy Manager in the Bank of Maharashtra since 2016 and suffering from 60% disability stated that he had been requesting for transfer to his native place or near to native place like Gonda / Ayodhya / Lucknow in Uttar Pradesh; he has been working in Bhopal since 2016 and there were many branches of respondent in and around Lucknow, Uttar Pradesh.

6. The respondent stated that as per the Transfer Policy of the Bank, the complainant was eligible to request for transfer after two years of service which he has already completed. The respondent further stated that they had noted the serious difficulties which the complainant was facing in coming daily to his office and therefore the complainant's request will definitely be accepted in the Annual Transfer Plan 2021, as no Annual Transfer Plan was planned in 2020 due to Covid-19.

Observation/Recommendations:

7. Accepting the above said commitment of the respondent, the Court recommends that the complainant's transfer may be given effect to by the respondent, as early as possible in 2021.

8. The case is disposed of.

Dated: 11.08.2020


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भारत सरकार/Government of India

Case No. 11425/1023/2019

Complainant : Dr Ashim Baran De, 40/1B, R.N. Das Road, 1st Floor, Kolkata – 700 031.

Respondent : Central Bank of India, (Thru Chairman & Managing Director), Central Bank of India, Chandermukhi, Nariman Point, Mumbai – 400 021.

Gist of Complaint:

Dr. Ashim Baran De vide his complaints dated 23.07.2019 and 02.11.2019 submitted that he is a person with 55% locomotor disability and is also a Cancer patient and was twice operated upon for his illness. He has been denied his pension by his employer Central Bank of India. He submitted that according to a declaration of NHRC, denial of retirement benefits including pension is a violation of human rights. He made a representation to NHRC in 2017 with all details and documentary evidences. NHRC registered his case in October 2017 under file No. 1963/13/16/2017. NHRC issued several notices to his employer which they chose to neglect except once in 2018 when they supplied some irrelevant information to NHRC which was out of context. He has not received any relief so far. He is passing through great misery and NHRC should restore his right to pension and provide him relief before he dies in misery.

2. The General Manager-HRD, Central Bank of India vide his letter no. CO/HRD/RBD/2019-20/1135 dated 29.02.2020 submitted that they have examined the complaint of Shri Ashim Baran De on the basis of record available at their end and found that the redressal process to his grievance has to be worked upon afresh. They further submitted that they have initiated steps for the redressal of his grievance in line with applicable guidelines in the matter.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 04.08. 2020.

3. The following persons were present during the hearing ;

- 1) Mr. Ashim Baren De, Complainant
- 2) Mr. P.K. Aggarwal, AGM, Central Bank of India.

Both the parties were heard.

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4. During the hearing complainant reiterated his grievance and relief sought for the payment of full pension arrears w.e.f. from the date of his retirement, i.e. 21.12.2007 after the adjustment of Bank Provident Fund contribution earlier paid and funding gap contribution as per the 2nd Pension option policy and payment of regular payment thereafter. The complainant also wanted relief for payment of interest @ 20% cumulative on the monthly accrual of pension arrear by the Respondent Bank. On observation of records, it is found that the complainant submitted his application dated 16.07.2007 to the GM (HRD & Retiral Benefit), Bank of India, Mumbai wherein he submitted that he was not a pension optee on the date of his retirement. However, in 2010 with the 2nd pension option, he was inclined to opt for pension and did all formalities including medical examination etc. for the purpose within a week's time. In response the Bank replied that he is a CPF optee and the amount of Rs. 15,92,037 towards Bank's contribution as well as own contribution was paid to him on 31.12.2007 vide Cheque No. 638192. The 2nd option of pension was extended to those employees who had opted for pension earlier. Since he had not opted for pension at that time, his request was not considered.

5. During the hearing, the respondent requested the Court to give them some more time to file their final reply. The Court granted two days time to file their written submissions after which a final view will be taken.

6. The Respondent vide their reply dated 05.08.2020 inter alia submitted that the Complainant Shri Ashim Baran De got himself medically examined and submitted medical examination Report. Therefore, the Complainant was aware about the contents of the 'Offer Letter' and he cannot be selective and say that he was not made aware about the amount he had to deposit towards funding gap, however, he got himself medically examined. He cannot be selective about the contents of the offer letter. If he was aware about the medical examination he was also aware about the other requirements mentioned in the said letter, Thus the complainant was well aware about the conditions for opting 2nd Pension Option including the requirement of funding gap. (Copy enclosed for complainant)

Observation/Recommendations:

7. On observation of the written submissions by the Respondent and on the basis of record submitted by the complainant, there does not seem any discrimination on the ground of disability. Further it is an administrative and policy related matter. Therefore, the Court recommends that the case of Shri Ashim Baran De may be re-examined in the light of existing Pension Policy and norms of the Bank and redress the grievance through a Speaking reply to the Complainant.

8. The case is disposed of.

Dated: 10.08.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11436/1022/2019

Complainant : Shri Vineet Sharma, House No. 600, Karam Singh Colony, Karnal – 132 001

Respondent : Kendriya Vidyalaya Sangathan, (Thru the Commissioner), 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi – 110 016.

Date of Complaint : Nil

Gist of Complaint:

Shri Vineet Sharma, a person with 100% visual impairment submitted that he is presently working as PRT Music at Kendriya Vidyalaya Nahara and had requested for his transfer to Kendriya Vidyalaya-3 in Ambala Cantt. during the annual transfer exercise 2019 but he had not been transferred to his choice station in annual transfer exercise. The vacancy at Ambala Cantt. station is vacant since 1st May, 2019 but another teacher was allotted that station without qualifying eligibility criteria as she joined KVS in 2018 only.

2. The Assistant Commissioner, KVS vide letter no. 11-E-3030(34)/1/2019-Estt-III/2294-95 dated 16.12.2019 submitted that Shri Vineet Sharma had been considered sympathetically for change of posting to any KV at Ambala station but for want of vacancy at Ambala Station, his request could not be acceded to as the same vacancy was given to Smt. Poonam Rani, PRT (Music) from KV, Pasighat (Arunachal Pradesh) to KV No.3 Ambala Cantt. Vide their order dated 22.07.2019 on the ground of her spouse in terms of 109th BOG meeting held on 06.03.2018.

3. The complainant vide his rejoinder dated 11.01.2020 has informed that his problem has not been resolved yet. He has not even received any response from KVS. He submitted that he and his family are continuously facing many difficulties due to this.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 04.08. 2020.

4. The following persons were present during the hearing ;

- 1) Mr. Vineet Sharma, the complainant.
- 2) Mr. Krishna Kumar P., Section Officer (Estt.), KVS, for the respondent.

Both the parties were heard.

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5. The complainant stated that he was 100% visually handicapped and has been working in Kendriya Vidyalaya Sangathan as PRT Music for more than 12 years. That initially he was posted in Pauri Garwhal in Uttarakhand and since 2009 he was posted in Nahara, Sonipat. Each year he had requested for his transfer to his choice of station Ambala Cantt as per the Point Based Transfer Policy of Kendriya Vidyalaya Sangathan. However, no reply to his representation was ever given by the respondent and whenever he went to enquire, he was scolded and sent back. In 2019, the vacancy at Ambala Cantt. was available and there was no applicant apart from him to be considered for this vacancy. Even then the respondent did not consider his candidature despite his high points of 78 and posted another candidate having much less points, on the ground of posting with spouse.

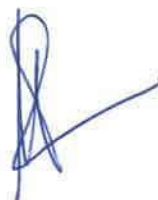
6. The respondent stated on phone that it was correct that the complainant did have very high points to be considered on priority as per the Point Based Transfer Policy. However, due to a decision of Board of Governors' in 2018, all direct recruits who joined KVS after 01.04.2017 were considered over and above the previous requests.

7. The complainant disagreed with this reply of the respondent and stated that as per the Transfer Policy, the points of the candidate posted at Ambala Cantt. were much less than that of the complainant.

Observation/Recommendations:

8. The Court recommends that the respondent should implement the Transfer Policy with complete transparency and strictly in terms of the number of points acquired by a candidate. The complainant is a 100% visually handicapped person and deserves to be posted at his choice of station on first priority. The Board of Governors' should have been informed of this position by the respondent before posting any other candidate having less marks than that of the complainant. There should be no violation of Transfer Policy and Guidelines by the respondent more so in the case of persons with disabilities.

The Respondent should take immediate action as per Section 21 (1) of the Rights of Persons with Disabilities Act, 2016, as per which every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it and should also register a copy of the said policy with the Chief Commissioner for Persons with Disabilities or the State Commissioner, as the case may be.



The Court recommends that the transfer of the complainant may be considered at the earliest possibility to one of the choice stations of the complainant like Karnal, Kurukshetra (Mathana), Ambala Cantt.

9. The case is disposed of.

Dated: 11.08.2020



(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 8014/1011/2017

R-22444

Complainant: Dr. Nitesh Kumar Tripathi, H.No. B – 241, B Block, Sant Nagar Burari, Delhi – 110084

Respondent: The Chairman cum Managing Director, NTPC, NTPC Bhawan, Scope Complex, Institutional Area, Lodhi Road, New Delhi - 110003

R-22445

Complainant: 65% locomotor disability

GIST of the Complaint:

The complainant vide e-mail dated 01.04.2017 inter-alia submitted that he was the single candidate with disabilities who had appeared in the Computer Based Test for the post of GDMO in NTPC on 19 February 2017 but despite his good performance he was not shortlisted.

2. The matter was taken up with the Respondent vide letter dated **01.09.2017** under Section 75 of the RPwD Act, 2016.

3. In response, Sr. Manager (HR), NTPC vide letter dated 06.10.2017 has inter-alia submitted that for the post of GDMO, only two PwD candidates appeared in the test dated 19.02.2017, out of which one is Dr. Nitesh Kumar Tripathi, who did not obtain the minimum qualifying marks i.e. 30 out of 100. Dr. Tri pathi scored 29.5 out of 100 in the test. The other candidate qualified the test by scoring 55.75 out of 100 and was duly called for interview. Upon interview, the candidate was found suitable by the selection board and accordingly, offer was issued to him.

4. After considering the respondent's reply and the complainant's letter, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **08.06.2018**.

5. During the hearing on **08.06.2018**, complainant stated that he had secured 29.5 marks and cut off marks was 30 so he was eligible as this is construed as full marks under general rules. After hearing both the parties, it was decided to clarify from the DoP&T whether 29.5 marks are equivalent to 30 marks in the recruitment process.

6. Under Secretary, DoP&T vide letter dated 28.01.2020 submitted that UPSC has informed that rounding off to nearest integer is not in practice in respect of Recruitment Tests conducted by Recruitment Branch of the Commission. Marks are retained upto two (02) decimal place.

Observation/Recommendations:

7. After perusal of the rival submissions and opinion of UPSC through DoP&T, the Court does not find any merit for further hearing. (The reply of DoP&T to be enclosed)

8. The case is disposed of.

9. This issues with the approval of Chief Commissioner for Persons with Disabilities.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 10739/1014/2018

Complainant: Shri P. Srinivasan
7/239, Nagathamman Kovil Street
Bharathiyar Nagar, Nandambakkam – 61
Kundrathur, Chennai, Tamilnadu – 600069

Respondent: The Commandant
Officers Training Academy
Saint Thomas Mount
Chennai – 600016

Complainant:

GIST of the Complaint:

Complainant submitted that Army Training Academy in Chennai which is called Officers Training Academy had announced sixteen Group 'C' posts through recruitment notification and out of 16 posts, one post of Masalchi was reserved for PwD (OH) and he had applied under PwD category. He further submitted that only ten candidates were passed and went to further process of certification verification and skill test. During the skill test he met a person who was selected to the post of Masalchi and at the time of skill test that person's appearance did not look like a PH. So complainant was suspicious of him and asked him about his disability, but, he did not answer properly. When result was published, it was found that the same candidate had been selected. The complainant through his rejoinder has raised doubt on the disability certificate of the selected candidate.

2. The matter was taken up with the Respondent vide letter dated **15.02.2019** under Section 75 of the RPwD Act, 2016.

3. In response, Establishment Officer vide letter dated **06.03.2019** submitted that Shri S Tyson is 75% Orthopedically handicapped (locomotor disability) with diagnosis of Cerebral

and Cerebellar Atrophy and disability certificate was issued by Commissionerate for the Welfare of the Differently Abled, KK Nagar, Chennai and he was selected for the single post reserved for PH category of Masalchi after successfully passing the written examination as well as skill test (Trade Test) whereas Shri P. Srinivasan had passed the written examination and failed in skill test.

4. After considering the respondent's reply and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **06.11.2019** re-scheduled on **03.01.2020**.

5. On the date of hearing on 03.01.2020, respondent was absent and complainant reiterated his written complaint. After hearing the complainant, respondent was advised to submit the list of selected candidates for the post of Masalchi during 2016 – 2017 with their marks obtain alongwith copy of the disabilities certificate and what was the rank of Shri Tyson. Accordingly, respondent submitted its reply vide letter dated 30th Jan. 2020 alongwith the disability certificate of Mr. S Tyson.

Observation/Recommendations:

6. After perusal of the reply of the respondent and documents available on record, respondent is advised to verify the disability certificate of Shri. S. Tyson from the concerned issuing hospital and take further necessary and appropriate action.

7. The case is disposed of.

8. This issues with the approval of Chief Commissioner for Persons with Disabilities.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 7668/1014/2017

Complainant: Ms. Ankita Mathur, D – 7, IDPL Township, Old Delhi Gurgaon Road, Dundahera, Gurgaon – 122016

e-mail: <ankita.mathur92@gmail.com>

Respondent: The Chairman & Managing Director, Housing and Urban Development Corporation Ltd, T – 395/2D, Dildar Nagar, Nizamudd Lodhi Road, Nizamuddin West, CGO Complex, New Delhi – 110013

e-mail: <cmd@hudco.org>

GIST of the Complaint:

Complainant submitted that applications were invited by HUDCO for the posts of Trainee Officers for three disciplines viz Projects, Finance and Law for which an online test was conducted on 04.12.2016 in various centres throughout India and she appeared in Delhi (Saket) Centre for the online computer test. She further submitted that respondent had published 65 vacancies of which 04 were reserved for the person with disabilities (02 for HH & 02 for VH). The result for the posts was released in third week of January 2017 and no PWD candidate was selected. She had requested to (i) direct the organization to publish the complete merit list for all candidates who appeared for online test on their website and display the cut off marks in all categories and disciplines. (ii) Check roster of the organization for the PwD. (iii) direct the organization to stay the process of recruitment for the post of Trainee Officer until the issue raised by the complainant is resolved etc.

2. The matter was taken up with the Respondent vide letter dated 24.03.2017 under Section 75 of the RPwD Act, 2016.

3. In response, Executive Director (HR), HUDCO vide letter dated 22.08.2017 inter-alia submitted that out of 65 vacancies, 04 vacancies (02 VH & 02 HH) were reserved for PwD candidates and based on the written test, 346 candidates were shortlisted including 03 PwDs and finally 01 PwD was selected. They further submitted that Ms. Ankita Mathur had secured 77 marks out of 150 marks in the written for the post of Law discipline and ranked at S. No. 268 in the merit list. There were 249 candidates (including 05 PwD candidates) ahead to Ms. Ankita Mathur in the merit list of written test who had not been shortlisted for interview because of their low percentage in written test as compared to the 18 candidates shortlisted for interview. They further submitted that the posts earmarked to PwD could not be filled up due to non-availability of suitable candidates even with relaxed standards and they have shortfall of 05 posts for PwDs (03-HH, 2-VI) in Group 'A' that will fill up by a Special Recruitment Drive.

4. Complainant vide rejoinder dated 16.05.2019 submitted her views and pointed out that respondent had not submitted reservation roster of PwDs.

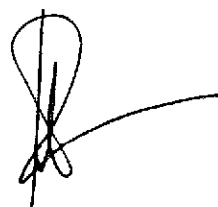
5. After considering the respondent's reply and the complainant's letter, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **17.07.2019**. On the request of the respondent, case was adjourned for the next online hearing on **07.08.2020 at 1500 hrs.**

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.08.2020**. The following were present:

1. Ms. Ankita Mathur, the complainant.
2. Mr. Nitin Dahiya, Advocate, for the respondent.

Observation/Recommendations:

6. Both the parties were heard.



7. The respondent once again requested for postponement of the hearing as he was not ready to submit the rejoinder.

8. Noting that the case is pending since February, 2017 onwards and the objection of the complainant to further postponement of hearing, **the respondent was directed to submit to this Court their written submission latest by 14.08.2020 positively.** No further hearing will be held in the case.

9. The written submission of the respondent has been received on 13.08.2020 and has been studied. The plea taken by them is, that "in respect of horizontal reservation there is no question of any separate zone of consideration required" as quoted from the judgment given by Hon'ble Madras High Court in V. Yamuna Devi Vs the Registrar genera Madras High Court writ petition number 25778 and 26588 of 2010. The respondent further states that this judgment was only the reproduction and explanation of the earlier judgment in Indira Sahni Vs Union of India [(1992)SUPPL.(III) SCC 217]. The Respondents have relied on following observation of the Madras High Court in V. Yamuna Devi (supra) case:

"36. On the reading of the said judgment, it is clear and categorical that the provision given for women, of course, as a matter of right, for appointment is horizontal, applicable to each and everyone of the reserved categories viz., SC/ST/MBC. Etc. and the provision cannot be said to be vertical reservation which is on social basis. In fact, the Supreme Court held that while reservation in favour of physically handicapped, women, etc., is horizontal in nature, the reservation made on the social basis viz., community- wise is vertical reservation. Therefore, in respect of horizontal reservation, there is no question of any separate zone of consideration required. It is relevant to point out that the said judgment was only a reproduction and explanation of the earlier judgment in Indra Sawhney vs. Union of India [1992 Suppl. (3) SCC 217], as it has been elicited in the said judgment itself. In such circumstances, the consideration must be made for women candidates among the Scheduled Castes is totally misconceived and opposed to the established legal position"



10. The Respondents have misinterpreted the observations of the Hon'ble Court. The judgment says that there shall not be separate zones of consideration for women and men. Likewise, there cannot be separate zones of consideration for SCs or STs or OBCs or women while considering persons with disabilities. But the Court never said that zone of consideration for finding out PWDs cannot be extended. Correct position has been given in para 22 of the DOPT OM No. 36035/3/2004-Estt (Res) dated 29.12.2005 which reads as follows:

"22. RELAXATION OF STANDARD OF SUITABILITY: If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post / posts in question."

11. The case under consideration relates to recruitments made against vacancies advertised in the year 2016. Reservation for persons with disabilities in services at the relevant time was governed by instructions issued by the DOPT vide OM No. 36035/3/2004-Estt (Res) dated 29.12.2005. These instructions, as stated in the opening para of the said OM, were in line with the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, the law in vogue at the relevant time. It need be noted that the provisions relevant to the case under consideration remain the same under the Rights of Persons with Disabilities Act, 2016 which supersedes the 1995 Act.

12. Para 22 of the OM dated 29.12.2005 (supra) stipulated two situations about the availability of persons with disabilities. First, it is possible that PWD candidates qualifying by general standard may become available for all the vacancies earmarked reserved for them.



In such a case all vacancies reserved for them may be filled by candidates qualifying by general standard. The other possibility is that sufficient number of PWD candidates qualifying by general standard may not become available for all the vacancies earmarked reserved for them. In such a case, as many candidates belonging to this category as are not available with general standard would have to be selected on relaxed standard. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category would have to be taken by relaxing the standards to make up the deficiency in the reserved quota.

13. Such relaxed standards encompass both relaxation in the selection criteria as well as the relaxation in the width of the zone of consideration of short-listed candidates. If there was no Person with Disability found in the first 38 candidates it was obligatory for the Respondent to broaden the zone of consideration to include Persons with Disability even though the zone of consideration may have gone beyond the 1:5 ratio. There is no logic in restricting the zone of consideration to such an extent that there is no PwD candidate in that zone. Such selection practices will only ensure that no disabled person is ever short listed or selected for employment. The reliance on the aforesaid judgement is gross mis-interpretation of the judgment and used to justify the wrong stance taken by the respondent. It has been upheld by the Supreme court on more than one occasion that the judgment in Indra Sawhney case is not applicable in respect of reservations for disabled. This case is not about a separate zone of consideration but it is about a broader/larger zone of consideration accounting for relax standards for inclusion of Person with Disability in the selection process.

14. The Respondents have stated that as the selection process got completed way back in 2017 and the selected candidates joined the organization, therefore the complainant is now legally ESTOPPED from claiming any vested interest in the said selection as that will prejudice the rights of the selected candidates. They go on to state that as per the Hon'ble Supreme Court judgment in Dhananjay Malik and others vs State of Uttranchal and others [(2008 IV SCC 171)] candidates having participated in the selection process and becoming unsuccessful are ESTOPPED from challenging the selection criteria. The Respondents have relied on the following part of the judgment in Dhananjay case (supra):




“7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are stopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.”

15. Simple reading of the judgment shows that observations of the Hon'ble Supreme Court are not relevant for the case before me. The complainant has not challenged the educational qualifications as notified in the advertisement. What has been challenged is non-compliance with the law of the land in relation to selection of the persons with disabilities against reserved vacancies. What has been challenged is the non implementation of provision of the PwD Act, 1995 (RPwD Act, 2016) and the Government of India instructions issued in furtherance of the Act. The Act and the rules are to be complied with by all government organizations including the respondent.

16. This court finds no merits in the arguments put forth by the respondent. This court observes that there were 04 vacancies reserved for Persons with Disability (PwD) out of 65 and they could have been in any of the 03 disciplines i.e., Projects, Finance and Law. The respondent affirms that in the Law discipline they short listed only 38 candidates based on their merit /performance in the written test to meet the requirement of 1:5 ratio. Out of these 38 candidates there was no candidate from PwD because the respondent decided that there was no requirement of having a larger zone of consideration which should include Persons with Disabilities also. Hence, they did not short list any PwD candidate including the complainant.

17. The Respondent has referred to the judgment in the matter of Rajesh Kumar Daria Vs Rajasthan which has no relevance to the case under consideration.



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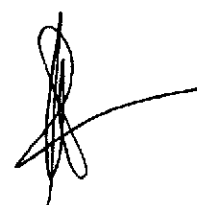
18. This Court notes that the case indeed goes back to the year 2016. It is also noted that the complainant had given the complaint to this court on 05.02.2017 itself and the matter has been pending since then with the Court where two hearings have been held. This Court also notes that employment is a key factor in the empowerment and inclusion of people with disability. It is only because of the denial of their rights through such misinterpretation of the law and violating the provisions of the Act and prescribed rule position that the PwDs are denied the right to make useful contribution to their own lives and to the lives of their families and community. It is the responsibility of this Court to ensure that the provisions of the RPwD Act, 2016 are implemented strictly in letter and spirit by all establishments.

19. The DOPT OM dated 29.12.2005 (supra) provides that if any vacancy reserved for persons with disability cannot be filled in the initial year of recruitment by PWD candidate due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall not be filled in that year and shall be left unfilled. Clause (a) of para 16 of the OM states,

“(b) If any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or, for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a 'backlog reserved vacancy' to the subsequent 'recruitment year.'”

20. This provision is in line with the 1995 Act as well as 2016 Act. Section 36 of the 1995 Act reads as follows:

“36. Where in any recruitment year any vacancy under section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if ;r the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only

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when there is no person with disability available for the post in that Year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability: Provided that if the nature of vacancies in an establishment is such that a given category of person can Page 262 not be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government."

21. Similarly, Section 34(2) of the 2016 Act provides-

"34(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

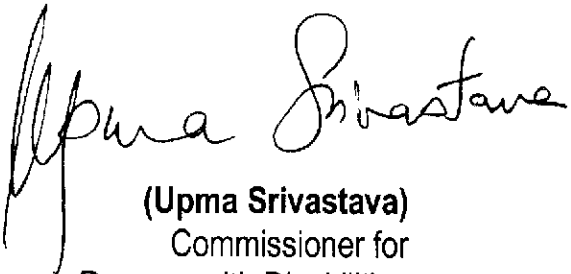
Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government."

22. It is the case of the Respondent that they have not made any recruitment against any vacancies notified after 2016. Therefore, as per DOPT guidelines and the provisions of the Act, the vacancies earmarked as reserved for PwD in the initial year of recruitment should still be vacant. The Respondents are directed to consider the candidates with disabilities of the category for which the vacancies were earmarked as reserved in 2016 and who appeared in the examination conducted by the Respondent in that year. The vacancies can be left unfilled only if all such candidates are found unfit.



23. If the Respondent has filled the vacancies earmarked reserved for PWD by appointing able body persons against such reserved vacancies in violation of the provisions of the Act and the DOPT instructions, the Respondent shall create supernumerary posts and consider the appointment of such candidates against supernumerary posts so created.

24. The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 8236/1011/2017 R-22699

Complainant: Shri Amresh Kumar Singh, Research Scholar (PhD), Flat No. 201, Nalanda Hostel, Indian Institute of Technology, Hauz Khas, Delhi
e-mail: <amreshkumar98@gmail.com>

Respondent: The Registrar, Sant Longowal Institute of Engineering & Technology, Longowal, Distt. Sangrur, Punjab – 148106
e-mail: <registrar@sliet.ac.in>

Complainant: 50% locomotor disability

GIST of the Complaint:

Shri Amresh Kumar Singh vide letter dated **30.06.2017** submitted that Sant Longowal Institute of Engineering and Technology had published 44 vacancies through the advertisement No. 02/2017 dated 11.06.2017 vide which 14 vacancies were available for Professor, 09 vacancies for Associate Professor and 21 vacancies for Assistant Professor and as per the advertisement instructions, one post of Associate Professor was reserved for PwDs. He further submitted that he wanted to apply for Assistant Professor but post was not reserved for PwDs.

2. The matter was taken up with the Respondent vide letter dated **14.07.2017** under Section 75 of the RPwD Act, 2016.

3. Registrar, Sant Longowal Institute of Engineering and Technology, Punjab vide letter dated 21.012.2017 informed that information/documents is being prepared and would be sent shortly. But despite reminders dated **14.05.2018**, **16.01.2019** and **06.05.2020** they did not submit any reply; therefore, the hearing was scheduled for **14.07.2020**. On the request of the respondent hearing re-scheduled on **07.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.08.2020**. The following were present:

1. Mr. Amresh Kumar Singh, the complainant.
2. Mr. Mohan Krishan, Dy. Registrar, for the respondent.

Observation/Recommendations:

4. Both the parties were heard.
5. The complainant submitted that the respondent was violating the provisions of the Rights of Persons with Disabilities Act, 2016 by not maintaining the roster for persons with disabilities in the institute. As a 50% O.H. candidate, he wanted to apply for the post of Assistant Professor advertised vide advertisement no.02/2017 dated 11.06.2017, vide which 21 vacancies for Assistant Professor were advertised, but not a single post of Assistant Professor was reserved for persons with disabilities.
6. The Court was disappointed to note that the respondent did not submit any reply in the matter despite reminders dated 14.05.2018, 16.01.2019 and 06.05.2020. In the previous hearing scheduled on 14.07.2020 also, the respondent did not attend due to technical problems.
7. The respondent informed the Court that in all they had 180 Group 'A' teaching posts, out of which 7 posts were reserved for persons with disabilities candidates and out of which 5 were vacant in 2019. The respondent further explained that they could not advertise the post of Assistant Professor as reserved for persons with disabilities candidates as their Board of Management did not allow the same.
8. The court noted with disappointment that despite vacancies in the Institute, they did not consider reserving even one post out of 21 vacancies for the Assistant Professor for persons with disabilities candidates. The Institute is bound to take action as per the statute and government instructions irrespective of the directions of the Board of Management in matter of reservations for Pw Ds. The Court reiterates the legal position in this respect for the benefit of the respondent in the following paragraphs.



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

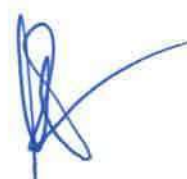
- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities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

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

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

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

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



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

10. In the light of the above, the case is disposed of with strict recommendation to the respondent to provide reservation to persons with disabilities in future as per provisions under Section 34 of Rights of Persons with Disabilities Act, 2016. The Court also recommends that the respondent shall:

- a) calculate the backlog reserved vacancies in all Groups.
- b) maintain reservation roster for persons with disabilities according to the DOP&T's instructions.
- c) initiate a special recruitment drive for filling the aforesaid 5 vacancies urgently

11. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 9347/1021/2018

वादी श्री भीम सिंह बिष्ट, द्वारा — ओम प्रकाश धाकेर, 34—ए, अम्बिका
नगर, रतलाम, मध्य प्रदेश — 457001
ई-मेल: <bheemsingh01011975@gmail.com>

प्रतिवादी महाप्रबंधक, पश्चिम रेलवे, चर्चगेट, मुंबई।
सचिव, रेलवे बोर्ड, रेल भवन, रफी मार्ग, नई दिल्ली।

वादी 40 प्रतिशत अस्थिदिव्यांग

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 02.04.2018 में कहना है कि रेलवे के विभिन्न मंडलों में दिव्यांग कर्मचारियों को पदोन्नति में आरक्षण का लाभ दिया जा रहा है जबकि पश्चिम रेलवे में पदोन्नति में आरक्षण लाभ दिव्यांगों को नहीं दिया जाता है।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 14.03.2018 द्वारा प्रतिवादी के साथ उठाया गया।

3. Dy. Chief Accounts Officer (G), O/o Principal Financial Adviser Western Railway, Mumbai vide letter dated 01.06.2018 submitted that their office is not in receipt of any instructions from Railway Board on the subject of reservation in promotion to PwDs. As such, any further clarification/implementation can only be done on receipt of the same from Railway Board.

4. वादी कि शिकायत एवं पश्चिम रेलवे के टिप्पण एवं स्मरण पत्रों जो कि रेलवे बोर्ड को भेजे गए के मददेनज़र, सुनवाई दिनांक 19.06.2019 को रखी गई। परन्तु प्रशासनिक कारणों से सुनवाई 16.10.2019 को सुनिश्चित हुई। सुनवाई के दिन प्रतिवादी की ओर से उपस्थित प्रतिनिधि ने समय की मांग की। दिनांक 04.12.2019 को प्रार्थी के अनुपस्थित होने के कारण सुनवाई 05.02.2020 को स्थगित की।

...2...

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 07.08.2020. The following were present:

1. Shri Bhim Singh Bist complainant
2. Shri Shailender Tiwari, Advocate, Western Railway

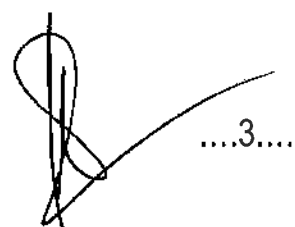
Observation/Recommendations:

5. Both the parties were heard.
6. There are two issues to be addressed in this matter:
 1. whether reservation in promotion to Group A and B is applicable for Persons with disabilities (hereinafter mentioned as 'PwD') and can be implemented being a horizontal reservation as against vertical reservation for other categories,
 2. whether Government instructions are mandatory to be issued before implementation of reservation for Pwd in promotion to Group A and B.

Issue 01

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

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

3....

...3.....

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

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

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

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

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

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

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



...4...

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

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

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

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

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

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



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

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

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

Issue 02

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

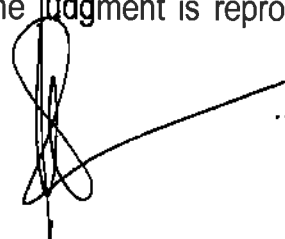
19. First proviso to sub-section (1) of section 34 of the Rights of Persons with Disabilities, 2016 reads as follows:

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

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

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

.....6....



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

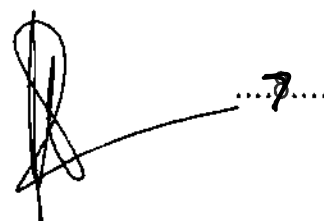
22. Incidentally, Hon'ble Uttarakhand High Court in its judgment delivered in matter of UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLineUtt 865 reiterated the same with respect to Section 34 of RPwD Act of 2016. Relevant Paras of the judgment are reproduced below -:

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

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

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

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

7....

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

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

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

28. It is recommended that the respondents may consider giving reservation to persons with benchmark disabilities in promotion in all Group of posts in accordance with the order of Hon'ble Supreme Court in the matter of Shri Rajeev Kumar Gupta and others Vs Union of India and others. The matter of complainant may be considered by the respondent accordingly.

29. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 30.09.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 9644/1014/2018

वादी

R-22701

श्री अहिवरन सिंह वर्मा, मकान नं: 96-97-सी, ब्लॉक ए
ओम विहार फेस - 5, गली नं: 06, पीर बाबा मार्ग
उत्तम नगर, नई दिल्ली - 59
ई-मेल: <ahivaran.singh99@gmail.com >

प्रतिवादी

R-22702

अध्यक्ष और प्रबंध निदेशक, एच.एस.सी.सी. (इंडिया)
ई-6 (ए), सेक्टर-1, नोएडा, उत्तर प्रदेश - 201301
ई-मेल: <hsccltd@hsccltd.co.in >

वादी

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GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह एच.एस.सी.सी. (इंडिया) लि० में डिजाइन एवं इंजीनियरिंग विभाग में पिछले 05 साल से लगातार एक ही पद पर निश्चित कार्यकाल अवधि कर्मचारी (fixed tenure basis employee) पर कार्यरत है। प्रार्थी का आगे कहना है कि कम्पनी पिछले कई दसक से विभिन्न पदों पर नियमित रिक्तियाँ निकाल रही है, किन्तु आरक्षित कोटा जैसे एस.सी./एस.टी./ओ.बी.सी. के अलावा दिव्यांगजन योग्य होने पर भी उन्हें जानबूझ कर नहीं लिया जाता।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 26.07.2018 द्वारा प्रतिवादी के साथ उठाया गया।

3. DGM (HRM), HSCC (India) Ltd vide letter dated 12.12.2018 inter-alia submitted that they have already informed to the complainant on 30.07.2018 that recruitment to various posts on regular pay scales is regulated in terms of HSCC Recruitment Rules and guidelines and there is no provision in the rules to convert an employee engaged on "fixed tenure" basis directly to "regular pay scales". Therefore, request cannot be acceded to.

4. प्रति उत्तर में प्रार्थी का कहना है कि उनके सामने उनके जैसे टर्म्स एंड कंडीशन पर जिन लोगों ने विभाग जॉइन किया, उन्हें मात्र एक एम साल बाद ही नियमित कर दिया गया और उन्हें 05 साल बाद भी नहीं किया गया, ऐसे केस एक दो नहीं कई केस है।

5. वादी के पत्रों एवं प्रतिवादी के टिप्पण के मददेनज़र, सुनवाई दिनांक **31.07.2019** को रखी गई। सुनवाई के दिन, वादी की ओर से उपस्थित अधिवक्ता ने लिखित में विस्तृत उत्तर दिया जिसकी एक प्रति प्रतिवादी को सौंप दी गई। अगली सुनवाई दिनांक **15.11.2019** को सुनिश्चित की गई। परन्तु प्रशासनिक कारणों से सुनवाई **12.02.2020** को सुनिश्चित हुई।

6. सुनवाई के दौरान, प्रतिवादी की ओर से उपस्थित अधिवक्ता ने लिखित में अपना उत्तर दिया और बताया कि complainant was engaged as Draftsman on fixed tenure basis, initially for a period of one year from 07.03.2011 but he resigned from the service and relived on 31.12.2012. He further informed that complainant was given fresh appointment as Draftsman on fixed tenure basis from 26.12.2013 and thereafter contract of the complainant was extended from time to time taking into consideration the requirements of the project. The last of such extension was given w.e.f.01.01.2018. He also informed that HSCC (India) Ltd was taken over by NBCC.

7. दोनों पक्षों को सुनने के पश्चात्, प्रतिवादी को निर्देश दिया जाता है कि निम्नलिखित बिन्दुओं पर अपने टिप्पण अगली सुनवाई दिनांक **08.04.2020** से पहले भेजे:

- Draftsman के कितने पद HSCC (India) Ltd में fixed tenure basis पर भरे गये।
- Draftsman के इलावा कितने पद fixed tenure basis/contract द्वारा HSCC (India) Ltd में भरे गये, उनका पूरा ब्यौरा।
- कितने fixed tenure basis/contractual कर्मचारी HSCC (India) Ltd के NBCC में गये, का पूरा ब्यौरा।
- कुल कितने पद fixed tenure basis/contractual कर्मचारियों से भरे और उनमें से कितने दिव्यांगजन थे
- आरक्षण रोस्टर प्रस्तुत करें।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 07.08.2020. The following were present:

1. Mr. Manoranjan Kumar Thakur, Advocate, for the complainant.
2. Mr. B.K. Menon, DGM (HRM) & Mr. Vivek Tyagi, Sr. Manager (Legal), for the respondent.

Observation/Recommendations:

8. Both the parties were heard.



9. The complainant stated that he had worked in HSCC since last 11 years on fixed tenure basis on the post of Draftsman. While other employees of similar status were considered for appointment on regular basis, his candidature was not considered. He was dismissed from service on 30.12.2018 on expiry of the fixed tenure period and had nowhere to go at this stage. The complainant further stated that in the last hearing held on 12.02.2020, certain issues were raised by the complainant which were not responded to by the respondent.

10. The Court noted that the response to the aforesaid points was received on **07.08.2020** with a copy marked to the complainant. In the response, the respondent has stated that 90 employees were working on fixed tenure basis and were being released from employment on the basis of completion of tenure and requirements of the organisation. They further stated that not even one single person on fixed tenure basis was converted to appointment on regular basis. Some employees had applied against the advertisement issued for regular vacancies and were selected and given fresh appointment. The complainant was working as a Draftsman in the Public Health Engineering Division of the organisation and now the organisation did not consider necessary to continue with the post of Draftsman.

11. On inquiring whether the complainant could be adjusted on humanitarian grounds on a similar post on contractual basis in other ongoing projects of the organisation, the respondent submitted that such an assurance could not be given at their level.

12. The Court observes that the complainant had indeed spent a long period in the organisation and being 40% O.H., it is extremely difficult for him to find a new source of employment. The Court recommends that on humanitarian grounds, the respondent may consider the complainant's case for employment in any other ongoing projects of the organisation.

13. The Case is accordingly disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11394/1021/2019

वादी

R-22703

श्री राधे श्याम यादव, एच-283, काली बारी मार्ग
नई दिल्ली - 110001
ई-मेल: <raviyadav9555@gmail.com>

प्रतिवादी

R-22704

निदेशक (प्रशासन- I), पर्यटन मंत्रालय, पर्यटन विभाग
ट्रांसपोर्ट भवन, संसद मार्ग, नई दिल्ली - 110001
ई-मेल: <bibhuti.dash72@gov.in>

वादी

100 प्रतिशत दृष्टिबाधित

GIST of the Complaint:

प्रार्थी श्री राधे श्याम यादव, सहायक अनुभाग अधिकारी का अपनी शिकायत दिनांक 29.07.2019 में कहना है कि सन् 2018 में उनकी पदोन्नति सहायक निदेशक के पद पर होनी थी जिसे यह कह कर टाल दिया गया कि अभी 08 साल सहायक पद पर पूरे नहीं हुए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 06.08.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. अवर सचिव (प्रशासन- I प्रभाग), पर्यटन मंत्रालय, नई दिल्ली का अपने पत्र दिनांक 02.09.2019 में कहना था कि श्री राधेश्याम यादव को उनकी दिव्यांगता के कारण पद के लिए उपयुक्त नहीं पाए जाने के कारण पदोन्नति से वंचित नहीं किया गया बल्कि पात्रता मानदंड को पूरा नहीं करने या ग्रेड में रिक्ति की कमी के कारण उन्हें पदोन्नत नहीं किया जा सका।

4. प्रति उत्तर में प्रार्थी का कहना था कि उन्हें आज तक वरिष्ठता की सूची नहीं दी गई प्रार्थी ने अनुरोध किया कि उनके केस में जल्द से जल्द कार्रवाई कि जाए चूंकि उनकी सेवानिवृत्ति 30 जून 2020 तक है।

5. वादी के पत्रों एवं प्रतिवादी के टिप्पण के मद्देनजर, सुनवाई दिनांक 27.12.2019 को रखी गई।

6. सुनवाई के दौरान वादी ने अपने लिखित कथनों को दोहराया तथा प्रतिवादी की ओर से आए प्रतिनिधियों ने अपने लिखित कथनों को दोहराते हुए दिनांक **31.07.2012** तक की सहायक वरिष्ठता सूची प्रस्तुत की। दोनों पक्षों को सुनने के पश्चात्, अगली सुनवाई दिनांक **07.02.2020** को सुनिश्चित की गई तथा प्रतिवादी को सलाह दी गई कि नवीनतम वरिष्ठता सूची 2018 तक की प्रस्तुत करें तथा वरिष्ठता सूची की प्रक्रिया को स्पष्ट करें। परंतु प्रशासनिक और अपरिहार्य परिस्थितियों के कारण सुनवाई नहीं हो पाई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 07.08.2020. The following were present:

1. Mr. Radhey Shyam Yadav, the complainant.
2. Mr. Bibhuti Dash, Director, Department of Tourism, on behalf of the respondent.

Observation/Recommendations:

7. Both the parties were heard.

8. The complainant stated that he was not given promotion to the post of Assistant Director as he was visually handicapped and the person who was junior to him (Sri Sunil Kumar Gaur) in the seniority list was instead promoted.

9. The respondent explained that there were two streams for promotion to the post of Assistant Director in the Department of Tourism. One from administrative side and other from the tourism side. The complainant had begun his career in the Department of Tourism as LDC and became Assistant in the year 2011, whereas Mr. Sunil Kumar Gaur to whom the complainant was referring was a direct recruit Assistant, who joined in the year 1997. In the seniority list which was looked into by the Departmental Promotion Committee on 18.07.2019, the name of the complainant was at Sl. No. 13, whereas the name of the person in reference i.e. Mr. Sunil Kumar Gaur was at Sl. No.4. The decision to promote Mr. Sunil Kumar Gaur was taken by the Department Promotion Committee as per prescribed rules and regulations. There was no discrimination on ground of disability.



10. The Court noted that the complainant had already retired on 30.06.2020. The Court found the reply of the respondent satisfactory and the matter is accordingly disposed of


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No:10480/1013/2018

Complainant: Shri Arpit Garg, 3523, Amrik Singh Road, Calcutta Street, Bathinda,
Punjab – 151001
e-mail: <arpitgargishu1989@gmail.com>

Respondent: The Commissioner
NavodayaVidyalayaSamiti, HQ, B – 15, Institutional Area, Sector –
62, Noida, Distt. – GautamBudh Nagar, Uttar Pradesh
e-mail: <dcpers.nvs@gov.in>

Complainant 50% visual impairment


GIST of the Complaint:

Complainant submitted that Notification of Navodaya Vidyalaya Samiti for the posts of LDC and LDC/Storekeeper were issued on 11.11.2017 having vacancies of LDC in HQ/regional office post code - 06 and LDC/Storekeeper (post code - 07). He had applied for both posts at HQ level and JNV i.e. LDC HQ NVS and LDC/Storekeeper JNV to have better chance of selection. His application was accepted and he received Admit Card for Computer Based Test showing post name as LDC/Storekeeper with 67 code. Based on his written exam, the result was announced and his name was mentioned under successful candidate under PwD subcategory (VH) and post code 67 (code used both for LDC HQ and LDC/storekeeper JNV) and he scored 88 marks. He further submitted that the final result was declared on 18.10.2018 and he was not in selected list of candidate despite being topper and candidate with much below marks was selected and called for document verification. He called NVS and they informed that he is not successful as his application was not filled for appropriate post code i.e. post code filled is 06 instead of 07 and so not eligible for selection as the post under 06 code does not have post reserved for VH candidate. He alleged that there is no such code 67 which is (probably combination of post code 06 and 07) mentioned in notification/advertisement as written on his admit card and it clearly means that he was considered for both 06 and 07 code.

2. The matter was taken up with the Respondent vide letter dated 06.11.2018 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Commissioner (Estt.I), Navodaya Vidyalaya Samiti vide letter dated 16.01.2019 inter-alia submitted that applications from eligible & interested candidates were invited online through designated portal for the posts of LDC and LDC/Storekeeper. Candidates who were interested for the post of LDC only had opted for post code 06, who were interested for the post of LDC/Storekeeper only had opted for post code 07 and who were interested for both the posts of LDC and LDC/Storekeeper had opted for the post code 6,7. It was clearly mentioned in the recruitment advertisement that out of 10 vacancies of LDC (HQ/RO cadre), none is earmarked for PH category of candidate and out of 440 vacancies of LDC/Storekeeper (JNV cadre), 12 are earmarked for PH category of candidates. As per information available in record i.e. application form filled by Shri Arpit Garg online, he had opted for post code 06 applicable for the post of LDC (HQ/RO cadre – 10 vacancies). In the combined merit list of candidates who had applied for the post of LDC (HQ/RO cadre-post code 06) and for both posts of LDC and LDC/Storekeeper (JNV cadre-post code 6,7), Shri Arpit Garg secured 3rd merit position. As no vacancy out of 10 vacancies of LDC (HQ/RO cadre) was earmarked for PH category of candidate, Shri Arpit Garg was not shortlisted for verification/appointment though he was placed at 3rd position in the merit list. They further submitted that Shri Arpit could have been selected as UR candidate because of his merit position but he availed the benefit of age relaxation being PH candidates and as such could not be placed in list of shortlisted candidates for the post of LDC (HQ/RO cadre).

4. Complainant vide rejoinder dated 22.01.2019 inter-alia submitted that he had applied for both i.e. LDC (HQ/RO) and LDC/Storekeeper under PH (PwD) category and his application was accepted and he received Admit Card for Computer Based Test showing post name LDC/Storekeeper with post code 67. As per advertisement point 8 (g-iv), Admit card was issued after final scrutiny of application and documents submitted by candidates online. Result was also declared under visually handicapped category. In view of his secured 3rd rank he was also eligible for LDC (HQ/RO) against UR (unreserved) candidates



after getting age relaxation benefit of 10 years permissible to PH candidates as per the advertisement point no. 7 (e) of General instruction of Detailed Notification of NVS.

5. After considering the respondent's replies and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **16.10.2019**.

6. On the date of hearing, Counsel of the complainant reiterated the grievance of the complainant and also submitted related Judgements of Hon'ble High Court of Delhi and Hon'ble Central Administrative Tribunal and stated that complainant was issued Admit Card for both posts under code no. (6,7), therefore, his candidature should be consider either code 06 or code 07. Representative of the respondent also reiterated his earlier written submissions and submitted that Shri Arpit Garg could have been selected as UR candidate because of his merit position but he availed the benefit of age relaxation being PH candidates and as such could not be placed in list of shortlisted candidates for the post of LDC (HQ/RO cadre). He further submitted that in case they appoint Shri Arpit Garg to the post of LDC/Storekeeper (JNV Cadre)/(Post Code -07) for which he did not apply, the action of NVS will not be appropriate and they put the organization in a catch situation difficult to defend as there are numbers of candidates who had applied only for the 10 vacancies for the post of LDC (HQ/RO cadre). Counsel of the complainant has sought time for submission of the relevant documents.

7. Vide ROP dated **01.01.2020**, respondent was advised to obtain the opinion in the matter from DoP&T at the earliest and submit the final outcome.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.08.2020**. The following were present:

1. Mr. Arpit Garg, the complainant.
2. Mr. Vikram Joshi, Dy. Commissioner, NVS, for the respondent.




Observation/Recommendations:

8. Both the parties were heard.
9. The complainant submitted that in the examination conducted by the respondent, the complainant was at Sl. No.3 in the combined merit list, but was not given appointment against Unreserved Category as he had availed age relaxation as a person with disabilities.
10. The respondent stated that as per the directions of this Court in hearing held on 01.01.2020, they had been directed to seek clarification from DoP&T and they were still in the process of obtaining a reply from DoP&T.
11. The Court observed that the rule position is very clear on this matter vide Clause No.21 of O.M. Dated 29.12.2005, states "(i) Upper age limit for persons with disabilities shall be relaxable (a) by ten years (15 years for SCs/STs and 13 years for OBCs) in case of direct recruitment to Group 'C' and Group 'D' posts; (b) by 5 years (10 years for SCs/STs and 8 years for OBCs) in case of direct recruitment to Group 'A' and Group 'B' posts where recruitment is made otherwise than through open competitive examination; and (c) by 10 years (15 years for SCs/STs and 13 years for OBCs) in case of direct recruitment to Group A and Group B posts through open competitive examination. (ii) Relaxation in age limit shall be applicable irrespective of the fact whether the post is reserved or not, provided the post is identified suitable for persons with disabilities."

And Clause No.2 of O.M. dated 29.06.2015, as per which:-

"(i) Age relaxation of 10 years (15 years for SC/ST and 13 years for OBC candidates) in upper age limit shall be allowed to persons suffering from (a) blindness or low vision, (b) hearing impairment and (c) locomotor disability or cerebral palsy in case of direct recruitment to all civil posts/services under the Central Government identified suitable to be held by persons with such disabilities, subject to the condition that maximum age of the applicant on the crucial date shall not exceed 56 years.



(ii) The age concession to the persons with disabilities shall be admissible irrespective of the fact whether the post is reserved for persons with disabilities or not, provided that post is identified suitable for the relevant category of disability. This provision will not apply to the Civil Services Examination, in respect of which the List of Services identified suitable for Physically Disabled Category along with the Physical Requirements and Functional Classifications is notified separately."

12. In view of the position as stated above, the complainant is entitled to get appointment against the post of LDC or LDC/Storekeeper as per his complaint. The respondent is recommended to issue appointment letter to the complainant accordingly.

13. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No:10778/1011/2019

Complainant: Dr. Nitesh Kumar Tripathi, H.No. B – 241, B Block, Sant Nagar
Burari, Delhi – 110084
e-mail: <niteshtripathi85@gmail.com>

Respondent: The Director, Heavy Engineering Corporation Ltd, Plant Plaza
Road, PO Dhuwa, Ranchi.
e-mail: <cmd@hecltd.com><recruitment@hecltd.com>

Complainant: 65% locomotor disability

GIST of the Complaint:

Complainant vide e-mail dated **30.12.2018** submitted that HECL had published an advertisement for various posts without providing reservation to PwDs. He has requested to ask the respondent to maintain 100 point reservation roster and provide disabled friendly environment during the interview and to also conduct the Special Recruitment Drive for filling up the backlog vacancies for PwDs.

2. The matter was taken up with the Respondent vide letter dated **22.02.2019** under Section 75 of the RPwD Act, 2016. But despite reminders dated **21.08.2019** and **25.09.2019** respondent has not submitted any reply, therefore hearing fixed on **07.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.08.2020**. The following were present:

1. Dr. Nitesh Kumar Tripathi, the complainant.
2. None for the respondent.

Observation/Recommendations:

3. The complainant reiterated his points as stated in his complaint dated 30.12.2018 regarding not confirming to the provisions of the Rights of Persons with Disabilities Act, 2016 in the advertisement dated 08.12.2018 issued by the respondent.

4. The Court took a serious view of no response from the side of the respondent to letters of this Court dated 22.02.2019, 21.08.2019 and 25.09.2019. The Court also noted with disappointment that the respondent did not choose to find it convenient to appear in the personal hearing. Taking into consideration the points raised by the complainant, the respondent is directed to take action in terms of Section 34 of the Rights of Persons with Disabilities Act, 2016, which is reads as under:

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

(a) blindness and low vision;

(b) deaf and hard of hearing;

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

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

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness by the appropriate Government from time to time:

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

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



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

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

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

5. In the light of the above, the case is disposed of with directions to the respondent:
- a) to provide reservation to persons with disabilities in future strictly as per provisions under Section 34 of Rights of Persons with Disabilities Act, 2016.
 - b) to calculate the backlog reserved vacancies in all Groups and maintain reservation roster for persons with disabilities according to the DOP&T's instructions
 - c) to ensure disabled friendly environment to persons with disabilities especially at the time of examination and interview
 - d) to ensure that barrier free facilities are provided in accordance with Rights of Persons with Disabilities Act, 2016.

6. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No:11169/1014/2019

R-22695

Complainant: Shri Vijender Singh
National Platform for Disabilities Rights and Duties & others
H.No. 1468 (G), Sector – 39, Chandigarh – 160036
e-mail: <parashar.sharma591@gmail.com>

Respondent: The Registrar
Central University of Himachal Pradesh, Camp Office, Near HPCA
Cricket Stadium, Dharamshala, District Kangra (H.P.) – 176215
e-mail: <registrar.cuhp@gmail.com>

Complainant: 75% visual impairment

GIST of the Complaint:

Shri Vijender Singh vide letter dated **16.05.2019** submitted that Central University of Himachal Pradesh had published an advertisement for various posts without providing reservation to persons with visual impairment.

2. The matter was taken up with the Respondent vide letter dated **18.06.2019** under Section 75 of the RPwD Act, 2016 but despite reminder dated **04.09.2019**, no response was received from the respondent, therefore, hearing scheduled on **12.02.2020**.

3. On the date of hearing, complainant informed that Central University of Himachal Pradesh is not providing reservation to persons with disabilities as per the Section 34 of the Rights of Persons with Disabilities Act, 2016. The representatives of the respondent informed that complainant had filed the similar matter before the Hon'ble Commissioner for Persons with Disabilities, Himachal Pradesh and the said case was disposed off vide order dated 03.06.2019 with the directions to provide 01 post to visually impaired candidate and accordingly University had issued a corrigendum. Case was adjourned to **03.04.2020** with the direction to the respondent to bring the reservation roster for all Group i.e. 'A', 'B', 'C' & 'D'. But due to COVID-19, hearing could not be held.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **07.08.2020**. The following were present:

1. Mr. Vijender Singh, the complainant.
2. Mr. Hemraj Thakur, Dy. Registrar, on behalf of the respondent.

Observation/Recommendations:

4. Both the parties were heard.
5. The Court noted that the matter has already been decided by the State Commissioner for Persons with Disabilities in favour of the complainant. The complainant further submitted that the respondent was not maintaining proper roster for reservation of vacancies for persons with disabilities. The respondent countered this and said that the complainant was not selected for appointment, because the Selection Committee did not find him suitable. The university was committed to filling the post reserved for persons with disabilities as per Govt. of India rules and regulations.
6. The Court recommended that the respondent shall send to the complainant a copy of the roster maintained by the university in respect of persons with disabilities in terms of Section 34 of the Rights of Persons with Disabilities Act, 2016.
7. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 8476/1103/2017

Complainant: Shri Jaydeep Arvind Tanna, Advocate, a person
With 85% locomotor disability, R/o 601, B-1,
EktaSafalya CHS, L.B.S. Marg, Near Vikas
Complex, Thane (West) – 400601 (Maharashtra);
Email: advocatejaydeeptanna@gmail.com;
Mobile: 9029542163 **Complainant**

Respondent: Railway Board, Through: Secretary, Ministry of
Railways, Rafi Marg, New Delhi-110001;
Email: secyrb@pb.railnet.gov.in;
advocatesksuryan@gmail.com; **Respondent**

Gist of Complaint

On 18.07.2017, Railway Protection Force [RPF] at Ghatkoper Railway Station, Mumbai on Central line caught total 29 persons (six Police, five Govt. servants and eighteen members of public) for illegally and fraudulently travelling in coaches reserved for passengers with disabilities in Mumbai Suburban Trains. RPF booked those offenders under Section 155 of Railways Act, 1989 [punishable upto Rs.500/- only]. Mid day Mumbai evening edition dated 21.07.2017 had published an article on this incident, "Due to ZERO implementation of 'The Rights of Persons with Disabilities Act, 2016' [RPWD Act, 2016], offenders are getting away with measly fines of anywhere Rs.150/- to Rs.200/-." The complainant had further submitted that Senior Divisional Security Commissioner RPF Central Railway Mumbai in this matter had stated that "We

Page 1 of 8

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)

[RPF] don't have any power to implement the law. RPF should have mentioned about provision of Section 91 read with Section 95 of RPWD Act, 2016 in the complaint copy to Hon'ble Magistrate under Section 180-F of Railways Act, to take cognizance of said offence so that the Magistrate can alter the Section under Section 216 of CrPC and transfer case to Sessions Court under Section 209 of CrPC or RPF should have handed over such offenders to Govt. Railway Police to initiate legal action under said sections of RPWD Act, 2016. Government Railway Police, Central Railway Mumbai had stated that, "We [Railway Police] don't have difficulty implementing RPWD Act, 2016, but RPF must keep us in the loop, if they send these offenders to us, we will take action."

2. In view of the facts mentioned, the complainant prayed that

- (i) direction may be given to Railway authority to apply Section 91 read with Section 95 of RPWD Act, 2016 on able persons including government servants and police who found fraudulently and illegally travelling in coaches reserved for passengers with disabilities in Mumbai Suburban Section as well as long distance trains; and,
- (ii) Railway Authority may be directed that all 29 persons caught by RPF may be punished under Section 91 read with Section 95 of the RPWD Act, 2016.

3. Section 91 and Section 95 of RPWD Act, 2016 read as under:

"91. Whoever, fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both."

"95. Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any other law for the time being in force, the offender found guilty of such offence



shall be liable to punishment only under such Act as provides for punishment which is greater in degree."

4. In view of the facts mentioned above, the case was taken up initially with (i) Director General, RPF, New Delhi; (ii) Chief Security Commissioner, RPF, Mumbai; and (iii) Addl. Director General of Govt. Railway Police, Mumbai for submission of their comments.

5. DIG/MAC, Railway Board vide letter dated 10.01.2018 filed their reply and submitted that RPWD Act, 2016 does not empower RPF officials to prosecute offenders under penal Sections 91, 92 and 95 of the said Act. Therefore, RPF prosecutes the accused persons under relevant sections of the Railway Act.

6. Sr. Dy. Security Commissioner (RPF), Central Railway filed their reply dated 20.12.2017 and submitted that RPWD Act, 2016 does not confer any legal power upon RPF to apprehend and prosecute any offender. RPWD Act, 2016 does not also provide for any provision to hand over any offenders apprehended by RPF to GRP. GRP on its own may, if they so decide, take suo-motu action to apprehend offenders under the said Act and prosecute them. The suggestion given by complainant is his self-interpreted view which is legally not tenable.


7. Office of Additional Director General Police, Railways, Maharashtra, filed their reply dated 08.03.2018 and submitted that necessary instructions have been issued to all the concerned to take action against the unauthorized persons found travelling in the compartment reserved for passengers with disabilities.



9. The case was heard on 14.08.2019. During the hearing Intervention Applications were received from (i) Ms. Fatima Dsouza, a person with 70% disability; Shri SadanandPagare, a person with 90% disability; and (iii) Shri AjitsinghRajmohansingh Rawat, a person with 52% Locomotor Disability filed regarding accessibility and barrier free environment at railway platforms and in railway coaches.

10. After hearing both the parties, a Show Cause Notice dated 27.09.2019 was issued to the Railway Board regarding arrangements made for accessibilities/facilities for persons with disabilities while travelling in Rail and status report with regard to the following was desired; and hearing was fixed on 11.10.2019:

- (a) Issue of E-Ticketing Card to Divyangjan by Sr. DCM, New Delhi;
- (b) Tactile Paths, Ramps, Wheelchair, Low Height Drinking water station, separate accessible Toilets (with fitted Steel Grip Bars & Wider Doors), Special Ticket Counter & Help Desk facilities for Divyangjans on Railway Stations/Platforms;
- (c) Steps/Measures undertaken to check encroachment of seats in Reserved Coach for PwDs by General Class travellers;
- (d) Accessible Coach with Colour Code & Ramp facilities for Divyangjan;
- (e) Lifts, Subways facilities for Divyangjan for moving from one Platform to another Platform.



- (f) Preventive measures to check illegal sale of seats reserved for Divyangjan to other passengers by Railway & RPF personnel on duty;
- (g) Number of surprise checks made on Reserved Coaches by Railway Vigilance teams on Major Stations during last two years.
- (h) Steps taken for disabled friendly & barrier free environment for Divyangjans on platforms and Railway Stations in Metro Cities;
- (i) Advance booking facility for online for capturing data regarding requests of food habits, Coach Number, wheelchair facility, trolleys etc. as requested by the Divyangjan on arrival at Railway Stations and during the journey/or at time on destination stations; and
- (j) Necessary directives and instructions issued by Railway Board/Hqrs. To Divisions and Station Superintendents for implementation of provisions & facilities under RPwD Act, 2016 for Divyangjans at Railway Stations/Platforms.

11. During the hearing on 11.10.2019, Shri Jyoti Mani, ASC/RPF (Central Railway), Mumbai filed their reply for Railway Board & Others. The respondent refuted the allegations labelled by the complainant. However, it was submitted that RPF Mumbai division was continuously prosecuting offenders who were unauthorized persons travelling in coaches reserve for persons with disabilities, including cancer patients and pregnant women in Mumbai suburban trains. On 18.07.2017, RPF staff of Ghatkopar Thana had rightly



booked and prosecuted under Section 155 of Railway Act those 29 persons which included 06 Mumbai police Staff, 02 Railway servants, 01 ECC Bank employee and 20 general passengers. The respondent also stated that there is no provision in the RPwD Act, 2016 for RPF to apprehend the offenders and handover them to GRP for prosecution. Regular drives and raids were being carried out jointly by GRP and Commercial Branch. The raids taken in the years 2017, 2018 and 2019 were submitted as under:

Year	No. of cases	Amount of fine recovered (Rs.)	No. of persons sent to jail
2017	14273	3926965	10
2018	1459	3762815	02
2019 (upto September)	13542	3404832	03

The respondent also filed a copy of the "Facilities for Divyangjan available in Indian Railways".

12. Next hearing was fixed in this case on 20.11.2019. The complainant filed a copy of the Oral Judgment (PER A.S.OKA, J.) dated 25.01.2017 wherein the Hon'ble High Court of Bombay had issued directions to the respondent to submit compliance report by 4th May, 2017. The complainant was still praying that Railway Board should be directed that 'trespasser' be prosecuted under Sections 89-95 of the RPwD Act, 2016.

13. Railway Board filed their reply on 20.12.2019.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.08.2020. The following were present:

1. Shri Jaydeep Arvind Tanna, the complainant.
2. Shri Surendra Suryan, from RPF, on behalf of the respondent.

Observation/Recommendations:

Both the parties were heard.

2. After the last hearing held on 20.11.2019 and submission of the Railway Board vide their reply dated 20.12.2019, which was also sent to the complainant, the grievance of the complainant as expressed in his letter dated 07.01.2020 were limited to the following:-

- (i) Railway authority is legally duty bound to comply with the Section 40 and Section 41 of Rights of Persons with Disabilities Act, 2016.
- (ii) Legal action and punishment must be taken under Section 91 read with Section 95 of the Rights of Persons with Disabilities Act, 2016 against unauthorized travelers in coach reserved for Divyangjan – disabled passengers.
- (iii) Railway authority is liable to be punished under Section 89 of Rights of Persons with Disabilities Act, 2016 for contravention of the provisions of the Act.

3. As regards first grievance of the complainant, this Court recommends that the Railways must make all out efforts to ensure full accessibility for persons with disabilities at all Railway Stations as per Sections 40, 41 & 42 of the Rights of Persons with Disabilities Act, 2016. This should be done in a phased manner taking into consideration the administrative, financial and logistic issues.



4. As regards second grievance of the complainant, the respondent stated that regular checks and vigilant action was undertaken to catch people unlawfully occupying the seats and coaches reserved for persons with disabilities. 2,302 checks (2018-19) were conducted by Railways and 24,320 (2017-18) persons were caught and penalized. Appropriate Legal action is taken against all such persons who are caught occupying illegally in coaches reserved for persons with disabilities. So far as applicability of the Section 91 of the Rights of the Persons with Disabilities Act, 2016 is concerned, the Court observes that the Section 91 read with Section 95 is not applicable in this matter as those who are travelling in the coaches meant for persons with disabilities can be termed as unauthorized passengers only and not persons who are fraudulently availing the facility meant for the Pwds

5. As regards third grievance of the complainant, this Court noted the detailed submission made by the respondent and did not find any merit to apply Section 89 of the RPwD Act, 2016 in this matter.

6. Accordingly, the case is disposed of.

Dated: 24.08.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 8547/1023/2017

वादी श्री कृष्ण कुमार निगम, एफ-408, राजाजी पुरम, लखनऊ

प्रतिवादी प्रभारी, रक्षा टी.पी.ए., साइबर हाइट बिल्डिंग, 8वां तल
विभूति खण्ड, गोमती नगर, लखनऊ।
ई-मेल <crcm@rakshatpa.com+>

वादी 60 प्रतिशत दृष्टिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक **26.07.2017** में कहना था कि वह द ओरिएण्टल इंस्युरेन्स कंपनी लिमिटेड के क्षेत्रीय कार्यालय में सहायक प्रबंधक के पद पर कार्यरत है तथा सेवाकाल में ड्यूटी के दौरान पक्षाघात का अटैक होने के पश्चात् 60 प्रतिशत दिव्यांग हो गए थे तथा चिकित्सा में व्यय की गई धनराशि का भुगतान रक्षा टी.पी.ए. द्वारा अभी तक नहीं किया गया।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक **08.11.2017** द्वारा प्रतिवादी के साथ उठाया गया।

3. In response, respondent vide letter dated **03.05.2018** has informed that the claim file of Shri K.K. Nigam has been repudiated by Oriental Insurance Company and Shri K.K.Nigam is an Employee of Oriental Insurance Company and well versed about policy guidelines. He can co-ordinate with concern Department of Oriental Insurance Company for claim related issue.

4. वादी कि शिकायत एवं प्रतिवादी के टिप्पण के मददेनज़र, सुनवाई दिनांक **11.08.2020** को रखी गई।

5. The complainant had given a written submission through e-mail dated **10.08.2020** that he wants to withdraw his complaint. The request is accepted and hence there is no need of hearing in the matter.

6. The Case is accordingly disposed of.

(Upma Srivastava)

Commissioner for

Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No:10277/1011/2018

Complainant: Ms. Surbhi Bhatia, A-69, Prayag Apartment, Vasundhara Enclave,
Near Dharamshila, Delhi – 110096
e-mail: <unistarsurbhi@gmail.com >

Respondent: The Chiarmen-cum-Managing Director, NBCC India Ltd, NBCC
Bhawan, Lodhi Road, New Delhi - 110003
e-mail: <bdd@nbccindia.com>

Complainant: 68% hearing impaired

GIST of the Complaint:

Complainant in her complaint dated **05.09.2018** submitted that she had applied for the post of Assistant Manager (Finance) (E-I) under HH category in NBCC (India) Ltd and obtained 53 marks. She got an e-mail from NBCC for verification of original documents on 29.06.2018 and she went there for verification but they rejected her candidature with reason "does not have post qualification experience". She further submitted that she was the only candidate who cleared the exam under PH category

2. The matter was taken up with the Respondent vide letter dated **02.11.2018** under Section 75 of the RPwD Act, 2016.

3. In response, Chief General Manager (HRM), NBCC vide letter dated **01.12.2018** inter-alia submitted that during the document verification process, the candidature of Ms. Surbhi Bhatia for the post of Assistant Manager (Finance) was not found suitable as per the advertisement criteria, as she was having a post qualification experience of 02 months 08 days only on the cut-off date of 25.03.2018 as against the requirement of 02 years of essential post qualification experience for the post of Assistant Manager (Finance).

4. Complainant vide rejoinder submitted that she had also applied for the post of Management Trainee (Finance) via Advertisement No. 07/2018 in which he scored 55 marks and she had requested NBCC to consider her to the post of Management Trainee (Finance) but did not consider to fill up the vacancy.

5. After considering the respondent's reply and the complainant's letter, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **08.04.2020** and later on **10.06.2020**.

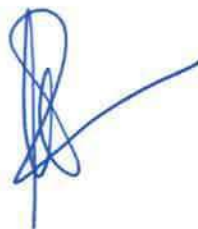
6. During the online hearing held on **10.06.2020**, complainant submitted that why the NBCC had not considered her in the lower post i.e. Management Trainee (Finance) as they had mentioned in the point No. 13 in their advertisement that "in case of non suitability of candidates for the post applied, NBCC at its discretion can offer a suitable post in the lower level. Therefore, according to point No. 13, NBCC can consider in the lower post to fill the backlog vacancy of HH category as she had also applied and qualified for the post of Management Trainee (Finance) post. Respondent was directed to submit comments and next hearing fixed on **11.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **11.08.2020**. The following were present:

1. Ms. Surbhi Bhatia, the complainant.
2. Mr. Ajay Pandey, Dy. General Manager (Legal) and Ms. Anjali Narayan, Dy. General Manager (Recruitment), NBCC, on behalf of the respondent.

Observation/Recommendations:

7. Both the parties were heard.



8. In the last hearing in this matter held on **10.06.2020**, the respondent was asked to explain as to why the candidature of the complainant could not be considered for a suitable post in the lower level i.e. Management Trainee (Finance). The respondent was requested to submit comments in this matter. No comments were received till the date of hearing. The respondent explained that the candidate of the complainant could not be considered against the vacancies of Management Trainee (Finance), because there were no vacancies reserved for persons with disabilities in this group of posts.


9. The Court noted that the complainant was not appointed as Assistant Manager (Finance), because she did not have a full post required qualification experience of two years.

10. The instructions vide O.M. No.36035/02/2017-Estt (Res) of the DoP&T, Govt. of India dated 15th January, 2018, para 11.1 states that *"If sufficient number of candidates with benchmark disabilities candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts."*

11. The respondent affirms that they had not applied for any relaxed standard in the case of the complainant.

12. This Court recommends that in view of the above rule position, the respondent may consider the case of the complainant for appointment as Assistant Manager (Finance) as the identified post for persons with disabilities.

13. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No:10813/1011/2019

वादी श्री मनमोहन बाजपेयी, डी-2158, इन्दिरा नगर, लखनऊ - 226016

प्रतिवादी 1 निदेशक, कर्मचारी राज्य बीमा निगम मुख्यालय, पंचदीप भवन, सी.आई.जी. मार्ग, नई दिल्ली।
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2 सचिव, संघ लोक सेवा आयोग, शाहजहाँ रोड़, नई दिल्ली - 110001
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3 सचिव, कार्मिक एवं प्रशिक्षण विभाग, नॉर्थ ब्लॉक, नई दिल्ली - 110001
ई-मेल: <asestt-dopt@gov.in>

वादी 40 प्रतिशत दृष्टिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 08.01.2019 में कहना था कि कर्मचारी राज्य बीमा निगम द्वारा उपनिदेशक के पद पर सन् 2011 के उपरान्त संघ लोक सेवा आयोग के माध्यम से पदों की भर्ती की गई, लेकिन दृष्टिबाधित व्यक्तियों को आरक्षण नहीं दिया गया। प्रार्थी ने बताया कि उन्होंने आर.टी.आई. के माध्यम से कर्मचारी राज्य बीमा निगम विभाग द्वारा जानकारी प्राप्त की जिससे उन्हें मालूम हुआ कि उपनिदेशक के पद पर कोई भी दृष्टिबाधित व्यक्ति उनके कार्यालय में कार्यरत नहीं है जबकि उक्त पद दृष्टिबाधित व्यक्तियों के लिए चिह्नित है।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 14.02.2019 द्वारा कर्मचारी राज्य बीमा निगम के साथ उठाया गया।

3. उप निदेशक, कर्मचारी राज्य बीमा निगम, नई दिल्ली अपने पत्र दिनांक 30.04.2019 द्वारा अवगत करवाया कि उनके द्वारा समय-समय पर उप निदेशक के रिक्त पदों को सीधी भर्ती से भरने हेतु प्रयास किये गये तथा वर्तमान में जो प्रस्ताव उप निदेशक की भर्ती हेतु संघ

लोक सेवा आयोग को भेजा जाना प्रस्तावित है उसमें नियमानुसार वी.एच. कैटेगरी से भी पद भरे जाने है तथा आयु सीमा बढ़ाये अथवा ना बढ़ाये जाने का निर्णय संघ लोक सेवा आयोग का ही अधिकार है।

4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 03.10.2019 कहना था कि विपक्षी द्वारा समय पर विज्ञापन न जारी होने के कारण वह आवेदन करने व नियुक्ति प्राप्त करने के अवसर से आयु सीमा संबंधित कारण से वंचित रह सकते है। प्रार्थी का आगे कहना है कि कर्मचारी राज्य बीमा निगम द्वारा संघ लोक सेवा आयोग को जुलाई 2019 में उप निदेशक पद पर विज्ञापन जारी करने का अध्याचन भेजा चुका है जो कि शीघ्र प्रकाशित होने वाला है जिसमें आयु सीमा में छूट का प्रावधान नहीं है।

5. वादी के पत्रों एवं प्रतिवादी के टिप्पण के मद्देनज़र, सुनवाई दिनांक 29.01.2010 को रखी गई। सुनवाई के दौरान प्रार्थी ने अपने लिखित कथनों को दोहराया एवं कर्मचारी राज्य बीमा निगम की ओर से आए प्रतिनिधियों ने बताया कि उप निदेशक पद पर सीधी भर्ती हेतु प्रस्ताव संघ लोक सेवा आयोग को दिया गया था जिसे उन्होंने पत्र दिनांक 17.04.2012 द्वारा इस निर्देश के साथ वापिस लौटा दिया कि उप निदेशक पद के भर्ती नियम/रेग्यूलेशन नोटीफाई होने पर प्रस्ताव दिया जाये पुनः बदलाव होने तथा इसके चलते नोटिफिकेशन ना होने के कारण संघ लोक सेवा आयोग द्वारा प्रस्ताव दिनांक 08.05.2018 को लौटा दिया गया तथा वर्तमान में प्रस्ताव पुनः संघ लोक सेवा आयोग को भेजे जाने की प्रक्रिया में है।

6. दोनों पक्षों को सुनने के पश्चात्, कर्मचारी राज्य बीमा निगम द्वारा प्राप्त जवाब की प्रतिलिपि संघ लोक सेवा आयोग एवं कार्मिक एवं प्रशिक्षण विभाग को भेजते हुए उन्हें प्रतिवादी नं: 02 एवं 03 के रूप में शामिल किया गया तथा अगली सुनवाई दिनांक 03.04.2020 को सुनिश्चित हुई परन्तु कोविड-19 के कारण दिनांक 24.06.2020 को सुनिश्चित कि गई। परन्तु तकनीकी समस्या के कारण नहीं हो पाई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.08.2020. The following were present:

1. Mr. Manmohan Bajpai, the complainant.
2. Mr. Sunil Kumar Gautam, Assistant Director, ESIC, for Respondent No.1.
3. None for the Respondent No.2 & 3.



Observation/Recommendations:

7. Both the parties were heard.
8. The complainant stated that the post of Dy. Director (Administration) in ESIC though reserved for visually impaired persons has not been notified by the respondent since 2015. Due to this, the complainant has not been able to apply against that post and consequently has lost the benefit of relaxation of age as prescribed for persons with disabilities.
9. The respondent stated that they have not been able to advertise the three posts of visually impaired persons because the matter of notifying new Recruitment Rules was pending with UPSC. Until & unless the new Recruitment Rules were notified, it was not possible to advertise the post. Despite their efforts from 2015 onwards, they have not been able to get the required clearances from UPSC.
10. The Court noted with disappointment that due to huge administrative delay, the complainant had not got an opportunity to apply for the identified post. The Court recommends that once the UPSC approval is available, the respondent may undertake a Special Recruitment Drive for filling all such vacancies including backlog immediately. In this Special Recruitment Drive for backlog vacancies due age relaxation may be given to the candidates who were eligible at the time of the existence of backlog vacancies with reference to the year of vacancy.
11. The Case is accordingly disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 10951/1023/2019

वादी श्रीमति सरिता मिश्रा, पत्नी श्री अजय कुमार मिश्रा
98, कृषि कुंज, नई दिल्ली-110012
ई-मेल: <mishra.diwakar44@gmail.com>

प्रतिवादी प्रभारी, फार्म ऑपरेशन सर्विस यूनिट (फोसू)
भारतीय कृषि अनुसंधान संस्थान, नई दिल्ली - 12
ई-मेल: <mkhanna@iari.res.in>

वादी श्री अजय कुमार मिश्रा, 90 प्रतिशत बहुदिव्यांग

GIST of the Complaint:

प्रार्थिनी का अपनी शिकायत दिनांक 14.02.2019 में कहना था कि उनके पति फार्म ऑपरेशन सर्विस यूनिट, नई दिल्ली में कार्यरत थे जहां पर भारी कार्य जैसे वजन उठाने व हथौड़ा चलने आदि का कार्य होता है परन्तु बीमारी के वजह से डा. राम मनोहर अस्पताल के डाक्टरों ने हल्का काम करने के लिए सलाह दी थी परन्तु अधिकारियों ने उनको हल्का काम न देकर भारी कार्य दिया, जिसकी वजह से दिन पर दिन हालत बदतर होती चली गई। प्रार्थिनी ने निवेदन किया है कि संस्थान की लापरवाही से उनके पति विकलांग हुए हैं जिसका उचित हर्जाना दिलाया जाए तथा उनके पुत्र को नौकरी दिलवाई जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 19.03.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. प्रभारी, फोसू का अपने पत्र दिनांक 10.04.2019 में कहना है कि श्रीमति सरिता मिश्रा द्वारा शिकायत निराधार है चिकित्सक द्वारा ऐसा कोई प्रमाण पत्र कार्यालय को नहीं प्राप्त कराया गया जिसमें प्रार्थी को हल्का कार्य करने की सलाह दी गई हो। प्रार्थी के स्वास्थ्य की स्थिति देखते हुए उनसे कोई भी ऐसा कार्य नहीं लिया जाता था जिसमें उन्हें किसी प्रकार की परेशानी का सामना करना पड़े।

4. वादी के शिकायत एवं रिजाइंडर दिनांक 07.06.2019 एवं प्रतिवादी के टिप्पण के मद्देनजर, सुनवाई दिनांक 18.09.2019 को रखी गई।

5. सुनवाई दिनांक 18.09.2019 के दौरान सरिता मिश्रा ने कहा कि उनके पुत्र को अनुकंपा आधार पर नौकरी एवं मुआवजा दिया जाए। उन्होंने यह भी कहा कि पेंशन अभी तक शुरू नहीं हुई है जबकि उनकी तरफ से उपस्थित अधिवक्ता ने मामले में सुनवाई की तारीख की मांग की। प्रतिवादी की तरफ से उपस्थित प्रतिनिधियों ने उल्लेख किया कि वादी द्वारा पेंशन के दस्तावेज देर से जमा करने के कारण पेंशन शुरू नहीं हो पायी जबकि नियमानुसार पेंशन की प्रक्रिया आरम्भ की जा चुकी है। उन्होंने कहा कि वादी के पति सरकारी नियम अनुसार पूर्ण सेवा के उपरांत सेवानिवृत्त हुए, अतः वादी द्वारा वांछित कोई दावा नहीं बनता। अगली सुनवाई दिनांक 07.02.2020 को सुनिश्चित हुई परन्तु प्रशासनिक कारणों से नहीं हो पाई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.08.2020. The following were present:

- Ms. Sarita Mishra, the complainant.
- Dr. Manoj Khanna, Head, FOSU, for the respondent.

Observation/Recommendations:

6. Both the parties were heard.

7. The complainant reiterated that as her husband got injured while serving in FOSU and passed away because of such illness, her son may be given appointment in the organisation on compassionate ground. The second grievance was regarding the payment of pension.

8. The respondent clarified that all formalities in respect of payment of pension had been completed successfully and the pension was paid regularly to the complainant and the pension of the month of July, 2020 had also been made. As regards the matter for appointment on compassionate ground is concerned, the complainant's husband retired from service on 28.02.2019 and passed away subsequent to his retirement. As such there was no case for giving compassionate appointment to the complainant's son. Moreover the complainant's son did not suffer from any form of disability.



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9. The reply of the respondent is found satisfactory and the case is accordingly disposed of.

10. The Case is accordingly disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No:11327/1011/2019

Complainant: Shri Vijender, National Platform for Disabilities Rights and Duties & Others, H.No. 1468 (G), Sector – 39 B, Chandigarh – 160036
e-mail: <parashar.sharma591@gmail.com>

Respondent: The Registrar, Mahatma Gandhi Central University, Camp Office Raghunathpur, Motihari, District – East Champaran, Bihar-845401
e-mail: <vc@mgcub.ac.in>

GIST of the Complaint:

Complainant vide complaint dated **27.06.2019** submitted that Mahatma Gandhi Central University had published an advertisement without providing reservation to persons with disabilities. He has requested to direct the respondent to equally distribute seats between persons with disabilities categories.

2. The matter was taken up with the Respondent vide letter dated **22.07.2019** under Section 75 of the RPwD Act, 2016. But despite reminders dated **20.09.2019** and **14.01.2020** respondent did not submit any reply, therefore hearing fixed on **11.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **11.08.2020**. The following were present:

- Mr. Vijender, the complainant.
- Dr. Padmakar Mishra, OSD (Administration), for the respondent

Observation/Recommendations:

3. Both the parties were heard.

4. The complainant stated that the respondent had issued an advertisement no.008/2019 dated 12.06.2019 wherein there was no mention of any reservation for persons with disabilities against the vacancies mentioned in the advertisement. The complainant further stated that the respondent was not maintaining the proper post-wise roster and was not filling the vacancies as required to be filled in terms of the roster.

5. The respondent stated that the university was established only in the year 2016 and they were in the process of preparing proper roster for persons with disabilities. He explained further that the exact procedure as prescribed by the government may not be in place, but they are fully sensitive to the requirements of the persons with disabilities. As in the case of the general candidates, they have not prescribed any cut-off criteria in case of persons with disabilities so far as their recruitment is concerned. It is a fact that they have been able to recruit only three persons with disabilities in O.H. category, however, any shortfall in any particular category including VH will be taken care of in the future vacancies by the respondent.

6. The Court advised the respondent to fulfill all the directions of the Government in this respect which are reiterated for their benefit as under:-

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

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



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

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

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

7. Para 2 of DOP&T O.M. No.15012/1/2003-Estt.(D) dated 29th June, 2015 states as under:-

"(i) Age relaxation of 10 years (15 years for SC/ST and 13 years for OBC candidates) in upper age limit shall be allowed to persons suffering from (a) blindness or low vision, (b) hearing impairment and (c) locomotor disability or cerebral palsy in case of direct recruitment to all civil posts/services under the Central Government identified suitable to be held by persons with such disabilities, subject to the condition that maximum age of the applicant on the crucial date shall not exceed 56 years.

(ii) The age concession to the persons with disabilities shall be admissible irrespective of the fact whether the post is reserved for person with disabilities or not, provided the post is identified suitable for the relevant category of disability. This provision will not apply to the Civil Services Examination, in respect of which the List of Services Identified suitable for Physically Disabled Category along with the Physical Requirements and Functional Classifications is notified separately.

(iii) Relaxation of age limit would be permissible to such persons who have a minimum of 40% disability.

(iv) The definitions of above categories of disabilities, for the purpose of age relaxation, will be same as given in this Department's O.M. No.36035/3/2004-Estt(Reservation) dated 29th December 2005.



(v) *If a person with disability is entitled to age concession by virtue of being a Central Government employee, concession to him/her will be admissible either as a 'person with disability' or as a Central Government employee' whichever may be more beneficial to him/her. This provision will not apply to the Civil Services Examination, which is governed by the Civil Services Examination Rules, published annually.*

(vi) *Provisions of this O.M. will not be applicable to a post/service for which other specific provision regarding age relaxation is made by notification.*

8. Para 2 of DOP&T O.M. No.36035/02/2017-Estt (Res) dated 15th January, 2018 states as under:-

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

2.2 Against the posts identified for each disabilities, of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent, under clauses (d) and (e), unless otherwise excluded under the provisions of Para 3 hereunder:-

(a) blindness and low vision;

(b) deaf and hard of hearing;

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

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

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness

9. All the above mentioned O.Ms. are available on the website of the DOP&T.

10. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No:11559/1014/2019

Complainant: Shri Velmurugan P
e-mail: <vel9790745858@gmail.com>

Respondent: The General Manager, REPCO Bank, 33, North Usman Road, T. Nagar, Chennai – 600017
e-mail: <ho@repcobank.co.in>

GIST of the Complaint:

Complainant vide complaint dated **20.09.2019** submitted that he had appeared for an online test conducted by REPCO Bank for the post of Jr. Assistant/Clerk and he obtained 172 marks out of 200. After document verification on 04.09.2019, his candidature was cancelled due to visual impairment.

2. The matter was taken up with the Respondent vide letter dated **04.10.2019** under Section 75 of the RPwD Act, 2016.

3. In response, Managing Director, REPCO Bank vide letter dated **04.11.2019** submitted that on 04.09.2019, complainant was appeared for the pre-appointment formalities and it was found that he is 100% VH. Since the entire banking operations (CBS) in their Bank are system enabled and his visual impairment is 100%, the same was explained to complainant and he was enquired whether he is capable of working in computer systems. But he informed us that he is not able to work in computer systems.

4. On behalf of complainant, Prof. Anil K. Aneja vide rejoinder dated **25.03.2020** inter-alia submitted that the claim of the respondent that the complainant does not have computer

knowledge is totally false and appears to be a deliberate distortion of facts in view of the fact that the complainant had already submitted to the respondent the proof of his computer training as well as certificate of experience of working as a computer instructor.

5. After considering the respondent's reply and the complainant's letter, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.06.2020**. Due to some administrative exigencies, hearing re-scheduled on **11.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **11.08.2020**. The following were present:

- Mr. Velmurugan P., the complainant & Prof. Anil Aneja, representative of the complainant.
- Mr. Sankar, General Manager, REPCO Bank, Chennai, on behalf of the respondent

Observation/Recommendations:

6. Both the parties were heard.

7. After going through the documents submitted by the complainant and the respondent as well as hearing both the parties, the Court observes that the complainant was not given appointment as Jr. Assistant/Clerk despite qualifying the online test conducted by the respondent only on the grounds of visual disability. The argument given by the respondent that the complainant was rejected, as he was 100% visually impaired and was not trained in computers is unacceptable. Persons with 100% visually impaired are working as Senior Civil Servants in the Country and training can always be provided to any person for becoming proficient in computers. The respondent also admitted that there was not a single visually impaired person working in the organisation.



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8. This Court concludes that the respondent had violated Section 34 of the Rights of Persons with Disabilities Act, 2016 and also the direction of the Hon'ble Supreme Court's judgment in the matter of Union of India & Anr. Versus National Federation of the Blind & Ors vide Civil Appeal No. 9096 of 2013 regarding prevention of discrimination in appointment and employment to persons with disabilities

9. The Court recommends that the respondent may immediately appoint the complainant on the post of Jr. Assistant/Clark as per his successful result in the test conducted by the respondent. A Compliance Report may be sent to this Court within 90 days of receipt of this order.

10. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 11972/1141/2020

Complainant: Shri Zaheer Jan,
Email: infostdfjk2013@gmail.com; Mobile: 9858433611
for Dr. Zaffer Ur Rehman & Mrs. Shayesta,
Parents of the victim child Mohammad Ayaan Zaffer,
Email: drzaffar28@gmail.com

Respondent: The Principal, Delhi Public School,
Athwajan, Bypass, Srinagar-190004 (Jammu &
Kashmir); Email: info@dpssrinagar.com;
Phone: 0194-2467286, 2467550... **Respondent No.1**

Jammu & Kashmir Police,
through: DPG, Police Headquarters,
Srinagar; Email: phqjk@jkpolice.gov.in

....**Respondent No.2**

Gist of Complaint

Mohammad Ayaan Zaffar, a child with 100% Blindness, s/o Dr. Zaffar Ur Rehman and Mrs. Shayesta and student of SEN Department of Delhi Public School (DPS), Srinagargot hit by one of the School Buses in the premises of the school on 19.06.2019. The child was initially admitted in Bone and Joint Hospital, later on referred to Sheri Kashmir Institute of Medical Sciences, Srinagar as he had sustained serious injury to his right leg with CP Nerve injury with foot drop wherein he was got operated. Thereafter, the parents took the child to various hospitals at Mumbai. An F.I.R. in this regard had been

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 ; 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)

lodged. The parents alleged that the school authorities misinformed them by making understand that the victim child had suffered a mere fall whereas it was sheer negligence of the school authorities. The complainant demanded compensation for treatment expenses and disability caused due to the accident, by school authorities; and Complete education, wherever available as per the need of their ward (within India or abroad) be completely sponsored by the respondent No.1 till Class XII as already promised at the time of accident.

2. The respondent No.1 in their reply dated 18.06.2020 rejected the allegations labelled against the school and submitted that there was no negligence by the school. The child has been on scholarship since June 2019 and will remain on scholarship till he is enrolled in the school. The school had also approached the Department of Social Welfare in considering whatever grant could be given to the child Mohammad Ayaan.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 11.08.2020. The following were present:

1. ShriWasim Aslam, Advocate for the complainant, Dr. Zaffar Ur Rehman & Smt. Shayesta parents of child with disability.
2. ShriSumairaBawan, Advocate & ShriSajad Ahmed Sufi, Advocates for the respondent.

Observation/Recommendations:

Both the parties were heard.

2. The complainant reiterated his points made in his complaint dated 27.06.2019. The relief sought by the complainant from this Court was



reimbursement of medical expenses incurred by the complainant in treatment of the grievous injury caused to his son due to the accident on 19.06.2019 in the school premises.

3. The respondent stated that they wanted to furnish a detailed reply to the rejoinder dated 03.07.2020 submitted by the complainant. They also informed this Court that the complainant had already filed a case under Motor Accident Claim Tribunal (MACT) seeking compensation; that the complainant's son did not suffer from 100% visually handicap; that the accident was not foreseeable and that the complainant's son was on scholarship with the school.

4. The Court noted that there was nothing in the rejoinder of the complainant, which was already not available in the initial complaint and as such giving more time for furnishing of reply would not serve any purpose apart from delaying justice. However, **a copy of the rejoinder is enclosed with this order for information of the respondent.**

5. On inquiring from the complainant, they informed the Court that they had been regularly paying fees to the School each month and the child was not on any scholarship and that they had school fees receipts to prove the same till the date of accident. The complainant also admitted that they had filed a case with the MACT in July, 2019.

6. This Court observed that the child was studying in the respondent's school since the year 2016 and was aged only 11 years at the time of the accident. As per the disability certificate issued by the competent authority, the child was indeed 100% visually impaired and whose condition not likely to improve. The accident happened in the

premises of the school at 11.00 a.m. on 19.06.2019 during the school hours. It had been confirmed in the reply of the Respondent No.2 i.e. Police Headquarters, Jammu & Kashmir Police, Srinagar that the child got hit by the school bus while the driver was moving the bus towards bus yard. The complainant's statement that the CCTV footage shows the accident is also admitted on record. It is also noted that the school has been catering to special children like that of complainant's son on a regular basis.

7. This Court finds merit in the contention of the complainant that, the school has full responsibility to ensure the safety and security of all students and doubly so for those who are also having physically disability, in the premises of the school. Under no circumstances, the school can give any excuse to evade such responsibility and is accountable for any accident caused due to an external source leading to such an injury to a 100% visually impaired student. The school bus driver was an employee of the school and it was the obligation of the school to ensure that there was no student in the way of the bus let alone a 100 percent VH student.

8. The school should have offered on their own to stand in support with the complainant's son and render all necessary support and assistance in this matter including medical care. Recognizing that it is very difficult to take care of a visually impaired child, the parents entrusted this responsibility to the school for a few hours in the hope that the child will be safe and secure. It is indeed a case of gross negligence in providing a safe and secure environment by the school due to which such serious injury was caused.



9. The statements of the Respondent regarding the child not being Visually Impaired and that he was on scholarship before the accident are found to be not true. The claim made under MACT does not debar the complainant to make a claim under RPwD Act 2016.

10. The Court recommends reimbursement of all medical expenses undertaken by the complainant for treatment of injury caused due to this accident as well as full scholarship to the student till such time he continues in the school. The Court also directs that on no account the child should be dismissed from the school and/or harassed by the respondent on this account.

11. The case is disposed of.

Dated: 24.08.2020



(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 7760/1022/2017

Complainant : Shri Sandeep Bose, Employees Provident Fund Organisation, District Office,
AT/Post : Modipara, District : Sambalpur, Odisha – 768 002

Respondent : Employees Provident Fund Organisation, (Thru Regional P.F. Commissioner-I
(HRM), Ministry of Labour & Employment, Bhavishya Nidhi Bhawan, 14, Bhikaji
Cama Place, New Delhi – 110 066.

Gist of Complaint:

Shri Sandeep Bose, a person with locomotor 50% disability vide his complaint dated 25.02.2017 submitted that he has been posted as M.T.S. at District Office, EPFO, Sambalpur Odisha since 17.01.2013 on compassionate ground on the death of his father Late Ganesh Prasad Bose. His mother is suffering from Anylosing Spondylitis since last two years and is staying alone in her native village at Nabagram District, Burdwan, West Bengal. Her doctor advised his mother complete rest and care. There is no one except him who can look after his ailing mother. The complainant submitted that it is difficult for him, being a person with disability, to shuttle between his office and home, which is 672 kms away. He made several representations to the management requesting for his transfer to his native place, but did not receive any response yet. The complainant has requested for his transfer from EPFO District Office, Sambalpur, Odisha to EPFO Sub-Regional Office, Howrah/S.R.O. Park Street, West Bengal.

2. THE Regional P.F. Commissioner-I (HRM), EPFO vide his letter no. HRM-VII/IV/59(1)2010/Pt./MTS/Trf/3602 dated 22.05.2018 submitted that the complainant had been advised to give a written undertaking if he is willing to be the junior most in the new region where he is transferred. He submitted that this undertaking is required as per their Office Circular No. HRM-III/14/1/99/IRT/GL/11502-520 dated 18.02.2000 in the matter of conditions governing Inter Regional Transfer.

3. The complainant vide his email dated 16.10.2018 submitted that he has already submitted an undertaking to his office in connection with letter dated 20.06.2018 regarding Zonal Transfer.

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Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 14.08.2020.

5. The following persons were present during the hearing;

- 1) Mr. Sandeep Bose, the complainant.
- 2) Mr. Subhash Sharma, RPFC, on behalf of the respondent.

Both the parties were heard.

6. The complainant stated that since 2017, he has been requesting for a transfer from Sambalpur, Odisha to Burdwan, West Bengal. He had already given a written undertaking to the respondent as required by them to be treated as junior most in the cadre in West Bengal. However, till date there was neither any reply from the side of the respondent regarding his complaint nor any transfer orders.

7. The respondent explained that they had not been able to consider the transfer of the complainant to Burdwan, as there was no surplus post at that station against which they could consider posting him. Further, as it was a matter of interstate transfer, the Central Provident Fund Commissioner at Calcutta was the appropriate authority to accept this request. However, the respondent stated that within a period of one month from the date of this hearing, the complainant shall be transferred to the station of his choice i.e. Burdwan, West Bengal.

Observation/Recommendations:

8. The respondent is directed to send a compliance report to this office within 90 days of receipt of this order.

9. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated : 25.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

Case No. 7831/1022/2017 भारत सरकार/Government of India

Complainant : Shri B.K. Tripathi, H.No.01, Block 'B', Barsyatpur, Near Homeopathic Medical College, Kanpur.

Respondent : Bank of Baroda, (Thru Deputy General Manager), Regional Office, 19-A, Dwarka Bhawan, Tagore Town, Allahabad – 211 002

Gist of Complaint:

Shri B.K. Tripathi, a person with 45% locomotor disability vide his complaint submitted that he is presently posted at Meza Road Branch, Allahabad Region of Bank of Baroda which is 45 Kms away from the city where he is presently posted. As he has to visit his doctor once in a week for regular check up, he has requested for his transfer to Kanpur city.

2. General Manager of Bank of Baroda of Lucknow zone vide letter number LZ.HRM.F-67:1410 dated 08.06.2018 submitted that Mr. Tripathi had joined Bank's service as a Clerk on 19.04.1983 in Sarai-Akil Branch in Allahabad Region. He had been posted for more than a year and then transferred to Kanpur Region on 18.07.1984. He remained posted there till February, 2017. The Complainant had been posted in the Allahabad Region since 07.03.2017 and presently is posted at Ashok Nagar Branch in Allahabad City. Repeated incidents of lapses/irregularities were observed against Mr. Tripathi during his posting in Kanpur region. The allegations were of sanctioning loan without completing the due process resulting into perpetrated fraud and also recommending loan application without following the Bank's norms. In addition to above, disciplinary cases were initiated against him as his performance has not been satisfactory which led to financial loss during his posting in Kanpur Region. Due to preventive vigilance measure, he was transferred and posted in Allahabad Region near to his home town after considering all aspects including the medical facilities. In compliance of this Court's letter dated 20.03.2018, they had directed Regional Head, Allahabad Region to post Mr. Tripathi in Allahabad City (not in rural areas) and accordingly, he was posted at Ashok Nagar Branch in Allahabad. The Respondent further submitted that Allahabad is a major city in Uttar Pradesh and is having good medical facilities similar to Kanpur.

3. The Complainant vide his letter dated 26.06.2019 has submitted that he was transferred from Kanpur to Allahabad in the month of January 2017. He was posted at Meza Road, which is a rural branch at a distance of 5.5 Km from Allahabad. He was again transferred to Ashok Nagar on 25.04.2018. He was then transferred to Allapur in the month of December 2018. He further submitted that his wife is suffering from Cancer of liver and he has crossed 58 years of age. He has requested to post him in any branch in Kanpur city.

....2/-

Hearing : 14.08.2020.

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 14.08.2020.

5. The following persons were present during the hearing ;

- 1) Mr. B.K. Tripathi, the complainant.
- 2) Mr. Diwakar Prasad Singh, Regional Head, Bank of Baroda, Allahabad, for the respondent.

Both the parties were heard.

6. The complainant stated that he is 59 years of age and wanted a transfer to Lucknow now due to his wife diagnosed with Cancer.

7. The respondent informed the Court that the complainant had been posted from 1984 to 2017 in Kanpur, the station of his choice. He was transferred to Allahabad on the grounds of preventive vigilance measure. He has been requesting earlier for approval to Kanpur and now to Lucknow. His case recommending the transfer had been forwarded to the Zonal Head Office for acceptance.

Observation/Recommendations:

8. Given the fact that the complainant has only about one year left to superannuate and the medical status of his wife, this Court recommends that the respondent may accept his request of transfer to Lucknow.

9. The case is disposed of.

Date : 25.08.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 7861/1022/2017

Complainant : Shri Pandurang B. Mahale, Postal Assistant, O.E. Ambarnath S.O., Distt. Thane, Maharashtra – 421 502.

Respondent: The Chief Postmaster General, Maharashtra Circle, Department of Posts, 2nd floor, Mumbai GPO Old Building, Mumbai - 400 001.

Gist of Complaint:

Shri Pandurang B. Mahale, a person with 58% locomotor disability vide his complaint dated 20.03.2017 submitted that he is working as Postal Assistant in the Office of Sr. Superintendent of Post Offices at their Thane Central Division. He submitted that the Sr. Supdt. of Post Offices had issued an order 'Leave Reserved P.A.' which means that he can be deputed in other offices whenever the staff there is on leave. The complainant has requested to exempt him from such transfer.

2. The Sr. Supdt. of Post Offices, Thane Division vide letter no.B2/Complaint/PBM/2018 dated 14.08.2018 submitted that since the complainant was transferred under Rule 38 of P&T Manual Volume IV from Mumbai City North West Division in Aug'2016, he was junior most in this Division and therefore he was posted as Leave Reserve Postal Assistant then. The Complainant resides at Ambarnath and was posted in the office near his residence, i.e. at O.E. Ambarnath. He was deputed only twice (in Jan. 2017 and Feb. 2017) to other office, i.e. at O.E. Ambarnath which is in Ambarnath only and that too at a distance of only 1 Km from his residence. The following are the action taken on the prayers of the complainant;

1) The official is not Leave Reserve PA now. He is posted as Treasurer at O.E./Ambarnath Post Office as per his own request vide their Office Posting Order dated 17.07.2017 and since then he is working as Treasurer.

2) The official is residing at Ambarnath and also posted in Ambarnath. Further he is posted as per his own request.

3) After Feb'2017, the official has never been sent on deputation and

4) The official is not presently due to rotational transfer. However, it is to state that Rotational Transfers are issued as per the guidelines issued by Department of Post from time to time.

3. The Complainant vide his rejoinder dated 05.04.2019 submitted that the employees with disabilities are not exempted from the Rotational Transfer in the Deptt. of Posts.

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Hearing :

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 14.08.2020.

5. The following persons were present during the hearing:

- 1) Mr. Pandurang B. Mahale, the complainant.
- 2) Ms. Shobha Madhare, Postmaster General, Navi Mumbai Region, for the respondent.

Both the parties were heard.

6. The complainant stated that he wanted to be exempted from the routine/rotational transfers and was having difficulties in commuting from residence to office due to his present posting at Ambarnath East. He accordingly wanted a transfer back to Ambarnath West. The complainant further stated that he was not exempted from roster duty during Covid-19.

7. The respondent stated that the present posting of the complainant was at one of the three choice stations as indicated by him. He had to be transferred from the earlier post because the organisation does routine transfers after three years as per their policy.

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

Observation/Recommendations:

9. In view of the aforesaid, the Court recommends that the complainant may be transferred to a station from where he can commute easily and discharge his duties efficiently. The respondent may consider the request of the complainant favourably and regarding roster duty during Covid-19/rotational transfers, the respondent is advised to follow the government circulars and exempt the complainant from roster duty/rotational transfers as per the guidelines issued by the Govt. of India from time to time in this regard.

10. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Date : 25.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 7996/1023/2017

Complainant : Shri Ashok M. Shrimali, G.S.T. Bhiwandi Commissionerate, Division No. 3, Chandrama Bldg., Kalyan, Maharashtra – 421 301.

Respondent : The Chief Commissioner of GST & Customs, Mumbai Zone, 115, New Central Excise Building, M.K. Road, Churchgate, Mumbai – 400 020.

Gist of Complaint:

Shri Ashok M. Shrimali, a person with 100% visual impairment vide his complaint dated 27.04.2017 submitted that he is an employee of Central Excise Thane 1 Commissionerate and posted at Kalyan Division. He joined the office in the year 2003 as L.D.C. through Special Recruitment drive for VH persons 2000 conducted by Staff Selection Commission. Thereafter, he was promoted to the post of Tax Assistant of grade pay Rs.2400 in the year 2011. Then he was promoted to the post of Executive Assistant in the grade pay Rs.4200 in October 2014. Thereafter persons with no disabilities were promoted as Inspector in grade pay Rs.4600 during November 2016. He graduated with first class from Mumbai University in the year 1994. He has submitted that one of his fellow employees who is also a person with visual impairment and who is posted at Indore Commissionerate was promoted as Executive Assistant in the year 2009 in the Grade Pay Rs.4200 but he has not been promoted to Grade Pay Rs.4600/-. The complainant has sought his promotion in the next grade pay of Rs.4600 w.e.f. from November 2013.

2. The Commissioner (CCA), GST & CX, Mumbai Zone vide his letter no. II/26(CON)-19/2019/324 dated 07.11.2019 submitted that the Complainant vide his letter dated 12.02.2019 has requested for promotion to the grade of Administrative Officer or equivalent. The Complainant has mentioned that the Nationalised Banks appoint VH candidates to Deputy Manager posts by examination conducted by IBPS and further these officers are promoted to the Manager and Senior Posts regularly. Further he has contended that he had written a letter dated 23.10.2017 to Assistant Commissioner, Bhiwandi, Commissionerate, Division-III, Kalyan requesting them to assign the task of GST information cell, but no communication was received from the said office. Further the Complainant has informed that he has not received a single training during the last 15 years of his service and no policy to train VH employees has been formulated. Further, he has contended that the office has not provided him any equipment and accessories like PC and

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stationary and office equipments. The Respondent submitted that the post of Inspector or Central Excise, Group 'B' (Non-Gazetted) has not been identified as suitable for visually impaired persons in terms of Annexure to Govt. of India, Ministry of Social Justice and Empowerment Notification No.16-45/2010-DD.III dated 29.07.2013. The Hon'ble Supreme Court in Civil Appeal No.9096 of 2013 (arising out of SLP (Civil) No.7541 of 2009) in the case of UOI & Anr V/s National Federation of the Blind & Ors had held that " Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B,C & D and the post in an identical manner viz, "computing 3% of total number of vacancies in the cadre strength" which is the intention of the legislature. He submitted that accordingly certain clauses in the DoP&T O.M. No. 36035/3/2004-Estt(Res) dated 29.12.2005 which are contrary to the above reasoning are struck down and we direct the appropriate government to issue new office memorandum (s) in consistent with the decision rendered by the Court'. The Respondent further submitted that DoP&T vide O.M. No.36035/02/2017-Estt(Res) dated 20.06.2017 has informed that the issue of reservation in promotion for a person with disability is sub-judice in various cases in the Hon'ble Supreme Court including Civil Appeal No.1567/2017 titled Siddaraju vs State of Karnataka & Ors and Review Petition (C) No.36/2017 tagged with it. Further, vide the said OM they have circulated a draft OM and have sought suggestions on the same. It is seen from the draft O.M. that the quantum of reservation has been increased from 3% to 4% in case of direct recruitment as well as promotion. However, only Group 'C' and 'D' posts have been identified for consideration for promotion for a person with disability. The Respondent submitted that in view of DoP&T and Ministry's instructions, it is submitted that no reservation is available for Visually Impaired persons in Group 'B' posts, i.e. Inspector & Superintendent in promotion. Further, the Group 'B' post have also not been identified for consideration for promotion to persons with disabilities. The Respondent has served a copy of their reply dated 07.11.2019 to the Complainant and has enclosed an acknowledgement dated 04,11,2019 for the same from the Complainant.

Hearing : 14.08.2020

3. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 14.08.2020.

4. The following persons were present during the hearing;

- 1) Mr. Ashok M. Shrimali, the complainant on telephone.
- 2) Mr. C.K. Narayanan, Assistant Commissioner, GST, on behalf of the Respondent.

Both the parties were heard.



5. The complainant expressed that he had not been promoted on grounds of seniority vis-a-vis his other counterparts in the year 2016 to the post of Inspector (Grade Pay 4600). He was not promoted because he was a 100% visually impaired person.

6. The respondent stated that the post of Inspector was not identified for a visually impaired person.

Observation/Recommendations:

7. On inquiring that the complainant could have been promoted to any other equivalent post in the same pay-scale, the respondent informed that it had not been possible to do so as the Recruitment Rules for the post of Administrative Officer (Grade pay 4600) were under amendment and got approved only on 21.05.2020. The DPC will be held very shortly in furtherance of the new Recruitment Rules and the matter of the complainant for promotion to the post of Administrative Officer will be duly considered. The complainant was eligible and would be provided mandatory training for this purpose and the promotion should take place in all probability in this year itself.

8. In view of the above, the case is accordingly disposed of.

Date : 25.08.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 8191/1023/2017

Complainant : Shri Tukaram Bansode, State President, Maharashtra Apang Vikas Manch, P-67, MIDC, Lathur, Maharashtra -413531.

Respondent : Western Railway, (Thru General Manager), Western Railway Head Quarter, Old Building, Churchgate, Mumbai – 400 021.

Gist of Complaint:

Shri Tukaram Bansode had made a Complaint dated 12.06.2017 on behalf of Shri Baliram Bodke, a person with 40% locomotor disability. While working at Nandurbar Reservation Office, Shri Manoj Singh, Commercial Inspector, NDB wilfully and with vengeance motive harassed Shri Baliram Bodke – CERS/NDB, made alteration in roster and also marked him absent in the muster roll dated 13.01.2016 and 15.01.2016 although Shri Baliram Bodke-CERS/NDB had performed his duty on these days and further reported this to Head Quarter Office at Mumbai Central. This resulted in stress/tension and chest pain to the Complainant and was he was admitted into Jagjivan Ram Hospital for his treatment. He was also charge-sheeted by his department and later on the said charge-sheet was dropped by the competent authority. Due to his sickness, he could not attend his duty from 16.01.2016 to 16.03.2016 which deprived him of his legitimate salary for this period and also two days salary of 13.01.2016 and 15.01.2016. Further, he had to incur himself for his medical expenses. Despite letters to competent authority, no action has been taken against Shri Manoj Singh. The following are the relief sought by the Complainant ;

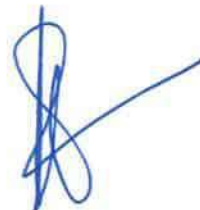
- i) Shri Baliram Bodke should be given entire salary for the period as mentioned above either by the Railway Administration or by Shri Manoj Singh-CMI/BCT.
- ii) Medical Expenses should be reimbursed by Shri Manoj Singh-CMI/BCT.
- iii) He should be given compensation amounting to Rs.3,00,000/- for causing mental stress and trauma by Shri Manoj Singh-CMI/BCT for his mischievous act and wrong reporting.
- iv) Necessary action should be taken against Shri Manoj Singh-CMI/BCT for his above mentioned mischievous act and wrong reporting.

2. The Dy. CPO (M&E), Western Railway, vide letter no. EC/Misc/4/TFR-BSB/(L) dated 14.03.2019 submitted that Weekly Roster was prepared on 10.01.2016 for a period from 11.01.2016 to 17.01.2016 whereby both Shri Gopal Verma & Shri Suresh Pal were advised to

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perform morning duty on counter nos. 1 & 2 respectively. As per roster Shri Baliram Bodke was to perform General Duty but was changed to perform evening shift on counter duty. On 14.01.2016, Suresh Pal performed double duty (Morning + Evening counter duty) and was unable to come in the morning shift on 15.01.2016, it was informed to Shri Bodke to perform morning counter duty on 15.01.2016. The Respondent further submitted that Shri Suresh Pal has informed on 14.01.2016 that he has performed double duty on 14.01.2016 and won't be able to perform morning duty on 15.01.2016 and asked Shri Baliram Bodke to perform morning counter duty on 15.01.2016. However, no staff turned up in the morning shift to perform duty at counter no.2. This information of non-manning of counter no.2 was given to Shri Manoj Singh-CMI/NDB at 8.35 hrs. on 15.01.2016. Therefore, Shri Manoj Singh-CMI/NDB crossed the muster of Shri Baliram Bodke in column of 15.01.2016 but failed to notify the time on muster roll. On 14.01.2016, Shri Suresh Pal after performing double duty and informing his inability to come in the morning shift on 15.01.2016 to Shri Baliram Bodke and asked him to perform morning counter duty on 15.01.2016 after effecting respective changes in the weekly roster. On 15.01.2016 when counter no.2 remained unmanned, information was given to Shri Manoj Singh-CMI/NDB who in turn asked Shri Baliram Bodke to attend and perform duty at counter no.2 in the morning shift but Shri Baliram Bodke did not turn up and hence Shri Manoj Singh made a cross against his name in the muster roll and marked absent against the name of Shri Baliram Bodke without obtaining permission from Shri Manoj Singh and performed evening shift duty on counter no. 1. The Respondent further submitted that due to unmanning of counter no.2 in the morning shift on 15.01.2016 and non attending of morning shift despite informing Shri Baliram Bodke, he was marked absent at around 09.00 Hrs. itself by Shri Manoj Singh. Further Shri Baliram Bodke performed evening shift duty on counter no. 1 without obtaining permission from Shri Manoj Singh. The absent marked against the name of Shri Baliram Bodke on 15.01.2016 remained as it is. The Respondent submitted that since Shri Manoj Singh-CMI/NDB was correct in his action of 15.01.2016, there was no need to initiate action against him and a minor charge sheet, i.e. SF-11 was issued to Shri Baliram Bodke for this incident and the same was withdrawn by the competent authority on humanitarian ground as per mercy appeal of Shri Baliram Bodke.

3. The Complainant vide his rejoinder dated 08.07.2019 has submitted that as per roster, Shri Saurabh Sapkale was to perform Evening Counter Duty on 15.01.2016. There was a modification in roster of Shri Saurabh Sapkale whereby it was changed to CR without the knowledge of Shri Baliram Bodke on 15.01.2016 by Shri Manoj Singh. Hence, it is incorrect that Shri Saurabh



Sapkale was given CR on 15.01.2016 as per original roster. Further, as per rule the date of extra duty performed has to be mentioned in the roster for availing CR but in this case, it was not mentioned in the roster. The inability to perform morning shift duty on 15.01.2016 by Shri Suresh Pal as per roster duty and non attending of his duty on 15.01.2016 in the morning shift, prior information was not given to Shri Baliram Bodke. He was only informed telephonically on 15.01.2016 at around 08.50 hrs when Shri Suresh Pal did not turn for roster morning duty on 15.01.2016. Hence, Shri Baliram Bodke reached office to perform morning counter duty at around 09.05 hrs but there he found Shri Suresh Pal working in counter no 2. Therefore, Shri Baliram Bodke signed in the muster and started working on ROPD and other required table work. The Respondent submitted that it is correct that Shri Suresh Pal performed double duty on 14.01.2016 but Shri Suresh Pal did not ask Shri Baliram Bodke to perform morning duty on 15.01.2016 in his place. Later on Shri Baliram Bodke was asked at around 08.50 hrs about unmanning of counter no. 2 in the morning of 15.01.2016 by Shri Manoj Singh who in turn was informed by Shri Baliram Bodke that as per roster, Shri Suresh Pal was to perform the morning counter duty on 15.01.2016, but Shri Manoj Singh insisted to attend morning counter duty. Therefore, Shri Baliram Bodke reached office at around 09.05 hrs on 15.01.2016 and found that Shri Suresh Pal was working in counter no. 2. Hence Shri Baliram Bodke signed in muster and started working on ROPD and other required table work in the presence of Shri Manoj Singh who left thereafter. He submitted that Shri Baliram Bodke attended the office at around 09.05 hrs on 15.01.2016 at the telephonic instruction of Shri Manoj Singh to perform the morning counter duty which was unmanned due to non attending of duty by Shri Suresh Pal at 08.00.

Hearing : 14.08.2020

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 14.08.2020.

5. The following persons were present during the hearing;

- 1) Mr. Tukaram Bansode, the complainant on telephone.
- 2) None for the respondent.

6. The complainant reiterated his point as given in his complaint dated 12.06.2017. The detailed written reply of the respondent vide dated 14.03.2019 has also been seen. The matter is of alleged harassment of the complainant in the year 2016.

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Observation/Recommendations:

7. After careful consideration of the written documents, this Court is of the view that it is an entirely administrative matter of the office of the complainant, of the year 2016 and should have been routinely resolved by now. The Court does not see the need of any intervention in the matter. However, it is advised that the respondent should be sensitive and empathetic to the needs and dignity of persons with disabilities.

8. The case is disposed of.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated : 25.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 8214/1023/2017

Complainant : Shri S.J. Anbuselvan, 117, Bajanai Kovil Street, Ayalacheri Village, Alamathi Post, Chennai – 600 052.

Respondent : Life Insurance Corporation of India, (Through the Chairman & Managing Director), 1st Floor, Yogakeshema Central Office, Jeevan Bima Marg, Nariman Point, Mumbai – 400 021.

Gist of Complaint:

Shri S. J. Anbuselvan, a person with 72% locomotor disability vide his email dated 17.06.2017 has submitted that he had worked as Development Officer in LIC of India in Chennai II Division South Zone. He was terminated because of low performance. He requested his establishment to give him some other job. He got his termination order on 03.03.2017. While joining LIC, he was medically fit. The complainant has sought the following grievances;

- The LIC did not transfer him to some other job, but instead he was terminated.
- He was given commission arrears.
- He was not given increment as per 7th Pay Commission.
- LIC have deducted his salary for SODEXO Meal pass

2. The Chief (Personnel), LIC of India vide letter no. CO/PER/ER/WC-E(I)SZ dated 05.03.2019 submitted that they have called for the comments on the complaint of Shri S.J. Anbuselvan from their Southern Zone under whose jurisdiction the matter comes and will revert as soon as the details are received from them.

Hearing : 14.08.2020

3. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 14.08.2020.

4. The following persons were present during the hearing ;

Both the parties were heard.

- Mr. S.J. Anbuselvan, the complainant along with Mr. Sundar Ram & Mr. Jayprakash.
- Mr. R. Govindaraja, Marketing Manager, LIC, on behalf of the respondent.

Both the parties were heard.

...2/-

5. The main issue in the complaint dated 17.06.2017 was termination from the post of Development Officer in LIC of India in Chennai II Division South Zone on grounds of low performance on account of disability. The complainant expressed that he had joined LIC in 2009, did the mandatory training in 2011 and was confirmed in service. His disability started with a severe back pain and by December, 2014 he was fully disabled. Due to his disability, he could not work to his fullest potential and was given a show cause in January, 2015 which was followed by his replies and taking up the matter with the Hon'ble Madras High Court. The complainant was dismissed in March, 2017 by the respondent after giving him a personal hearing in February, 2017 as per orders of the Hon'ble Madras High Court. The complainant has stated that his dismissal from service was violation of Section 20(4) of the Rights of Persons with Disabilities Act, 2016.

6. The respondent stated that the complainant never declared that he was suffering with some kind of disability and till 2015 when he was issued a show cause, he had not reported any disability. He was dismissed on the grounds of non-performance and not meeting the business targets in terms of Special Rules for Development Officers in LIC. The respondent confirms that the complainant had indeed been confirmed in service on successful completion of probation in 2011.

7. The disability certificate issued by Regional Medical Board, Govt. Stanley Hospital, Chennai, confirms the disability statement of the complainant. On inquiring about the policy of the organisation about dealing with such cases, the complainant informed that as per the Staff Regulations of LIC 1960 an alternative employment shall be provided to the disabled persons till he attains the age of 55. However, the same regulations were not applied in his case. The complainant further informed and was confirmed by the respondent that the Special Rules for Development Officers under which the complainant was dismissed from service were sub-judice as there were many cases pending in various courts regarding their applicability.

8. The Court observes that in terms of Section 20 of the Rights of the Persons with Disabilities Act, 2016:

- (1) *No Government establishment shall discriminate against any person with disability in any matter relating to employment;*
Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

...3/-



- (2) *Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.*
- (3) *No promotion shall be denied to a person merely on the ground of disability.*
- (4) **No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:**

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

- (5) *The appropriate Government may frame policies for posting and transfer of employees with disabilities.*

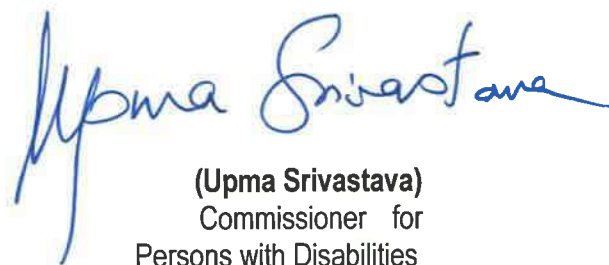
9. In terms of the aforesaid provisions of the Rights of Persons with Disabilities Act, 2016 and the fact that the complainant was a permanent employee of LIC and that he developed his disability after four years of his joining the service and in view of the valid disability certificate, the termination orders dated 03.03.2017 are found to be illegal. The plea of the respondent that the complainant did not report any disability is devoid of any merit as at the time of the personal hearing given by the respondent, there was an ample opportunity to confirm the position of disability in real and physical terms.

Observation/Recommendations:

10. The Court recommends that the termination order may be cancelled and in terms of provisions of aforesaid Section 20(4) of the Rights of Persons with Disabilities Act, 2016, necessary action may be taken to reinstate the complainant with full benefits and keep him on a supernumerary post till he attains the age of superannuation.

11. The case is disposed of.

Date : 25.08.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 8301/1023/2017

Complainant : Shri M. Balakrishnan, 1/1A7, Kundalakesi Street, Vannarpettai, Tirunelveli, Tamil Nadu-627 003.

Respondent : State Bank of India, (Through the Chairman), State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai – 400 021.

Gist of Complaint:

Shri M. Balakrishnan, a person with 65% locomotor disability vide his complaint dated 06.07.2017 submitted that he was appointed as Clerk in the SBI under PH quota on 13.07.1981 at Vilathikulam branch. He was transferred to Tirunelveli Branch on 08.03.2001. He was retained at Tirunelveli branch on his promotion to the post of Special Assistant on 13.01.2005. He was also exempted from transfer under Five Year Transfer Policy. He has completed 36 years of service and is aged above 57 years. He submitted that now he has been transferred to South Bye Pass Road branch on 21.06.2017 which is 6 kms away from his residence ignoring the fact that he cannot commute such a distance since he is suffering from Spastic Paralysis. He further submitted that there is no ramp available in the new building. The branch is located in a busy and heavy traffic area near to Tirunelveli Main Bus Stand and it is difficult for him to cross the road. Being a senior staff, he has to work as Cash-in-Charge and hence has to hold the related safe keys. He submitted that his physical disability became a hurdle to perform handling of safe keys and operating the chests etc. As he is serving the last lap of his career, he has requested this Court to cancel his transfer to South Bye Pass Road branch to enable him to complete the remaining years at Tirunelveli branch.

2. The DGM & Circle Development Officer, SBI, LHO Nungambakkam, Chennai branch vide letter dated 01.09.2018 has submitted that the transfer request of the employee has been favourably considered by the Bank and his transfer order to South Bye Pass Road Branch has been revoked. The employee was posted at Tirunelveli Town Branch and he joined the Branch on 26.12.2017, which is on the ground floor and more user-friendly to the persons with disabilities. He submitted that they have also resolved the issue raised by the employee with regard to key holding by posting another staff for the same.

....2/-

3. The Complainant vide his rejoinder dated 06.06.2019 has submitted that he was asked by the then HR Manager Shri Saravanan (now promoted as Chief Manager, HRD unit Madurai), Regional Office, Tirunelveli to submit an application for transfer to a branch other than Tirunelveli Branch. His services in the bank was treated as 'vacated from service' and his salaries and other allowances for 6 months were stopped. He found no other alternative, but to accept transfer to a branch other than Tirunelveli Branch for his and family's survival. Hence, he was compelled to submit his application for transfer to Tirunelveli Town Branch on 19.12.2017. He joined duty at Tirunelveli Town Branch on 26.12.2017 as advised by HR Manager over phone as no written order was issued to him so far. After joining duty, he again requested the Regional Manager, Tirunelveli to treat his period of absence as sick leave alongwith medical certificate. He submitted that till now his leave was not sanctioned and the said leave has been treated as 'loss of pay for six months'. In view of the harsh, cruel and inhuman treatment meted out to him, he requested for redressal of the following grievances;

- i) To issue him a written Transfer Order to Tirunelveli Branch to enable him to complete his remaining 8 month of service so that he can commute daily without much difficulty.
- ii) To withdraw the Order No. RBO/RM/III/HR/980 dated 08.11.2017 regarding "Vacation of Service".
- iii) To treat the period of relieving from Tirunelveli Branch to reporting Tirunelveli Town Branch (i.e. 22.06.2017 to 19.12.2017) as on Sick Leave.
- iv) To disburse his salary, conveyance, newspaper and entertainment allowance for the above Sick Leave period with interest and
- v) To make payment of overtime allowance for demonetization period with interest for the delayed period.

Hearing : 14.08.2020

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 14.08.2020.

5. None present from any side.

Observation/Recommendations:

6. The Court noted that the complaint was regarding transfer of the complainant to a particular branch of SBI in Tamil Nadu. The complainant has already retired on 29.02.2020 and hence there is no need of pursuing this matter further.

7. The case is disposed of.

Date : 25.08.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 8546/1021/2017

Complainant : Shri G. Rajvardhan Reddy, General Secretary, Deaf Employees Welfare Associations, Plot No.4, Phase-III, Teacher's Colony, Nagarjuna Sagar 'X' Road, Vaishalinagar Post, Hyderabad – 500079.

Respondent : Canara Bank, (Through the Chairman & Managing Director), 112, J.C. Road, Bangalore – 560 002.

Gist of Complaint:

Shri G. Rajvardhan Reddy, the General Secretary of Deaf Employees Welfare Association filed a complaint on behalf of Mrs. Ajita Wadadekar (Deaf and Dumb), Clerk and Mr. Veeresh Kumar (Blind), Clerk working in Canara Bank. Both the employees had passed the promotion exam but they had been discriminated on the ground of disability and were denied the promotion. Mrs. Ajita has been working since last 20 years in Tamarind Lane Branch, Mumbai and Mr. Veeresh has been working since last 29 years in Manikonda Branch, Hyderabad. Mr. Veeresh had also performed in mobilizing of Deposits from time to time and was also honoured with award certificate.

2. The General Manager, Canara Bank, Bengaluru vide letter no. HRW PM 63-A 10770 2019 dated 16.01.2019 submitted that the promotion process in their Bank is carried out based on regulations / Govt. guidelines / policy approved by the Board of Directors. In the normal course, an eligible employee has to clear the Test and Interview. The promotion is dependent upon the aggregate performance in both the test and interview. Both Smt. Ajit Uday Wadadekar and Shri Veeresh Kumar had appeared for promotion process from Clerical Cadre to JMG Scale-I during 2017 and attended test and interview. However, as they have not come within the ranking list, they have not been promoted. Further, both Smt. Ajit Uday Wadadekar and Shri Veeresh Kumar had appeared for promotion process from Clerical Cadre to JMG Scale-I during 2018 and attended test and interview. Since Veeresh Kumar had come within the ranking list, he has been promoted to JMG Scale-I. The Respondent further submitted that during 2018 they had promoted Shri Paul Muddha, who is a 100% visually impaired person from Middle Management Grade Scale-III to Senior Management Grade Scale-IV (i.e. Executive Cadre).

....2/-

3. The Complainant vide his rejoinder dated 17.11.2019 submitted that Shri Veeresh Kumar, a person with visual impairment who appeared for promotion test in second attempt in the year 2018 was promoted on 20.09.2018. Smt. Ajitha Wadadekar, a person with 100% hearing impairment cleared promotion examination four times along with normal persons. She cleared all the promotion tests despite all odds and came on par with normal counterparts without any benefit from the Bank.

Hearing : 14.08.2020

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 14.08.2020.

5. The following persons were present during the hearing;

- 1) Mr. G. Rajvardhan Reddy & Mrs. Ajitha Wadadekar, the complainant
- 2) Mr. Manu Pandey, Assistant General Manager, Canara Bank, for the respondent.

Both the parties were heard. The hearing of the complainant was facilitated by Sign Language Interpreter.

6. The earlier complaint was regarding two individuals (i) Mr. Veeresh Kumar and (ii) Mrs. Ajitha Wadadekar for promotion through examination from Clerical cadre to JMG Scale-I, both being 100% hearing impaired persons. Though Mr. Veeresh Kumar was promoted in the year 2018, but Mrs. Ajitha Wadadekar was not promoted as yet despite clearing the written examination consequently in the years 2015, 2016, 2017 and 2018. Each time she was rejected at the stage of interview. During the year 2019, she was senior enough to be considered only through direct interview for consideration for promotion. However, she was again not selected. The complainant stated that though she has already completed more than 23 year of service in the bank and has been qualifying the written examination regularly, yet she was not being considered for promotion due to her hearing disability.

7. The respondent stated that Mrs. Ajitha Wadekar could not fulfill the specified benchmark in all the interviews she had appeared in and hence could not be selected for promotion.

Observation/Recommendations:

8. The Court noted that DoP&T instructions in O.M. No.36035/3/2013-Estt.(Res) dated 31.03.2014, provide that job specific post- recruitment as well as pre-promotion training programmes are required to be organized for persons with disabilities. The respondent may give attention to the fact that the complainant has been qualifying written examination regularly and may need some support for qualifying the interview. This support should be offered from the



respondent in terms of a pre-promotion training as also by providing a Sign Language Interpreter at the time of the interview, so that the complainant does not suffer from any disadvantage on account of her disability while facing the interview. The respondent may recognize the efforts of a person with disability in successively qualifying the written examination and facilitate her in every way possible to clear/qualify the interview. Though strictly as per the rules relaxed standards are not prescribed in the matter of promotion, yet the respondent for the purpose of encouraging and giving equal opportunity to persons with disabilities could consider slightly relaxed standards in the process of interview.

9. The case is disposed of.

Date : 25.08.2020



(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 7756/1011/2017

Complainant: Shri N.Y. Sastry, H. No. 9-67/40, Street No. 01, Sri Devi Kalian Estates, Yapral, Hyderabad – 500087
e-mail: <nysastry4@gmail.com>

Respondent: The General Manager (HRD), Bharat Petroleum Corporation Ltd
Bharat Bhawan, 4 & 6, Currimbhoy Road
Ballard Estate, Mumbai – 400001
e-mail: <ritumathur@bharatpetroleum>

Affected persons Shri Nemani Kishore Kumar – 98% HH
Shri Nemani Phani Kumar – 90% HH

GIST of the Complaint:

Complainant vide complaint dated **28.02.2017** submitted that his two hearing challenged sons Shri Nemani Kishore Kumar, B.E. (computer science), M.B.A. and Shri Nemani Phani Kumar, B.E., M. Tech, first class with distinction in Computer Science had appeared for the written examination in response to the advertisement published by BPCL for the recruitment of Management Trainees under Special Recruitment Drive for PH in 2015 and 2016 but after the written examinations, BPCL had informed that both the candidates were not shortlisted for further process. He further submitted that the total sanctioned strength of BPCL as on 01.07.2015 was 12870 and there were only 218 PwDs.

2. The matter was taken up with the Respondent vide letter dated **06.04.2017** under Section 75 of the RPwD Act, 2016.

3. In response, BPC Ltd vide letter dated **28.08.2017** inter-alia submitted that out of 588 candidates who applied against vacancies of Computer Science Discipline, 233 candidates appeared for written test and total 63 candidates cleared the cut off 60 marks in written test

and were called for further selection process. He further submitted that Shri Kishore Kumar N scored 28/100 and was ranked 221 amongst 233 candidates who appeared for the written test and Shri Phani Kumar N scored 37/100 and was ranked 186 amongst 233 candidates. Both candidates could not clear the written test which was cleared by many other PwD candidates. Relaxations and concessions to all the PwD candidates were provided.

4. Complainant in his rejoinder dated **18.08.2019** inter-alia submitted that the BPCL had selected the PH persons as per their quota, but, they did injustice by not filling up the vacancies 1% each of HI and VI denying their rights.

5. After considering the respondent's reply and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **18.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **18.08.2020**. The following were present:

- Mr. N.Y. Sastry, the complainant.
- Ms. Ritu Mathur, DGM, HRD BPCL & Mr. K.G. Verma, Advocate BPCL, on behalf of the respondent.

Observation/Recommendations:

6. Both the parties were heard.

7. The complainant reiterated the points raised in his complaint dated **28.02.2017** and stated that the respondent was biased towards recruiting Hearing Impaired and Visually Impaired persons, as both of these categories could not find a place in the Special Recruitment Drive conducted by the respondent for filling of vacancies meant for persons with disabilities in the year 2016. The respondent chose to fill the vacancies by other categories of persons with disabilities violating the provisions of Rights of Persons with Disabilities Act, 2016 as per which reservation of 1% of each category of disabilities is to be made.



8. The respondent explained that in the discipline of Computer Science where the complainant (his two hearing impaired sons) had applied, there were 30 vacancies out of which 20 were carry forward reservation vacancies and 10 were backlog reservation vacancies. There were only 4 vacancies of the Computer Science discipline amongst the 20 carry forward reservation vacancies and all were reserved for O.H. category. Therefore, violation of the provisions of the Rights of Persons with Disabilities Act, 2016 does not arise.

9. This Court observes that if this was the position then why did the advertisement not categorically say so and excluded persons with disabilities of other categories from applying. The Court also observes that though technically the respondent can justify their stand, yet it appears that they have not implemented the spirit of the reservation policy of the Govt. of India. As the matter is of the year 2017, this Court cannot make any recommendation in favour of the complainant. However, this Court recommends that the respondent being a prestigious PSU should be diligent in implementing the provisions of reservation both in letter and spirit. All the categories of disability should be appointed in BPCL by making extra efforts as per the Govt. of India instructions and the respondent should not shy away from appointing Hearing and Visually Impaired persons as their employees.

10. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 8594/1023/2017

Complainant : Shri Mahender Singh Dhakad, C.M. 100, Sainik Nagar, Uttam Nagar, Delhi-110059

Respondent 1: University of Delhi, (Through the Registrar), New Delhi - 110007

Respondent 2 : Rajdhani College, (Through the Principal), Raja Garden, Ring Road, New Delhi – 110 015.

Gist of Complaint:

Shri Mahender Singh Dhakad, a person with 100% visual impairment vide his complaint dated 25.09.2017 submitted that he has been working as Assistant Professor in Rajdhani College, New Delhi. He is a member of Governing Body of the College. In Governing Body meeting held on 08.05.2017, an initiative was taken for an inquiry against a senior Associate Professor, Dr. Sushil Kumar Azad, who is also a colleague of the complainant. The complainant opposed the proposal of an inquiry against Professor Azad. Therefore, the Chairman of the Governing Body threatened the complainant of dire consequences in case he does not subscribe to this illegitimate proposal. During the meeting of Rajdhani College Teachers' Association (RCTA) held on 04.08.2017 a number of allegations were made against the complainant, being the Teachers' Representative. Both the Chairman and the Principal has been harassing him since the RCTA meeting and subsequent Governing Body meetings of the College.

2. The Respondent No.1 vide their letter no. CS-I/111/Misc./(TS)/34/RDC/2017/386 dated 04.01.2018 submitted that the Principal of the Rajdhani College has been requested by them to look into the matter and submit the comments directly to this Court.

3. The Respondent No. 2 vide their letter No.RC/RG/176/3325 dated 18.01.2018 submitted that the allegations made by Shri Mahender Singh Dhakad are false and hence denied in toto. The appointment of Acting Principal Dr. Rajesh Giri has been made by following the due process as per the Delhi University rules through duly constituted Screening Committee. A student of Second year has made a complaint against the complainant for which a Fact Finding Committee has been constituted by the College.

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4. The complainant vide his rejoinder dated 10.04.2019 submitted that a Fact Finding Committee was constituted against him by the College Principal in September 2017 to suppress his voice in the Governing Body (GB) because being the GB Member, he had raised his voice against the illegal appointment of Dr. Rajesh Giri, Acting/Officiating Principal. The report was produced and discussed in the GB in August 2018 and a resolution was passed but to suppress his voice in future it was officially not communicated to him. He again requested several times to the Principal to provide him the fact finding Committee report along with BG resolution but it was not provided to the complainant. The complainant submitted that he again requested the Principal to provide the fact finding Committee report alongwith GB resolution passed by GB in August 2018 but unfortunately he was not provided the report then also.

Hearing : 18.08.2020

5. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 18.08.2020.

6. The following persons were present during the hearing;

- 1) Mr. Mahender Singh Dhakad, the complainant on telephone.
- 2) Dr. Rajesh Giri, Principal, Rajdhani College, for the respondent.

Both the parties were heard.

7. The complainant alleged mental and physical harassment by the College Management because of his visual impairment. He stated that as he had raised some issues in the administrative affairs of the College, false disciplinary cases were initiated against him.

8. The respondent stated that there was no merit in the contentions of the complainant and they were fully sensitive to the cause of the persons with disabilities. The respondent further informed that there was an Equal Opportunity Cell in the College, which was headed by the complainant himself and was provided with all necessary support as and when required.

Observation/Recommendations:

9. This Court recommends that the respondent may adhere to the provisions of the Rights of Persons with Disabilities Act, 2016 and the Govt. of India instructions issued by the DoP&T in this matter from time to time. The College should be supportive of persons with disabilities both in letter and spirit.

10. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Date : 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

Case No. 8778/1024/2017 भारत सरकार/Government of India

Complainant : Shri Faiyaz Mohammad, R/o Village Hathaura Buzurg, Post : Roza RS, Dist. : Shahjahanpur, Uttar Pradesh – 242 306.

Respondent : Ordnance Clothing Factory, (Through the General Manager), Shahjahanpur, Uttar Pradesh – 242001.

Gist of Complaint:

Shri Faiyaz Mohammad, a person with 50% locomotor disability vide his complaint dated 19.10.2017 submitted that his father Shri Nabi Rasool who was working as a Tailor with T.NO. 10412 with the Ordnance Clothing Factory expired on 18.09.2013 and his mother expired on 31.03.2015. During April 2015, the complainant approached the employer for Family Pension. After repeated follow up for more than five months, the employer called him to submit the listed supporting documents which he submitted on 03.2.2015 along with his disability certificate. Then vide letter dated 22.08.2016, the employer demanded his disability certificate to be issued from one of the listed medical institutions as per their list. He submitted the Disability Certificate issued to him on 17.03.2017 by PGI Chandigarh to the establishment. The employer returned him the said Disability Certificate issued to him by the PGI Chandigarh and asked him to get the Disability Certificate from the District Hospital Medical Board at Shahjahanpur. The District Medical Board issued him the Disability Certificate on 27.05.2017 on the format provided by the employer containing therein the desired personal opinion on earning of livelihood as well. The employer did not forward his papers pertaining to the Pension to the PCDA (P), Allahabad. The employer then again insisted on his disability certificate from PGI Chandigarh on a modified proforma. He submitted that his father's employer, i.e. Ordnance Clothing Factory is not forwarding his family pension papers to PCDA (P), Allahabad.

2. The Asst. Works Manager/ Admn, Ordnance Clothing Factory vide letter dated 10.05.2018 stated that the complainant was advised by the Respondent to fill up the required documents regarding the Family Pension. The complainant submitted the same documents on 24.03.2018. After preparing the case of Family Pension to Shri Faiyaz Mohammad the same was forwarded to PCDA (Pension), Allahabad for approval of Family Pension. After receiving the approval from PCDA(Pension), Allahabad, PPO will be sent to the complainant.

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3. The Complainant vide his rejoinder dated 04.10.2018 submitted that after the death of his mother on 31.03.2015, he approached the employer for his pension personally along with the Disability Certificate and supporting documents but the employer did not hear him. He then sent a registered undated letter on 06.08.2015 by Speed Post to the employer along with all the supporting documents. After one year of persuasion with the employer, the employer sent him a letter dated 22.08.2016 through which they demanded his disability certificate from the listed medical institutions including PGI, Chandigarh and the same was submitted by him on 31.03.2017. The employer again raised objection on the disability certificate and demanded specific language to be part of it, though it was on a specified format only as contained in the Disability Act. The case is still pending with PCDA, Allahabad since May 2018.

Hearing : 18.08.2020

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 18.08.2020.

5. The following persons were present during the hearing;

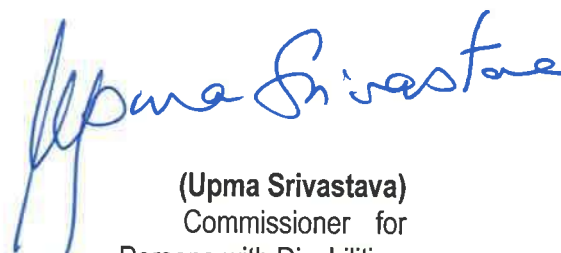
- 1) None for the complainant.
- 2) Mr. Yogesh Mishra, Works Manager, OCF, Shahjahanpur, on behalf of the respondent.

6. The respondent informed that the complainant got his family pension w.e.f. October, 2018.

Observation/Recommendations:

7. As the complaint of the complainant has been addressed, therefore, the matter is disposed of.

Date : 19.08.2020


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 8888/1021/2017

Complainant : Shri K. Marimuthu, The New India Assurance Co. Ltd., High Sports Building, 1st Floor, Old No147, New No.186, Salai Road, Ramnathapuram, Tamil Nadu-623 501.

Respondent : The New India Assurance Co. Ltd.,(Through the General Manager), The New India Assurance Co. Ltd, Head Office : 87, M.G. Road, Fort, Mumbai – 400001.

Gist of Complaint:

Shri K. Marimuthu, a person with 100% hearing impairment vide his complaint dated 09.11.2017 submitted that he has completed his MBA and has been working as a Senior Assistant in The New India Assurance Company Ltd. The new India assurance recruits scale-1 officers by Direct recruitment, partly by competitive examination and by Departmental promotion. No post has been earmarked for any categories of disabled employees, such as VH/OH & HH. He submitted that there is no reservation quota for persons with disabilities. It creates huge backlog vacancies and these vacancies are filled up by SC/ST candidates.

2. The General Manager, The New India Assurance Company Ltd, Mumbai vide letter no. HRM/CI III & IV Cell/2019 dated 10.01.2019 has submitted that the vacancies for Scale I Officer cadre in their organisation are filled by direct recruitment as well as by promotion and they follow and ensure compliance of all DoP&T guidelines. The vacancies for promotion from Class III (Group C) to Scale I Officer cadre (Group A) are declared as per the Board approved Promotion Policy for SCS Staff 2008 and its amendments till date. The reservation for persons with disabilities is provided as per their Promotion Policy and DoP&T guidelines, within Group 'C' only, i.e for the promotion to the cadre of Assistant and Sr. Assistant. Whereas, Para 13.2 of their Promotion Policy refers promotion of Class III (Group C) to Scale I Officer (Group A) post. The respondent submitted that as per relevant OMs and OM No.36035/02/2017-Estt(Res.) dated 15.01.2018, the provision of reservation for persons with disabilities is applicable for Group 'A' post filled by direct recruitment only. The respondent further submitted that the vacancies for the post of Hindi Officer (Scale I) are filled as a special exercise through the process of recruitment (Internal recruitment and upgradation), hence the reservation for person with disability is provided as per DoP&T guidelines. The Respondent has enclosed the number of vacancies of Scale I Officer filled since 1996 in Direct Recruitment and certificate issued by the Liaison Officer regarding maintenance of rosters for persons with disabilities as per DoP&T instructions.

....2/-

3. The complainant vide his rejoinder dated 23.01.2019 submitted that a large number of identified posts in Group 'A' and 'B' were filled only through promotions. The benefit of reservation under Section 33 of the Persons with Disabilities Act, 1995 and the revised Rights of Persons with Disabilities Act, 2016 are being denied to the persons with disabilities. He further submitted that the following benefits were denied to a person with disability by his establishment;

- i) Handicapped Allowance at par with State and Central Govt. Employees.
- ii) Identification of jobs.
- iii) Denial of Special Training.
- iv) Accessible Environment.
- v) Electronic Aids.
- vi) Grievance redressal in all ROs.
- vii) Accommodation.
- viii) Escort on LTS.

Hearing : 18.08.2020

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 18.08.2020.

5. The following persons were present during the hearing;

- 1) None for the complainant.
- 2) Mr. Vinod Kumar, Branch Manager, Madurai, on behalf of the respondent.

6. The respondent informed the Court that the complainant has been promoted to the post of Administrative Officer (Scale I Officer Cadre) w.e.f. 25.09.2019.

7. The Court observes that the main complaint has been addressed. As regards the other issues raised by the complainant in his rejoinder dated 23.01.2019 are concerned, the rule position in respect of these issues is reproduced as under for benefit of the respondent:

(i) In terms of Section 34 of the Rights of Persons with Disabilities Act, 2016:

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



...3/-

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

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

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

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

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

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

(ii) In terms of Section 38 of the Rights of Persons with Disabilities Act, 2016:

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



(2) On receipt of an application under sub-section (1), the authority shall refer it to an Assessment Board consisting of such Members as may be prescribed by the Central Government.

(3) The Assessment Board shall assess the case referred to it under sub-section (1) in such manner as may be prescribed by the Central Government, and shall send a report to the authority certifying the need of high support and its nature.

(4) On receipt of a report under sub-section (3), the authority shall take steps to provide support in accordance with the report and subject to relevant schemes and orders of the appropriate Government in this behalf.

(iii) As per DoP&T O.M. No.36035/3/2013-Estt.(Res) dated 31st March, 2014:

Para-B. Post recruitment and Pre-promotion training

Induction training is an essential component of the service requirement of an employee. Induction training programme for the persons with disabilities should be imparted together with the other employees.

Job specific post-recruitment as well as pre-promotion training programmes are required to be organised for the persons with disabilities. Outlining a specific module/norm for training programme for the persons with disabilities common to all the Ministries/Departments and their attached/subordinate offices, Central Public Sector Enterprises, Cantonment Board, etc. may not be possible as the training requirement may be different on the basis of the work pattern. All the Ministries / Departments should take definite action to conduct job specific inclusive training programmes for the persons with disabilities with other employees.

Duration and training contents may be finalized in consultation with the National Institutes under the Department of Disability Affairs, Ministry of Social Justice & Empowerment and, if felt necessary, prominent Associations/Federations/Confederations workings in the sphere of disability can



be consulted. It should also be ensured that training programmes are conducted at the time of change in job, introduction of new technology, after promotion of the employee, etc. The venue of the training may be fixed as considered suitable for conducting such training. The Ministries/Departments and their offices shall utilize existing Budget provisions for undertaking the aspects of training programme.

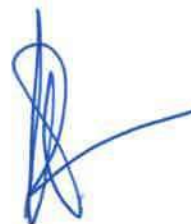
The employee with disability shall be placed with an experienced employee for at least one month on resuming responsibility of a post. This would help him to pick up skills required to perform the job and also the adaptations that may be required in individual cases.

Para-C. Providing aids/assistive devices

The persons with disabilities could perform their duties efficiently if they are provided with aids and appliances which are suitable to their needs. Ministries/Departments and their attached and subordinate offices, Central Public Sector Enterprises, Cantonment Board, etc. should assist the persons with disabilities by providing them high tech/latest technology led assistive devices (including low vision aids, hearing aids with battery), special furniture, wheel chairs (motorised if required by the employee), software scanners, computer and other hardware, etc. in accordance with their requirement, which would improve their efficiency.

They should either provide or shall reimburse the cost of such devices with a specific time period for such devices to persons with disabilities in accordance with the price/durability of the special devices, special furniture, software, scanners, computer and other hardware, etc. as fixed by them, in consultation with various National Institutes working in the sphere of disability. A review exercise shall be carried out by the Departments/Ministries every three years to check the availability or need for introduction of enhanced/upgraded versions of such devices/software etc. They shall utilise their existing budget provisions for providing these facilities.

...6/-



Para-D. Accessibility and barrier free environment at work place


In addition to the guidelines for modification in all public buildings including Government offices to provide easy accessibility and barrier free environment for PWDs as per the provisions of the PWD Act, all Government offices should take special steps to provide barrier free and accessible work stations to PWD employees, access from main building entrance to their work stations and access to common utility areas such as Toilets, canteens etc. Lifts/elevators should be made accessible by providing Braille signage and audio outputs. Wherever required, suitable colour contrast may also be made available in buildings, utilities, staircases, etc. for the benefit of low vision employees.

Observation/Recommendations:

7. The respondent may ensure that this rule positions & DoP&T's instructions issued from time to time for a conducive working environment for PwDs be strictly enforced in their organisation.

8. The case is disposed of.

Date : 24.08.2020



(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 10094/1024/2018

Complainant: Shri Harish Kumar Garg, B-3/203, 1st Floor,
Paschim Vihar, New Delhi,
Email: harishgarg_1966@yahoo.com

Respondent:

The Regional Provident Fund Commissioner-I, Employees'
Provident Fund Organisation, Plot No.23, Sector-23, Dwarka,
New Delhi – 110075; E-Mail: ro.delhi.south@EPFindia.gov.in;

....Respondent No.1

The Additional Central Provident Fund Commissioner-I, Employees'
Provident Fund Organisation, Delhi & Uttarakhand, 8th Floor,
Bhavishya Nidhi Bhawan, 28, Community Centre, Wazirpur
Industrial Area, Delhi – 110052; Email: acc.dlut@epfindia.gov.in

.... Respondent No.2

The Central Provident Fund Commissioner-I, Employees' Provident
Fund Organisation, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama
Place, New Delhi – 110066; Email: cpfc@epfindia.gov.in

.... Respondent No.3

The Regional Provident Fund Commissioner-I, Employees'
Provident Fund Organisation, Bhavishya Nidhi Bhawan, Plot No.43,
Sector-44, Institutional Area, Gurugram-120002 (Haryana)
E-mail: ro.gurgaon@epfindia.gov.in

.... Respondent No.4

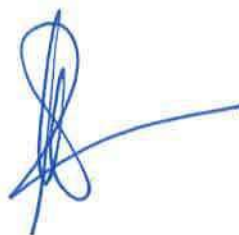
Gist of Complaint

The complainant, a person with 50% visual impairment was
re-employed in respondent's Office at Dwarka as Senior Social

Page 1 of 4

Security Assistant (SSA) with effect from 03.12.2010. He claimed that he was eligible for Pay Fixation as per last pay drawn in Defence Service in accordance with DoPT OM No.3/1/1985 (Pay II) dated 31.07.1986 read with DoPT OM No.3/13/2008-Estt.(Pay II) dated 11.11.2018 and DoPT OM No.3/19/2010-Est.(Pay II) dated 05.04.2010. Other offices of the respondent had also fixed the pay of their re-employed ex-servicemen. So, he applied for pay fixation as a re-employed ex-serviceman w.e.f. his date of joining i.e. 03.12.2010. His pay fixation was processed. Later, on the instruction of respondent's Head Office letter dated 18.08.2017, the pay fixation of the complainant was kept in abeyance in reference to the respondent's HO letter dated 26.07.2017 whereby the pay fixation of other 16 re-employed ex-servicemen of EFPO Gurugram had been kept in abeyance. Those 16 re-employed ex-servicemen approached Hon'ble Principal Bench CAT and filed OA/3453/2017. Hon'ble CAT set aside the respondent's HO letter vide order dated 29.09.2017 stating that the said letter dated 26.07.2017 of respondent is illegal and against the settled laws. The order of Hon'ble CAT was implemented and the pay fixation of those 16 re-employed ex-servicemen of Gurugram was allowed, but the pay fixation in respect of the complainant was not allowed.

2. The respondent had filed their reply and inter-alia submitted that the complainant had joined their office as a Group 'C' employee and was not eligible for fixation of pay as per provision available for commissioned officer as per above said DoPT OM dated 05.04.2010.



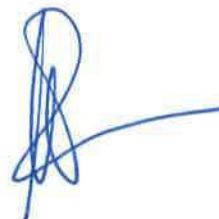
3. The case was first heard on 27.09.2019 and respondent was advised to submit their written submissions and appear before this Court in the next hearing.

4. The respondent No.1 filed their reply dated 20.01.2020 and submitted that the reason is not known to that Regional Office and seemed totally irregular and the Regional Office is not bound to follow procedure of other office, but only CCS (Revised Pay) Rule, DoPT instructions and EPFO Head Office instructions/guidelines issued from time to time. Presently there are 05 Regional Offices and Head Office of EPFO in Delhi and fixation of pay in respect of re-employed ex-servicemen had been done/exercised in every Regional Office in Delhi as per Office Memorandum dated 05.04.2010 of DoP&T. The complainant had joined the office as a Group 'C' employee and is not eligible for fixation of pay as per provision available for commissioned officer as per DoP&T OM dated 05.04.2010.

5. The complainant filed his rejoinder to the reply dated 20.01.2020 of the respondent No.1 and requested that the respondent may be directed to submit the provisions/rules regarding non-eligibility for pay fixation if a defence commissioned officer joins the civil organization below Group A post.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 18.08.2020. The following were present:

1. Mr. Raju Gupta, Advocate alongwith Mr. Harish Kumar Garg, the complainant.



2. Mr. Subroto Bhowmick, RPFC, South Delhi, Mr. Judy James, Advocate & Mr. Raju, Assistant P.F. Commissioner, Gurgaon Branch, on behalf of the respondent.

Observation/Recommendations:

Both the parties were heard.

2. The court noted that the CAT judgment to which the complainant had referred was still sub-judice and a final decision was awaited. Moreover, in an identical case handled by CAT, Chandigarh Bench, the verdict was in the favour of the respondent.
3. The Court also noted that there was no discrimination in this matter on the grounds of disability. The complainant is free to approach the Central Administrative Tribunal (CAT) to redress his grievance of pay fixation as exercised by other similarly placed employees.
4. The Court sees no reason to intervene in this matter & the case is disposed of.

Dated: 24.08.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 10552/1081/2018

Complainant: Shri Hemant Jayantilal Shah, 304, Nandkuvar CHS Ltd., Factory Lane, Next to Ambe Maa Temple, Borivali (West), Mumbai – 400092, Email: hemant_bind7@yahoo.com

Respondent: The Director – Housing, Delhi Development Authority (DDA), Vikas Sadan, INA, New Delhi-110023, Email: ddmighouse@dda.org.in, piyushchandel93@gmail.com;

Gist of Complaint

The complainant applied for one LIG Flat under PD category in DDA Housing Scheme – 2014 with registration fee of Rs.1.00 Lakh. Being a successful allottee, he submitted required documents on 15.01.2015. DDA on 26.03.2015, instructed him to pay Rs.4,12,100/- by 25.05.2015 failing which 15% interest would be levied and/or allotment would be cancelled. The complainant made a payment of Rs. 4,12,100/- on 14.05.2015 through online portal of DDA. As per the scheme, "Person with disabilities category will have option of making payment either on cash down basis or in instalments". After making payment, the complainant filed RTI on 18.05.2015 and raised the issue of mode of payment. DDA in their reply dated 11.08.2015 stated that PD category persons were allotted flat under hire purchase scheme/instalment scheme (which carries interest @15% per annum) as per the policy of Government. Complainant's constraint was that when DDA lottery result showed that allotment made to him was under Cash Down Basis why he

Page 1 of 4

was compelled to accept Hire Purchase Scheme/instalments scheme arbitrarily (that too not disclosed upfront). Finally, the complainant made full and final payment of Rs.7,63,308/- vide Cheque No.578811 on 24.01.2017 through payment gate way. But on the same day, the flat allotted to him was shown as auto cancelled way back on 26.03.2016.

2. The respondent DDA filed their reply on 28.01.2019 and submitted that the complainant/allottee had become a defaulter by not paying the instalments for the intervening period. His request for change of mode of payment was considered favourably and a revised demand letter had been sent to him on 24.01.2017. The said demand letter missed out on some of the cost components i.e. subsidy/rebate and also the one time maintenance charges, service tax and other charges etc. However, the allottee only raised the issue of defective demand letter on 31.01.2018. Inviting attention to the missing subsidy component in the original demand letter dated 26.03.2015, the allottee had worked out the balance amount payable and sent in the payment of Rs.7,63,308/- through a cheque drawn on IDBI Bank. DDA had returned his cheque vide letter dated 15.02.2018 and informed him that payments are not received by cheque and he might deposit the same through RTGS/NEFT or bank challan. In view of the above, reluctance on his part to make the payment and persistence with the issue of rate of interest even after approval of change of mode of payment, his representation dated 24.08.2017 showed that his only grievance was concessional rate of interest which was not covered under the provision of the scheme. However, having considered the case, DDA issued a fresh revised Demand letter on 21.05.2018 duly incorporating subsidy component and the allottee must make the payment and submit the required documents for taking over possession letter of flat. As far as the relief concerned to the complainant (a) that as per the clause 11 of the brochure of the Housing



Scheme 2014, it is clearly mentioned that the amount deposited is refundable without any interest and cancellation charges shall be recovered; (b) It is clearly mentioned in clause 13 of the brochure that the allotment of flats shall be made on cash down basis except under PD category who will have option of making payment either on cash down basis or instalment.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 18.08.2020. The following were present:

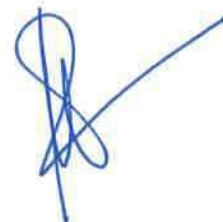
1. Shri Hemant Jayantilal Shah, the complainant.
2. Shri Piyush Chandel, Advocate, on behalf of the respondent.

Observation/Recommendations:

Both the parties were heard.

2. The complainant stated that he wanted refund of his entire money deposited with Delhi Development Authority (DDA) against allotment of a house in the PH category with 15% interest thereon. He further stated that the respondent had cheated him by not allowing him to exercise the mode of payment as prescribed for persons with disabilities and cancelled his allotment.

3. The respondent stated that the change in the mode of payment as demanded by the complainant was approved by the DDA and house allotment was indicated as cancelled because the complainant never deposited any amount as required by the demand letter. The respondent further stated that the applicant was fully aware of Clause No.11 and 13 of the brochure of DDA as per which refund to an applicant is possible by deduction of the cancellation charges and on submission of all original documents of allotment.



4. The Court noted that the respondent had indeed changed the mode of payment after representation of the complainant which was examined by the Office of the Lt. Governor. A final demand letter, rectifying all deficiencies, was also issued to him dated 21.05.2018. As per this demand letter, the complainant was to make the due payments through RTGS/NEFT. However, due to Point No.15 of the letter which indicated automatic cancellation if demanded amount is not paid by 25.03.2016, the complainant assumed that his allotment was cancelled and did not pay any further amount to DDA.

5. The Court observes that the complainant could have got his clarifications from the DDA by making more efforts instead of assuming and not depositing the due amount. The refund position is governed as per the prescribed rules and regulations which will be applicable in this case as well. There is no discrimination on the grounds of disability.

6. The case is disposed of.

Dated: 24.08.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 10698/1014/2018

Complainant: Dr. Nitesh Kumar Tripathi, H.No. B – 241, B Block, Sant Nagar
Burari, Delhi – 110084
e-mail: < niteshtripathi85@gmail.com >

Respondent: The General Manager (HR)
Oil and Natural Gas Corporation Ltd, Corporate R&P Department
'B' Wing, Green Hills, Tel Bhawan, Dehradun – 248003
e-mail: <kapoor_Mohan@ongc.co.in>

Complainant: 65% locomotor disability

GIST of the Complaint:

Complainant vide e-mail dated **09.12.2018** submitted that ONGC had published an advertisement for the post of Doctors and the advertisement was not showing exact number of seats reserved for PwDs. He has requested to ask the respondent to maintain 100 point reservation roster and provide disabled friendly environment during the interview and to also conduct the Special Recruitment Drive for filling up the backlog vacancies for PwDs.

2. The matter was taken up with the Respondent vide letter dated **22.02.2019** under Section 75 of the RPwD Act, 2016.

3. In response, GM (HR)-Head Corp R&P, ONGC vide letter dated **04.04.2019** inter-alia submitted that allegation is totally misplaced and devoid of facts in the case and Instructions contained in OM dated 15.01.2018 is already being compiled by ONGC.

4. Complainant in his rejoinder dated **10.04.2019** inter-alia submitted that after going through the reply of the respondent nothing has been answered as per the issues raised by him. He has requested to fix a hearing in the matter.

5. After considering the respondent's reply and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **18.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **18.08.2020**. The following were present:

- Dr. Nitesh Kumar Tripathi, the complainant.
- None for the respondent

Observation/Recommendations:

6. The complainant reiterated his points as stated in his complaint dated **09.12.2018** regarding not confirming to the provisions of the Rights of Persons with Disabilities Act, 2016 in the advertisement dated **09.12.2018** issued by the respondent.

7. The Court took a serious view that the respondent did not choose to find it convenient to appear in the personal hearing. Taking into consideration the points raised by the complainant, the respondent is directed to take action in terms of Section 34 of the Rights of Persons with Disabilities Act, 2016, which provides as under:

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

(a) blindness and low vision;

(b) deaf and hard of hearing;

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

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

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness by the appropriate Government from time to time:



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

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

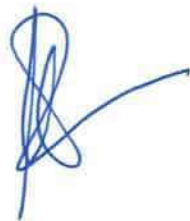
(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable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

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

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

8. In the light of the above, the case is disposed of with recommendations to the respondent:

- a) to provide reservation to persons with disabilities in future vacancies strictly as per provisions under Section 34 of Rights of Persons with Disabilities Act, 2016.
- b) to calculate the backlog reserved vacancies in all Groups and maintain reservation roster for persons with disabilities according to the DOP&T's instructions.



- c) to ensure disabled friendly accessible environment to persons with disabilities especially at the time of examination and interview
- d) to ensure that barrier free facilities are provided in accordance with Rights of Persons with Disabilities Act, 2016.

9. The case is disposed of.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 10991/1011/2019 & Case No: 10992/1011/2019

Complainant: Shri Prafulla Gajendra Martha
Plot No. BC/82, Old Bhimbhoi Colony, Madhuban, Paradip,
Dist.-Jagatsinghpur, Odisha – 754142
<digambarmishraadvocate@gmail.com>

Smt. Kanakalata Sahoo
At – New Jagannath Colony, Bijaychandrapur, PO-Atharbanki
PS-Paradip, Dist.-Jagatsinghpur, Odisha – 754142
<sudhanshusekharjana@gmail.com>

Respondent: The Chairman
Paradip Port Trust, Administrative Building, Paradip
Dist. – Jagatsinghpur, Odisha – 754142
<secyppt@paradipport.gov.in>

GIST of the Complaint:

Both the complainants in their complaints dated **25.02.2019** submitted that they had applied for the post of Jr. Assistant against Special Recruitment Drive for PwDs in Paradip Port Trust and they were called for Skill test on **29.10.2017**. They further submitted that they had qualified for the posts and their names were included in the panel list of Paradip Port Trust and also called for document verification. They alleged that only one of the candidates was appointed from the panel list. Hence, the full panel list should be utilized for filling up the vacant posts.

2. The matter was taken up with the Respondent vide letter dated **29.04.2019** under Section 75 of the RPwD Act, 2016 in both the cases.

3. In response, Sr. Dy. Secretary, Paradip Port Trust vide letter dated **29.05.2019** submitted that they had issued advertisement under PwD quota mentioning the number for SC/ST/OBC&UR categories in various posts and the complainants applied for the post of Jr.

Assistant under UR category against 13 vacancies i.e. (SC-2, ST-5, OBC-3 & UR-3) but could not be selected as they had not secured the required marks of UR category. Now, these complainants have requested to consider their case under the vacancies of SC/ST categories, which could not be filled up due to non-availability of qualified candidates. The representation of Shri Prafulla Gajendra Martha and Mrs. Kanakalata Sahoo do not have any merit for consideration.

4. Complainant vide rejoinder dated **10.06.2019** inter-alia submitted that according to the respondent PwDs reservation comes under the Caste reservation and as per that ratio of caste reservation they advertised the Backlog vacancies for PwDs persons which seems to be totally illegal against the order of Hon'ble Supreme Court and DoP&T OM dated 15.01.2018. Further, in point No. 04, respondent had given wrong information, they said that they have advertised for 13 post of Jr. Assistant in Special Recruitment Drive for Backlog vacancies of PwDs but actually the advertisement was for 09 posts of Jr. Assistant.

5. After considering the respondent's reply and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **18.12.2019**. Due to some administrative exigencies, hearing was re-scheduled on **12.02.2020**.

6. During the hearing, counsel of the complainants had submitted that Paradip Port Trust had conducted a Special Recruitment Drive for Persons with Disabilities and the advertisement does not take care of the Benchmark disabilities but goes for caste based reservation amongst PwDs. He further submitted that PwD by itself is a special class which knows no caste, class and religion, PwD itself cannot be further classified to be belonging to any ST, SC or OBC as disability does not know any caste or religion. He further submitted that both the complainants faced selection process and found place in the merit list as well



in the panel list. Both are having benchmark disabilities. The instant recruitment is exclusively meant for PwDs as it is a Special Drive, meaning thereby only PwDs irrespective of caste or religion are eligible to apply for the posts. The advertised posts are the definite vacancies identified and reserved for PwDs. PwD reservations are horizontal reservation where in vertical reservation is not constitutionally permissible. Simply because, PwDs are not segregated on basis of caste or religion. Further, classification of PwDs under Article 16(1) is not permissible. Hence, without resorting to any caste basis reservation PwDs ought to be appointed and discrimination needs to be removed. Case was adjourned to **03.04.2020** with the direction to the respondent to bring the reservation roster for all Group i.e. 'A', 'B', 'C' & 'D' and explain the procedure for reservation but due to COVID-19 hearing was held.

7. During the online hearing on 10.06.2020, respondent submitted written version in the case which was forwarded to the complainants for submissions of their comments.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **18.08.2020**. The following were present:

- Mr. Digambara Mishra, Advocate, for the complainants.
- Mr. Tarun Hazra Choudhury, Sr. Deputy Secretary, on behalf of the respondent.

Observation/Recommendations:

8. Both the parties were heard.

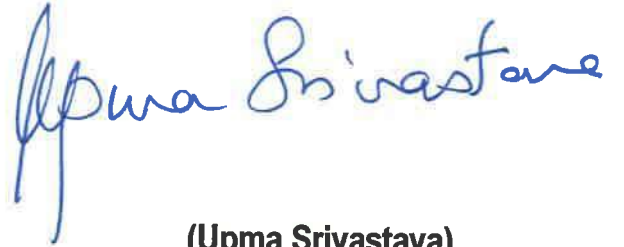
9. The Court observed that the advertisement issued by the respondent on **22.06.2017** for filling 9 backlog vacancies through a Special Recruitment Drive for persons with disabilities was not in conformity with the provisions of the Rights of Persons with Disabilities Act, 2016. No segregation on the basis of caste or any other criteria can be made in a Special Recruitment Drive where only persons with disabilities are required to be appointed. This type of recruitment is meant only for persons with disabilities irrespective of caste or religion. As such any appointment made on the base of this advertisement is illegal and should be cancelled. However, learning that 4 out of these 9 vacancies have already been filled by some persons with disabilities, the cancellation of such appointment would



...4...

lead to injustice to those persons. Hence, this Court recommends that the remaining 5 vacancies may be filled from that panel of persons with disabilities who were selected in the year 2017 against the advertisement in question irrespective of any segregation based on any criteria other than merit. While doing so, the candidature of two complainants i.e. Mr. Prafulla Gajendra Martha & Mrs. Kanakalata Sahoo may also be considered for appointment.

10. The case is disposed of.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 24.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 8538/1024/2017

वादी श्री इन्द्रेश कुमार, साउथ ईस्ट सेंट्रल रेलवे दिव्यांग
एम्पलाइज वेलफेयर एसोसिएशन, बिलासपुर
e-mail: <indreshk1980@gmail.com> <indreshk390@gmail.com>

प्रतिवादी मंडल रेल प्रबंधक, दक्षिण पूर्व मध्य रेल, बिलासपुर, छत्तीसगढ़।
ई-मेल: <srdfm@bsp.railnet.gov.in>

GIST of the Complaint:

प्रार्थी ने अपनी शिकायत दिनांक 29.08.2017 में साउथ ईस्ट सेंट्रल रेलवे के सभी दिव्यांग कर्मचारियों की ओर से आग्रह किया है कि उन्हें बहुउद्देशीय कक्ष एवं आवास आवंटन, सभा के लिए आवंटित किया जाये

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 14.11.2017 द्वारा प्रतिवादी के साथ उठाया गया।

3. मण्डल रेल प्रबंधक, बिलासपुर का अपने पत्र दिनांक 15.12.2017 में कहना था कि दिव्यांग एसोसिएशन को बहुउद्देशीय कक्ष आवंटन एवं आवास आवंटन सभा में प्रतिनिधित्व करने से संबंधित, रेलवे मुख्यालय/रेलवे बोर्ड का कोई भी विनिर्दिष्ट दिशा निर्देश उपलब्ध नहीं होने के कारण रेलवे प्रशासन, बिलासपुर मण्डल इस प्रकरण पर कार्रवाई करने में असमर्थ है।

4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 28.02.2018 में कहना है कि उन्हें बहुउद्देशीय कक्ष एवं आवास आवंटन सभा में प्रतिनिधित्व हेतु मदद करें तथा अनुरोध किया है कि रेलवे में कार्यरत दिव्यांगों की वास्तविक स्थिति की पुष्टि अप्रत्यक्ष रूप से करवाई जाए।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 21.08.2020. The following were present:

- Mr. Indresh Kumar, the complainant alongwith Mr. Avadhesh Kumar Mishra, representative.
- None for the respondent.

Observation/Recommendations:

5. The complainant stated that for the purpose of meetings of association of persons with disabilities , a Multi-Purpose Hall or a Common Room was required at Bilaspur Division of South-East Central Railway, Chattisgarh. He further stated that such a facility was available for all other associations like Scouts & Guides ,cultural associations etc, but not for persons with disabilities.

6. No one was present from the side of the respondent to express their view. This Court recommends that in case such a Common Room/Hall is available for meetings of other associations, the same shall be provided to the South-East Central Railway Divyang Employees Welfare Association as well. There should be no discrimination on the ground of disability and they should be given equal opportunity at par with all other employees of South-East Central Railway.

7. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 8937/1103/2017

Complainant:

Dr. Anjana Goswami, Director, Ashadeep, Guwahati;

Email: anjanagos@yahoo.co.in; and

Smt. Minu Dhondia, President, Titabor Physically Handicapped Deaf and Dumb School and Training Centre, District-Jorhat, P.O.

Titabor-786530

Respondent:

Railway Board, Through: Secretary, Ministry of Railways, Rafi Marg, New Delhi-110001; Email: secyrb@pb.railnet.gov.in;

advocatesksuryan@gmail.com;

....Respondent No.1

The General Manager, North East Frontier Railway, Guwahati-781011; Email: gm@nfr.railnet.gov.in; Mobile: 99575-50950

....Respondent No.2

Gist of Complaint

State Commissioner for Persons with Disabilities, Govt. of Assam had forwarded two complaints of Dr. Anjana Goswami Director, Ashadeep and Smt. Minu Dhondia, President, Titabor Physically Handicapped Deaf and Dumb School and Training Centre. The persons with disabilities particularly in Assam had to travel very long distances to attend their respective DRM Offices along with their escorts to get the concession cards prepared. The North-East Frontier Railway with headquarters in Maligaon, Guwahati has five

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(05) DRM Offices i.e. (i) Tinsukia; (ii) Lumding; (iii) Rangia [all 03 falling in Assam]; (iv) Alipur (WB); and (v) Katihar (Bihar) which caters to the needs of Assam in particular as well as the entire North-Eastern Region in general. For getting a Concession Card, a person from Silchar in Cachar District of Assam has to travel by train a minimum of 7 hours to 10 hours to reach Lumding DRM Office one way. A person from Dhubri Railway Station takes about 6 to 7 hours of Rail travel to reach Rangia DRM Office; and a person from Jorhat has to travel by train 3 to 5 hours to arrive at Tinsukia DRM Office in one way. Same set of difficulties might have been faced by some other states also. Therefore, SCPD Assam had requested for modification of the implementation of the system of Divisional Railway Manager (DRM)wise issue of Concession Cards on railway travel belonging to persons with disabilities to some important railway stations within the respective DRM Offices.

2. The matter was initially taken up with the Railway Board on 11.01.2018 with a copy to the General Manager, North East Frontier Railway, Maligaon, Guwahati.

3. North Frontier Railway in their reply dated 07.02.2018 had intimated that as per the Commercial Circular No.18 of 2015 of the Railway Board, only the divisional authorities have been delegated to issue such Photo Identity Card after proper verification contained in the detailed instructions. The modification proposed by SCPD Assam is not under the purview of the Zonal Railway.

4. No reply from Railway Board had been received yet despite Reminders dated 13.04.2018, 27.05.2019, 19.11.2019, 07.07.2020.



Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 21.08.2020. The following were present:

1. Dr. Anjana Goswami, the complainant
2. Mr. Sudhendru Sen Gupta, Dy. CCM (PM), North Frontier Railway, for the respondents

Observation/Recommendations:

Both the parties were heard.

2. The complainant reiterated the issues as made out in the complaint dated 24.10.2017 forwarded by the State Commissioner for Persons with Disabilities, Govt. of Assam vide letter dated 10.11.2017.

3. The respondent informed that vide new directions of the Railway Board dated 11.08.2020 the Concessional Photo Identity Cards can now be issued by Area Officers (ARM Office) of the Railways, in addition to the DRM Offices. Even otherwise physical presence of the person is not mandatory and such cards can be got through post by sending required documents.

4. In view of the above, the grievance is redressed and accordingly, the case is disposed of.

Dated: 26.08.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 9694/1101/2018

Complainant:

Dr. Satendra Singh, Founder, Infinite Ability (Disability Group),
Associate Professor of Physiology, University College of Medical
Sciences & GTB Hospital, Delhi – 110095;
Email – dr.satendra@gmail.com;

.... Complainant

Respondent:

All India Institute of Medical Science (AIIMS), Delhi, through its
Director, Ansari Nagar, Delhi-110029;
Email: director@aiims.edu;

....Respondent

Gist of Complaint

Dr. Satendra Singh, a person with 70% locomotor disability (RL), Founder, Infinite Ability (Disability Group), Delhi, had filed a complaint dated 18.04.2018 regarding inaccessibility of the All India Institute of Medical Sciences, New Delhi (AIIMS, Delhi) especially the BB Dixit Library, Centre for Medical Education & Technology and the toilets in the AIIMS.

2. On taking up the matter AIIMS Delhi filed their reply dated 24.07.2018 and submitted that AIIMS building infrastructure had come up over 70 years. With the hospital in operation, it becomes a daunting task to convert the existing infrastructure accessible to the persons with disability. Nevertheless, AIIMS had already initiated

Page 1 of 4

action for conducting fresh accessibility audit of OPD block, Emergency Block and Dr. R.P. Centre to begin with. In regard to B.B. Dixit Library, the access for students with disabilities is through the ground floor gate. In phases certain areas were made accessible by modification of the existing building despite its constraints. New buildings at AIIMS have been ensured accessibility.

3. Dr. Satendra Singh in his rejoinder dated 31.10.2018 submitted that it was appalling to see the apathy of AIIMS official in issuing the term 'universal accessibility' as a 'daunting task'. AIIMS is the premier institution with no dearth of money. The reply did not explain whether BB Dixit Library was accessible or not. Entrance is from ground floor but it did not state the fact that it had steps at the entrance and no lift. If the premier hospital in the capital of India could not be made accessible, he wondered what the point of this whole campaign was.

4. Upon considering the facts, the case was heard on 25.09.2019. All the necessary facilities such as ramp, non-slippery floor, wheel chair, wide doors, toilets, etc. were stated by the respondent to be already available at the said BB Dixit Library, Centre for Medical Education & Technology (CMET). Action was being taken to install the lift.

5 After hearing, the respondent was directed to submit a detailed report about accessibility of the location along with relevant photographs.

6. The case was again heard on 13.11.2019. The representative of the AIIMS, Delhi reiterated his earlier submissions. It was added



that the work for installation of lift had been awarded, doors had been broadened.


7. The complainant refuted the submission made by the representative of the respondent and stated that all OPDs, the toilets at General Wards were still inaccessible at AIIMS Delhi.

8. The respondent was advised to submit a detailed report along with photographs ensuring that AIIMS Delhi is fully accessible for persons with disabilities.

9. AIIMS Delhi vide letter dated 10.12.2020 submitted the current status of facilities available with photographs for persons with disabilities in different buildings at AIIMS Delhi. It was also stated that the Lift Shaft structures for both lifts at Library & Administrative block had been installed and the work was likely to be completed by April/May 2020, information of which would be given separately. The ramp at raised floor at 2nd floor in Old Nurses Hostel (New Private Ward) building could not be made for X ray & ultrasound facility due to constraint of building structure as it was shifted/extended there due to heavy patient load but both the facilities were also available nearby for wheel chair/stretchered patients at floor level.

10. The reply filed by AIIMS Delhi was sent to the complainant on 20.02.2020 for his information and submission of comments.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 21.08.2020. The following were present:



1. Dr. Satendra Singh, the complainant.
2. None for the respondent.

Observation/Recommendations:

The reply received from the respondent dated 10.02.2020 indicating progress made in improving the infrastructure in AIIMS viz-a-viz persons with disabilities, was sent to the complainant. The Court noted that though work had been done by AIIMS to improve the position, yet there were still areas which needed to be looked into. The complainant indicated specifically six areas where accessibility issues were still there for persons with disabilities. These are listed as under:

- (i) The Hostels
- (ii) Faculty Department Wash Rooms
- (iii) Board Room
- (iv) Private Ward-I
- (v) Ultrasonography Room
- (vi) ATM Outside the boys hostel

2. The court recommends that urgent action in terms of Sections 40, 41 & 42 of the Rights of Persons with Disabilities Act, 2016 may be taken by AIIMS Administration to ensure complete accessibility and all other necessary facilities for persons with disabilities in the entire campus.

3. The case is disposed of.

Dated: 26.08.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 9829/1033/2018

Complainant:

Shri Sandeep Kumar Yadav, a person with 45% locomotor disability, Research Scholar, Ph.D. (Pol. Science), Banaras Hindu University, Varanasi, Email: sanbhu77@gmail.com;

Respondent:

Director (Sch), Department of Empowerment of Persons with Disabilities (Divyangjan), M/o Social Justice & Empowerment, 5th Floor, B-Wing, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110001; Email: vikash.prasad@gov.in;

....Respondent No.1

The Secretary, University Grants Commission, Bahadur Shah Zafar Marg, New Delhi – 110002; Email: secy.ugc@nic.in;

....Respondent No.2

Gist of Complaint

The complainant had applied for RGNF in 2012 under which he got one year Fellowship as the duration of M.Phil is for one year. After a gap of one year, he started his Ph.D in the year 2014. Because of the gap he got his Fellowship for four years only instead of five years.

2. Initially the matter was taken up with BHU and after receiving a reply from BHU, the matter was taken up with UGC. UGC in their reply dated 17.10.2018 submitted that the awardees selected under the NF-PwD scheme, receive their DBT mode directly from the Ministry of Social Justice & Empowerment. Only selections are made by UGC.

3. On taking up the matter with DEPWD, it was intimated that clarifications were sought from UGC whether it is permissible by UGC to

pursue Ph.D. after a gap of one year and to grant JRF/SRF as applicable. In case there is provision under UGC regulation; the applicant would be entitled for SRF for one more year (11.12.2017 to 10.12.2018). From the reply filed by DEPWD, it appeared that UGC had not responded to the letters dated 11.01.2019, 15.01.2019, 29.01.2019, 09.05.2019 and 29.09.2019.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 21.08.2020. The following were present:

1. Mr. Sandeep Kumar Yadav, the complainant.
2. Dr. Surender Singh, Joint Secretary, UGC & Ms. Megha, Education Officer, UGC, on behalf of the respondent No.2

Observation/Recommendations:

Both the parties were heard.

2. The guidelines of the UGC are very clear in this matter. The total period of scholarship is five years including the Gap Period. The guidelines are available (UGC XII Plan Guidelines for Junior Research Fellowship in Sciences, Humanities and Social Sciences) in the document Clause 15 Gap Period addresses the complainant's issue. A copy of the guidelines is also enclosed with this order for information of the complainant.

3. The case is disposed of.

Dated: 26.08.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 10723/1024/2018

Complainant: Shri Brijesh Chaurasia, 2502, Flat No.3 FF, Gali
Kashmirin, Churiwalan, Delhi – 110006;
Email: bc889477@gmail.com;

Respondent:

Aruna Asaf Ali Govt. Hospital, [Through its Medical Superintendent],
Office of the Medical Superintendent, Raipur Road, Civil Lines,
Delhi – 110054; Email: msaaagh@gmail.com;

....Respondent No.1

Lok Nayak Jai Prakash Narayan Hospital [Through its Medical
Superintendent], Jawahar Lal Nehru Marg, New Delhi – 110002;
Email: mslnh@nic.in;

....Respondent No.2

Gist of Complaint

The complainant is a person with 80% locomotor disability (Post Polio paralysis in both lower limbs). A certificate in this regard was issued by LNJP Hospital on 05.02.1994. His father was an employee - Section Supervisor in the Office of Central Telegraph Office, BSNL. His father expired on 30.05.2017. The complainant submitted that both his legs are polio affected, he cannot walk freely and he is not capable to earn his livelihood. So, he applied for Family Pension to BSNL along with his disability certificate. BSNL vide their letter No.AO/Pension/NTR-HQ/17-18/2 dated 15.03.2018 inter-alia intimated to the complainant that in the disability certificate

Page 1 of 3

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 233860054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 233860054, 23386154 ; Telefax : 23386006

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

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

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

it is not mentioned that the complainant is not capable to earn his livelihood, as per CCS Pension Rule-54 sub Rule-6. The complainant approached Aruna Asif Ali Govt. Hospital, Delhi to get a certificate issued as required by BSNL that he is not capable to earn his livelihood. But the Aruna Asif Ali Govt. Hospital denied giving in writing that the complainant is not capable to earn his livelihood.

2. The case was heard on 25.09.2019.

3. During the hearing the representative of Aruna Asif Ali Govt. Hospital [Respondent No.1] reiterated their reply that the disability assessment is done on the basis of guidelines notified by the Ministry of Social Justice & Empowerment and accordingly, disability certificate is issued. There is no such guidelines available regarding evaluation of earning capacity. Further, the Disability Certificate has been issued to Shri Brijesh Chaurasia, the complainant, from LNJP Hospital. The earning capacity assessment in the case of disability does not fall in the domain of a medical expert. However, if this Court is desirous of assisting in this matter, medical expert help may be sought from LNJP Hospital [Respondent No.2] as the disability assessment and certification has been done there.

4. The representative of Respondent No.2 submitted that if the complainant/applicant approaches them, then they would consider his application accordingly.

5. After hearing both the parties, the complainant was advised to approach Respondent No.2 and apply for issuance of the medical



certificate as required under Rule 54 Sub Rule 6 of the CCS Pension Rules. Respondent No.2 was advised to examine the complainant/applicant after receipt of the application from him and submit their report/medical certificate in the light of the said CCS Rule.

6. No reply/response had been found received from either of the parties.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 21.08.2020.

Observation/Recommendations:

No one was present. An e-mail dated 21.08.2020 has been received from the complainant stating that his grievance has been sorted out with the respondents. In view of this, the case is disposed of.

Dated: 26.08.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No:11646/1011/2019

Complainant: Shri Bibhuti Bhusan Nayak
e-mail: <bibhuti080283@gmail.com>

Respondent: The Joint Secretary-2, Department of Personnel & Training
M/o Personnel, Public Grievance & Pension, North Block, New
Delhi – 110001
e-mail: <jssv-dopt@nic.in>

Complainant: 40% Multiple Disability (40% VH & 9.66 HI)

GIST of the Complaint:

Complainant vide complaint dated **21.11.2019** submitted that he attained All India Rank 759 and he was allotted IDES (5th Preference). He further submitted that he was the only candidate with Multiple Disabilities (SC) in the CSE-2018 who qualified. He has requested to consider him for appointment against the vacancies in IAS.

2. The matter was taken up with the Respondent vide letter dated **03.01.2020** under Section 75 of the RPwD Act, 2016. But despite reminder dated **29.06.2020**, they did not submit any reply; therefore, the hearing was scheduled for **21.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **21.08.2020**. The following were present:

- Mr. Bibhuti Bhusan Nayak, the complainant.
- Mr. S.K. Verma, Under Secretary, ASI (I), DoP&T, on behalf of the respondent.

Observation/Recommendations:

3. Both the parties were heard.

4. The respondent explained that in Civil Services Examination 2018, the Rights of Persons with Disabilities Act, 2016 was implemented for the first time and only three services i.e. Indian Defence Estates Services, Indian Civil Accounts Services and Indian Information Services were identified for appointment of persons with disabilities. Hence, the complainant was given Indian Defence Estates Services and not the Indian Administrative Service. However, from the year 2019 onwards Indian Administrative Services has also been identified as suitable for appointment of persons with disabilities.

5. The case is disposed of.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 26.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 11907/1092/2020

Complainant: Shri Hemant Bhai Goyal, National Vice President, Divyang Adhikar Mahasangh, Plot No.01, Jamuna Vihar, Swej Farm, Sodala, Jaipur-19 (Rajasthan); Email: hemantbhai1966@yahoo.com

Respondent: Deputy Secretary (NSAP), National Social Assistance Programme Division, Ministry of Rural Development, Room No.701, 11-Block, CGO Complex, Lodhi Road, New Delhi-110003; Email: manikc.pandit@nic.in

Gist of Complaint

The Government of India had granted an ex-gratia of Rs.1000/- to the beneficiaries (having severe disabilities) of Indira Gandhi National Disability Pension Scheme (IGNDPS) under Pradhan Mantri Garib Kalyan Yojana Package to all Divyang Pensioners of the country to help them fight the pandemic COVID-19. The complainant alleged that the Ministry of Rural Development, in providing the ex-gratia, has violated the Section 24(1) and 24(3)(c) of the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016]. He demanded that the Government should extend this facility to all the persons with Benchmark Disabilities.

2. Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment vide OMs

Page 1 of 4

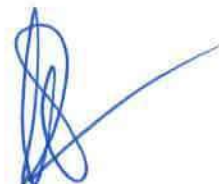
dated 29.04.2020 and 06.05.2020 had also requested the Ministry of Rural Development to look into the issue for appropriate action as they had been receiving requests for extending the benefit of payment of ex-gratia to all Divyangjan (having disability of 40% or more).

3. The matter was taken up with the National Social Assistance Programme Division, Ministry of Rural Development. But, no response was received.

Hearing: The complainant was heard via Video Conferencing by the Commissioner for Persons with Disabilities on 21.08.2020.

Observation/Recommendations:

The complainant was heard and he reiterated all the points as mentioned in his complaint dated 04.04.2020. He stated that the benefit of disbursement of Rs.1,000/- only under Pradhan Mantri Garib Kalyan Yojana Package should be made to all Divyang Pensioners of the country to help them to fight Covid-19 pandemic, however this amount is being made available only to those disabled persons who are covered under Indira Gandhi National Disability Pension Scheme, being implemented by the Ministry of Rural Development under National Social Assistance Programme of the Govt. of India. Due to this in the State of Rajasthan, all disabled persons have not received the benefit of this scheme. This is a violation of Section 24 of Rights of Persons with Disabilities Act, 2016 as per which,



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

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

(2) The appropriate Government while devising these schemes and programmes shall give due consideration to the diversity of disability, gender, age, and socio-economic status.

- (3) The schemes under sub-section (1) shall provide for,-*
- (a) community centres with good living conditions in terms of safety, sanitation, health care and counseling;*
 - (b) facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;*
 - (c) support during natural or man-made disasters and in areas of conflict;*
 - (d) support to women with disability for livelihood and for upbringing of their children;*
 - (e) access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas;*
 - (f) provisions of aids and appliances, medicine and diagnostic services and corrective surgery free of cost to persons with disabilities with such income ceiling as may be notified;*
 - (g) disability pension to persons with disabilities subject to such income ceiling as may be notified;*
 - (h) unemployment allowance to persons with disabilities registered with Special Employment*



Exchange for more than two years and who could not be placed in any gainful occupation;

- (i) care-giver allowance to persons with disabilities with high support needs;*
- (j) comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Scheme, or any other statutory or Government sponsored insurance schemes;*
- (k) any other matter which the appropriate Government may think fit.*

2. This Court recommends that necessary action be taken by the Government of India under Ministry of Rural Development to ensure that benefit of payment is received by all eligible pensioners with disability in the country.

3. The case is disposed of.

Dated: 01.09.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 6086/1024/2016

Complainant : Shri Rakesh Kumar Bhardwaj S/o Late Shri Chandgi Ram, R/o. H. No.145, Patparganj Village, Delhi – 110 091

Respondent : Delhi Development Authority, (Thru Dy. CAO (Medical)), Vikas Sadan, INA New Delhi – 110 023.

Gist of Complaint:

Shri Rakesh Kumar, a person with 49% locomotor disability vide his complaint dated submitted that he is employed as Officer Clerk (Mate) Work Charge in Delhi Development Authority. He had secondary Osteoarthritis in left hip with metallic implants from previous surgery. He needed removal of the implant and total Hip replacement. The Primus Hospital had given an estimate for Rs.1,88,150/- out of which the cost for Hip replacement was Rs.95,000/-. A surgery was performed on the complainant for his Hip Replacement on 10.06.2015. After the final payment at the Hospital, an expenditure of Rs.1,75,000/- was raised on the applicant by the Hospital. He had produced the bill to his establishment, but recovery was made from the applicant to the tune of Rs.28,000/- by DDA which the applicant feels was wrong and unlawful. In addition another expenditure of Rs.25,000/- was raised on the applicant by DDA. Thus a total of Rs.53,000/- was worked out against the applicant. The applicant wrote several letters to DDA requesting for reimbursement/adjustment of the expenditure. He was pressurized to deposit the recovery amount of Rs.28,000/-. The complainant had prayed for the following relief from the Court:

- i) To release the full cost of Implant of Rs.95,000/- to the complainant.
- ii) Compensation for harassing the complainant.
- iii) Any other relief deemed fit and proper to the complainant.

2. The Executive Engineer, Eastern Division No.9, DDA vide letter No. F6(43)/ED9/DDA/843 dated 01.06.2016 submitted that the reply received from the Primus Hospital was forwarded to the complainant on 09.03.2016. The complainant has not filed any rejoinder with reference to the department letter dated 09.03.2016. He further submitted that DDA Medical Scheme provides reimbursement under CGHS rules and the same has already been reimbursed to the complainant. As regards increased / differential cost of implant, the hospital had informed in their letter dated

...2/-

31.12.2015 that the patient was briefed well about all details of implant/surgery. Briefly, it was observed that the complainant preferred costly implant and as per DDA Medical Scheme, costly implants/differential amount is to be borne by the patient/DDA Medical Card Holder themselves. The Respondent submitted that there was no reimbursable amount pending on the part of DDA.

3. The complainant vide his email dated 09.08.2020 submitted that he is suffering from financial and mental harassment. He also submitted that he has retired from the service on 31.03.2020 from DDA.

Hearing: The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 25.08.2020.

4. The following persons were present during the hearing;

- 1) Mr. Rakesh Kumar Bhardwaj, the complainant.
- 2) Mr. Sanjay Kumar, Assistant Accounts Officer, DDA, on behalf of the respondent.

Both the parties were heard.

5. The grievance of the complainant was regarding reduced reimbursement of medical claim by the DDA. The respondent informed that the complainant had retired from the service on 31.03.2020 and all the records pertaining to his case had been transferred to a separate division in DDA. Hence, the respondent was not aware about the details of the case.

6. The Court looked into the written submission of the respondent dated 01.06.2016 and noted that the matter was administrative in nature and had to be settled between DDA, complainant and the hospital which conducted the surgery on the complainant. There was no issue pertaining to discrimination on grounds of disability. Hence, the complainant is advised to represent again to the Vice-Chairman, DDA, and the respondent is recommended to settle the case as per rules.

7. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 8075/1023/2017

Complainant : Pt. Vikas Sharma, Social Activists for PwDs, Disabled Helpline Foundation,
1520, Shri Chandi Road, Pilkhuwa, Hapur (U.P) - 245304

Respondent : Western Railway, (Thru General Manager), Old Building, Churchgate, Mumbai

Gist of Complaint:

Pt. Vikas Sharma made a complaint on behalf of Shri Raj Kumar Sharma, a person with visual impairment. Shri Raj Kumar had been working as a Junior Clerk cum typist in DRM ADI, Western Railway at Ahmedabad. He had been harassed and not getting proper facilities at the place of working. He was not given Computer System with jaws software. He had been told to write with a pen. It is difficult for him to write for long time and was given work which includes reading which is not possible for him due to low vision. The Railway authorities were compelling him to do paper work with a pen only and he was threatened and told that he would be transferred. He was transferred to Gandhi Dham which is not a developed place. There were not much facilities at Gandhi Dham. He had requested to cancel his transfer orders from DRM ADI.

2. No reply has been received from the Respondent Railways.

Hearing : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 25.08.2020.

3. The following were present during the hearing;

- 1) Pt. Vikas Sharma, the complainant.
- 2) None for the respondent.

4. The complainant Pt. Vikas Sharma was heard, who has made the complaint on behalf of Mr. Raj Kumar Sharma, a persons with visual impairment.

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5. The Court noted that the case was of the year 2017 regarding harassment, non-payment of salary and transfer to Gandhi Dham, which was not suitable for Mr. Raj Kumar Sharma. The complainant informed the Court that he was no longer in contact with Pwd Mr. Raj Kumar. Mr Raj Kumar informed via telephone/email that the matter has since been resolved to his satisfaction.

6. In view of the above, the case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 8240/1023/2017

Complainant : Shri Suresh Kumar Goyal, Flat No.1, E-Block, Pacific Hospital Campus, Umarda, Udaipur – 313 005.

Respondent : AIIMS-Jodhpur (Through Director & the Administrative Officer), Basni Phase-2, Jodhpur, Rajasthan – 342 005.

Gist of Complaint:

Dr. Suresh Kumar Goyal, a person with 80% locomotor disability vide his complaint dated 06.06.2017 has submitted that the AIIMS, Jodhpur vide its advt. no. Admn/faculty/02/2016 AIIMS, JDH dated 31.12.2016 had advertised for recruitment of faculty positions (Group A) in various departments of AIIMS, Jodhpur on direct recruit basis. There were total of 121 posts. Out of these posts, 4% were reserved for persons with disabilities. The complainant was an eligible candidate for the post of Associate Professor. He was interviewed on 22.03.2017 and the result was declared on 31.05.2017. There were reservations for SC, ST & OBC categories, but no PH candidates were selected which indicates the violation of Rights of Persons with Disabilities Act, 2016. The complainant further submitted that earlier also there were total of 215 posts for Group 'A' faculty and there were 9 posts reserved for PH persons but no candidate under PH category was selected. The complainant submitted that he has not claimed reservation benefits till yet. He got admission to MBBS under general category and MD seat too was allotted to him under general category. Even after completing MD he did not get any benefit of reservation for PH person in any government services. Therefore, he is till now working with private medical colleges. He met with an accident while pursuing MBBS in the year 2002 and he has been on wheel chair after that. He did not get any benefit of reservation either in education or in employment. He applied for Assistant Professor job in RPSC, but he was not selected as he was told that the PH seat is reserved only for one leg affected person while he is having both his legs affected. His submitted his prayers as given below;

i) Assurance of the implementation of the rules by AIIMS, Jodhpur and to issue an appointment letter to him as he was the only eligible PH candidate for the post of Associate Professor in the Deptt. of Physiology.

ii) to ensure the implementation of employment laws in all the institutes as per law and responsible authorities who violates the law should be punished.

....2/-

iii) to ensure that his establishment has been implementing the reservation in recruitment for persons with disabilities like for SCs, STs and OBCs.

2. The Respondent vide their reply dated 26.09.2017 submitted that while issuing the advertisement dated 31.12.2016 for recruitment for the post mentioned in the advertisement on direct recruitment basis, it was clearly provided in note 2 of the notes appended to the advertisement that the reservation will be as per Government of India policy. They submitted that all the provisions provided under the Act of 1995/2017 along with laws comprised in various OMs issued by DoP&T were carried out in their establishment. They further stated that while issuing the advertisement dated 31.12.2016, it was clearly mentioned at point no. 2 under heading note that the reservation will be as per Government policy. Their establishment is already following various OMs issued by DoP&T for reservation of 3% post for PwDs considering the total cadre strength of Group A and B posts along with other posts available in their establishment. During the course of selection process, the complainant was not found fit for selection by the Selection Committee. Merely passing eligibility criteria and taking part in the selection process does not make anybody entitled for selection automatically. The Respondent submitted that three vacancies have already been filled up from PwDs.

3. The complainant vide this rejoinder dated 10.11.2017 submitted that the Respondent had not provided any reservation to the Group 'A' employees with disabilities. The Respondent themselves admitted that the complainant was found to be eligible for the post provided, but he had been deprived of appointment without assigning any valid reason. The Complainant further submitted that he was fulfilling all the eligibility criteria as prescribed in the advertisement and he also participated in the interview and, therefore, there was no valid and justified reason with the Selection Committee to declare him unfit for appointment to the said post. He submitted that there were 121 Group 'A' posts, out of which 4 posts were to be filled for PH persons.

Hearings: 08.01.2018, 12.02.2018, 28.03.2018

4. The case was heard through personal hearings by the Chief Commissioner for Persons with Disabilities on 08.01.2018, 12.02.2018 and 28.03.2018.

5. During the personal hearings the representative of the complainant submitted that his brother had enough experience and qualification to be selected to the post of Associate Professor. There were reservations for SC, ST & OBC categories, but no PH candidate was selected. In the advertisement, no marks were mentioned for interview.



6. The Learned Counsel for the Respondent submitted that the Complainant secured only 16 marks in the examination out of 100 marks, which is well below the minimum pass marks required for passing the examination. The minimum percentage of marks required for selection is 50. Therefore, the complainant could not be selected to the post of Assistant Professor.

7. The Court directed the Respondent during the hearing on 28.03.2018 to submit the Reservation Roster showing carried forward/backlog vacancies, number of PH candidates selected under Special Drive launched for Persons with Disabilities etc. since its inception to this Court within 4 weeks from the date of issue of Record of Proceedings before taking a final decision in the case.

8. The Respondent vide letter no.3070 dated 11.05.2018 submitted the following detail;

Particular	No. of posts
Total Sanctioned Faculty Posts	350
Total Posts (Faculty) earmarked for persons with disabilities	10
Total Working Faculty as on today	117
Total Working Faculty (PwDs) as on today	3
Backlog vacancies for PwDs to be carried forward in next recruitment drive	2

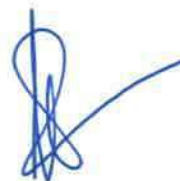
Hearing : The case was finally heard through video conferencing by the Commissioner for Persons with Disabilities on 25.08.2020.

9. The following persons were present during the hearing.

- 1) Dr. Suresh Kumar Goyal, the complainant.
- 2) Mr. Praveen Kr. Jain, Advocate & Mr. Sajal Manchanda, Advocate, on behalf of the respondent.

Both the parties were heard.

10. The complainant reiterated his points as mentioned in his complaint dated 06.06.2017 and rejoinder dated 10.11.2017.



11. In the last hearing held on 28.03.2018, this Court had directed the respondent to submit the Reservation Roster showing carried forward/backlog vacancies, number of PH candidates selected under Special Drive launched for persons with disabilities since its inception.


12. **The respondent vide their reply dated 11.05.2018 has not submitted the Reservation Roster as asked for. They have also not answered regarding the Special Recruitment Drive for persons with disabilities to fill up the reserved posts.** The respondent was informed that as per the provisions of the Rights of Persons with Disabilities Act, 2016, 4% of the Group 'A' faculty posts have to be reserved for persons with disabilities. As such, the total number comes to 13 posts. It is seen from the reply of the respondent that as on 11.05.2018 only 3 persons with disabilities are working as faculty. The respondent is directed as follows:

- (i) Prepare a proper 100 point Reservation Roster to earmark the posts reserved for persons with disabilities.
- (ii) Conduct a Special Recruitment Drive immediately to fill the existing and backlog vacancies.
- (iii) Strictly follow the provisions of DoP&T O.M. No. 36035/02/2017-Estt (Res) dated 15th January, 2018 regarding relaxed standards for appointment of persons with disabilities and as per said O.M.s clause 11 states as under:

11. **RELAXATION OF STANDARD OF SUITABILITY:**

11.1 If sufficient number of candidates with benchmark disabilities candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. However, this provision shall not be used to allow any relaxation in the eligibility criteria laid down for the issuance of certificate of disability.

....5/-



11.2 Same relaxed standard should be applied for all the candidates with Benchmark Disabilities whether they belong to Unreserved/SC/ST/OBC. No further relaxation of standards will be considered or admissible in favour of any candidate from any category whatsoever.

13. The respondent is expected to be completely transparent and follow all Govt. of India's rules and regulations for reservation in their recruitment procedures.

14. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No: 8741/1021/2017

वादी श्री शिव प्रताप सिंह, कार्यालय अधीक्षक, मंडल रिकार्ड अनुभाग,
उत्तर रेलवे मंडल कार्यालय, लखनऊ
ई-मेल: <singhnagendra474@gmail.com>

प्रतिवादी वरिष्ठ मंडल कार्मिक अधिकारी, उत्तर रेलवे, मंडल कार्यालय, लखनऊ
ई-मेल: <anilkshrivastava@yahoo.co.in>

मंडल रेल प्रबंधक, उत्तर रेलवे, मंडल कार्यालय, लखनऊ

वादी 60 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 11.10.2017 में कहना है कि वह मण्डल रेल कार्यालय के रिकार्ड अनुभाग में कार्यालय अधीक्षक के पद पर कार्यरत है तथा सामान्य रूप से पदोन्नति के लिए वह दिव्यांगसूची में सबसे वरिष्ठ है इसलिए दिव्यांगता कोटे का लाभ देकर उन्हें मुख्य कार्यालय अधीक्षक में पदोन्नति मिलनी चाहिए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 13.12.2017 द्वारा प्रतिवादी के साथ उठाया गया।

3. जवाब में मंडल रेल प्रबंधक, उत्तर रेलवे, लखनऊ का अपने पत्र दिनांक 26.04.2018 में कहना है कि वर्तमान में मुख्य कार्यालय अधीक्षक/सी.आर. के लिए स्वीकृत पदों की संख्या 03 है तथा कार्यरत कर्मचारी भी 03 है जिसमें से 01 कर्मचारी दिव्यांग कोटे के तहत ही कार्यरत है अतः वर्तमान में दिव्यांग कोटे की कोई रिक्ति नहीं है इसलिए श्री शिवप्रताप सिंह को दिव्यांग कोटे के तहत पदोन्नति प्रदान करना संभव नहीं है।

4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 05.06.2018 में कहना है कि 01 कर्मचारी जिसको सामान्य+दिव्यांगता का लाभ दिया गया है अगर दोनों वर्गों को एक साथ सम्मिलित करना ठीक है तो उन्हें कोई ऐतराज नहीं है लेकिन अगर ये गलत है तो उन्हें तत्काल प्रभाव से पदोन्नति दिलवाएं।

5. वादी कि शिकायत एवं प्रतिवादी के टिप्पण के मद्देनज़र, सुनवाई दिनांक **18.10.2019** को रखी गई।

6. सुनवाई के दिन शिकायतकर्ता ने अपने लिखित कथनों को दोहराया तथा अतिरिक्त दस्तावेज जमा किए, जिसकी एक प्रति प्रतिवादी को उनके टिप्पण हेतु भेजी गई तथा निर्देश दिया गया कि वह अपने जवाब एवं टिप्पण 15 दिनों के अन्दर भेजें। अगली सुनवाई दिनांक **26.02.2020** को प्रतिवादी अनुपस्थित रहें। प्रतिवादी द्वारा दर्ज जवाब/टिप्पण की एक प्रति प्रार्थी को फिर से उनके टिप्पण हेतु भेजी गई और अगली सुनवाई दिनांक **24.06.2020** को सुनिश्चित हुई। दिनांक 24.06.2020 को ऑनलाइन सुनवाई के दौरान वादी अनुपस्थित रहे तथा प्रतिवादी के अधिवक्ता ने अपने द्वारा दायर जवाब पर वादी की प्रतिक्रिया मांगी, जिससे की को रेलवे से निर्देश प्राप्त कर सके। पुनः सुनवाई 25.08.2020 को सुनिश्चित की गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **25.08.2020**. The following were present:

- Complainant - absent.
- Mr. Anil Kumar Shrivastava, Advocate, on behalf of the respondent.

7. The respondent did not know anything about the matter and could not answer any question of this Court. It is disappointing that such representatives of the Respondent appear for hearing which waste precious time and resource of the court. The complainant was absent too. The case belongs to the year 2017 and three hearings in the matter have already been held on dated 18.10.2019, 26.02.2020 and 24.06.2020.

8. In the last hearing held on 24.06.2020, the complainant was directed by this Court to submit a written rejoinder by mail within a period of two weeks. More than two months have lapsed since the orders of this Court and the complainant has neither submitted any rejoinder nor has appeared for this hearing. He was absent on the previous hearing also. It appears that the complainant is not interested in pursuing the matter further.

9. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 9809/1023/2018

वादी श्री जगजीतन पाण्डेय, प्राथमिक शिक्षक, केन्द्रीय विद्यालय नं: 01, वायु सेना, गोरखपुर।
ई-मेल: <jjpandey7@gmail.com>

प्रतिवादी आयुक्त, केन्द्रीय विद्यालय संगठन, 18, शहीद जीत मार्ग, नई दिल्ली
ई-मेल: <kvs.estt.1@gmail.com>

वादी 50 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 12.05.2018 में कहना है कि विद्यालय के प्राचार्य उनको शारीरिक, मानसिक व आर्थिक रूप से प्रताड़ित कर रहे हैं जैसे प्रार्थी द्वारा प्रस्तुत चिकित्सकीय बिलों को दो-दो महीने तक विलम्बित रखना तथा विद्यालय में आयोजित होने वाली परीक्षाओं – एन.आई.ओ.एस., नीट, जी., सी.बी.एस.ई., बी.एच.यू. प्रवेश परीक्षा में प्रार्थी की ड्यूटी जान-बूझकर नहीं लगाई जाती।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 19.07.2018 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 27.11.2018 के बावजूद प्रतिवादी से कोई उत्तर प्राप्त नहीं होने की स्थिति में दिनांक 20.06.2019 को सुनवाई सुनिश्चित की गई।

3. कार्यवाहियों के रिकार्ड दिनांक 02.07.2019 के माध्यम से प्रतिवादी को सलाह दी गई थी कि वह जाँच रिपोर्ट की एक प्रति वादी को उपलब्ध करवाए तथा उनके चिकित्सा बिलों को नियमानुसार भुगतान कर कृत कार्यवाही की रिपोर्ट 45 दिनों के भीतर प्रस्तुत करें।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.08.2020. The following were present:

- Mr. Jagjitan Pandey, the complainant.
- Ms. Menaxi Jain, Dy. Commissioner (Acad & Estt.1), KVS, on behalf of the respondent.

Observation/Recommendations:

4. Both the parties were heard.

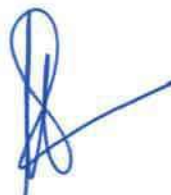
5. It was noted that in the first hearing held on 20.06.2019, this Court had directed the respondent the following:

- (i) To inquire into the entire matter of the harassment of the complainant and send the report.
- (ii) All medical claims of the complainant may be settled as per rules.

6. The respondent stated that they had sent the reply to the orders of the Court on 06.08.2019 which were not found to have been received in this Court till the date of this hearing. A copy of this report was sent by e-mail to this Court today. The reply states that all the medical claim bills of the complainant have been settled and till the date of 06.08.2020, not a single medical claim bill was found pending in Kendriya Vidyalaya Sangathan, Varanasi Division and Kendriya Vidyalaya Sangathan No.1, AFS, Gorakhpur. The respondent have further stated that as per their inquiry about the harassment allegations of the complainant, no proof of such allegations was found to be true. The respondent have further stated in the reply dated 06.08.2019 that the Principal, KVS, AFS Gorakhpur have also been instructed to be careful and sensitive while dealing with teachers and such type of issues.

7. The complainant after listening to the submission of the respondent stated that some of his medical claim bills are yet to be settled and the house in which he is living needed lots of repair for which he has been requesting KVC since July, 2018.

8. The Court observed that the complainant was extremely disturbed emotionally on account of his young daughter's demise and that he attributes her death due to severe financial crunch caused to him because of non-payment of his GPF claim etc. by the respondent in time and harassment on grounds of his disability.



9. The Court recommends that all medical claim bills of the complainant may be settled expeditiously and repairs of the government accommodation be carried out as per rules and regulations of KVC. Moreover, the respondents are advised to note that as per provisions of the Section 20(1) of the Rights of Persons with Disabilities Act, 2016, "*No Government establishment shall discriminate against any person with disability in any matter relating to employment*". The respondents shall strictly follow these provisions.

10. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11370/1023/2019

वादी श्री संजय पचौरी, 740, आलोक नगर, आधारताल
जबलपुर, मध्य प्रदेश - 482004
ई-मेल <yoyopachori.arpit@gmail.com>

प्रतिवादी प्रशासनिक अधिकारी, 4 तकनीकी प्रशिक्षण रेजिमेन्ट
1 सिग्नल प्रशिक्षण केन्द्र - 901124
ई-मेल <sureshkumarray@gmail.com>

वादी 45 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 09.08.2019 में कहना है कि यूनिट 4. टी.टी.आर. में उन्हें उच्च अधिकारी द्वारा परेशान किया जा रहा है तथा मेडीकल बिलों एवं मासिक वेतन का भुगतान नहीं किया गया। प्रार्थी ने निवेदन किया है कि उनका स्थानान्तरण 4. टी.टी.आर. से 1. एस.टी.सी. की यूनिट सिग्नल रिकॉर्ड में करवाया जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 19.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. प्रशासनिक अधिकारी, 4 तकनीकी प्रशिक्षण रेजिमेन्ट का अपने पत्र दिनांक 14.10.2019 में कहना है कि श्री संजय पचौरी की सेवा पुस्तिका के अवलोकन पर यह स्पष्ट हुआ है कि सिविलियन मोटर ड्राइवर संजय पचौरी की नियुक्ति अस्थिदिव्यांगता अथवा अन्य किसी भी दिव्यांगता के आधार पर नहीं बल्कि सामान्य श्रेणी में हुई है। वर्तमान में भी उक्त कर्मचारी द्वारा इस कार्यालय में ऐसा कोई प्रमाण पत्र प्रस्तुत नहीं किया गया है जिससे यह प्रमाणित हो सके कि संबंधित कर्मचारी को दिव्यांगता की श्रेणी अथवा इससे संबंधित लाभ दिया जा सके। प्रतिवादी का आगे कहना है कि कर्मचारी को उसके किसी भी संवैधानिक अधिकार से वंचित न रखा गया है और न रखा जाएगा।

4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 10.12.2019 में कहना है कि उन्हें लगातार मानसिक, आर्थिक रूप से प्रताड़ित किया जा रहा है

5. वादी कि शिकायत एवं प्रतिवादी के टिप्पण के मद्देनज़र, सुनवाई दिनांक 25.08.2020 सुनिश्चित की गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.08.2020. The following were present:

- Mr. Sanjay Pachori, the complainant.
- Col. S.K. Ray, on behalf of the respondent.

Observation/Recommendations:

6. Both the parties were heard.

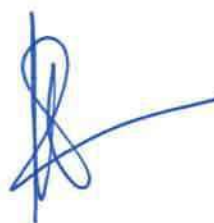
7. After going through the written submissions made by the complainant & the respondent and hearing the replies of both the parties, this Court directs as follows:

- (i) The disability certificate of the complainant issued on 14.05.2019 by S.G.D. Hospital, Jabalpur may be taken on record by the respondent and got published by them as per their office procedure.
- (ii) All the medical claims of the complainant may be settled at the earliest possibility.
- (iii) TDS certificate which is a very normal office procedure may also be issued to the complainant.
- (iv) Posting at a station of complainant's choice where he can work efficiently on long term basis may be given.

8. DoP&T instructions vide O.M. No.AB 14017/41/90-Estt (RR) dated 10.05.1990 & O.M. No.AB 14017/16/2002-Estt.(RR) dated 13.03.2002 may be referred too.

9. The respondent is further advised to note provisions of Section 20 of the Rights of Persons with Disabilities Act, 2016, which states as under:

- (1) *No Government establishment shall discriminate against any person with disability in any matter relating to employment;*



Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

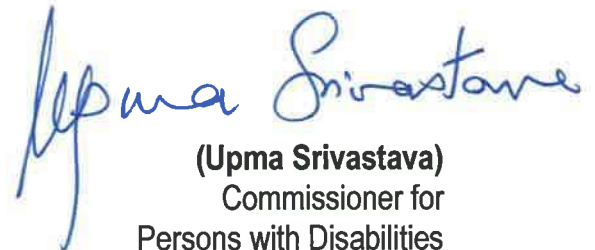
- (2) *Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.*
- (3) *No promotion shall be denied to a person merely on the ground of disability.*
- (4) *No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:*

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

- (5) *The appropriate Government may frame policies for posting and transfer of employees with disabilities.*

10. The Case is accordingly disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 11487/1021/2019

Complainant: Shri Anuj Bhardwaj, Flat No.002, Block H, Jaipura Sunrise Green, VIP Road, Zirakpur, Punjab.

Respondent : Industrial Development Bank of India, (Thru the Chairman & Managing Director), IDBI Tower, WTC Complex, Cuffe Parade, Mumbai – 400 005.

Gist of Complaint

Shri Anuj Bhardwaj joined IDBI Bank as Hindi cum English Typist on 15.05.1991 under PwD category. He was promoted to the post of Assistant Manager on 14.05.1999. Later on in 2007, he was promoted to Assistant General Manager. His ACRs were very good till date and his performance was exemplary. In 2011, he applied for the post of DGM but was not selected. The same thing happened in 2014 though his juniors were promoted. The interviews cum group discussions were conducted in years 2015, 2016, 2018 and 2019 and his juniors were promoted but he has been denied the promotion since last 8 years.

2. Chief General Manager (HR), IDBI Mumbai vide letter no.3380/2019-20 dated 01/11/2019 submitted that as there is no reservation in promotion within the Officer's cadre. As such there is no reservation roster for promotion within officer's cadre. As such Shri Bhardwaj has not been differentiated on being a person with disability; rather the promotion was carried out as per the extant promotion policy on merit basis.

3. The complainant vide his rejoinder dated 19/11/2019 has submitted that he has served the bank for more than 28 years. As per the complainant, the Respondent is taking the pretext of 'Selection Method' of the organization which changes as per the convenience of the Management. The Selection Method/Policy of the Bank is not prescribed/fixed and is also not transparent. It is based on the following:—

- APAR
- JAIIB/CAIIB
- Group Discussion
- Interview
- Mobility, and
- Disciplinary Attributes

Every year the complainant achieved all the parameters prescribed above but it seems in last six interviews/Group Discussions (8 years) the complainant is lacking in Points (c) and (d) only which is debatable. He further submitted that the marks given against Points (c) and (d) are never

....2/-

disclosed to the complainant and never a list of total marks of all the officers called for Group Discussion is published. The details of marks are never displayed anywhere in the bank which shows the non-transparent and malafide intentions of the Bank. The complainant has requested this Court to ask for the details of the following:

- (i) Marks of Group Discussion of all the candidates appeared from 2011 to 2019;
- (ii) Marks of Interview of all the candidates appeared from 2011 to 2019;
- (iii) Cut of marks of all the candidates appeared from 2011 to 2019;
- (iv) Minutes of the Selection Committee of all the candidates appeared from 2011 to 2019.

4. As per the complainant, the Respondent admitted that only four officers with disabilities were promoted during 2011-2019. The Complainant requested the Court to advise the Respondent to provide a list of all the four PwD candidates along with the marks and year of promotion.

Hearings: 24.06.2020 and 25.08.2020

5. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 24.06.2020. The following person was present on 24.06.2020:

1. Mr. Anuj Bhardwaj, Complainant

6. After hearing the complainant and going through the written submissions of the respondent and other documents available on record, this Court instructed IBDI Bank to submit the following information in terms of Section 77 of the Rights of Persons with Disabilities Act, 2016 within 02 weeks:

- (i) Marks of Group Discussion of all the candidates appeared from 2011 to 2019;
- (ii) Marks of Interview of all the candidates appeared from 2011 to 2019;
- (iii) Cut of marks of all the candidates appeared from 2011 to 2019;
- (iv) Minutes of the Selection Committee of all the candidates appeared from 2011 to 2019;
- (v) Number of employees with Disabilities so far promoted to the post of DGM.

7. The General Manager, IDBI vide letter no. HRD/426 dated 08.07.2020 submitted his reply as directed during the online hearing held on 24.06.2020. The matter was further rescheduled for hearing on 25.08.2020.

8. The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on 25.08.2020.

9. The following persons were present during the online hearing on 25.08.2020.

- 1) Mr. Anuj Bhardwaj, the complainant.
- 2) Mr. Manish Aind, Dy. General Manager, IDBI, on behalf of the respondent.

Both the parties were heard.



10. The complainant stated that he has been appearing for the Interview-cum-Group Discussion process for selection to the post of Dy. General Manager since 2011. He continued to appear till the year 2020, but has not been selected while his juniors have been promoted. The complainant expressed that he was not being promoted only on the grounds of his disability.

11. The respondent stated that as there was no reservation in promotion, all the candidates have to qualify the selection process and the complainant had not been able to do so till now.

12. The Court observed that the complainant has been appearing since last 10 years and has been meeting all the criteria of the selection method/policy of the Bank except for Group Discussion and Interview, which are two out of six criteria as specified by the Bank. The Court also noted that in the year 2020, the selection method involved only the Psychometric Test and Interview. The complainant scored 67% in the Psychometric Test but was again not selected for the Interview which was allegedly held for three minutes only .


13. From the facts observed in the matter, it indeed appears that there is a bias towards a candidate with disability and that too in this case to the extent of 80%disability.

14. The respondent has failed to take into consideration the fact that the complainant has been meeting all the other 4 criteria and his performance reports have been outstanding. The respondent has failed to recognize the efforts of a person with disabilities in successfully meeting these criteria consistently over a period of 10 years.

15. It is universally acknowledged that the selection method of interview is inherently subjective and no matter the efforts brought in to make it objective it is difficult to eliminate subjectivity and biases on personal decisions. Hence, in the year 2020 it should not/can not form the sole basis of rejection of promotion of an employee who has been working in the organisation since last 28 years and where he met all other criteria.

16. The Court noted that Department of Personnel and Training instructions in O.M. No.36035/3/2013-Estt.(Res) dated 31st March, 2014 provided that job specific post-recruitment as well as pre-promotion training programmes are required to be organized for the persons with disabilities. If an employee was not able to qualify merely the interview, the organisation should have provided some support to him in terms of pre-promotion training, so that he got equal opportunity at par with other candidates. The organization has failed in this respect also.

...4/-



17. The respondent has also failed to take note of Section 2(y) of the Rights of Persons with Disabilities Act, 2016 to provide "reasonable accommodation" to the complainant.

18. In view of the abovesaid, this court recommends that the complainant shall be promoted to the post of Dy. General Manager in the year 2020 and necessary orders to this effect shall be issued by the Respondent.

19. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 27.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 123/2141/2016/MC

Suo-motu

In the matter of non-implementation and/or violation of rules notified by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment with regard to severity scale defined in case of Hearing Impairment

Versus

Railway Board, Through: Secretary, Ministry of Railways, Rafi Marg, New Delhi-110001; Email: secyrb@rb.railnet.gov.in;

....Respondent

Gist of Complaint

This is the case of non-implementation and/or violation of rules notified by the Department of Empowerment of Persons with Disabilities (Divyangjan), MSJE, by the Indian Railways with regard to the severity scale defined for Hearing Impairment. As per the earlier Notification dated 13.06.2001 of DEPWD, a person having disability of 71-100% Hearing Impairment is treated a totally speech and hearing impairment. On the basis of that rules concession certificates for availing railway concessional tickets were being issued by the concerned doctors authorised by Railways. In the instant case, the victim Kumari Pooja Keswani was having 90% hearing impairment; and she was having a concession certificate to avail Railways' concessional ticket. In spite of that she had been penalised with a fine of Rs.1238/- by the TTE; and the Railway

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Board had justified the same. Thus, the authorities of Indian Railways had not implemented/violated the rules and discriminated the legitimate rights of a person with hearing impairment.

3. Also, as per the current rules in vogue dated 04.01.2018 issued by DEPWD after the implementation of RPWD Act, 2016, the evaluated percentage for being "Deaf" is 70DB i.e. 57.1%. Accordingly, the authorities of Indian Railway had no right to discriminate the legitimate right of a person with hearing impairment having 90% of disability for availing concessional ticket, in accordance with their Tariff No.26 Part-I (Vol.II) where concession is admissible to completely Blind persons, Deaf and Dumb persons (both afflictions together in the same person).

4. In case of Visual Impairment, the percentage has been evaluated at 90% and above for being "blind". Accordingly, a person having 90% and above visual disability is eligible to get the benefit of fare concession in rail journey.

5. The provisions of the RPWD Act, 2016 and the Rules thereunder are not being implemented in true spirit and/or being violated by the authorities of Indian Railways.

Hearing: The case was scheduled for hearing via Video Conferencing by Commissioner for Persons with Disabilities on 28.08.2020. None appeared on behalf of the respondent.

Observation/Recommendations:

This matter is particularly related to persons with deafness. However, it seems that Railways have not modified its policy



relating to providing concession in railway fare to persons with disabilities in terms of the provisions of RPwD Act, 2016 and the 'Guidelines for Evaluation and Certification of Disabilities' issued by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment on 05.01.2018. It is recommended that a Committee may be formed immediately by Indian Railways to modify its concession policy in the light of RPwD Act, 2016 and the 'Guidelines for Evaluation and Certification of Disabilities'.

2. Accordingly the case is disposed of.

Dated: 01.09.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 9265/1103/2018

Complainant:

Shri Varun Shukla, Email: varunss2211@gmail.com

....Complainant

Respondent:

Railway Board, Through: Secretary, Ministry of Railways, Rafi Marg, New Delhi-110001; Email: secyrb@rb.railnet.gov.in;

....Respondent

Gist of Complaint

The complainant had filed a case to provide concessions in railway fare to different categories of persons with disabilities as specified in the Rights of Persons with Disabilities Act, 2016 (RPWD Act, 2016).

2. On taking up the matter, Railway Board vide letter dated 15.06.2018 had inter-alia submitted that "The financial burden of grant of concessions is borne by the Railways themselves and not reimbursed by any agency including Ministry of Social Justice and Empowerment. Railways grant concession to only four categories of disabled persons i.e.

1. Orthopaedically Handicapped/Paraplegic persons who cannot travel without an escort – when travelling alone or with an escort;
2. Mentally retarded persons who cannot travel without an escort – when travelling alone or with an escort;
3. Person with Visual Impairment with total absence of sight – when travelling alone or with an escort; and

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4. .Person with Hearing and Speech Impairment totally (Both afflictions together in the same person) – when travelling alone or with an escort.”

Railway Board further submitted that “The total revenue foregone due to concession being given to various categories of passengers in passenger fare is approximately Rs.1670/- Crore for the year 2016-17 on which revenue foregone due to concession being given to Divyang passenger is Rs.109 Crore. The same is increasing year after year. The mandate for welfare of persons with disabilities is given to Ministry of Social Justice and Empowerment. Hence, the cost of revenue to be foregone due to concession to be given to persons with disability should be borne by Ministry of Social Justice and Empowerment. At present, the entire concessional amount on account of the concessions is being borne by the Railways. At present, there is no such proposal to extend the concession to the other categories of persons with disabilities as per the Rights of Persons with Disabilities Act, 2016.”

Hearing: A hearing was scheduled via Video Conferencing by Commissioner for Persons with Disabilities on 28.08.2020. The following were present:

1. Shri Varun Shukla, the complainant
2. Shri Jagdish Prasad, Dy. Chief Commercial Manager, Central Railway, on behalf of respondent

Observation/Recommendations:

Both the parties were heard.

2. It seems that Railways have not modified its policy relating to providing concession in railway fare for persons with disabilities in terms of the provisions of RPwD Act, 2016 and the ‘Guidelines for Evaluation and Certification of Disabilities’ issued by the Department of



Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment on 05.01.2018. It is recommended that a Committee may be formed immediately by Indian Railways to modify its concession policy in the light of RPwD Act, 2016 and the 'Guidelines for Evaluation and Certification of Disabilities' keeping in view the severity and functional limitations of all 21 disabilities as scheduled in RPWD Act, 2016.

3. The case is accordingly disposed of.

Dated: 01.09.2020



(Upma Srivastava)
Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 9331/1013/2018

Complainant: Shri Abhishek Dineshpratap Monas, Flat No. C -3, Raj Vihar Building, Balajinagar, Dhankawadi, Pune – 411043
E-mail: <isabhiraj@gmail.com>

Respondent: The General Manager, State Bank of India, Atlanta Building, 3rd Floor, Nariman Point, Mumbai – 400021
E-mail: <crpd@sbi.co.in><gm.crpd@sbi.co.in>

Complainant: 75% visual impairment

GIST of the Complaint:

Complainant in his complaint dated **30.01.2018** submitted that in the year 2016, he had appeared for the SBI PO 2016 examination and could not clear MAINS level as he got 0.25 marks in General Awareness and the sectional cut off was 10 so could not clear the exam in spite of scoring 89 and cut off was 60. He further submitted that in 2017, SBI waved out the sectional cut off and his final total score was 45.49 and required cut off was 46.11 for final selection. He alleged that if such huge changes had to be made by the Authority, then they should have brought this news in public domain prior to the examination.

2. The matter was taken up with the Respondent vide letter dated **31.05.2018** under Section 75 of the RPwD Act, 2016.

3. In response, General Manager, State Bank of India, Mumbai vide letter dated **06.07.2018** submitted that the issue raised by the complainant is that the sectional cut off in the Main Exam held on 04.06.2017 for recruitment of PO was arbitrarily waived off by the Bank without notice to the applicants and that the waive off was against selection criteria detailed in the recruitment advertisement. The waiver of the separate 'minimum qualifying marks' in each of the individual 04 sections was bona fide decision taken at the highest level of the bank in the common interest of all the candidates across-the-board, without any discrimination, in the exigency of the situation and in good faith, after due deliberations and analysis of the data, and not arbitrarily.

4. He further submitted that the issue of waiver of sectional cut-off was also brought before Hon'ble High Court at Delhi vide W.P. No. 11598/2017. The Court dismissed the writ petition thereby upholding the stand of the Bank. The appellants have now filed an LPA which is under consideration of the Hon'ble Court. Another W.P. No. 1243/2018, questioning the Bank's decision of waiver of sectional cut-off, filed before Hon'ble Delhi High Court was also dismissed by the Court in default.

5. Complainant vide rejoinder dated **30.04.2019** inter-alia submitted that both the exams i.e. 2016 and 2017 were to have same set of rules.

6. After considering the respondent's reply and the complainant's letter, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.08.2020**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.08.2020**. The following were present:

- Mr. Abhishek Dineshpratap Monas, the complainant.
- Mr. Gowri Sankar, DGM, SBI, Corporate Office, on behalf of the respondent

Observation/Recommendations:

7. Both the parties were heard.

8. The Court observes that any establishment has the right to change the selection process of recruitment if done without causing any discrimination and based on due diligence and stakeholder consultation. As such, the decision of the respondent to change the selection criteria for all the candidates is in order.

9. In view of the above, the case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 01.09.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 9351/1011/2018

Complainant: Shri Aman Sharma
S/o OM Swaroop Sharma, Vill.-Sambari, Post – Mundkar
Teh. –Bhoranj, Distt. – Hamirpur, H.P.
e-mail: <amanshrm50@gmail.com>

Respondent: The Chief Manager (Recruitment), State Bank of India, HR
Department, 13th Floor, Local Head Office, 11, Sansad Marg, New
Delhi – 110001
e-mail: <crpd@sbi.co.in> <gm.crpd@sbi.co.in>

The Secretary, Department of Personnel & Training Ministry of
Personnel, Public Grievance & Pensions, North Block, New Delhi
e-mail: <asestt-dopt@gov.in><debabrata.d13@nic.in>

The Secretary, Department of Empowerment of Persons with
Disabilities (Divyangjan), 5th Floor, Pt. Deendayal Antyodaya
Bhawan, CGO Complex, Lodhi Road, New Delhi
e-mail: <secretaryda-msje@nic.in>

Complainant: 55% mental retardation/illness

GIST of the Complaint:

Complainant vide e-mail dated **01.02.2018** submitted that State Bank of India had not provided 1% reservation to categories of PwDs as per clause (d) and (e) under Section 34 (1) of RPwD Act, 2016 while advertising recruitment notification for the post of Jr. Associates.

2. The matter was taken up with the Respondent vide letter dated **08.06.2018** under Section 75 of the RPwD Act, 2016.

3. In response, Chief General Manager (HR), State Bank of India vide letter dated **03.08.2018** inter-alia submitted that categorization of posts for PwDs as per clause (d) and (e) under Section 34 (1) of RPwD Act, 2016 is to be done by an Expert Committee constituted by the M/oSJ&E. Suitability of various posts for persons with Benchmark examined by Central Govt. Public Sector Undertaking and Public Sector Banks will be examined by the Expert Committee. Suggestions/information sought from the Bank, in this regard had already been sent to GOI. He further submitted that Bank had implemented 4% reservation in direct recruitment including Jr. Associates to differently abled persons in existing identified posts. If a post was identified suitable only for one category of benchmark disability, total reservation of 4% was given to that benchmark disability for which it was identified. Likewise, in case the post was identified suitable for two or more categories of benchmark disabilities, reservation was distributed among persons with those categories of disabilities equally as far as possible.

4. After considering the respondent's reply and the complainant's letter, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **07.12.2018**.

5. During the hearing, the complainant reiterated his written complaint. The representative of the respondent informed that the Bank has implemented 4% reservation in direct recruitment including Jr. Associates to differently abled persons in the existing identified posts and they had taken guidance from point No. 05 of OM No. 36035/02/2017-Estt. (Res) dated 20.06.2017 in terms of which *"if a post is identified suitable only for one category of benchmark disability, reservation in that post shall be given to that category of persons with that benchmark disability only. Reservation of 4% shall not be reduced in such cases and total reservation in the post will be given to persons suffering from that benchmark disability for which it has been identified. Likewise, in case the post is identified suitable for two or more categories of benchmark disabilities, reservation shall be distributed between persons with those categories of benchmark disabilities equally as far as possible."* After hearing the both parties, this court decided to take opinion from the Department of Personnel and Training and Department of Empowerment of Persons with Disabilities in this matter. But despite reminder dated 12.02.2020, no response had been received.



Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.08.2020. The following were present:

- Mr. Aman Sharma, the complainant.
- Mr. Gowri Sankar, DGM, SBI, Corporate Office, on behalf of the State Bank of India.
- Mr. K.V.S. Rao, Director, on behalf of Department of Empowerment of Persons with Disabilities (DEPwD), Govt. of India

Observation/Recommendations:

6. The complainant informed that he was discriminated in being appointing as per clause (d) & (d) of Section 34(1) of the Rights of Persons with Disabilities Act, 2016. He stated that the respondent did not selected him for appointment as he was suffering from Schizophrenia and no post in State Bank of India is identified for considering such disability.

7. The respondent informed that at the time of consideration of the complainant's matter, indeed no post had been identified in SBI for such categories of disability. However, from 2019, the establishment has taken necessary action and has identified posts for such disabilities. The respondent from DEPwD was also informed that they had issued advisory to all the establishments in December, 2018 followed by reminders in May, 2019 and August, 2020 that pending notification of identification of posts by the Govt. of India they can identify posts for these categories on their own. He further informed that such notification shall be issued in furtherance of the Hon'ble Supreme Court's directions by October, 2020.

8. Noting that at the time of consideration, the case of the complainant's applicability of the Rights of Persons with Disabilities Act, 2016 w.e.f. 2019 in SBI, there is now further intervention which this Court can make. The complainant was also informed that as per DoP&T's O.M. No.36035/3/2004-Estt(Res) dated 29th December, 2005 para 21 states as under:

21. RELAXATION IN AGE LIMIT:

- (i) *Upper age limit for persons with disabilities shall be relaxable (a) by ten years (15 years for SCs/STs and 13 years for OBCs) in case of direct recruitment to*

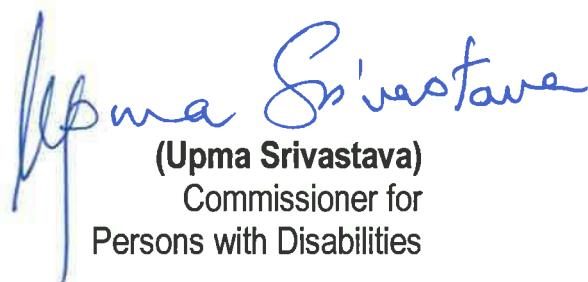


Group 'C' and Group 'D' posts; (b) by 5 years (10 years for SCs/STs and 8 years for OBCs) in case of direct recruitment to Group 'A' and Group 'B' posts where recruitment is made otherwise than through open competitive examination; and (c) by 10 years (15 years for SCs/STs and 13 years for OBCs) in case of direct recruitment to Group A and Group B posts through open competitive examination.

- (ii) *Relxation in age limit shall be applicable irrespective of the fact whether the post is reserved or not, provided the post is identified suitable for persons with disabilities."*

9. However, the complainant is advised to apply further, as & when such vacancy arise and advertised, keeping in view of the age relaxation provided as above.

10. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 01.09.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 9647/1013/2018

Complainant: Dr. N. Srinivasa Ragavan MD, S/o Late N.P. Nagarajan
E-mail: <ragavan@gmail.com>

Respondent: ESIC Medical College & PGIMSR
Through the Dean
Ashok Pillar Road, K.K.Nagar, Chennai-600078
E-mail: <deanmc-kkn.tn@esic.nic.in>

Employees' State Insurance Corporation
Through the Director General
Panchdeep Bhawan, Comrade Inderjeet Gupt
CIG Marg, New Delhi – 110002
E-mail: <jd-admin2a@esic.in><med6-hq@esic.in>

Complainant: 60% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **11.04.2018** submitted that he is 53 years old and currently working as Professor (Forensic Medicine) on contract basis in ESIC Medical College and PGIMSR, Chennai since 23.05.2015. He further submitted that ESI Corporation by its Advertisement dated 30.09.2015 had called for applications to fill up teaching faculties on regular basis in their various Medical Colleges and Research Institutions and he was selected on second number. He further submitted that the selected candidate has not joined duty in spite of several reminders therefore, he should have been issued the appointment orders as he was the next waitlisted candidate and have also qualified in the interview but ESI corporation has stated that the post of Professor (Forensic Medicine) is not an identified post for person with disability under Direct Recruitment quota in Group 'A' teaching faculties in ESIC and also he is over aged for the post.

2. The matter was taken up with the Respondent vide letter dated **26.06.2018** under Section 75 of the RPwD Act, 2016.

3. In response, Dean, ESIC Medical College & PGIMSR, Chennai vide letter dated **26.09.2018** inter-alia submitted that complainant had filed a W.P. No. 41083/2017 before the Hon'ble High Court of Madras to quash the selection list dated 21.09.2016 and appointing him against the post of Professor, Forensic Medicine called for vide advertisement dated 04.03.2014.

4. Complainant vide rejoinder dated **09.11.2018** inter-alia submitted that the referred writ petition is on a completely different premise and relates to the recruitment process done in the year 2014 for which final order were awaited.

5. After considering the respondent's reply and the complainant's letter, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.08.2020**.

6. ESIC Medical College & PGIMSR, Chennai vide e-mail dated 27.08.2020 informed that Dr. N. Srinivasa Ragavan expired on 02.05.2020. The Case is closed.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 28.08.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 9684/1103/2018

वादी श्री हरिओम मलिक, मकान नं: 112, गली नं: 06, बी-ब्लॉक,
हिमगिरी एंक्लेव, संत नगर, पेप्सी रोड, बुराड़ी, दिल्ली - 110084
ई-मेल: <hariommalik77@gmail.com>

प्रतिवादी वरिष्ठ मंडल वाणिज्य प्रबंधक, कार्यालय वरिष्ठ मंडल वाणिज्य प्रबंधक,
उत्तर रेलवे, ईस्टेट एन्ट्री रोड, नई दिल्ली - 110055
ई-मेल: <secyrb@pb.railnet.gov.in> <eden@rb.railnet.gov.in>

वादी 50 प्रतिशत अस्थिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उन्होंने दिनांक 01.09.2017 को उत्तर रेलवे को ई टिकटिंग कार्ड बनाने के लिए सभी दस्तावेज जमा कराये। परन्तु दो महीने बाद पता करने पर मालूम हुआ कि प्रार्थी का रियायती प्रमाण पत्र बुलंदशहर के अस्पताल से बना हुआ है जो मुरादाबाद मंडल के अधीन आता है इसलिए उत्तर रेलवे द्वारा संबंधित अस्पताल से सत्यापित करने के पश्चात् ही ई टिकटिंग कार्ड जारी किया जायेगा।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 25.05.2018 द्वारा प्रतिवादी के साथ उठाया गया।

3. मंडल वाणिज्य प्रबंधक, उत्तर रेलवे का अपने पत्र दिनांक 14.6.2018 में कहना था कि प्रार्थी का रियायती प्रमाण पत्र मुरादाबाद मंडल के पास सत्यापन हेतु भेजा गया व अनुस्मारक दिनांक 06.09.2017, 08.11.2017 एवं 05.07.2018 भी भेजे गये हैं जैसे ही प्रार्थी का रियायती प्रमाण का सत्यापन प्राप्त होगा ई टिकटिंग कार्ड बनाकर फोन द्वारा सूचित कर दिया जायेगा।

4. प्रार्थी ने ई-मेल दिनांक 17.08.2020 द्वारा अवगत करवाया है कि अभी तक उनका कार्ड नहीं बना है।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.08.2020. The following were present:


- Mr. Hariom Malik, the complainant.
- None for the respondent.

Observation/Recommendations:

5. The Court observes that this matter has been pending due to inaction on the part of the respondent since 2017. The complainant has been requesting for issue of Railway Concessional Certificate based on his disability certificate. He had applied on 01.09.2017 to the Office of the DRM Commercial Manager, New Delhi. As per the list of the Northern Railway, they have been writing to the Senior Divisional Commercial Manager, Moradabad Division with the request to verify the request of the complainant of Railway Concessional Certificate. The Northern Railway has written many letters beginning from 2017 and till April, 2019. However, as informed by the complainant, no redressal to the genuine grievance of the complainant has been done.

6. This Court noted with extreme disappointment that the Railway Board is not able to respond to the request of a person with disability despite the lapse of three years. There own subordinate office is not responding in the matter and apart from reminders, no action has been taken by the Railway Board. This Court directs the respondent that necessary verification may be got conducted by the Office of Senior Divisional Commercial Manager, Moradabad Division and Railway Concessional Certificate may be issued to the complainant as per rules within a period of one month from the date of receipt of this order. A Compliance Report may be sent to this Court within 90 days of receipt of this order.

7. The case is disposed of.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 01.09.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 9696/1014/2018

वादी

श्री अजय हसमुखभाई पट्टनी, 322-ए, रेलवे क्वार्टर, बालाश्रम के पास, भावनगर परा, भावनगर — 364003
ई-मेल: <ajaypattani11@gmail.com>

प्रतिवादी

सचिव, कर्मचारी चयन बोर्ड, संघ प्रदेश दमण एवं दीप प्रशासन, फोर्ट एरिया, मोटी दमण — 396220
ई-मेल: <secretary-ssb-dd@gov.in>

वादी

75 प्रतिशत दृष्टिबाधित

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उन्होंने कर्मचारी चयन बोर्ड, दमन एवं दीव तथा दादरा एवं नगर हवेली द्वारा जारी दिनांक 28.08.2017 के विज्ञापन में लोअर डिवीजन क्लर्क के लिए दिव्यांगों की श्रेणी में नियमानुसार अर्जी फॉर्म भर दिया था एवं दिनांक 18.01.2018 को मुंबई के सेंटर में ओनलाइन परीक्षा देने के लिए कॉल लेटर भिला था परन्तु दिनांक 13.01.2018 को प्रार्थी को दमन सचिवालय में टाइपिंग टेस्ट के लिए फोन कर के बुलाया गया। प्रार्थी का आगे कहना है कि उनके आवेदन पत्र दिनांक 21.01.2018 के संदर्भ में एस.एस.सी ने उनको सूचित किया कि कर्मचारी चयन बोर्ड दमण एवं दीव द्वारा निम्न श्रेणी लिपिक की चयन प्रक्रिया के अंतर्गत प्रार्थी के दिव्यांग प्रमाण पत्र के अनुसार वह 75 प्रतिशत दृष्टिहीनता के आधार पर उनकी अनुकूलता के लिए दिनांक 13.1.2018 को सचिवालय, दमण में टंकण परीक्षा के लिए आह्वान किया था क्योंकि मुंबई केन्द्र में दृष्टिहीन उम्मीदवार के लिए सुविधा उपलब्ध नहीं थी टंकण समिति के निगरानी में दिनांक 13.01.2018 को सचिवालय, दमण में प्रार्थी की कौशल परीक्षा ली गई जिसमें वह असफल रहा।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 16.08.2018 द्वारा प्रतिवादी के साथ उठाया गया।

3. Dy. Secretary (SSB), UT Administration of Daman & Diu vide letter dated 28.09.2018 inter-alia submitted that Staff Selection Board, Daman & Diu had advertised the post of LDC

vide Advertisement dated 28.08.2017. In the advertisement, three vacancies were advertised for persons with disabilities and online applications were called in this regard. Total 30 divyangjan applied for the advertised posts including 02 blind/low vision candidates. In the present case Shri Ajay Hasamukhbhai Pattani, who is a divyangjan (Blind/Low vision) applied for the post of Lower Division Clerk in UT of Daman & Diu. The candidate/applicant is right in stating that he was allotted Mumbai centre for typing test and computer based MCQ examination. However, later it was decided to conduct typing test at Secretariat, Moti Daman to provide all required facilities to divyangjans. The applicant was called along with other candidates on dated 01/2018 and a typing test was conducted. Point 6 (d) of the call letter clearly mentions that Divyangjans of Blind and low vision category should bring along a scribe/reader/assistant with them for the computer based MCQ examination. The candidate did not bring any scribe/reader/assistant. Still during the typing test facilities of audio, reader/scribe/assistant was offered to the candidates but he declined the offer. In the typing test the applicant could not qualify. The applicant was informed telephonically that he had been disqualified in the skill test and cannot appear for the MCQ examination. His contention that his signature was taken on the plain paper is completely wrong. The signature was taken only on the attendance sheet and skill/typing test print out.

4. प्रति उत्तर में प्रार्थी का कहना है कि कर्मचारी चयन बोर्ड ने उनकी ओफलाइन टायपिंग टेस्ट दिनांक 13.01.2018 को दमन में एम.एस.वर्ड सॉफ्टवेयर में ली गई। इस सॉफ्टवेयर में कोई भी लिखे को भिटा सकते हैं तथा किसी भी प्रकार की छेड़ छाड़ हो सकती है। जो टेस्ट की प्रिंट की कॉपी प्रार्थी को भेजी गई उसमें प्रार्थी के हस्ताक्षर टेस्ट पूरी होने के 03 मिनट बाद लिए गए थे इन 03 मिनट के अंदर टायपिंग टेस्ट में छेड़छाड़ करने के बाद प्रिंट निकाल के हस्ताक्षर लिए गए हैं उसमें अधिकारी के हस्ताक्षर हैं। मगर कोई भी अधिकारी का नाम और मुहूर नहीं लगी हुई कर्मचारी बोर्ड से जो फर्जी रजिस्टर प्राप्त हुआ है जो एम.एस.वर्ड सॉफ्टवेयर में बनाया गया है इसमें प्रार्थी के हस्ताक्षर लिए गए थे।

5. वादी कि शिकायत एवं प्रतिवादी के टिप्पण के मददेनज़र, सुनवाई दिनांक 31.07.2019 को सुनिश्चित की गई। सुनवाई के दिन, वादी की ओर से उपस्थित अधिवक्ता ने निम्नलिखित तर्क रखे: (1) दृष्टिबाधित व्यक्तियों के लिए अलग से टाईपिंग टेस्ट का प्रावधान क्यों नहीं रखा गया? (2) MS Word में टेस्ट क्यों लिया गया? (3) Skill Test का परिणाम कब सूचित किया? (4) आरक्षित पद को भरने के लिए क्या कदम उठाए? (5) category wise reservation क्यों नहीं दिया गया?

6. प्रतिवादी द्वारा प्राप्त टिप्पण/जवाब दिनांक 30.10.2019 उपरोक्त तर्क के साथ उपयुक्त नहीं पाये गये इसलिए सुनवाई दिनांक 28.08.2020 को सुनिश्चित की गई।

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.08.2020**. The following were present:

- Mr. Santosh Kumar Rungta, Advocate for the complainant.
- Mr. Prashant Singh, Advocate for the respondent.

Observation/Recommendations:

7. Both the parties were heard.

8. The Court noted that in the last hearing held on 31.07.2019, following points were raised by the complainant:

- Why there is no separate provision for typing test for persons with visual impairment?
- Why was the test not taken in MS Word?
- When was the result of skill test published?
- What actions were taken to fill up the reserved vacancies?
- Why was the category-wise reservation not given?

9. A reply to these queries was received in December, 2019 from the respondent.

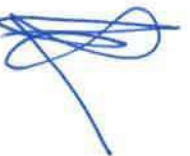
10. After going through the written submission of the respondent and the hearing today the 28.08.2020, this Court notes that there are specific directions for taking examination as per Guidelines for conducting written examination for Persons with Benchmark Disabilities issued by Department of Empowerment of Persons with Disabilities (Divyangjan), Govt. of India vide O.M. No.34-02/2015-DD-III dated 29th August, 2018, and Clause XIII & XV of the guidelines provides as under:

"Clause XIII. The candidates should be allowed to use assistive devices like talking calculator (in cases where calculators are allowed for giving exams), tailor frame, Braille slate, abacus, geometry kit, Braille measuring tape and augmentative communication devices like communication chart and electronic devices."



“Clause XV. As far as possible, the examining body should also provide reading material in Braille or E-Text or on computers having suitable screen reading software for open book examination. Similarly online examination should be 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.”

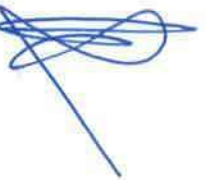
11. The Court further noted that in the advertisement issued by the respondent, it was not categorically mentioned for the three, which were reserved for physically handicapped persons against the post of Lower Division Clerk/Student Section Clerk/Hostel Rector/LDC-cum-Cashier were for which category of disability. **This position is stated in the Rule 11 (Computation of Vacancies), of the Rights of Persons with Disabilities Rules, 2017 as per which,** “(1) For the purposes of computation of vacancies, four percent of the total number of vacancies including vacancies arising in the identified and non-identified posts in the cadre strength in each group of posts shall be taken into account by the appropriate Government for the persons with benchmark disabilities: Provided that the reservation in promotion shall be in accordance with the instructions issued by the appropriate Government from time to time. (2) Every Government establishment shall maintain a vacancy based roster for the purpose of calculation of vacancies for persons with benchmark disabilities in the cadre strength as per the instructions issued by the appropriate Government from time to time. (3) While making advertisement to fill up vacancies, every Government establishment shall indicate the number of vacancies reserved for each class of persons with benchmark disabilities in accordance with the provisions of section 34 of the Act. (4) The reservation for persons with disabilities in accordance with the provisions of section 34 of the Act shall be horizontal and the vacancies for persons with benchmark disabilities shall be maintained as a separate class”, and as also in **Clause No.13 (Computation of Reservation), of the DoP&T's O.M. No.36035/3/2004-Estt(Res) dated 29th December, 2005**, “Reservation for persons with disabilities in case of Group C and Group D posts shall be computed on the basis of total number of vacancies occurring in all Group C or Group D posts, as the case may be, in the establishment, although the recruitment of the persons with disabilities would only be in the



posts identified suitable for them. The number of vacancies to be reserved for the persons with disabilities in case of direct recruitment to Group 'C' posts in an establishment shall be computed by taking into account the total number of vacancies arising in Group 'C' posts for being filled by direct recruitment in a recruitment year both in the identified and non-identified posts under the establishment. The same procedure shall apply for Group 'D' posts. Similarly, all vacancies in promotion quota shall be taken into account while computing reservation in promotion in Group 'C' and Group 'D' posts. Since reservation is limited to identified posts only and number of vacancies reserved is computed on the basis of total vacancies (in identified posts as well as unidentified posts), it is possible that number of persons appointed by reservation in an identified post may exceed 3 per cent. 14. Reservation for persons with disabilities in Group 'A' posts shall be computed on the basis of vacancies occurring in direct recruitment quota in all the identified Group 'A' posts in the establishment. The same method of computation applies for Group 'B' posts."

12. Since this fact was not mentioned in the advertisement, the reply of the respondent was not that the post was not reserved for visually impaired and only reserved for physically handicapped OH candidates is unacceptable. Moreover, the aforementioned guidelines, which are suppose to be strictly followed by the respondent for visually impaired persons have not been followed. Such matter's strict compliance of the Guidelines for conducting written examination for Persons with Benchmark Disabilities is a must and no other methodology can substituted.

13. The respondent further stated that they have not been able to fill the vacancies which were advertised through this advertisement in 2017. It is a set of affairs that despite the availability of PH candidates, this is an established case of their failure in preparing the reservation roster and competency to conduct examinations accessible for persons with disabilities, therefore, so many candidates are deprived of employment.



14. This Court recommends that the respondent may give a fresh opportunity to the complainant to appear for the skill test providing all the accessibility features and software strictly in terms of the O.M. No.34-02/2015-DD-III dated 29th August, 2018 – Guidelines for conducting written examination for Persons with Benchmark Disabilities, issued by Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment, Govt. of India, and Staff Selection Commission's Scheme of Skill Test for VH candidates (including blind and partially blind persons) with visual disability of forty percent and above (copy enclosed) and appoint him in the event of successful completion of test.

15. The Case is accordingly disposed off.


(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 01.09.2020



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No.10444/1013/2018 and 10445/1121/2018

Complainant:

Shri Gaurav Gautam, S/o Shri Bal Krishan, R/o H.No.40, Ambedkar Colony, Gali No.2, Khera Khurd, Delhi-110082;

Email: gauravgautam8445@gmail.com;

through Dr. Dinesh Rattan Bhardwaj, Solicitor & AOR, Supreme Court of India, 308, C.K. Daphtary, Supreme Court of India, New Delhi-110001;

Email: dineshbhardwaj1@gmail.com

Respondent:

Railway Recruitment Cell (RRC), Northern Railway, through its Chairman, Lajpat Nagar-1, New Delhi-110024; Email:

chairmanrrcnrlpnr@gmail.com;

....Respondent No.1

Dr. Rajendra Prasad Centre for Ophthalmic Sciences, All India Institute of Medical Sciences, Ansari Nagar, New Delhi-110029; through: Medical Superintendent; Email: ps.chiefrpc@gmail.com; Phones: 26588500, 26588700, 26589900

....Respondent No.2

Gist of Complaint

Dr. Dinesh Rattan Bhardwaj, Solicitor & AOR, Supreme Court of India, filed a complaint regarding denial of appointment of Shri Gaurav Gautam, a person with 40% visual impairment, to Group 'D' post under persons with disability (VI) category despite having 40% visual impairment re-examined and certified by AIIMS Delhi vide Disability Certificate No.629/15 dated 23.07.2015. Shri Gaurav Gautam had appeared in the recruitment exam got conducted by Railway Recruitment Cell (RRC), Delhi on 23.02.2016 under Special Recruitment Drive for Persons with Disabilities. He scored 77.10 marks against the cut off 69.67 and had been declared passed.

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2. The matter was taken up with the Railway Board; and RRC, Northern Railway, Delhi.

3. The respondents filed their reply dated 05.03.2019 and submitted that the candidate had appeared for medical examination to Divisional Hospital, Delhi on 23.06.2016. On examination, as the diagnosis did not correlate to the Disability Certificated by RPC/AIIMS, a letter was sent on 24.08.2016 to RPC/AIIMS for Re-Assessment. No fresh Disability Certificate from RPC/AIIMS was received to the respondent by 29.05.2018. As per letter dated 08.05.2018 of RRC, his case was re-examined in Divisional Hospital, Delhi on 29.05.2018 by a Medical Board consisting of 02 Eye Surgeon and 01 Senior Doctor. As per Medical Board examination his vision again in Right Eye was PI Negative and Left Eye was 6/36 without Glasses and 6.2 with glasses (-0.75 D). On Fundus Examination Right Eye-MYOPIC DISC with TEMPORAL CRESANT with PIGMENTORY changes while Left Eye-Normal. Hence he was declared unfit under PwD (VI) category due to less than 40% disability.

4. The complainant filed his rejoinder dated 05.07.2019 and had denied that any re-medical examination of complainant was conducted at CMS/DLI by the respondent. The complainant alleged that he was forced to sign certain blank papers/documents as they were desirous to declare the complainant unfit for the post and it was only mockery in the name of re-examination.

Hearing: The case was scheduled for hearing via Video Conferencing by Commissioner for Persons with Disabilities on 28.08.2020.

Observation/Recommendations:

On 27.08.2020, the complainant through email submitted that he did not want to pursue this matter and requested to withdraw his case.

2. Accordingly, hearing scheduled in this case is cancelled and the case is closed.

Dated: 27.08.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities