



Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case Number No. 10052/1101/2018

R-23534

### Complainant:

Dr. Nitesh Kumar Tripathi, R/o House No.241, Gali No.11,  
B-Block, Sant Nagar, Burari, Delhi-110084;  
Email: [niteshtripathi85@gmail.com](mailto:niteshtripathi85@gmail.com);

R-23535

### Respondent:

The Secretary, Department of Posts, Ministry of Communication, Dak Bhawan,  
New Delhi-11001; Email: [secretary-posts@indiapost.gov.in](mailto:secretary-posts@indiapost.gov.in)

### Gist of Complaint

The complainant, a person with 65% locomotor disability (lower limbs - crutch user), had filed a complaint under the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] regarding not providing accessible postal services at public place to persons with disabilities under ambit of RPwD Act, 2016 at 24 hrs Speed Post Booking Centre, Bhai Veer Singh Marg, Gol Market, New Delhi. The complainant alleged to have no proper arrangement of Hand Rails, Braille Enabled Sign Boards, Disabled Friendly Parking, Lift etc. There was no proper arrangement for access to the basic amenities as meant for persons with disabilities especially for women with disabilities.

2. Sections 40, 42, 44, 45 and 46 of the RPwD Act, 2016, provide as under:

“40. The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.”

“42. The appropriate Government shall take measures to ensure that,—

Page 1 of 3





(i) all contents available in audio, print and electronic media are in accessible format;

(ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;

(iii) electronic goods and equipment which are meant for every day use are available in universal design."

"44. (1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government."

"45. (1) All existing public buildings shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules:

Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters.

(2) The appropriate Government and the local authorities shall formulate and publish an action plan based on prioritisation, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops."

"46. The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules."

3. In view of the above, the matter was taken up with the respondent on 20.09.2018 for submission of comment.

4. Office of the Chief Postmaster General, Delhi Circle filed their reply dated 19.11.2018 and submitted that Civil Wing had been addressed for furnishing estimates for the provision of works mentioned by the complainant and the same would be provided in a time bound manner. Vide letter dated



25.10.2019, it was further intimated with photograph that a ramp at Speed Post Center, Bhai Veer Singh Marge, New Delhi has been made.


5. The complainant in his rejoinder dated 15.09.2020 raised his objection to the reply filed by Chief Postmaster General, Delhi and pointed out that the time limit of 2 years for making the building premises accessible as per Section 40 to Section 46, has been over and there is need of prompt action for compliance of the provisions made under these Sections of RPWD Act, 2016.

**Observation/Recommendations:**

To achieve accessibility at the Built Environment; Transportation and Information; and Communication Eco-System etc., the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, Government of India has launched a nationwide campaign under 'Accessible India Campaign' – 'Sugamya Bharat Abhiyan' for the persons with disabilities and reduced mobility. Respondent is advised to consider making Speed Post Booking Centre, Bhai Veer Singh Marg, Gol Market, New Delhi accessible in terms of the provisions made under Sections 40 to Section 46 of the RPWD Act, 2016 read with the Rules 15 and 16 of the Rights of Persons with Disabilities Rules, 2017.

2. Accordingly the case is disposed off.

Dated: 05.10.2020

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities







सत्यमेव जयते

Ext 24

# न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 274/1028/11-12

Complainant : Shri P.V.S. Stalin Babu, Plot No.164, NGGO's Colony, Pattabhi Ramireddy Gardens, Visakhapatnam - 530 007.

Respondent No.1 : Ministry of Shipping (Through the Secretary), Transport Bhawan, 1, Sansad Marg, New Delhi- 110001.

Respondent No.2 : Shipping Corporation of India Limited (Through the Chairman and Managing Director), Shipping House, No.245, Madame Cama Road, Mumbai - 400 021.

Respondent No.3 : Dredging Corporation of India Limited (Through the Chairman and Managing Director), 'Dredge House', Port Area, Visakhapatnam - 530 035.

## Gist of the matter:

In this case complainant P.V.S. Stalin Babu filed complaint before the office of Chief Commissioner of Persons with Disabilities (hereinafter referred as 'CCPD') whereby it was alleged that his service were terminated contrary to provisions of Persons With Disabilities (Equal Opportunities Protection Of Rights And Full Participation) Act 1995 (hereinafter referred to as 'PwD Act'). Thereafter interim order was passed by the office of CCPD. Respondent in the case i.e. Dredging Corporation of India invoked justification of the High Court against the interim order of the office of CCPD.

2. Subsequently, Hon'ble High Court quashed the interim order passed by the office of CCPD and directed the office of CCPD vide its orders dated 04/01/2018 to dispose of the matter within a period of six months from the date of receipt of a copy of this order after giving due opportunity to the petitioner. These orders were received in this court on 12/03/2020. Meanwhile the complainant passed away and Smt P.Sunita wife of the late complainant represented vide her letter dated 05.03.2020. Respondent organisation by its reply dated 26 August 2020 has put forward contentions related to termination of the Complainant.



...

...2/-

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

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

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



3. Main contention of the complainant is that he acquired disability during his service in the respondent organisation. Thereafter, he was held unfit for the service and was terminated by the respondent organisation.

4. Respondent organisation claims that it has two service divisions and there is no provision or condition for transfer of employees from one division to another. The division in which the complainant was serving was unfit for the persons with disabilities. Hence, complainant was terminated because he acquired disability which made him unfit for the division in which he was serving and in absence of transfer rules he could not be transferred from one division to another.

5. This court concludes that contention is in direct violation of PwD Act 1995 Rights of Persons with Disabilities Act 2016. Both the legislations are social welfare legislations intended to bestow benefits on the persons with disabilities. Hence, absence of any rule relating to transfer of employees from one division to another is not a legally plausible defence and it is merely a hollow excuse.

6. Section 47 of Pwd Act lays down law relating to non-discrimination in government employment. This section makes it mandatory for the establishments to not terminate or reduce in rank an employee who acquires a disability during his service. This section mandates that if an employee after acquiring disability does not remain suitable for the post he was holding he has to be shifted to some other post with the same pay scale and service benefits. Absence of such rule or condition in the by-laws of the respondent corporation does not make Section 47 of PwD Act in-applicable upon the respondent organisation.

#### Applicability of Section 14 of Pwd Act

7. Respondent organisation has taken a defence that Section 47 of the PwD Act is not applicable where there is no necessary corollary between the nature of job and the cause because of which disability is suffered. This court concludes that this is merely an academic argument and does not have any practical significance. Phrase used in this section is "acquires a disability during his services." This section does not talk about proximity between nature of job and cause because of which disability is suffered. Provision does not lay down relationship between injury causing disability and nature of job, as a pre-condition for the application of section. Therefore, this court concludes that section 47 is applicable in the present complaint. Further Hon'ble Supreme Court in Justice Sunanda Bhandare foundation v. Union of India (2017) 14 SSC 1, held



A large, stylized handwritten signature in black ink.

"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".

8. To accept the contention of the Respondent shall amount to step backwards rather than step forward.

9. Further, attention of the Respondent is also attracted to decision of Hon'ble Madras High Court in P. Thangamarimuthu v. T.N. State Transport Corporation; (2006) 108 FLR 1131 (Madras), whereby it was held that benefits under Section 47 of PwD Act can not be taken away by relying upon Section 72 of the Act.

10. Furthermore, Hon'ble Supreme Court in its judgment of Kunal Singh v. Union of India; (2003) 4 SCC 524 held that

"11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pension Rules. The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further, Section 72 of the Act also supports the case of the appellant."

#### Conclusion/Recommendations

11. This court concludes that the termination of the complainant was in direct violation of Section 47 of Pwd Act. Hence, this court recommends that the complainant shall be paid back wages from the date of illegal termination till the date of death of the complainant.

Dated: 06.10.2020



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





# न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 10931/1021/2019

In the matter of:

Shri Deepak Kumar

E-mail: <deepakgoyal1972@gmail.com>

Complainant

Versus

The Director General, Central Public Works Department  
Nirman Bhawan, Maulana Azad Road New Delhi – 110011

E-mail: <ddgcoordnr.cpwd@gov.in> <ce-wtlqa-chd@cpwd.gov.in>

Respondent

## 1. GIST of the Complaint:

1.1 Complainant is suffering from 50% disability. He was appointed on the post of Lower Division Clerk (LDC) in year 1995 against vacancy for PwDs. Till 2012 he was not promoted to post of Upper Division Clerk (UDC). In year 2012 he was promoted to UDC after he qualified departmental exam.

1.2 During the same period, other employees were promoted to higher posts some of whom even reached up to post of Chief Clerk.

## 2. CONTENTION RAISED

2.1 Complainant raised the contention that he was denied promotion and this denial was against the rules applicable in this regard.

## 3. RELIEF SOUGHT

Complainant asked for granting of promotion from back date.



*[Handwritten signature]*

#### 4. CONTENTIONS OF THE RESPONDENT

Respondent raised following contentions –

4.1 Till 2012 name of the Complainant in the seniority list was on lower position. Hence, he was not considered for promotion.

4.2 After 2012, recommendations of 6<sup>th</sup> Pay Commission were accepted and post of Chief Clerk, Group C post, was converted to Group B post.

4.3 Benefit of reservation in promotion to PwDs can not be granted for promotion to Group B posts from Group C post.

#### 5. CONTENTIONS RAISED BY COMPLAINANT IN REJOINDER

In seniority list, there was only one name of person belonging to PwD category above him. Hence, denial of promotion to the Complainant is illegal.

#### 6. CONTENTIONS RAISED BY THE RESPONDENT IN THE REPLY TO REJOINDER

Respondent has quoted OM No. 36035/7/95-Estt. (SCT) issued by DoPT dated 18.02.1997, whereby it was laid down that while filling post by promotion against vacancies reserved for the PwD candidates who are falling within 'Normal Zone' and 'Extended Zone' can only be considered. Since, the Complainant did not fall under either Zone therefore, his name was never considered for promotion.

#### 7. OBSERVATIONS

7.1 Two main issues in this Complaint are –

- i. Whether denial of promotion was in accordance with DoPT norms?
- ii. Whether reservation in promotion from Group C to Group B can be denied?





7.2 OM No. 36035/7/95-Estt. (SCT) issued by DoPT dated 18.02.1997 lays down that while filling post by promotion against vacancies reserved for the PwDs candidates who are falling within 'Normal Zone' and 'Extended Zone' can only be considered. It is to be noted that on the date when promotion of the Complainant was due, he neither fell in 'Normal Zone' nor in 'Extended Zone'. Hence, this court concludes that denial of promotion on such date of consideration was in line of DoPT O.M. mentioned above.

7.3 However, contention of the Respondent that no reservation in promotion can be given to Persons with Disabilities is against the judgments of Hon'ble Supreme Court and Hon'ble High Courts. The Hon'ble Supreme Court settled this issue in the judgment of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153, whereby hon'ble court laid down that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment, further Government was directed to extend reservation under The Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act 1995 (hereinafter mentioned as 'PwD Act of 1995') to PwD in all identified posts in Group A and Group B irrespective of mode of filling up of such vacancies. Relevant paras of the judgment are reproduced below –

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

25. In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PwD in all identified posts in Group A and Group B,



irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

7.4 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.

7.5 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."

7.6 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.





7.7 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.

7.8 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."

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

7.10 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 OnLine Utt 865. Hon'ble High Court held that law as laid down in Rajeev Kumar Gupta Case by the hon'ble Supreme Court does not make any distinction between Group A and B posts vis a vis Group C and D posts. Then the hon'ble High Court went on to held that judgments rendered under the



light of provisions of PwD Act of 1996 still hold good under RPwD Act of 2016. Relevant Para of the judgment is reproduced below -:

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

7.11 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.

7.12 Further, this court concludes that denial of promotion on the ground that promotion from Group C posts to Group B posts can not be given is contrary to the judgments of Hon'ble Supreme Court and Hon'ble High Court, as mentioned above and also contrary to the Order passed by this Court in B. UMA PRASAD v. E.P.F.O. 11183/1021/2019

7.13 Hence this court recommends that the Complainant if falls under either 'Normal Zone' or 'Extended Zone', he may be given promotion in accordance with rules relating to seniority. Fact that after implementation of 6<sup>th</sup> Pay Commission post of Chief Clerk has been converted from Group C post to Group B post shall have no impact over the promotion of the Complainant.

8. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 06.10.2020





355



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. 9905/1021/2018

R-23630

**Complainant :** Shri S.K. Md. Gyashuddin, C/o. Shri Naaz Khatoon, AT + P.O Kalla (C.H.), Asansol, Dist. Paschim Burdwan, West Bengal-713340.

R-23631

**Respondent :** South Eastern Railway (Through General Manager), 11, Garden Reach Road, Kolkata – 400043.

### Gist of Complaint:

SK. MD Gyashuddin, a person with hearing impairment vide his complaint dated 30.05.2018 submitted that he has been working as a Helper at Wagon Repair Workshop, Adra under South Eastern Railway. He has requested for his transfer to his native place, i.e. Asansol. During the year 2016 while on duty he became injured while lifting Oxygen Cylinder which affected his Spine. He has been suffering from chronic low back pain since then and has been spending lot of money on his treatment. He further submitted that he has also been denied promotion by his establishment. He submitted that he has also not been paid the House Rent Allowance.

2. The Court takes serious view of the fact that no reply has been received from the Respondent.

### Observation/Recommendations:

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

- This Court within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules, advises the respondent to be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.
- The Respondent is recommended to transfer the complainant to his native place, i.e. Asansol in terms of rule position quoted as under:-

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

*[Signature]*

.....2/-



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

- c) The House Rent Allowance shall be given to the Complainant immediately as per extant rule.
- d) The matter of promotion in respect of Shri S.K. Md. Gyashuddin may be considered as per extant rule as per the reservation of persons with disabilities expeditiously.

4. The case is disposed off.

Date : 08.10.2020

  
(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. 10835/1022/2019

**Complainant :** Shri Rameshwar Meena, I.O.F.S, Joint General Manager, Ordnance Factory, Varangaon, Maharashtra-425308.

**Respondent :** Ordnance Factory Board (Through Secretary), Ayudh Bhawan, 10-A, S.K. Bose Road, Kolkata - 700 001.

### Gist of Complaint:

Shri Rameshwar Meena, Joint General Manager (JAG) of Ordnance Factory Varangaon vide his complaint dated 11.01.2019 has submitted about negligence and lapses in the matter of reservation (SC,ST,OBC & PH) & roster preparation during inspection as per the DOPT OM No. 36012/2/96 dated 02.07.1997. A committee was formed by OGV for scrutiny of the faulty rosters in question and as per the guidelines given by OFB committee the rosters have been prepared and submitted to him for inspection on 04.01.2019. After Scrutiny following observations/facts emerged :-

- i) All the promotion rosters were made based on the "running account" and not as per the "replacement basis". The register/roster register shall be maintained in the form of a running account year after year.
- ii) It was observed by him that rosters were prepared from 2014 year and not from the date 02.07.1997, the reasons of the same has not been mentioned in any of the record. Further due to this it became impossible for him to calculate the backlog vacancies year wise, also it is not possible to ascertain that the benefit of reservation has been provided or not provided to the real incumbent and cannot be verified further. The Re-casted rosters were verified by someone else and also it had been forwarded to ministry/commissions to cover up the negligence.
- iii) During scrutiny of these rosters, it was observed that the sanctioned strength was 93 but promotions were given to 98 incumbents, such accommodation is not permissible. He had requested not to consider his transfer until corrections/resolutions of all these rosters/seniority issues (although varangaon station is a declared hard station

...2/-



*[Handwritten signature]*

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

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

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

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

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



- iv) Not to transfer OFV Head of Department and all officers concerned, otherwise these discrepancies may not ever be resolved.

2. The Director General, Ordnance Factories vide letter No. 02/LO-OFV/Per/Resv(SCT) dated 26.07.2019 submitted that Ordnance Factory Board, Kolkata (OFB) and OFV are seriously reviewing the representation/complaint/allegation made by Shri Rameshwar Meena/Joint General Manager/OFV in the light of existing latest available rules and regulations. The Respondent has enclosed a copy of the fact and information of the subject matter which has been forwarded to the Liaison Officer/OFV. He submitted that the inspection of the updated / re-casted reservation rosters has been inspected by Liaison Officer/OFV and the requisite inspection certificate has been issued to the complainant.

3. The complainant vide his rejoinder dated 04.12.2019 submitted that the Respondents are trying to divert/eyewash by replicating comments as it was submitted earlier to the Hon'ble Chairman, National Commissioner for Scheduled Caste vide Letter No.1308/Estt/Reservation dated 17.01.2019 and the rejoinder has also been submitted by the applicant vide letter dated 26.07.2019. He submitted that the Respondent transferred the complainant without any reason and with contempt of direction given by Supreme Court of India that every transfer must be reasoned properly and as per the formulated transfer policy. He submitted that he has neither completed the tenure at Varangaon station nor indulge in any administrative underperformance except performing duties as Liaison Officer in holistic way. After his hasty release and envisioned to change Liaison Officer, Ordnance Factory Varangaon Administration assigned duties as Liaison Officer to Shri Rakesh Sharma, Deputy General Manager who refused to vet all these faulty rosters and then the duties were allocated to Shri Amit Kumar Meena, Deputy General Manager who also vetted all these rosters with serious observations as per his letter dated 02.07.2019. Shri Rajeev Gupta, Additional General Manager issued a letter to Secretary/OFB that all the rosters are vetted and can be submitted onward to National Commission for Persons with Disabilities, keeping aside all these observations without taking any cognizance. The complainant submitted that Hon'ble Chief Commissioner for Persons with Disabilities called for records/rosters maintained by respondent after receipt of complaint filed by Shri S.K. Rungta, General Secretary, National Federation of Blinds (NFB). The correspondences

...3/-





between all the Ordnance Factories and between Ordnance Factory Board clearly justify his all observations and how cunningly they took certificate from all innocent Liaison Officers without producing rosters. The complainant submitted that if Ordnance Factory Board and Ordnance Factories have properly maintained the rosters in case of Scheduled Caste, Scheduled Tribe, Persons with Disabilities, OBC and for Ex-serviceman then he prayed this Court to direct the respondent to produce the following two documents only along with rosters since 01.01.1996.

- i) DPC Proceedings since 01.01.1996 or date from, these are available.
- ii) Vacancy Breakup Certificates awarded by Liaison Officers since 01.01.1996 or date from these are available.

**Observation/Recommendations:**

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

- a) This Court within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules, advises the respondent to be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.
- b) The Respondent shall maintain roster for persons with disabilities and shall not deny promotion to the person with disabilities.

5. The case is disposed off.

Date : 08.10.2020

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities.





Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11034/1024/2019

### Complainant:

Shri Sunil Deepchand Hansrajani,  
Pooja Nivas, 151/A, Udhavnagar,  
Old Wadej, Ahmedabad-380013  
Email: [sunildh@prl.res.in](mailto:sunildh@prl.res.in); Mobile: 9409250281

### Respondent:

The Director, Physical Research Laboratory (An Autonomous Body  
under the Department of Space), At: Navrangpura, Ahmedabad-  
380009 (Gujarat)

### Gist of Complaint

The complainant, a person with 50% locomotor disability, filed a complaint regarding switching over from CPF to GPF/Pension Scheme.

2. The complainant was a permanent employee of Central Institute of Plastics Engineering & Technology [CIPET] for the last 16 years. On selection, he joined Physical Research laboratory [PRL], Department of Space [DOS] on 11.07.2006. He filed a representation and requested PRL for transfer of PF contributions accumulation. PRL vide letter dated 30.08.2006 replied that "PRL is governed by Defined Contributions Pension Scheme (NPS), a request for transfer of PF accumulated during previous employment

Page 1 of 3





at CIPET cannot be conceded". At the time of his leaving, CIPET was governed by CPF rules and no Civil Pension was applicable. Later in 2009, Civil Pension Scheme was implemented in CIPET and became applicable to all those employees who were on permanent roll of CIPET as on 01.04.2009 and those who were joined service in CIPET on or before 31.12.2003.

3. The matter was taken up with the respondent.

4. The respondent file their reply dated 10.08.2020 and submitted that in terms of sub para 2(ii) of Govt. of India, Ministry of Personnel, Public Grievances & Pensions, DOP & PW OM No.28/30/2004-P&PW (B) dated 26.07.2005, the employees who entered into service on or before 31.12.2003 and who were governed by CPF scheme or any pension scheme of Central or State Government, other than the Pension Scheme under Central Civil Services (Pension) Rules, 1972, on submission of technical resignation to take up new appointment on or after 01.01.2004, cannot be allowed to join the Old Pension Scheme under Central Civil Services (Pension) Rules, 1972 because entry to the said scheme ceased w.e.f. 31.12.2003 and no new entry can be allowed in the Pension Scheme under above rules. Since the services of the complainant in CIPET were governed under CPF scheme and he joined PRL on 11.07.2006 i.e. after 31.12.2003, the date implementation of New Pension Scheme, PRL/DOS may not be in a position to extend him GPF with Pension Scheme unless CIPET consider his case to extend Pension at par with those who were on permanent roll of CIPET as on 01.04.2009. As conveyed by DOS,



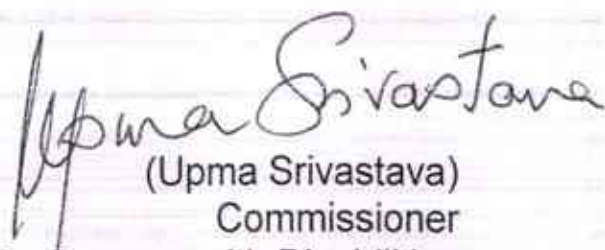
unless CIPET consider his case to extend Pension at par with those who were on permanent roll of CIPET as on 01.04.2009, PRL/DOS may not be in a position to consider his case. Complainant requested for two months' time to file his rejoinder.

**Observation/Recommendations:**

After perusal of the rival submissions, CIPET implemented old pension scheme w.e.f. 01.04.2009 and on this date the complainant was not on the role of CIPET. Accordingly, there is no violation of Government of India rules and instructions issued thereunder.

2. The matter is accordingly disposed off.

Dated: 08.10.2020

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities





352



1

## 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. 11827/1023/2020

**Complainant :** Shri M.S. Upadhyay, 2-1/C, CRPF, 27 Bn, Bawana, New Delhi - 110039.

**Respondent :** The DGMS (Army), Integrated Hqr. of Mod (Army), Dte. Genl. of Medical Services, Adjutant General Branch, 'L' Block, New Delhi - 110011

### Gist of Complaint:

Present Complaint was filed by the Major (MNS) Poonam through her husband, Shri M.S. Upadhyay. Shri M.S. Upadhyay vide his complaint dated 14.02.2020 submitted that his wife Smt. Poonam is suffering from Schizophrenia. She is posted at MH Varanasi Cantt. She has not been drawing her pay and perks for the last four years. Many a time the Commanding Officer MH Varanasi had officially requested the O/o PCDA (O), Golibar Maidan, Pune for restoration of pay and allowances to his wife. She is in the category Shape-II (P) because of psychiatric illness. As per the advice Medical Board and direction of M.H. Varanasi, his wife has started performing light duty and accordingly was taken in the ration strength, but she has not started getting her salary till date. The Nursing Officers two years junior to her are holding the rank of Lt. Col. and she has been made to work under them and posting her to M.H. Varanasi where there are no psychiatric setup/specialists inspite of recommendation of three Medical Board to post her at a station where regular review with psychiatrist can be done. Keeping her in the same mess aggravated her symptoms and she also faced difficult work environment. The M.H. Varanasi has framed two charges on his wife for absenting herself without leave.

### Hearing :

2. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 15.09.2020.

3. The following persons were present during the hearing.

- 1) Shri M.S. Upadhyay, the complainant
- 2) Lt. Col. Sandip Singh, OIC Legal Cell for Respondent.

Both the parties were heard



.....2/-

**Observation and recommendations**

4. After hearing both the parties this court makes the following undisputable conclusions:
- The Complainant's wife Smt. Poonam, Major (MNS) presently posted at Military Hospital Varanasi Cant. is a person with disability, suffering from mental illness of Schizophrenia since 2009 onwards.
  - She has been posted at this Military Hospital since 2009 and till date i.e. for a period of 11 years, away from her spouse / care givers as well as on a posting which is neither of her choice nor close to her home station.
5. The complainant has sought the following reliefs:
- Setting aside of disciplinary action initiated against Major Poonam for wilful absence;
  - Transfer to Allahabad or Delhi where she has caregivers and appropriate medical hospitals to look into her ailment appropriately.
  - Resumption of payment of salary which has been stopped since last 4 years.

**DISCIPLINARY ACTION**

6. It is noted that the disciplinary action against Major Poonam has been initiated by the respondent on the grounds that she was on wilful absence/absconding between the following time periods -:
- 25.3.2010 to 08.4.2010
  - 08.4.2010 to 15.7.2014 (date of issue of show cause) and
  - 15.7.2014 to 13.3.2015 (Admission to Base Hospital Delhi Cant.)
7. The court notes that the complainant has given several documentary evidences as noted below -
- Hospital Discharge Slip dated 28.05.2010 of 165 Military Hospital
  - Medical Treatment Certificates of District Hospital, Dimapur, Nagaland dated 10.05.2010, 15.11.2010, 13.01.2011, 12.02.2011, 14.04.2011,
  - Discharge Cards dated of Dayal Nursing Home, Allahabad dated 01.05.2010, 18.01.2012, 19.02.2012, 20.04.2012, 20.06.2012, 15.08.2012, 15.09.2012, 15.11.2012, 15.01.2013, 16.03.2013, 15.05.2013, 15.07.2013, 10.08.2013, 27.1.2013, 28.11.2013.





- d. COPE CODING CERTIFICATE issued by Military Hospital, Varansi, certifying that the Complainant is diagnosed with Schizophrenia.
  - e. Letter dated 16.04.2010, addressed to The Commanding Officer, Military Hospital, Varanasi Cantt. Received by LT. Col proving that story related to MNS Officer Mess was accepted.
8. Above documents show beyond doubt that the complainant kept the respondent informed of her mental condition and that she was undertaking specialised treatment at CIHSP Dimapur and District Hospital Dimapur where her spouse was posted. It is not understood as to why the respondent has failed to take into cognizance these communications from complainant and insisted on issuing an apprehension roll, issuing show cause case notice and initiated disciplinary action on grounds such as the complainant being a perpetual offender etc.
9. Before moving to the next issue it is pertinent to bring relevant provisions of Rights of Persons with Disabilities Act, 2016; Mental Healthcare Act, 2017 and judgments of Hon'ble Supreme Court and High Court.
10. Section 20 of Mental Healthcare Act, 2017 guarantees that every person suffering from mental illness shall have right to live with dignity. Further same section lays down that every such person has to be protected from cruel and degrading treatment. It is reproduced below:-

20. Right to protection from cruel, inhuman and degrading treatment.—(1) Every person with mental illness shall have a right to live with dignity.

(2) Every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights, namely—

- (a) to live in safe and hygienic environment;
- (b) to have adequate sanitary conditions;
- (c) to have reasonable facilities for leisure, recreation, education and religious practices;
- (d) to privacy;
- (e) for proper clothing so as to protect such person from exposure of his body to maintain his dignity;
- (f) to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;



...4/-

- (g) to have adequate provision for preparing for living in the community;
- (h) to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;
- (i) to not be subject to compulsory tonsuring (shaving of head hair);
- (j) to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and
- (k) to be protected from all forms of physical, verbal, emotional and sexual abuse.

11. Section 20 of RPwD Act, 2016 guarantees that any person who has acquired any disability during employment shall not be reduced in rank and his services cannot be dispensed with.

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

(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.

12. Hon'ble Supreme Court in ANIL KUMAR MAHAJAN v. UNION OF INDIA (2013) 7 SCC 243, decided to quash the compulsory retirement orders of an IAS officer who acquired mental illness during his service. Judgment was rendered under Section 20 of RPwD Act, 2016. In another judgment delivered by Hon'ble Madras High Court in A. VEERIYA PERUMAL v. SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, CHENNAI, 2006 SCC OnLine Mad 648, Petitioner who acquired mental illness during his employment was proceeded against departmentally and was ultimately retired with a provisional pension. Hon'ble High Court decided that since the petitioner in the case was mentally unsound when he committed the misconduct hence punishments imposed after disciplinary proceedings are liable to be set aside.





13. On the basis of provisions and judgments mentioned above, this court concludes that Disciplinary Proceedings going on against the Complainant violates rights of the Complainant under RPwD Act, 2016 and Mental Healthcare Act, 2017.

TRANSFER

14. Despite the mental health condition of the complainant and her admission in Base Hospital New Delhi in 2015 for treatment it is indeed a mystery as to why the respondent did not transfer her on grounds of disability immediately in 2015 to New Delhi if not prior to that date to ensure that she stays with her spouse/caregivers. This action itself catamounts to deliberate harassment of a Person with Disability. Kind attention of the Respondent is brought to Section 20(5) of RPwD Act 2016. As per the provision appropriate government has to frame policies related to posting and transfers of employees with disabilities. Further O.M. No. A-B 14017/41/90-Estt. (RR) dated 10.05.1990 issued by DoPT lays down that physically handicapped candidates appointed under the Government should preferably be posted in their native places or at least in their native district.
15. On this issue Section 18 of Mental Healthcare Act, 2017 is also ~~is~~ pertinent to mention. This provision confers the right upon every person to have geographical access to mental health service. This section is reproduced below as –

18. Right to access mental healthcare.—(1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.

(2) The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and caregivers.

16. Therefore, on this issue this court concludes that denial of transfer to the Complainant to either Allahabad or Delhi, where caregivers of the complainant reside is violative of rights given under RPwD Act, 2016 and O.M. issued by the DoPT in this regard.



NON PAYMENT OF SALARY

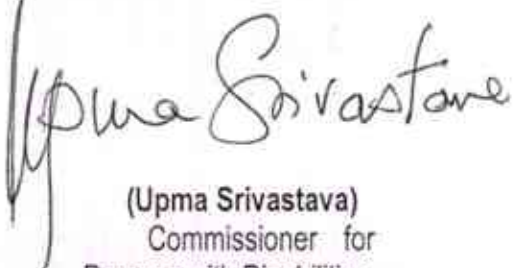
17. On the issue of non-payment of salary, it is to be noted that non-payment of salary, pending disciplinary proceedings, is against Government rules and regulations and she should not be deprived of her due remunerations since last 4 years ever since she was admitted at Delhi Base Hospital. In a similar case decided by Hon'ble Kerela High Court, it was decided that when the employer's post was converted to lower category as per Section 20(4) of RPwD Act, 2016, he was still entitled for protection of salary before category change. SAJIMON KB v. KERALA STATE ROAD TRANSPORT CORPORATION, 2019 SCC OnLine Ker 7139.
18. Attention of the respondent is also brought to the judgement of Hon'ble Supreme Court. Hon'ble Court in SHOBHA RAM RATURI v. HARYANA VIDYUT PRASARAN NIGAM (2016) 16 SCC 663 and CHIEF REGIONAL MANAGER UNITED INDIA INSURANCE COMPANY v. SIRAJ UDDIN KHAN (2019) 7 SCC 564. He relied upon the principle that when an employee is restraint from performing his duties, then principle of no work no pay will not be applicable. In the present case disciplinary proceedings going on against the complainant arose out of instance of disability acquired during employment. Therefore, this court concludes that non-payment of wages during continuation of disciplinary proceedings amounts to restraining by the employer and therefore, non-payment of wages during this period is a contravention of provisions of Rights of Persons with Disability Act, 2016 and Mental Healthcare Act, 2017 and also in contravention with judgements of the Hon'ble Supreme Court as mentioned above.

On the basis of Observations made by this court in preceding paragraphs, this court recommends the Respondent to –

- Immediately transfer the Complainant to either Allahabad or Delhi where the complainant can be taken care of by her caregivers.
- Examination of the matter of non payment of salary and immediate payment of her due salary alongwith arrears.
- Setting aside of the Disciplinary proceedings and regularisation of leave as per admissible rules by taking into cognizance the ramifications of her mental illness and her efforts to keep the respondent informed at all times.

The case is disposed off.

Dated : 08.10.2020

  
(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. 11985/1023/2020

Complainant : Smt. Marjorie Brito, Brito Bagh, Hoige Bazar, Mangaluru, Karnataka-575001.

Respondent : New Mangalore Port Trust (Through the Chairman), Panambur, D.K. District, Mangalore, Karnataka - 575 010.

## Gist of Complaint:

Smt. Marjorie Brito vide her complaint dated 16.03.2020 submitted that she is a family pensioner since 01.03.2017. The New Mangalore Port Trust where her husband was working has its own antique rules which were being interpreted according to their individual whims and fancies thus causing hardship and harassment to its employees and their families they leave behind. The RPwD aCT 2016 Para 7.3(C) clearly states to provide maintenance to persons with disabilities. She submitted that though her children, both his son and daughter are 80% visually impaired, were sanctioned Family Pension on 05.02.2011 by the New Mangalore Port Trust. The latest letter no. RPAR/339/FAE 11/A2 dated 15.02.2020 states that 'the latest Disability Certificate will be examined at the time of sanctioning the Family Pension in accordance with the then prevailing Rules. The approval for granting Family Pension to her children cannot be considered now in anticipation of the future. The rule clearly states that the person with permanent disability requires to furnish the Disability Certificate only once in a lifetime. The Disability Certificate submitted by her has been sanctioned by the Government Hospital.

2. The New Mangalore Port Trust has one more objection that the Disability Certificates of her two children have been issued on two different dates, i.e. one on 23.06.2008 and the other on 26.02.2009. The complainant has enclosed a photocopy of the Family Pension letter sanctioned to her two children by the SBI Mumbai on 15.03.2012. The Disability Certificates submitted by her to the New Mangalore Port Trust are the same which she had tendered to the SBI. She further submitted that she has crossed the age of 79 years and cannot take any uncertainty

....2/-





or tension with regards to her children's future. The same New Mangalore Port Trust that sanctioned Family Pension to her two children on 05.02.2011 is contradicting its own orders of 15.02.2020. Para 3 of the New Mangalore Port Trust insists on a Guardianship Certificate, which they will examine, at the time of sanctioning of Family Pension to her children. She submitted that the CCCS rules are very clear regarding guardianship which clearly states that its requirements is only for minor children and persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

3. She further submitted she was earlier getting a paltry sum of Rs.6,180/- as monthly Family Pension which has not been enhanced to Rs.7,200/- since 31.07.2019. When her husband died on 01.03.2017, he had been drawing a pension amounting to Rs.36,000/- per month. As per CCCS Pension Rules, Rule 54, Para 23, Family Pension shall be calculated at a uniform rate of 50% of the current revised pay structures subject to a minimum of Rs.9,000/- per month. The New Mangalore Port Trust has not taken into account the various Pay Commission Reports and their implementation in fixing the Family Pension. Though the restrictions of paying two Dearness Allowances has been done away with over 20 years back, the New Mangalore Port Trust does not pay Dearness Allowances to spouses who are drawing pensions from the Institutions they have earlier worked for. The establishment is not paying her Dearness Allowance though she is neither employed nor re-employed.

4. The Financial Advisor and Chief Accounts Officer, New Mangalore Port Trust vide letter No.RPAR/339/FAE.II/A2 dated 13.08.2020 submitted that the allegations made by Smt. Marjorie Brito are prejudicial and all the interpretations, claims are false and hereby denied. He submitted that no family pension was sanctioned to the children of Smt. Marjorie Brito w.e.f. 05.02.2011 as stated in the complaint. The names of disabled children are entered in pension records who are eligible to draw Family Pension after the demise of their parents under Rule 54(6). The above endorsement does not mean sanction of family pension. It is only an entry of disabled family member details who are eligible for family pension on the death of both the parents. He submitted that Smt. Brito is also a pensioner of State Bank of India. For grant of Family Pension to children, the dependency criteria shall

....3/-





be met. Since they are entitled to get Family Pension from State Bank of India also, sanction of Family Pension to children with disabilities can be considered only after the demise of parent, who is presently a family pensioner. He submitted that the State Bank of India in its letter dated 18.04.2012 has clearly stated that 'the appropriate authority has accorded approval to include two handicapped children of Smt. Marjorie Brito, as disabled beneficiary for family pension'. The New Mangalore Port Trust also included the name of her children in pension records of Late Shri Felix F. Brito. EE(Ele) Rtd, i.e. PPO Book No.239/FA&CAO/NMPT. The revision of pension for Officers of NMPT takes place once in 10 years. As per the order of Govt. of India, the Family Pension of Smt. Marjorie Brito was revised to Rs.15,000/- per month and arrears amounting to Rs.3,13,815/- were paid to Smt. Marjorie Brito in the month of April 2020 along with pension. As Smt. Brito has been drawing dearness relief from SBI, she is not entitled for two dearness relief. In this connection, a writ petition filed by the Family Pensioners is pending before the Hon'ble High Court of Karnataka.

5. The complainant vide his rejoinder dated 29.08.2020 submitted that in the reply of NMPT letter dated 13.08.2020 they have stated that no family pension was sanctioned by them to her disabled children w.e.f. 05.02.2011. She would like to know then why the Respondent made an endorsement in her husband's PPO 239 which states 'Passport size photograph of Miss Ameetha Maria Brito, daughter of Shri Felix Brito and Mr Anish Felix Brito, son of Shri Felix Brito, Retd, EE (Ele) who are eligible to draw pension after their parents death under Rule 54 (6) since they are physically handicapped (Progressive vision failure due to Bilateral Optic Atrophy) Rule 54 section 30 para 2 to 5 clearly states that the pensioner/Family Pensioner, may at any time before or after retirement/death of the employee make a request to the appointing authority seeking advance approval for grant of family pension for life to a permanently disabled child in terms of provisions contained in Rule 54 of the CCS (pension) Rule 1972'. On acceptance at such a request the Head of Office will immediately issue sanction order for grant of family pension to such children. No further authorization for grant of family pension to the child with disability would be required. The head of office and Account Officer, will maintain details of such children with disabilities in the service book and pension file of the employee/pensioner to enable prompt processing of such request. On the basis of this approval the child with permanent disability will be authorized to receive Family

....4/-





Pension at the appropriate time, i.e. after the death of the pensioner. No fresh PPO need to be issued in such cases and the family pension will be payable by the pension disbursing authority and family pension would be allowed by PDA for life for permanently children with disabilities. The complainant submitted that the Port should have no problem if she has been drawing pension from State Bank of India. She submitted that it is her legitimate right which will entitle her two children with disabilities to draw Family Pension. She submitted that she would be glad if the Port gives her a copy of the Rule that for a permanently child with disability the dependency criteria has to be met. Whether they draw Family Pension from State Bank of India or not, the Port has to do its duty by sanctioning Family Pension to her children with disabilities as per Rule 54 Section 30, para 2 to 5 of the CCS Pensions. The Rule 54 para 21 clause 3 states that Family Pension admissible to a beneficiary in respect of one deceased employee/pensioner is not to be counted as income for the purpose of determination of eligibility for another Family Pension which is admissible in connection with another deceased employee/pensioner. She submitted that the Respondent is only creating hurdles in all her submissions. The NMPT is trying to find fault with the State Bank of India using the word approval and says that he is interpreting the word for sanction. Rule CCS 55A The State Bank of India is paying her Dearness Allowance on her pension as per rules but NMPT does not pay her any D.A.. Their contention is that since she is a pensioner of the SBI, she is supposed to be employed. They want a certificate saying that she is not employed but who will give her one, since she has no employer. She submitted that whenever it suits the NMPT, they quote CCS Rules and at other times they quote the Ministry of Shipping Rules. Is the pension not governed by the Pay Commissions Reports? The CCS Rule 54(23) states that the Family Pension from 01.01.2016 shall be calculated at a uniform rate of 30% of basic pay in the revised pay structure and shall be subject to a minimum of Rs.9,000/- per month and maximum of 30% of the highest pay in government. Her husband's last salary drawn was Rs.7350/- in June 1997. According to another order it states that it is Rs.12,850/-. It is confusing as it dates 23 years back. On his death on 01.03.2017, he was sanctioned a Family Pension of Rs.6180/- with no DA. She submitted that she wants a clarification from the Port that what they mean by saying that she is re-employed. She is a pensioner of SBI and have not taken a job nor have been re-employed. Does drawing a pension mean that she is re-employed. The restriction on drawing two dearness relief has been abolished over 20 years back by the Government of India.

...5/-



A large, stylized handwritten signature in black ink.



**Observation/Recommendations:**

6. In the light of the documents available on record and within its ambit and scope of jurisdiction exercisable under the Rights of Persons with Disabilities Act, 2016 and relevant rules this Court give the following directions to the Respondent :

- a) The Respondent should be more sensitive towards persons with disabilities and ensure that rights of persons with disabilities are not infringed.
- b) The Respondent shall ensure that Rule 54 (30) is strictly followed by them. The New Mangalore Port Trust should have no objection on the dates of issue of the Disability Certificates in the name of two children with disabilities of the complainant on different dates.
- c) The Respondent shall grant family pension to the two children with disabilities of the complainant and ensure that the complainant's children receive family pension for life as per the request made in her late husband's PPO 239 which was sanctioned on 05.02.2011 as per extant rules.

7. The case is disposed off.

Date : 08.10.2020

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities.





## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

Case No. 9490/1021/2018

**Complainant :** Shri Manoj Kumar, Junior Judicial Assistance (JJA), Posted at Pool Car Office, Tis Hazari Court, Delhi – 110 054

**Respondent :** Tis Hazari Courts ( Through Office of the District and Sessions Judge), Delhi – 110 054

### Gist of Complaint:

Shri Manoj Kumar, a person with 70% locomotor disability vide his complaint has submitted that he has been employed as Junior Judicial Assistance in Central District Court, Tis Hazari Court, Delhi. He joined the service as LDC under PH category on 06.05.2009. His number in the seniority list is 1062. The complainant has been eligible and fit for promotion since 06.05.2014 in the light of order passed in Writ Petition (Civil) 5686 of 1998. The name of the complainant was found missing in the Order bearing No. 5153053333 Admn.II/S&P/(JJA)/2017 of the Office of District and Session Judge (HQ) dated 23.08.2017. Therefore, he made representation to the Office of District and Session Judge (HQ), Tis Hazari Courts, Delhi requesting to review the above mentioned promotion order. He further submitted that he is eligible for promotion even in the General Category without availing the benefit of being of PH category.

**Hearings :** 08.09.2020 & 06.10.2020.

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 08.09.2020.

5. The following persons were present during the hearing on 08.09.2020;

- 1) Mr. Manoj Kumar, Complainant.
- 2) Mr. Darshan Gosain, Branch Incharge (Litigation) on behalf of the respondent.

Both the parties were heard.

6. The respondent requested that they need one month time to come up with proper reply to the points raised by the complainant. The Court observed that the matter is pending since 2017 and in view of the objections of the complainant for granting one month time for filing reply to the rejoinder of the complainant, the respondent is directed to furnish its written submission by 22nd September, 2020 to this Court with a copy to the complainant.

.....2/-



7. The matter was listed for hearing after receipt of the written submission of the respondent. vide email dated 17.09.2020.

8. An online hearing has been scheduled in the case on 06.10.2020.

9. The following persons were present during the hearing ;

- 1) Mr. Sanjeev Kumar, Advocate for Complainant
- 2) Mr. Mukesh Kumar, Advocate for Respondent.

Both the parties were heard.

**Observations and Recommendations:**

Respondent raised following contentions

1. Complaint is not related to discrimination on the basis of disability.
2. Post of UDC is a Group D post and no reservation in promotion to PwD candidates can be given while considering promotions from Group C posts to Group B posts.
3. Court of Chief Commissioner for persons with disability and Court of State Commissioner for persons with disability, Delhi only have advisory powers and therefore both the Commissioners lack jurisdiction to adjudicate this complaint.
4. Court of CCPD does not have territorial jurisdiction to adjudicate this complaint.

All these issues are dealt with separately in following paragraphs.

**10. ISSUE OF DISCRIMINATION ON THE BASIS OF DISABILITY**

1.1 It is a undisputed fact that the complainant is a person with 70% locomotor disability. He joined the service as LDC under PH category, his number in the seniority list is 1062. Further, it is also a proven fact that the respondent promoted certain employees from the post of LDC to UDC by order dated 23.08.2017. Respondent became eligible for promotion to the post of UDC on 06.05.2014. From the perusal of the documents and arguments presented during online proceedings, it is certain that the respondent has failed to provide reservation in promotion to persons belonging to PwD category. Hence, this is a direct violation section 34 of Rights of Persons with Disabilities Act, 2016 which provides that, atleast 4% reservation shall be provided by appropriate government.

1.2 Hence, this court concludes that the present complaint is related to discrimination on the basis of disability.



2. ISSUE OF NO PROMOTION FOR GROUPS C TO B POSTS.

2.1 Respondent raised the contention that LDC is Group C post and UDC is Group B post. Therefore, reservation in promotion from Group C post to Group B post cannot be given. Hon'ble Supreme Court settled this issue in RAJEEV KUMAR GUPTA v. U.O.I.; (2016) 13 SCC 153, where by Hon'ble Court held that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Further, Hon'ble court directed the Government to extend reservation to PwD's in all identified posts in Group A and Group B, irrespective of mode of filling up such vacancies. Recently, Hon'ble Supreme Court in SIDDARAJU v. STATE OF KARNATAKA Civil Appeal – 1567/2017 case upheld the judgement passed in the matter of Rajiv Kumar Gupta case. It is to be noted that above judgements were passed under Persons with Disabilities Act, 1995. Hon'ble Uttarakhand High Court in UMESH KUMAR TRIPATHI v. ST. OF UTTARAKHAND 2018 SCC OnLineUtt 865, extended ratio of Rajiv Kumar Gupta case to RPwD Act 2016.

2.2 Hence, this court concludes that the argument that reservation cannot be provided in promotion from group C to B post lacks legal validity.

3. ISSUE OF ADJUDICATORY POWER OF CCPD AND STATE COMMISSIONER FOR PERSONS WITH DISABILITY

3.1 Respondent has claimed that neither this court nor the Office of State Commissioner Persons with Disabilities, have powers to adjudicate this complaint. Attention of respondent is attracted to section 75(1)(b) of RPwD Act, 2016. As per the provision Chief Commissioner can inquire any matter related to deprivation of rights of PwDs and can take up the matter with appropriate authorities and can make recommendations to the concerned authority. Therefore, this court concludes that this court as well as Office of State Commissioner Persons with Disability (under section 80 of RPwD Act, 2016) have power to enquire this complaint and pass necessary recommendation.





4. ISSUE RELATED TO TERRITORIAL JURISDICTION OF THIS COURT

4.1 Respondent has raised the contention that respondent is governed under Delhi District Courts establishment Rules, 2012. Further, it is contended that the subordinate courts fall under Entry 41 and 65 of a State list of Schedule VII of Constitution of India. Therefore, any issue arising out of administrative decision of the respondent is related to State and not related to Centre, whereas section 75(1)(b) empowers the Chief Commissioner to inquire the issues for which the Central Government is the appropriate government. Further, it is contended that the State Commissioner under section 80(b) would be the appropriate authority to inquire into matters for which the State Governments is the appropriate government. This court concludes that the present complaint is related to the authority for which the State Government is the appropriate government. Hence, State Commissioner is the appropriate authority to enquire into this complaint.

11. Hence, this court refers this complaint to the State Commissioner to take up the matter with the respondent for corrective action and necessary recommendations.

12. It is pertinent to mention that rule 3(3) of Delhi Rights Of Persons With Disability Rules 2018, mandates that complaint file shall be decided within 30 days.

13. The case is disposed off.

Date : 09.10.2020



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



extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 10793/1081/2019

### Complainant:

Shri N. Suresh, R-2, Jauhari Nagar, Type-3, OCF Estate, Avadi,  
Chennai-600054 (Tamil Nadu); Email: [nsnv2010@gmail.com](mailto:nsnv2010@gmail.com);

### Respondent:

Central Government Employees Welfare Housing Organization, through  
its Chief Executive Officer, 6<sup>th</sup> Floor, 'A' Wingh, Janpath Bhawan, New  
Delhi – 110001; Email: [cgewho@nic.in](mailto:cgewho@nic.in);

### Gist of Complaint

The complainant is a person with 50% locomotor disability. He was allotted Type-C DU in Central Government Employees Welfare Housing Organisation (CGEWHO), Chennai (Phase-III) Housing Scheme on 06.10.2016. Changeover procedure & status was neither indicated in the CGEWHO Rules, nor intimated in writing to him. He applied for changeover from Type-C DU to Type-B DU on 12.04.2016. Later on, the complainant withdrew his changeover request vide letter dated 11.11.2018. The complainant alleged that the withdrawal letter dated 11.11.2018 which had been delivered on 14.11.2018 was hidden by the respondent and withdrawal request was not processed, but by misusing the delegated power the respondent processed the changeover request and allotted waiting list No.15 against his withdrawal request. Vide letter dated 15.11.2018, the respondent informed the complainant that his category had been changed from Type 'C' to Type 'B' and the registration number is CMB1111 and the respondent requested the complainant to

Page 1 of 3





return original Type 'C' allotment letter enabling them to issue him fresh Type 'B' allotment letter. The complainant has not vacated his Type-C DU and allotment letter for Type-B DU has not been issued to him but respondent's letter dated 14.12.2018 states that his allotment of Type-C DU was allotted to waiting list applicant of Type-C. The complainant has submitted that sufficient information of changeover procedure has not at all been indicated in the Rules Book cum Application Booklet No.136134 which requires 100% transparency. The complainant stated to have made effort to follow the rules and regulations but the respondent remained reluctant to share the basic information of changeover process, procedure, waiting list status and other formalities requested vide his emails dated 03.03.2018, 22.03.2018 and 06.08.2018. He requested to ensure the validity of allotment of Type-C DU allotted to him.

2. On taking up the matter, the respondent vide reply dated 18.03.2019 submitted that the complainant forwarded a request through email dated 23.03.2018 to migrate from Type C(3 BHK) to B(2BHK). As per date of request, in the waiting applicants his seniority was 9. On maturing his turn on 02.11 2018 for allotment, a note was processed through Officer-in-Charge for confirmed allotment in Type B(2BHK) to competent authority and got approved on 05.11.2018 and GST Invoice issue Note processed on 08.11.2018. The complainant's withdrawal request letter dated 11.11.2018 was delivered on 14.11.2018 when the vacancy created by his migration had already been filled up with the due approval note from the competent authority. However, the case with detailed history was put up to the competent authority on 04.12.2018 with option(s). On approval, his name was put in the waiting applicants of type C [at 15] since all the vacancies had already been filled in as on that date. All details have been given in Scheme Brochure. No irregularity



has been found and change of type has been approved by the competent authority.

3. The complainant in his rejoinder dated 03.04.2019 reiterated his complaint.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

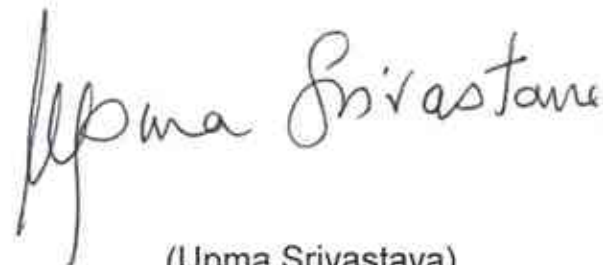
1. Shri N. Suresh, the complainant
2. Shri M.K. Maity, Dy. Director (Administration), on behalf of the respondent

**Observation/Recommendations:**

Both the parties were heard.

2. The Court observes that in this matter the main contention of the complainant is regarding procedure of change of allotment of a flat by the respondent. There is no discrimination on grounds of disability, the case is disposed off.

Dated: 12.10.2020



(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. 8057/1023//2017

**Complainant** : Shri K. Madhavan Pillai, Nedumpurath House, Kattachira, Pallickal P.O., Alleppey Dist., Kerala – 690 503.

**Respondent** : Employees Provident Fund Organisation, (Thru Central Provident Fund Commissioner), Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi – 110 066.

**Disability** : 50% Locomotor

### Gist of Complaint:

Shri K. Madhavan Pillai vide his complaints dated 11.05.2017 and 07.03.2019 submitted that his present pension is not at all sufficient for medicine. Further there are so many benefits declared by the Government from time to time, but are not being given to the beneficiaries. He has requested to restore his full pension and to sanction 2 years weightage at an early date. He submitted that he had completed 20 years in 2015 but was not being given full pension. He had retired under superannuation scheme (23 years). He commuted the 1/3rd pension i.e 433 from 1996 upto 2015. EPF officer already said that there is no provision for restoration of pension and they have already deducted Rs. 40,000/-.

2. The Regional Provident Fund Commissioner-I (Pension), Employees' Provident Fund Organisation vide his letter No. Pension-I/Misc/2020/STC Scheme/464 dated 20.08.2020 submitted that they have not received copies of complaints dated 11.05.2017 and 07.03.2019 which were once again sent to them vide letter dated 15.09.2020.

### Hearing :

3. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 29.09.2020.

4. The following persons were present during the hearing;

- 1) Mr. K. Madhavan Pillai, the complainant.
- 2) Mr. Andrew Prabhu, Regional P.F. Commissioner, Kochi, on behalf of the respondent.

Both the parties were heard.

....2/-

5. On inquiry from the Court, the respondent informed that the stand taken by them in this matter in the year 2017 has changed now with issue of revised government notifications issued in February, 2020. In accordance with these notifications, the EPFO has revised the pension of the complainant and restored it as full pension with retrospective effect from 15.11.2013. Arrears arising out of this revision in pension have also been granted to the complainant in May 2020.

**Observation/Recommendations:**

6. This Court observes that the complaint has been redressed suitably by the respondent.

7. The case is disposed off.

Dated: 12.10.2020

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities







सत्यमेव जयते

Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 10797/1024/2019

## Complainant:

R-23236  
Shri Kripasindhu Ghosh, Bridge & Roof Co. (India) Limited, 427/1, G.T. Road, Howrah 711101 (West Bengal); Email: [amit.pal96@yahoo.com](mailto:amit.pal96@yahoo.com); [amitpal981@gmail.com](mailto:amitpal981@gmail.com);

## Respondent:

R-23237  
Bridge And Roof Co. (India) Ltd.,  
Through its General Manager,  
427/1, Grand Trunk Road,  
Howrah-711101 (West Bengal);  
Email: [bridge@bridgeroof.co.in](mailto:bridge@bridgeroof.co.in);

## Gist of Complaint

The complainant, a person with 75% visual impairment, is a Sub-Staff in M/s Bridge and Roof Company India Limited, Kolkata, a Government of India Enterprise under Ministry of Heavy Industries and Public Enterprise, Department of Heavy Industry. He alleged that the Company has no standard rules/regulations governing the reimbursement of medical bills of the employees with disabilities. He further alleged that the Company vide memo dated 03.12.2018 had intimated him that Establishment charge was not reimbursable. On contrary, vide memo dated 18.12.2018 the Company informed him that there was no specific provision in the company regarding the prior intimation.

Page 1 of 4



2. On taking up the matter, the respondent company vide their reply dated 17.04.2019 submitted that the complaint put up two bills. The two bills had two components. One was towards Consultation fee i.e. Rs.350/- x 2 = Rs.700/- and another was towards, Establishment charges aggregating to Rs.150/- x 2 = Rs.300.00. As per the prevailing norms and practice, the bills of Consultation fee were reimbursable. The bills of Establishment Charges were not payable. In this regard he was intimated vide memo dated 03.12.2018 in response to his query dated 23.11.2018. There is no specific norm or rule in the Company, whereby the concerned Department is supposed to contact the employee and intimate him about such partial reimbursement before processing the same. The respondent further submitted that if the complainant would have been informed before denying reimbursement against such establishment charges, he would have taken necessary steps to fabricate the bill and resubmit the same for reimbursement which is not permissible.

4. The complainant, in his rejoinder dated 16.05.2019, urged that he should have been provided a chance/opportunity to rectify/correct his disputed medical bills/cash memo/invoice related documents in the line of company's rules/norms, being an employee with disability. He also alleged that the respondent is threatening him of filing this case against the company.

5. The respondent, in their reply dated 11.07.2019 to the rejoinder dated 16.05.2019, submitted that it is not tenable that the complainant could have been provided a chance to rectify or correct his disputed medical bill/cash memo or invoice since he has 75% visual impairment.





**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

1. Shri Kripasindhu Ghosh, the complainant
2. None for the respondent

**Observation/Recommendations:**

An e-mail dated 25.09.2020 has been received from the respondent, saying that the concerned officer of the Company is down with COVID-19. The complainant was distressed at the behaviour of his superior while interacting with them and wants to seek some clarification regarding reimbursement of his medical bills. The complainant informed that Shri M.C. Boral, AGM (WS) II harassed the complainant, intimidated him by shouting at him and throwing him out of his office chamber. The complainant further stated that medical reimbursement claims of other employees with disabilities are not being handled properly and he quoted a case of one Mr. Amit Pal, who is hearing impaired person.

2. This Court observes that this is a matter of Rs.300/- only which has not been reimbursed to the complainant as per the norms of the company, yet the complainant has the right to be informed about the reasons of denial of reimbursement and in case any error has been made by him, he should have been given an opportunity to make necessary corrections. A employee with 75% visually impairment status should be treated with respect and dignity like any other employee in terms of Section-3 of the Rights of Persons with Disabilities Act, 2016, which states as under:

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



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

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


(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities."

3. This Court recommends that a written warning may be issued against Shri M.C. Boral by the respondent for his misbehavior with a person with disability. The Company should implement a meaningful sensitization campaign, so that all the employees with the Company are aware of the rights and entitlements of persons with disabilities.

4. The case is disposed off.

Dated: 12.10.2020

  
(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. 10853/1023/2019

**Complainant :** Shri Nitin Singh, General Secretary, EIL Officer's Association, UG Floor, Engineers India Bhawan, 1, Bhikaji Cama Place, R.K. Puram, New Delhi-110066

**Respondent :** Engineers India Limited (Thru Chairman & Managing Director), Engineers India Bhawan, 1, Bhikaji Cama Place, R.K. Puram, New Delhi-110066.

**Gist of Complaint:**

Shri Nitin Singh, General Secretary of EIL Officers' Association vide his complaints dated 21.01.2019 and 24.05.2019 requested for the implementation of revised rates of Transport Allowance (at double rates) according to DoE O.M.No.21/5/2017-E-II(B) dated 07.07.2017 in Engineers India Limited (EIL). As per his communication with EIL management, they said that implementation of the revised rates of double transport allowance is not possible due to the absence of revised O.M from DPE. At present, Physically handicapped employees of EIL who are visually impaired, locomotor disability, deaf & dumb/hearing impaired, and disabled due to spinal deformity were getting Double TA as per rates defined in superseded DOE O.M.No.21\_2\_2008\_E-II\_B dated 29th August 2008 and Department of Public Enterprises (DPE) O.M.No.6(7)/2002-DPE(SC/ST Cell)-GL-103 dated 15th November 2011.

2. The Chief General Manager (HR & Legal), Engineers India Limited vide his letter No. 8589-711.027-89-47-LET-0008 dated 14.11.2019 submitted that as per the existing rules of the Company formulated in line with Guidelines issued by Department of Public Enterprises (DPE) from time to time, employees with physical disabilities are eligible for Special Transport Allowance at double the normal rate. The existing rates of Special Transport Allowance are placed below:-

Level	Rate of Special Transport Allowance (Rs.per month)[ in cities listed at Annexure-1)	Other places
12 & above	6400 + DA thereon	3200 + DA thereon
8,9 & 10	3200 + DA thereon	1600 + DA thereon
1 to 7	1200 + DA thereon	1000 + DA thereon



TRUE COPY

Sign.

....2/-

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

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

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

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

Subsequent to the implementation of the guidelines of DPE on Pay revision in February 2018 and with the Dearness Allowance neutralized, the rates of Special Transport Allowance were frozen considering the pre-revised rate of 126.9%. The Department of Expenditure (DoE) vide its O.M. No. 21/5/2017-E-II (B) dated 07.07.2017 issued instruction for revision of Transport Allowance w.e.f. 01.07.2017 for the employees of Central Government with the provision that physically challenged employees shall continue to be paid Special Transport Allowance at double the rates plus applicable DA thereon. The instructions issued by DoE do not apply mutatis mutandis to CPSEs unless DPE issues a communication to the same effect. As DPE is yet to issue instructions for implementation of the above DoE OM for the employees of CPSEs the revised rates are yet to be implemented in CPSEs. On the basis of recommendation of 6<sup>th</sup> Central Pay Commission, DoE vide OM dated 29.08.2008 revised the rates of the Special Transport Allowance. DPE vide OM No. 6(7)/2002-DPE(SC/ST Cell)-GL-103 dated 15.11.2011 extended the revised rates to employees of CPSEs. The revised rates of Special Transport Allowance in EIL were implemented w.e.f. 01.09.2011 in line with the Management approval.

3. The complainant vide his rejoinder dated 18.03.2020 submitted that EIL Officer's Association is not satisfied with the reply of Respondents in which the respondent had submitted that due to non-availability of instructions from Department of Public Enterprises (DPE) regarding the implementation of revision of rates and effective date of revised rates of Double Transport Allowance as per 7<sup>th</sup> CPC admissible to PH employees of EIL. The complainant referred to this Court's verdict dated 10.11.2017 in Case No. 7237/1024/2016 in the case of EILOA vs EIL in which the Respondent submitted to the Court that they were awaiting instructions / seeking directions from DPE.

**Hearing :**

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 29.09.2020.

5. The following persons were present during the hearing;

- 1) Mr. Nitin Singh, the complainant.
- 2) Ms. Smitha Sehgal, AGM (Legal), EIL, on behalf of the respondent.

Both the parties were heard.





6. The complainant stated that the Department of Expenditure has revised the rate of Transport Allowance w.e.f. 07.07.2017 vide its Office Memorandum No.21/5/2017-E.II(B) dated 7<sup>th</sup> July, 2017. Though PSUs like BSNL, TCIL, MTNL have been granted the benefit of these orders by the Department of Telecom, no such orders have been issued by the Engineers India Limited as yet.

7. The respondent explained that they are awaiting instructions of the Department of Public Enterprises (DPE), who has till now not issued any instructions in pursuance of the aforesaid orders of the Department of Expenditure. The respondent further stated that they had taken this matter with the Ministry of Petroleum & Natural Gas vide their letter dated 10.09.2019, but no response has been received to their communication. Therefore, in absence of DPE instructions or approval of the Ministry of Petroleum & Natural Gas, they have not implemented the revised rate of Transport Allowance.

**Observation/Recommendations:**

8. This Court observes that the said Department of Expenditure O.M. is applicable for all Central Government employees. In view of the above, the Court recommends to the respondent to implement w.e.f the revised rate of Transport Allowance on the basis of Ministry of Finance, Department of Expenditure O.M. No.21/5/2017-E.II(B) dated 7<sup>th</sup> July, 2017.

9. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 12.10.2020





## 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. 10975/1021/2019

**Complainant :** Shri Seetharam Bhat, 3/10, New No.156, St. John's Road Cross, Near Lemontree Hotel, Bengaluru - 560 042.

**Respondent :** Hindustan Aeronautics Limited, (Through the Chairman & Managing Director), Corporate Office, 15/1, Cubbon Road, Bengaluru - 560 001.

**Disability :** 75% Locomotor

### Gist of Complaint:

Shri Seetharam Bhat submitted that he has been working as Officer Grade II of HAL Engine Division, Bangalore. He submitted that inspite of repeated appeals for suitable work allocation in line with his progressive condition, more and more work load has been offloaded to him including the entire profile of a retired Grade V Officer in March 2016. Since the joining of SM-F and DGM-P, additional workload in the form of Medical payments, contractor bills, and all other residual bills processing were also given to him without concern for his appeals. He submitted that in recent days since asking for job rotation an Advisory letter has been issued regarding cheque signature mismatch. Daily mails are triggered regarding the same inspite of making himself abundantly clear on the subject. The timelines for marking his Quarterly Tasks (MAT) which is by 7th of end of the Quarter as per HR Manual were not followed and it has been kept pending. His previous two quarter MAT marks (June & Sept 18) were marked by his manager during Dec. 2018 with back dates. The marks awarded were significantly lower when compared to the previous quarters for the same tasks performed just to deny him promotion due in Jan. 2019. Under HR Manual Job rotation, it is mandatory on completion of 5 years in a sensitive section which had been willfully denied to him.

...2/-





2. The General Manager (HR-ER), Hindustan Aeronautics Limited vide letter No.HAL/HR/31(1)/2019 dated 03.04.2019 submitted that Government directives on reservation for persons with disabilities are being followed in HAL. The Reservation Rosters wherever applicable for persons with disabilities are being maintained in HAL, as per the Government directives. Further HAL takes utmost care to ensure that work environment is conducive and free from any discrimination against the employees with disabilities. Shri Seetharam Bhat was appointed as Finance Officer (Grade-II) (Group-A post) w.e.f. 30.10.2013 at HAL, Engine Division, Bangalore. He was appointed under PwD category. The complainant in his application / Bio-data had indicated that he is a person with disability with locomotor disability. However, the Officer during the Pre-employment Medical Examination was made provisionally unfit due to 'Defective Vision'. The Officer did not indicate in Bio-data that he was suffering from high Myopia. Subsequently, his case was reviewed after corrective surgery for high Myopia and he was found medically fit. However he was still considered for employment even though he suffered from multiple Sclerosis with Right Lower Limb Monoparesis. The Work Assignment has been done considering his limitation to move to other departments located at different locations in the Division. The assignment have been allotted with minimal or nil movements to Departments/Sections. Although, Shri Seetharam possesses 10 years of experience and requisite qualification of CA, he has not been posted in demanding work areas, keeping in view his physical condition. The complainant has been extended environment friendly facilities as differently abled person in the Division such as barrier free and conducive environment to work. He has been extended facilities such as Ramps, Handrails, Accessible Toilet, Water Closet, Wash Basin, Bio-metric

**Hearing :** The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 29.09.2020.

3. The following persons were present during the hearing;
- 1) Mr. Seetharam Bhat, the complainant.
  - 2) Mr. Alok Verma, Director (HR), HAL, on behalf of the respondent.

Both the parties were heard.

**Observation/Recommendations:**

4. After hearing both the parties, this Court makes the following recommendations for implementation by the respondent:

- (a) Shri Prabhat Raju, DGM, HAL may be counseled by the respondent for displaying more sensitivity towards persons with disabilities.



- (b) The complainant may be given only such responsibilities which he can handle efficiently with his level of disability.
- (c) The respondent may strictly follow the provisions of Section 20 of the Rights of Persons with Disabilities Act, 2016 which are reproduced as under:-

*"Section 20(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."*

- (d) The respondent may also follow the provisions of Section 2(y) of the Rights of Persons with Disabilities Act, 2016 and provide reasonable accommodation to the complainant, which are reproduced below:

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





(e) The respondent may further implement the provisions of **Section 23(1)** of the Rights of Persons with Disabilities Act, 2016, which states that "*Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer*", and inform this Court as well as to the complainant the contact details of the Grievance Redressal Officer in HAL.

5. The case is disposed off.

Dated: 12.10.2020

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities





## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11020/1024/2019

### Complainant:

Shri K. Dasaradhi Gupta,  
Retired Superintendent of Central Excise (GST),  
Flat No.301, Blue Berry Apartments,  
Opposite Road to Andhra Bank ATM,  
Road No.3, Sector 3, Lotus Land Mark,  
Kedareswarpet, Vijayawada 520003  
Email: [kotadasaradhigupta@gmail.com](mailto:kotadasaradhigupta@gmail.com);

### Respondent:

✓ The Principal Commissioner of Central Tax,  
Office of the Principal Commissioner of Central Tax,  
Hyderabad GST Commissionerate,  
GST Bhavan, LB Stadium Road, Basheerbagh,  
Hyderabad – 500005  
Email: [consec.hydgst@gmail.com](mailto:consec.hydgst@gmail.com);  
Phone: 040-2341117/23240725; Fax:040-23299204

### Gist of Complaint

The complainant is a person with 50% locomotor disability. He retired on 31.01.2015 from the respondent's office in the cadre of Inspector of Customs with grade pay of Rs.4800/- in Pay Scale of Rs.9300-34800/- in PB-2 under MACP w.e.f. 01.09.2008. Hon'ble Central Administrative Tribunal, Hyderabad, had set aside the decision dated 16.09.2009 of Central Board of Indirect Taxes and Customs (CBIC), New Delhi that the non-functional Grade Pay of Rs.5400/- in PB-2 would not be granted to such of those Group B Officers who have got the grade pay of Rs.4800/- in PB-2 on up-gradation under MACP. The complainant also submitted that this issue had been finally adjudicated by the Hon'ble Supreme Court vide judgment dated 10.10.2017 in Civil Appeal No.8883 of 2011. The complainant filed this complainant for grant of Non-functional Grade Pay of Rs.5400/- in PB-2 with all consequential

Page 1 of 2



benefits including pensionary benefits since he had completed regular service of 4 years in the grade pay of Rs.4800/- in PB-2.

2. On taking up the matter, the respondent in their reply dated 05.04.2019 submitted that CBIC, New Delhi informed to implement Hon'ble CAT's common order in the case of applicants/petitioners only; and since the complainant is not an applicant/petitioner in the said OAs, he could not be granted NFG to Grade Pay of Rs.5400/- in PB-2 and also payment of consequential benefits.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

1. Mr. Kota Dasaradhi Gupta, the complainant
2. Mr. P. Sai Mohan, GST Commissioner, on behalf of the respondent

**Observation/Recommendations:**

Both the parties were heard.

2. The respondent informed this Court that the complainant had raised this matter in Central Administrative Tribunal (CAT) also and CAT has since given favourable orders for the complainant. The complainant has received the Non-Functional Grade Pay of Rs.5400/-. Revised pension and his arrears etc. are also being processed by the respondent.

3. The case is disposed off.

Dated: 12.10.2020

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



378



Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11027/1022/2019

R23706

**Complainant** : Shri Bindeshwari Prasad Singh, Railway Quarter, 652/D, O.T. Para, Katihar Bihar - 854105.

R23707

**Respondent** : Kendriya Vidyalaya Sangathan, (Through the Commissioner), 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi - 110 016

**Disability** : 75 % Locomotor

### Gist of Complaint:

Shri Bindeshwari Prasad Singh submitted that he has been serving as Trained Graduate Teacher (TGT) in Kendriya Vidyalaya at Katihar in Bihar. He has been selected for the post of PGT (Biology) through Limited Departmental Competitive Examination-2018 of Kendriya Vidyalaya Sangathan (KVS). After his selection, he was given posting at Kendriya Vidyalaya, BSF, Kishanganj, Bihar. On the ground of his disability and as he need constant support of his near relatives for his daily activities, he applied to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi for modification/change of his place of posting from KV, BSF, Kishanganj to KV, NTPC, Deeptinagar, Kahalgaon, which is near to his hometown. His appeal has been rejected and the appeal of about 254 normal applicants have been considered and accepted. He has been deprived of his promotion as he was unable to join at the present place of his promotional posting.

2. The Assistant Commissioner, (Estt-II/III), Kendriya Vidyalaya vide letter No.11029MI/23/2019/Estt-II/1658-59 dated 28.08.2019 submitted that in KVS there are criteria for posting on promotion through LDCE as follows:

1. VH/PH/HH
2. Female employees
3. Others.

Accordingly, the applicant was given posting to the promotional post of PGT (Biology) through LDCE-2018 with posting at KV BSF, Kishanganj (Bihar) from KV Katihar. Now the complainant has been seeking modification in his place of posting but vacancy is not available at his desired place.



...2/-



3. The complainant vide his rejoinder dated 18.10.2019 submitted that in his original complaint he had mentioned that his application for modification in the place of posting was rejected by the Respondent whereas applications of 254 normal applicants were considered and accepted by the Respondent and thus the priority of a person with disability was denied thereby.

**Hearing :**

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 29.09.2020.

5. The following persons were present during the hearing;

- 1) Mr. Bindeshwari Prasad Singh, the complainant.
- 2) Mr. Dharmendra Patle, Assistant Commissioner (Estt.II/III), KVS (HQ), on behalf of the respondent.

Both the parties were heard.

6. The complainant explained that though he was promoted as PGT (Biology), his promotion could not take effect because transfer from his present posting was essential to effect the promotion. At present he was posted at Katihar in Bihar and was transferred to Kishanganj on promotion where he could not join because of his 75% locomotor disability. He had asked for a posting at Kendriya Vidyalaya, NTPC, Deeptinagar, Kahalgaon at the time of his promotion which was very close to his present place of posting and from where he could work efficiently and availed of his promotion also. However, the respondent did not consider his request and he had to forego his promotion.

7. The respondent explained that as they had not taken any application from anyone regarding their preference for posting on promotion, they could not consider the complainant for posting at Deeptinagar, Kahalgaon. At present only a posting at Sasaram in Patna region was available and if the applicant wishes to join there, he could be posted at that place.

8. The complainant said that because of his disability, it is not possible for him to go and work at Sasaram which is very far and has reconciled to his lack of promotion.

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



.....3/-

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

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

10. On many occasions this Court has noted that the Kendriya Vidyalaya Sangathan does not have the Equal Opportunity Policy which is required to be prepared and submitted to this Court in terms of Section 21 of the Rights of Persons with Disabilities Act, 2016 which reproduced below:

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

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

**Observation/Recommendations:**

11. As per the above rule position, the case of the complainant could have been considered appropriately and he could have been posted at the same place or place closest to enable him to avail of his promotion.

12. This Court recommends that the Equal Opportunity Policy may be prepared expeditiously taking into account all the persons with disabilities in Kendriya Vidyalaya Sangathan. The respondent is also recommended to give the complainant proforma promotion at his current place of posting till such time a vacancy arises at Deeptinagar, Kahalgaon or at Katihar.

13. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated : 12.10.2020





381



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: 11279/1023/2019

R-23696

वादी

✓ श्री अरुण कुमार, अन्नपूर्णा भवन, लोटा कारखाना के समीप बेलाटांड, झुमरी तिलैया, कोडरमा, झारखण्ड - 825409  
ई-मेल <arunjmt81@gmail.com>

प्रतिवादी

आयुक्त, नवोदय विद्यालय समिति, बी - 15, संस्थागत क्षेत्र, सेक्टर - 62, नोएडा, उत्तर प्रदेश - 201307  
ई-मेल <nvshqe3@gmail.com> <nlinvsnoida@gmail.com>

वादी

R-23697

80 प्रतिशत अस्थिबाधित

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उन्होंने नवोदय विद्यालय समिति, पटना संभाग अंतर्गत संचालित जवाहर नवोदय विद्यालय, झारखण्ड एवं बिहार में 01.01.2013 से 30.09.2016 तक प्रवक्ता (रसायनशास्त्र) के पद पर कार्य किया, तत्पश्चात त्यागपत्र देकर वर्तमान में व्याख्याता (रसायनशास्त्र) के पद पर राजकीय पॉलिटेक्निक, बिहार में कार्यरत है प्रार्थी का कहना है कि नवोदय विद्यालय समिति द्वारा उन्हें दुगने दर से मासिक यात्रा भत्ता का लाभ नहीं दिया गया।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 02.07.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. Consultant (Estt.-02), NVS vide letter dated 23.09.2019 inter-alia submitted that as per rule, the important condition for grant of Double transport allowance requires the recommendation of the Head of the Orthopaedics Department of a Govt. Civil Hospital which is essential for sanction of allowance in favour of the Blinds and Orthopedically disabled employees Though, complainant sent his application along with his disability certificate but there was no recommendation of grant of double transport allowance from the Head of the Orthopaedics Department of a Govt. Civil Hospital, therefore, he is not entitled to have such facilities.



Handwritten signature

4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 15.09.2019 में कहना है कि उन्होंने उपायुक्त, नवोदय विद्यालय समिति, पटना को 14 आवेदन पत्र तथा एक आवेदन पत्र प्रकोष्ठ, नवोदय विद्यालय समिति, नोएडा को भी उचित माध्यम के द्वारा भेजा था लेकिन कोई जवाब नहीं आया। प्रार्थी का कहना है कि उन्हें कभी इस बात की सूचना नहीं दी गई कि दिव्यांगता प्रमाण पत्र में दुगने यात्रा भत्ता देने के लिए recommendation नहीं किया गया है।

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

- Mr. Arun Kumar, the complainant.
- None for the respondent.

**Observation/Recommendations:**

5. The Court after going through the written submission of the respondent observes that Double Transport Allowance is admissible to all persons with disabilities on the basis of their disability certificate issued by a competent authority. No further recommendation from the Head of the Orthopedics Department of a Government Civil Hospital is required to be obtained. Hence the Navodaya Vidyalaya Samiti is directed to take note of the Department of Expenditure, Ministry of Finance, Government of India instructions issued vide O.M. No.21-1/2011-E.II(B) dated 5<sup>th</sup> August, 2013 in this matter as quoted below:

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

6. Payment of Double Transport Allowance to the complainant may be made by the respondent w.e.f. 01.01.2013 to 30.09.2016 i.e. the entire period for which the complainant worked in the Navodaya Vidyalaya Samiti.

7. The Case is accordingly disposed off.

Dated: 12.10.2020



*Upma Srivastava*  
(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: 11437/1021/2019

वादी

R-23686

श्री कमल कुमार

ई-मेल <kamaldeebe@gmail.com>

प्रतिवादी

R-23685

मंडल कार्मिक अधिकारी, उत्तर रेलवे, मंडल कार्यालय, दिल्ली मंडल, नई दिल्ली।

ई-मेल <gm@nr.railnet.gov.in> ई-मेल <cpro@nr.railnet.gov.in>

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 19.08.2020 में कहना है कि उनकी नियुक्ति विशेष दिव्यांग कोटे के अन्तर्गत आगरा मण्डल में सहायक स्टेशन मास्टर, ग्रेड पे 2800 के पद पर दिनांक 03.06.2013 को हुई तथा दिल्ली मण्डल में दिनांक 05.05.2016 को दिव्यांग कोटे के अन्तर्गत ग्रेड पे 2800 से ग्रेड पे 4200 में पदों उन्नत किया गया। प्रार्थी का आगे कहना है कि दिनांक 05.05.2018 को दो वर्ष पूरे हो चुके हैं तथा उन्हें दिव्यांग कोटे के अन्तर्गत 4600 ग्रेड पे मिलना चाहिए जो कि उन्हें अभी तक नहीं मिला। जबकि दिल्ली मण्डल ने 28.12.2018 को 4600 ग्रेड पे की पदोन्नति सूची जारी गई थी जिसमें एससी/एसटी को पदोन्नत किया गया परन्तु दिव्यांगजनों को पदोन्नति नहीं दी गई।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 05.09.2019 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 02.03.2020 के बावजूद प्रतिवादी ने कोई उत्तर/टिप्पण नहीं भेजे, इसलिए सुनवाई दिनांक 25.09.2020 सुनिश्चित की गई।

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

- Mr. Kamal Kumar, the complainant.
- Ms. Bubble, Divisional Personnel Officer, DRM Office, Delhi Division, on behalf of the respondent.

### Observation/Recommendations:

3. Both the parties were heard.



...2...

4. The complainant informed that he had not been promoted to the Grade Pay of Rs.4600/- even when he became eligible for the same way back in 2018. In this respect various officers in the organization had assured him of such promotion over the years.

5. No response was received to the written communications of this Court dated 05.09.2019 and 02.03.2020.

6. The respondent informed that in the year 2019, no promotions were given as there was no vacancy. However, the proposal for promotions in the year 2020 is under finalization and the name of the complainant has already been included in that. The final orders are expected to be issued very shortly. The respondent also informed that the complainant was rightly due for promotion in 2018 itself as indicated by him. He might have been overlooked by the respondent. To remedy that, the respondent explained that his case will be being examined for notional promotion w.e.f. 2018 itself which will enable him to be included in the panel for that year. This will address the grievance of the complainant to a large extent.

7. In view of these submissions of the respondent, the Court recommends that necessary orders as per above may be issued within 90 days of receipt of this order and a compliance report may also be sent to this Court.

8. The Case is accordingly disposed off.

Dated: 12.10.2020



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



374



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. 11451/1021/2019

**Complainant :** Dr. K.V. Harish Prashanth, 107/1, 9<sup>th</sup> Main, 2<sup>nd</sup> Cross, Saraswathipuram, Mysuru - 570009

**Respondent :** CSIR-Central Food Technological Research Institute, (Through the Director), Mysuru, Karnataka - 570020

**Disability :** 50% Locomotor

### Gist of Complaint:

Dr. K.V. Harish Prashanth submitted that he is presently working as a Scientist in the Deptt. of Biochemistry, CSIR-Central Food Technological Research Institute (CFTRI), Mysore. He joined the Institute in 2009 as a 'Junior Scientist' and was promoted to the post of Scientist in December 2012. He was very productive in the research output till the start of discrimination verbally at the place of his work. He approached the institutional higher authorities for the solution but in vain. After requesting for many a time, he got himself transferred to 'Dept. of Biochemistry' in December 2016. He was given very less marks for 2013-14 performance mapping of scientists (PMS) grading/scoring deliberately and for 2014-15, 2015-16. This has affected his career and also the management denied giving any normal promotion for next grade to 'Senior Scientist' due from December 2016. In spite of his two representations in this regard, his establishment did not consider his request for re-evaluation of the APAR (PMS) work report for the year 2013-14. Further he submitted his grievance with the Institute's Liaison Officer who recommended for higher grading of PMS (2013-14) and requested for review and revaluation to the Director, CSIR-CFTRI.

2. The Administrative Officer, CSIR-CFTRI vide letter No. FT/15(167/4)/190/2018/E-II dated 14.11.2019 submitted that the complainant has been promoted within 3 years from Jr. Scientist to Scientist position. Again he has been considered for next promotion during 2017-18, the result of which is awaited. He submitted that it could be seen from the facts of the Case furnished that CSIR-CFTRI has always acted within the framework of the established rules. It has always protected and safeguarded the interests and at no point of time deprived its employees belonging to the persons with disability category including Dr. Harish Prashanth, of their legitimate rights.

TRUE COPY



He submitted that Dr. Harish Prashnath was considered for his assessment promotion from 'Junior Scientist' to 'Scientist' on completion of the residency period of 3 years by the Assessment Committee constituted by CSIR-Recruitment and Assessment Board, as per the provisions of CSRAP Rules, 2001. The Assessment Committee reviewed the performance of Dr. Harish Prashnath based on the Work Report submitted by him and considering his output for the period under consideration, recommended him for promotion to the next higher grade on normal grounds without giving any special relevance to his disability. Dr. Harish Prashnath was promoted as 'Scientist' with effect from December 17, 2012. His representation was considered by the Competent Authority to retain the final grading of 0.8/75 awarded to him and the same has been communicated to him vide letter dated 17.06.2016. On completion of the residency period of 4 years, the PMS of Dr. Harish Prashanth was scrutinized by the internal Screening Committee to determine his eligibility for recommending the name of the Complainant to CSIR-RAB to consider his case for assessment promotion to the next higher grade. The Internal Screening Committee found that as against the required threshold of 85.00 marks, Dr. Harish Prashanth had scored only 82.50 marks and hence was not eligible to be considered for his assessment promotion to the next higher grade for the year 2016-17. CSIR-RAB has conducted interviews for the eligible candidates including Dr. Harish Prashanth on 18.09.2019 at CSIR-IHBT, Palampur for considering their eligibility for assessment promotion to the next higher grade, the results of which are awaited. Dr. Harish Prashanth though has been appointed on an unreserved post, considering his disability, he has been extended with all benefits applicable to the category of 'persons with disability'. He has been granted Transport Allowance at double the normal rates. He has been permitted to claim exemption under 80DD as applicable to 'persons with disabilities' and other benefits as applicable. Dr. Harish Prashanth is considered as per the existing 'CSIR Scientists Recruitment & Assessment Promotion Rules, 2001' norms.

3. The complainant vide his letter dated 22.01.2020 submitted that the Respondent has not given any information or justification to the Court in its reply dated 14.11.2019. The management of CSIR-Central Food Technological Research Institute (CFTRI), Mysuru has got no proper justification for the discrimination to the complainant.





**Hearing :**

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 25.09.2020.

5. The following persons were present during the hearing:

- 1) Dr. K.V. Hrish Prashanth, the complainant.
- 2) Mr. D.J.N. Prasad, Administrative Officer, CSIR-CFTRI, on behalf of the respondent.

6. Both the parties were heard.

7. The contention of the complainant was that he was not granted promotion to the post of Senior Scientist w.e.f. December, 2016 because of low grading of his performance in the year 2013-14 on account of disability.

8. The respondent did not consider his request for reevaluation of his APAR for the year 2013-14. The respondent did not take any action on the recommendations and the instructions issued by the Liaison Officer who recommended higher grading of his APAR for the year 2013-14.

9. The Court was informed by the respondent that the complainant has been promoted as Senior Scientist w.e.f. 2017. He could not be promoted w.e.f. 2016 because of low final grading on the basis of APAR of last four years.

**Observation/Recommendations:**

10. This Court observes that the respondent could not give any information on what action was taken by them on the recommendations of the Liaison Officer regarding higher grading of his APAR for the year 2013-14. Had the same been done the complainant would have become eligible for promotion w.e.f. 2016 itself. Noting this position, the Court recommends that this case may be re-examined by the respondent and the complainant may be given promotion w.e.f. December, 2016 if eligible after implementing the recommendations of the Liaison Officer.

11. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 12.10.2020





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: 11503/1023/2019

वादी श्री प्रफुल्ल कुमार त्रिपाठी, शहीद लेफिट यश आदित्य 'पावन' स्मृति  
आवास, डी-09, विज्ञानपुरी, महानगर, लखनऊ - 226006  
ई-मेल <darshgrandpa@gmail.com>

प्रतिवादी 1. केन्द्र निदेशक / केन्द्राध्यक्ष  
प्रसार भारती (भारत का लोक सेवा प्रसारक), आकाशवाणी, लखनऊ।  
ई-मेल <ang@air.org.in>

2. निदेशक (प्रशासन), प्रसार भारती, भारत का लोक सेवा प्रसारक,  
आकाशवाणी, महानिदेशालय, आकाशवाणी भवन, संसद मार्ग, नई दिल्ली  
- 110001  
ई-मेल <directoradmn@prasarbharati.gov.in>

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह वर्ष 2013 में कार्यक्रम अधिशाषी पद, प्रसार भारती, आकाशवाणी, लखनऊ से रिटायर हो चुके हैं रिटायरमेंट के समय उन पर किसी प्रकार के धनराशि की देयता कार्यालय ने दिखाई और नो ड्यूज प्रमाणपत्र भी जारी कर दिया। रिटायर होने के 06 साल बाद कार्यालय ने पत्र दिनांक 17.12.2018 के द्वारा प्रार्थी के अब तक रोक रखे गए वर्ष 2007 के एक टी.ए. बिल पर आपत्तियां लगाकर पेंशन से 23,737/- की रिकवरी का आदेश जारी कर दिया तथा पेंशन से कटौती के लिए पी.ए.ओ. को भी लिख दिया गया। प्रार्थी का आगे कहना है कि टी.ए. अग्रिम की मूल धनराशि रु0 7,500/- थी और उस पर चक्र वृद्धि ब्याज लगाया गया, प्रार्थी ने राशि जमा करते हुए महानिदेशालय को वस्तुस्थिति से अवगत करवाया। जिसके तहत आकाशवाणी महानिदेशालय ने इस मामले को गंभीरता से लेते हुए दिनांक 16.12.2018 को तथा पुनः दिनांक 17.05.2019 को जारी आदेश में इस रिकवरी को दोषपूर्ण बताते हुए प्रार्थी के टी.ए. बिल को निस्तारित करने, रिकवरी सम्बन्धी रिपोर्ट को स्खलित करने और इस मामले में हुई देरी का स्पष्टीकरण तुरंत प्रस्तुत करने के लिए निर्देश दिया किन्तु कार्यालय द्वारा अभी तक कोई कार्यवाही नहीं हुई

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।



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)



3. निदेशक (अभि.) / केन्द्राध्यक्ष, प्रसार भारती, आकाशवाणी, लखनऊ का अपने पत्र दिनांक 17.01.2020 में कहना है कि श्री त्रिपाठी द्वारा लिया गया यात्रा अग्रिम उनके द्वारा पहले ही जमा किया जा चुका है व इस पर देय ब्याज आकाशवाणी महानिदेशालय द्वारा माफ किया जा चुका है तो ऐसी स्थिति में उनकी पेंशन से किसी प्रकार की रिकवरी का प्रश्न ही नहीं उठता। यात्रा के दौरान मुख्यालय से बाहर रहने की अवधि दिनांक 09.04.2007 से 11.05.2007 तक अवकाश प्रार्थना पत्र श्री त्रिपाठी ने अभी तक प्रस्तुत नहीं किया है। जिस दस्तावेज को श्री त्रिपाठी नो ड्यूज प्रमाण पत्र कह रहे हैं वह वास्तव में विभिन्न अनुभागों द्वारा दी गई क्लीयरेंस है

4. प्रार्थी का अपने पत्र दिनांक 25.08.2020 कहना है कि विचाराधीन टी.ए. बिल की धनराशि का चक्रवृद्धि ब्याज सहित तुरंत भुगतान किया जाये

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

- Mr. Praful Kumar Tripathi, the complainant.
- Mr. K.M. Rastogi, AIR, Lucknow & Mr. Rajeev Malhotra, Dy. Director, Prasar Bharti, on behalf of the respondent.

**Observation/Recommendations:**

5. Both the parties were heard.

6. The Court noted that the recovery of Rs.23,737/- only which was proposed to be made from the pension of the complainant has been waived off by the respondent thereby causing no loss in pension to the complainant. The complainant raised the issue of settlement of his TA Bill in accordance with the CGHS Rules prevailing at that time.

7. This Court recommends that the respondent may examine and dispose off this matter of settlement of TA Bill as per Government rules and regulations.

8. The Case is accordingly disposed off.

Dated: 12.10.2020



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

368



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: 11503/1023/2019

वादी

श्री प्रफुल्ल कुमार त्रिपाठी, शहीद लेफिट यश आदित्य 'पावन' स्मृति  
आवास, डी-09, विज्ञानपुरी, महानगर, लखनऊ - 226006  
ई-मेल <darshgrandpa@gmail.com>

प्रतिवादी

1. केन्द्र निदेशक/केन्द्राध्यक्ष  
प्रसार भारती (भारत का लोक सेवा प्रसारक), आकाशवाणी, लखनऊ।  
ई-मेल <ang@air.org.in>
2. निदेशक (प्रशासन), प्रसार भारती, भारत का लोक सेवा प्रसारक,  
आकाशवाणी, महानिदेशालय, आकाशवाणी भवन, संसद मार्ग, नई दिल्ली  
- 110001  
ई-मेल <directoradmn@prasarbharati.gov.in>

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह वर्ष 2013 में कार्यक्रम अधिशार्थी पद, प्रसार भारती, आकाशवाणी, लखनऊ से रिटायर हो चुके हैं रिटायरमेंट के समय उन पर किसी प्रकार के धनराशि की देयता कार्यालय ने दिखाई और नो ड्यूज प्रमाणपत्र भी जारी कर दिया। रिटायर होने के 06 साल बाद कार्यालय ने पत्र दिनांक 17.12.2018 के द्वारा प्रार्थी के अब तक रोक रखे गए वर्ष 2007 के एक टी.ए. बिल पर आपत्तियां लगाकर पेंशन से 23,737/- की रिकवरी का आदेश जारी कर दिया तथा पेंशन से कटौती के लिए पी.ए.ओ. को भी लिख दिया गया। प्रार्थी का आगे कहना है कि टी.ए. अग्रिम की मूल धनराशि ₹ 7,500/- थी और उस पर चक्र वृद्धि ब्याज लगाया गया, प्रार्थी ने राशि जमा करते हुए महानिदेशालय को वस्तुस्थिति से अवगत करवाया। जिसके तहत आकाशवाणी महानिदेशालय ने इस मामले को गंभीरता से लेते हुए दिनांक 16.12.2018 को तथा पुनः दिनांक 17.05.2019 को जारी आदेश में इस रिकवरी को दोषपूर्ण बताते हुए प्रार्थी के टी.ए. बिल को निस्तारित करने, रिकवरी सम्बन्धी रिपोर्ट को स्खलित करने और इस मामले में हुई देरी का स्पष्टीकरण तुरंत प्रस्तुत करने के लिए निर्देश दिया किन्तु कार्यालय द्वारा अभी तक कोई कार्यवाही नहीं हुई

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।





3. निदेशक (अभि.) / केन्द्राध्यक्ष, प्रसार भारती, आकाशवाणी, लखनऊ का अपने पत्र दिनांक 17.01.2020 में कहना है कि श्री त्रिपाठी द्वारा लिया गया यात्रा अग्रिम उनके द्वारा पहले ही जमा किया जा चुका है व इस पर देय ब्याज आकाशवाणी महानिदेशालय द्वारा माफ किया जा चुका है तो ऐसी स्थिति में उनकी पेंशन से किसी प्रकार की रिकवरी का प्रश्न ही नहीं उठता। यात्रा के दौरान मुख्यालय से बाहर रहने की अवधि दिनांक 09.04.2007 से 11.05.2007 तक अवकाश प्रार्थना पत्र श्री त्रिपाठी ने अभी तक प्रस्तुत नहीं किया है। जिस दस्तावेज को श्री त्रिपाठी नो ड्यूज प्रमाण पत्र कह रहे हैं वह वास्तव में विभिन्न अनुभागों द्वारा दी गई क्लीयरेंस है

4. प्रार्थी का अपने पत्र दिनांक 25.08.2020 कहना है कि विचाराधीन टी.ए. बिल की घनराशि का चक्रवृद्धि ब्याज सहित तुरंत भुगतान किया जाये

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

- Mr. Praful Kumar Tripathi, the complainant.
- Mr. K.M. Rastogi, AIR, Lucknow & Mr. Rajeev Malhotra, Dy. Director, Prasar Bharti, on behalf of the respondent.

**Observation/Recommendations:**

5. Both the parties were heard.

6. The Court noted that the recovery of Rs.23,737/- only which was proposed to be made from the pension of the complainant has been waived off by the respondent thereby causing no loss in pension to the complainant. The complainant raised the issue of settlement of his TA Bill in accordance with the CGHS Rules prevailing at that time.

7. This Court recommends that the respondent may examine and dispose off this matter of settlement of TA Bill as per Government rules and regulations.

8. The Case is accordingly disposed off.

Dated: 12.10.2020



  
(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

Extra.

Case No: 11504/1023/2019

वादी

R-23668

श्री अवधेश विश्वकर्मा, महासचिव, राष्ट्रीय दृष्टि संघ मध्यप्रदेश शाखा,  
कार्यालय म.न. 44, जगन्नाथ पुरी कॉलोनी, नीलबड़, भोपाल - 462044  
ई-मेल <mayurharda1990@gmail.com>

प्रतिवादी

R-23669

उपायुक्त, केन्द्रीय विद्यालय संगठन, क्षेत्रीय कार्यालय, भोपाल क्षेत्र, मैदा  
मील के सामने, भोपाल - 462011  
ई-मेल <kvnepanagar@kvsedu.org> <acbhopal@yahoo.co>

## GIST of the Complaint:

प्रार्थी का कहना है कि श्री मयूर शर्मा, दृष्टिबाधित संगीत शिक्षक, केन्द्रीय विद्यालय, नेपानगर को प्राचार्य द्वारा प्रताड़ित किया जा रहता है जैसे वेतन पर्ची प्रदान न करना, शाला के परीक्षा विभाग के कक्ष में बैठने से मना करना, उपस्थिति रजिस्टर में हस्ताक्षर करने के लिए दबाव बनाना तथा अनेक बार अपमान जनक शब्दों का प्रयोग कर अपमानित किया जाता है।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. उपायुक्त, केन्द्रीय विद्यालय, भोपाल संभाग का अपने पत्र दिनांक 11.12.2019 में कहना है कि निरीक्षण प्राचार्य की टिप्पणी एवं श्री मयूर शर्मा एवं विद्यालयों के अन्य शिक्षकों से की गई वार्तालाप की सम्यक समीक्षा पर प्रथम दृष्टया पाया गया कि श्री मयूर शर्मा की प्राचार्य के विरुद्ध उत्पीड़न की शिकायत सिद्ध नहीं होती है। श्री शर्मा अपनी दिव्यांगता को ढाल बनाकर अपने उच्चधिकारियों के प्रति अपमानजनक टिप्पणी करते हैं एवं उन पर आरोप लगाते हैं तथा तथ्यों के आधार पर ही श्री मयूर शर्मा को एक सुझावी ज्ञापन दिनांक 05.08.2019 किया गया है।

4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 05.01.2020 में कहना है प्राचार्य द्वारा स्पष्टीकरण दिया गया जोकि पूर्णता असत्य है और एडवाइजरी में यह लिख देना कि विकलांगता को ढाल बना रहा है अवैधानिक है।





...2....

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **29.09.2020**. The following were present:

- Mr. Mayur Sharma, the complainant.
- None for the respondent.

**Observation/Recommendations:**

5. The complainant Mr. Mayur Sharma was tried to connect but could not be heard due to technical reasons.

6. The Court has gone through the written submissions made by the complainant dated 05.01.2020. The written submissions of the respondent dated 11.12.2019 have also been gone through. The matter is regarding harassment and humiliation of the complainant by the Principal of Kendriya Vidyalaya Nepanagar.

7. The complainant has also raised issues regarding non availability of adequate seating arrangement for a visually impaired person like him as well as false allegations made against him of negligence in paper work.

8. The respondent has stated that they examined the allegations made by the complainant and found that they were baseless and the harassment complaint is not proven. They have also informed that an advisory dated 05.08.2019 was issued to the complainant for maintaining proper behaviour with his superiors. The letter written to the Dy. Commissioner, Kendriya Vidyalaya Sangthan in this respect by the Principal of Kendriya Vidyalaya Nepanagar has also been seen.

9. This Court recommends that both the Principal and the complainant may be counseled by the Kendriya Vidyalaya Sangthan, so as to resolve this issue permanently. The Principal alongwith the entire staff of the Kendriya Vidyalaya Nepanagar may also be sensitized towards the need of greater understanding and empathy for persons with disabilities.

10. The Case is accordingly disposed off.

Dated: 12.10.2020



TRUE COPY

Sign.

*Upma Srivastava*  
(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: 11516/1024/2019

वादी

R-23677

श्री चेतन प्रकाश जायसवाल

ई-मेल <chetanjayawal84@gmail.com>

प्रतिवादी

R-23676

Regional Manager, Regional Office, Exide Industries Ltd, 501-506, 5<sup>th</sup> Floor, Sunny's Big Junction (SIC), Gopalpura Bypass Mansarovar, Jaipur  
Pin code- 302020

ई-मेल <jitandersm@exide.co.in>

वादी

40 प्रतिशत अस्थिबाधित

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उन्होंने Exide Industries Ltd में तीन साल Computer operator के पद पर कार्य किया तथा overtime करने के कारण उनकी जांघ में द्यूमर हुआ जिसका ऑपरेशन PGI, Chandigarh में हुआ और ऑपरेशन के दौरान complications के कारण पुनः आपरेशन की सलाह दी जिसकी सम्पूर्ण जानकारी उन्होंने अपने कार्यालय को दी परन्तु फिर भी प्रार्थी को नौकरी से निकाल दिया गया।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.09.2019 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 02.12.2019 के बावजूद प्रतिवादी ने कोई उत्तर/टिप्पण नहीं भेजे, इसलिए सुनवाई दिनांक 25.09.2020 सुनिश्चित की गई।

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.09.2020. The following were present:

- Mr. Chetan Prakash Jayaswal, the complainant.
- Ms. Sanjukta Maitra, EIL & Mr. Surender Sharma, Mascot Management, on behalf of the respondent.

### Observation/Recommendations:

3. Both the parties were heard.



TRUE COPY

Sign.



...2....

4. After hearing both the parties and detailed submission received from the Placement Agency – Mascot Management vide e-mail dated 25.09.2020, this Court recommends that the complainant may duly sign the appointment letter issued to him by the Placement Agency – Mascot Management for continuation of his service. For other grievances like claims of ESI etc., action may be taken by the complainant as indicated in this e-mail (**a copy of this e-mail is enclosed for information of the complainant**).

5. The Case is accordingly disposed off.

Dated: 12.10.2020



  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

364



Ex 36

## 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: 11521/1021/2019

वादी

R.23628

श्री राजेन्द्र सिंह, टी.जी.टी., गणित, जवाहर नवोदय विद्यालय पाटन,  
जिला - सीकर (राज.) - च332718  
ई-मेल <rsyadav0770@gmail.com>

प्रतिवादी

आयुक्त, नवोदय विद्यालय समिति, बी - 15, संस्थागत क्षेत्र, सेक्टर -  
62, नोएडा, उत्तर प्रदेश - 201307  
ई-मेल <nvshqe3@gmail.com> <nlinvsnoida@gmail.com>

वादी

R.23629

81 प्रतिशत अस्थिबाधित

### GIST of the Complaint:

प्रार्थी श्री राजेन्द्र सिंह टी.जी.टी., गणित, जवाहर नवोदय विद्यालय, जिला सीकर, राजस्थान का कहना है कि विद्यालय के परिसर में दिनांक 27.08.2008 को दुर्घटनाग्रस्त होने के कारण वह स्थाई रूप से दिव्यांग हुए। उनका आगे कहना है कि नवोदय विद्यालय समिति ने 24 सितम्बर 2018 को एलडीई 2018 परीक्षा आयोजित की। इस परीक्षा में उन्हें न तो अतिरिक्त समय दिया गया और ना ही मापदंडों में छूट दी गई।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 07.01.2020 द्वारा प्रतिवादी के साथ उठाया गया।

3. Dy. Commissioner (Pers), Navodaya Vidyalaya Samiti vide letter dated 20.02.2020 inter-alia submitted that a notification for conduct of LDE for promotion to the post of PGTs was issued on 12.03.2018 and qualifying standard was clearly indicated in the notice which was 45% for UR candidates and 40% for SC/ST candidates. As regards submission of Shri Rajendra Singh that being a PH candidate, relaxed qualifying standard as in case of SC/ST candidates should have been allowed to him, it is stated that GOI rules and instructions under the Heading "Concession & Reservation" have been extensively gone through and no where such relaxation is found to be extended to PH category candidates in promotion.



4. प्रति उत्तर में प्रार्थी का अपने पत्र दिनांक 11.03.2020 में कहना है कि यदि नियमानुसार अतिरिक्त समय मिला होता तो वह शेष प्रश्न हल कर सकते थे तथा मापदंडों में अन्य की तरह 5 प्रतिशत छूट मिलती तो वह परीक्षा में सफल हो जाते।

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **25.09.2020**. The following were present:

- Mr. Rajendra Singh, the complainant.
- Mr. Vikram Joshi, Dy. Commissioner, NVS, on behalf of the respondent.

**Observation/Recommendations:**

5. Both the parties were heard.

6. The complainant's grievance is that he was not given sufficient time during the LDE-2018 for promotion to the post of PGT. If he had got sufficient time, he would have qualified the exam by getting the required cut off.

7. The respondent explained that even if the complainant would have qualified the written examination, he still would not have been promoted as a PGT on grounds of seniority as all persons promoted through that examination (which was only qualifying in nature) were senior to Shri Singh.

8. Noting the above said submissions, this Court would like to sensitize the respondent to the concessions and relaxations which are admissible to a person with disability during written examinations. ***The O.M. No.34-02/2015-DD-III dated 29<sup>th</sup> August, 2018 issued by Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment, Government of India, entitled "Guidelines for conducting written examination for Persons with Benchmark Disabilities" is attached with this order for information of the respondent.***

9. This rule position may be kept in mind by the respondent for strict implementation in future, so that persons with disabilities are not deprived of their legitimate rights and get full opportunity to upgrade their position in an organisation.

10. The Case is accordingly disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 12.10.2020

Encl.: As stated above.

382



Ex/2

## 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. 11532/1022/2019

R-23688

**Complainant** : Shri Nitin Kumar, H.No. 890, Sector-12, R.K. Puram, New Delhi – 110 022.

R-23699

**Respondent** : Central Public Works Department, (Thru Director General), A-Wing, Nirman Bhawan, New Delhi – 110 011.

**Disability** : 90% Locomotor

### Gist of Complaint:

The complaint vide his letter dated 13.09.2019 submitted that he has been working as a Section Officer in Horticulture wing of CPWD since 29.08.2018. He has continuously been harassed and humiliated by his DDG (Horticulture) and the Director of Horticulture (NDR). He has been overburdened with the work of three officers by holding of additional charge and also by posting him frequently in opposite divisions of Horticulture division. He has requested to restore his dignity as per the provisions of the Act and transfer him back to his initial posting place i.e. Sub-Divisions-2, Horticulture Division-1.

2. The Dy. Director General (Hort.). CPWD vide letter dated 25.10.2019 submitted that Shri Nitin Kumar, SO (Hort.) has been appointed in CPWD and posted in the Office of Dy. Director (Hort.), Hort. Divn-I. The appointment order issued by the Department clearly states that:

“The appointment carries with it the liability to serve anywhere in India or outside where Central Public Works Department has an organisation or any other government department where he/she is required to serve.”

....2/-



Signature



He submitted that there has been regular demands from other regions, i.e. Southern Region, Eastern Region, Western Region, Northern Region, etc for posting of SO (Hort.) for their areas as they did not have sufficient number of SO (Hort.). He submitted that inspite of the vacancies outside Delhi, Shri Nitin Kumar's request for first posting was considered and he has been accommodated in Delhi in the Office of Dy. Director (Hort.), Hort. Divn.-I vide their Office Order No. DDG(H)/135/EC-I/2018/759-H dated 24.08.2018 and was given the charge of Kushak Road, i.e day-to-day maintenance of residential Bungalows at Kushak Road and adjoining areas. Consequent upon the promotions of Shri K.P. Singh, SO (Hort.) and Shri Avneesh Deshwal, SO (Hort.) to the post of Asstt. Director (Hort.) posted in Hort. Divn-I, both officers were promoted and transferred to Mussoorie & PWD respectively. Since there were no other SO (Hort.) available in Hort. Divn-I and as Shri Nitin Kumar, SO (Hort.) was already working in Hort. Divn-I, he was asked to look after their works temporarily till the SOs (Hort.) are not selected by PMO.

3. The complainant vide his letter dated 23.01.2020 submitted that his Department did not give any weightage in giving him choice of posting considering his disability and provisions of the Rights of Persons with Disabilities Act. He submitted that the Respondent's statement that 'the appointment carries with it the liability to be served anywhere in India or outside' seemed is applicable in case of normal persons without any disability. His posting in Delhi inspite of number of vacancies in other regions seems to be a favour done by the Respondent. He was given the charge of Kushak Road section in his first posting but the Respondent has not explained the reasons for this transfer. He submitted that in order to further harass him his Department issued orders for his transfer on 07.01.2020. On the very next day, he was again posted/transferred back on 08.01.2020.

**Hearing :**

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 25.09.2020.

5. The following persons were present during the hearing:

1. Mr. Arun Gaur, Advocate for the complainant.
2. Mr. P.K. Tripathi, DDG (Horticulture) and Mr. Ujjwal Kumar, Advocate, on behalf of the respondent.

....3/-



6. Both the parties were heard.

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

**Observation/Recommendations:**

8. After hearing both the parties, the Court makes the following recommendations for implementation by the respondent:

- (i) A person with disability who is 90% OH should **not** be given additional charges when other such officers are available.
- (ii) Posting of a person with disability at a station of his choice is not to be construed as a favour given by the respondent.
- (iii) No harassment or abuse should be caused to any person with disability.
- (iv) A suitable warning may be issued to Former DDG (Horticulture) – Dr. B.N. Srivastava and Director (Horticulture-NDR) – Mr. M.K. Tyagi for causing harassment and intimidation of the complainant.
- (v) Transfer of the complainant back to Horticulture Division No.-I, Kushak Road from where he was transferred without obtaining the consent of the competent authority – DG, CPWD.

9. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 12.10.2020







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: 11549/1014/2019

Complainant: Swaraj Kumar Gayen

R-23688

E-mail : <swarajgayen26@gmail.com>

Respondent: The Chairman Railway Recruitment Cell, Eastern Railway,  
56, Chittaranjan Ave, Calcutta Medical College, College  
Square Kolkata, West Bengal – 700012

R-23687

E-mail: <rrcerkol@gmail.com> <kolrrb@gmail.com>

### Gist of Complaint

1. Railway Recruitment Board issue notification number CEN 02/2018 (level 1 posts as per 7th CPC) revised PwBD vacancies. As per the notification Eastern Railway advertised total 2367 vacancies. Out of which initially only 9 vacancies were reserved for PwBD candidates. Thereafter, on the recommendations of Hon'ble Delhi High Court, reserved vacancies for PwBD were increased from 9 to 10. Complainant filed the present complaint pointing out the discrepancies in computation of vacancies.

### A. Contention raised by the respondent

2. Respondent has taken a defence that the posts advertised were safety related. Hence, they were not suitable for PwBD candidates. Further, it was also informed by the respondent that shortage created has been completed subsequently by reserving more than 4 percent of vacancies for PwBD candidates in 2019 notification.

### B. Observation and Conclusion

3. It is undisputed fact that total number of vacancies, both suitable and non -suitable for PwBD candidates, as per 2018 notification, were 2367. Out of these 2367 only 10 were reserved for PwBD candidates.





4. At the very beginning itself, kind attention of the respondent is brought to Master Circular Number 13 (Rly.B letter number E(NGS) II/ 90/ RC-R2/14), dated 23/11/1990. This Master Circular issued by the Railway Board itself lays down the method which has to be followed while counting vacancies reserved for persons with PwBD. As per this methodology reservation for physical handicaps for Groups C and D posts, has to be computed on the basis of total number of vacancies occurring in all Groups C and D posts. However, the recruitment has to be made only in the posts suitable for PwBD candidates.
5. Further, Section 34 of RPwD Act, 2016 makes it an obligation for every appropriate government to reserve 4% of the total number of vacancies in the cadre strength.
6. Further, Hon'ble Supreme Court in UNION OF INDIA v. NATIONAL FEDERATION OF THE BLIND (2013) 10 SCC 772, held that Computation of reservation is based upon total number of vacancies in cadre strength and not on basis of vacancies available in identified posts, such computation of posts for reservation is not dependent upon identification of posts.
7. It is evident from the fact that the respondent has failed to implement rules made by the Railway Board itself. Total number of vacancies were 2367. As per the Master Circular mentioned above, read with 2016 Act, 4% of the total vacancies were supposed to be reserved for PwBD candidates. 4% of 2367 is 95, whereas respondent reserved only 10 seats.
8. Hence, this court concludes that reserving 10 seats instead of 95 is violative of direction laid down in Master Circular No. 13, mentioned above and also against the judgment of Hon'ble Supreme Court in UNION OF INDIA v. NATIONAL FEDERATION OF THE BLIND.
9. Furthermore, it is pertinent to mention that effect of judgments delivered by Hon'ble Supreme Court under PwD Act 1995 has been extended to provisions of RPwD Act, 2016 by judgment of Hon'ble Uttarakhand High Court delivered in UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND 2018 SCC OnLine Utt 865 and also explained by this court in B. UMA PRASAD v. EPFO (11183/1021/2019).
10. Another contention raised by the Respondent relates to the fact that posts were safety related and were not suitable for PwBD candidates





is not supported by the relevant documents. It is to be noted that respondent has not presented any document to support its claim that posts advertised in the impugned notification were not suitable for PwBD candidates. During proceedings respondent was subsequently asked if any exemption by the respondent was ever taken in this regard. Respondent failed to answer this question. In this regard O.M. dated 15.01.2018, issued by DoPT is relevant. As per the OM, If any Ministry/Department in the Central Government considers it necessary to exempt any establishment or any cadre or cadres fully or partly from the provisions of reservation for persons with benchmark disabilities, it shall make a reference to the Department of Empowerment of Persons with Disabilities giving full justification for the proposal, who having regard to the type of work carried out in any Government establishment by notification and subject to such condition, if any, as may be specified in the notification, in consultation with the Chief Commissioner for Persons with Disabilities (CCPD) may exempt any Establishment or any cadre(s) fully or partly from the provisions of reservation for persons with benchmark disabilities.

11. Respondent did not present any document confirming claim related to the exemption, in accordance with the OM dated 15.01.2018.
12. Therefore, this court concludes that respondent has failed to prove that nature of the vacancies advertised was not suitable for PwBD candidates. Furthermore, this court concludes even if it is believed that the nature of the vacancies was such that it was not suitable for PwBD candidates, respondent has failed to adopt correct methodology, as prescribed in Railway Board Master Circular quoted above and as laid down in the judgment of Hon'ble Supreme Court.
13. On this issue of fulfilment shortfall of reserved vacancies of PwBD in subsequent 2019 notification, this court concludes that 2018 and 2019 notification are two different notifications. It is unjust to club the two together. There may be cases where the candidates who were eligible to apply under 2018 notification may have become ineligible from applying under 2019 notification, due to factors like age etc.
14. On the basis of Observations made above this court recommends that –
  - a. 4%, of total number of vacancies advertised in 2018 notification (i.e. 95), inclusive of identified suitable as well as non-suitable for PwBD



candidates should be reserved for filling by Persons with Disabilities.

- b. As not reserving vacancies for PwBD candidates is in direct violation of provisions of RPwD Act, 2016, Judgments of Hon'ble Supreme Court, O.M. issued by DoPT and also Master Circular of the Railway Board. Hence, the respondent shall quash the whole process and conduct the whole exercise of recruitment afresh after proper calculation of reserved posts for PwBDs.

15. In view of the above, the case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 12.10.2020





376



सत्यमेव जयते

Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11561/1083/2019

वादी

R-23694

श्री अजयपाल सिंह, बी-44 द्वितीय तल, गली नं: 02, जगतपुरी, दिल्ली  
- 110051

ई-मेल <singhajayapal108@gmail.com>

प्रतिवादी

R-23695

आयुक्त (कार्मिक), दिल्ली विकास प्राधिकरण, विकास सदन, आई.एन.ए.  
कॉलोनी, नई दिल्ली - 110023

ई-मेल <manish.gupta2017@dda.gov.in> <d.sarkar416@dda.gov.in>

वादी

100 प्रतिशत दृष्टिबाधित

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि दिल्ली विकास प्राधिकरण द्वारा उन्हें सेक्टर 35, रोहिणी में फ्लैट आवंटित हुआ है जहाँ पर दृष्टिबाधित लोग सुगमता पूर्वक आ - जा भी नहीं सकते हैं प्रार्थी का आगे कहना है कि डी.डी.ए. ने दिव्यांगजनों के लिए फ्लैट बेचने की समय-सीमा 15 साल निर्धारित कि है जबकि सामान्य लोगों के लिए कोई समय सीमा नहीं है।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 23.09.2019 द्वारा प्रतिवादी के साथ उठाया गया।

3. Commissioner (Housing), D.D.A. vide letter dated 26.09.2019 submitted that the Authority has approved Agenda Item No. 93/2019 regarding relaxation in lock-in period in respect of flats allotted to persons with disabilities on 17.09.2019. The changes proposed in the Agenda Item requires approval of the M/o of Housing & Urban Affairs, therefore, matter is being forwarded for approval.

4. प्रार्थी का अपने पत्र दिनांक 13.08.2020 कहना है कि दिल्ली विकास प्राधिकरण द्वारा अभी तक कोई कार्यवाही नहीं कि गई है।

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

- Mr. Ajaypal Singh, the complainant.
- No one from the respondent.



...2...

**Observation/Recommendations:**

5. The complainant informed that no communication has been received from the Delhi Development Authority regarding his request of relaxation in lock-in period in respect of flats allotted to persons with disabilities. In their last reply dated 26.09.2019, the respondent had stated that they had approved the request on their part and forwarded the matter to the Ministry of Housing & Urban Affairs for necessary approval before they could communicate the same to the complainant.

6. As the respondent was not present in the hearing, the present status of the matter is not known. However, the respondent is recommended to take it up actively with the Ministry of Housing & Urban Affairs for obtaining the necessary approval. **A copy of these orders is being forwarded to Secretary, Ministry of Housing & Urban Affairs for considering the matter on priority and granting necessary approval..**

7. The Case is accordingly disposed off.

Dated: 12.10.2020



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

Copy to:

Secretary  
Ministry of Housing & Urban Affairs  
Nirman Bhawan, Maulana Azad Road, New Delhi -110011



368



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: 11596/1022/2019

वादी *R-23692* श्री राजेश कुमार तिवारी, एम.ई.एस. - 462569, स0 दुर्ग अभि0 (टी),  
फैजाबाद  
ई-मेल <rktiwari.mes@gmail.com>

प्रतिवादी *R-23693* महानिदेशक (क्रांमिक), प्रमुख अभिन्यता, सैन्य अभि0 सेवा, कश्मीर हाऊस,  
राजाजी मार्ग, नई दिल्ली - 110011  
ई-मेल <ceengrll-mes@nic.in>

वादी 60 प्रतिशत अस्थिबाधित

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 07.10.2019 में कहना है कि उनका गृह जनपद बलिया (उत्तर प्रदेश) है और बलिया के निकट का स्टेशन फैजाबाद, गोरखपुर और वाराणसी है उन्होंने अनुरोध किया है कि उन्हें दुर्ग अभियन्ता, फैजाबाद में तैनात किया जाये।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 12.12.2019 द्वारा प्रतिवादी के साथ उठाया गया। परन्तु स्मरण पत्र दिनांक 02.03.2020 के बावजूद प्रतिवादी ने कोई उत्तर/टिप्पण नहीं भेजे, इसलिए सुनवाई दिनांक 29.09.2020 सुनिश्चित की गई।

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 29.09.2020. The following were present:

- Mr. Rajesh Kumar Tiwari, the complainant.
- None for the respondent.

### Observation/Recommendations:

3. The complainant reiterated his points made in his complaint dated 07.10.2019 regarding several transfers and harassment caused to him because of such transfers by the respondent. The Court observes that the respondent had not given any reply to the communications of this Court vide letters dated 12.12.2019 and 02.03.2020.

*[Signature]*



4. The complainant explained that ever since he had joined the MES as a Junior Engineer in 2005, he had been first posted at Muradnagar far away from his Home Town Gorakhpur and thereafter transferred in 2008 to Mhow, in 2011 to Gorakhpur, in 2015 to Faizabad, in 2018 to Gorakhpur for less than three months period, March 2019 to Allahabad (for a few months) and from Allahabad to Faizabad in August, 2019. He was again transferred to Ambala on 17.08.2019 but this transfer was cancelled later on by the respondent. He has been kept on the post of AGE 'T' in Faizabad though posts at the level of AGE B/R are available in places like Gorakhpur & Allahabad on which officers in similar situation are posted.

5. This Court observes that this is a clear case of harassment of the complainant by the respondent and is in violation of the following provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, as quoted below

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

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

6. In view of the above, this Court recommends that the respondent shall transfer the complainant immediately as AGE B/R at Faizabad or Gorakhpur.

7. The Case is accordingly disposed off.

Dated: 12.10.2020



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





सत्यमेव जयते

extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 11068/1101/2019 R-23771

## Complainant:

Shri Kaushik Kumar Majumdar  
Associate Professor,  
Computer and Communication Sciences Division,  
Indian Statistical Institute, 8<sup>th</sup> Mile, Mysore Road,  
R.V. College Post, Bangalore - 560059  
Email - [kmajumdar@isibang.ac.in](mailto:kmajumdar@isibang.ac.in);

## Respondent:

Indian Statistical Institute,  
Through its Director, 203-B,  
T. Road, Kolkata-700108;  
Email: [postmaster\(at\)isical.ac.in](mailto:postmaster(at)isical.ac.in) R-23772

....Respondent No.1

Indian Statistical Institute,  
through its Head/Director, Bangalore Centre,  
8<sup>th</sup> Mile, Mysore Road, Bangalore-560059;  
Email: [postmaster\(at\)isibang.ac.in](mailto:postmaster(at)isibang.ac.in) R-23773

....Respondent No.2

## Gist of Complaint

The complainant, a person with 85% Locomotor Disability (completely dependent on electric wheelchair) works as an Associate Professor in respondent's institute at Bangalore Centre. He filed a complaint dated 28.03.2019 under the Rights of Persons with Disabilities Act, 2016 regarding access to official transport for staff with locomotor disability. He submitted that his institute has five vehicles - Innova, Sumo, Omni, Indigo and a Swaraj Mazda. None of the vehicles is wheelchair accessible. He could never use institutional vehicles even for official works. He has his personal vehicle which has been made wheelchair accessible. But even for attending official events he was never given a driver to drive him in his modified vehicle to attend official

Page 1 of 4

TRUE COPY

Sign.



events. All other faculties of the institute get institute vehicle for official purposes. It happened in the past that he missed official engagements due to non-availability of driver to drive his vehicle, which was the only vehicle he could use. He was assured multiple times that when the institute would procure new vehicles for the Bangalore Centre, efforts would be made to procure a vehicle which could be made wheelchair accessible. The Innova was purchased after he had joined, but it could not be made wheelchair accessible. He uses a non-foldable electric wheelchair. He is single and lives alone inside the campus. Since the Omni and the Indigo have become unusable, a Swift Dezire had been approved for purchase by the institute, but it could not be made wheelchair accessible because it is too small. Within the same budget an Omni or Eeco could be procured, which could be made accessible with some additional cost (approximately Rs. 50000). He mentioned it numerous times to appropriate authority and even wrote to the Director, but it was not paid any heed at all. An accessible vehicle can be used by everyone, whereas a non-accessible vehicle cannot be used by wheelchair users.

2. On taking up the matter, the Head, ISIBC filed their reply and proposed two options –

**Option 1:** Prof. Majumdar can be permitted to utilize his own (modified) car with his own driver for the travel within Bangalore limits only, for official duties. He can seek reimbursement claim by providing place of visit (from and to), kilometre run with distance and travel details limited to maximum ceiling of Rs.24/- per kilometre as per TA rules of central government (All inclusive). He shall have to necessarily apply to Head, ISI Bangalore Centre in advance application seeking advance approval towards such official travel within Bangalore city limits as would be necessary for processing reimbursement claim on each occasion.

Or

**Option 2:** He may else utilize the taxi service for wheelchair users from "Mobility India" at Bangalore. Mobility India (MI) has four vehicles (02 Omni and 02 Eeco) specifically remodelled to suit the needs of persons with





disabilities. The charges of reimbursement to employee towards this taxi service shall be limited to maximum ceiling of Rs.24/- per km as per TA rules of Central Government (all inclusive) on the production of the bill of said cab service provider. Advance booking, payment, coordination etc. with the said taxi service provider shall be done by secretarial team attached to SSI unit after taking advance approval from Head, ISIBC on each occasion and then claim reimbursement after travel accordingly enclosing original bill.

3. The complainant in his rejoinder dated 29.07.2019, submitted that he was not salivating for a few hundred or thousand rupees, but he was demanding a secured transportation support by institutional transport service to keep up his official engagements like his all other faculty colleagues which the ISI has been persistently denying for the last ten years. Each time attention is being diverted harping on the same cost reimbursement offer which does not guarantee to travel in time to honour his official commitment. Almost all faculty members of ISI have their own vehicle and yet covered by guaranteed institutional transport service. The institute drivers persistently refused to drive his accessible vehicle. They have backing of the workers union and the ISI administration has never been able to resolve the deadlock. Mobility India Bangalore Chapter has only two vans. It needs prior appointment for a ride and often fails even have no guarantee to keep up its prescheduled appointment due to paucity of drivers. The options given by ISI are a gross misrepresentation of facts. The most suitable and economically viable measure is to close down the institute transport service and outsource the entire operation. It will not only save huge expenses incurred due to purchase and maintenance of vehicles, but also will do away with payment of inflated fuel bills and other corrupt means of pilferage of funds.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 01.10.2020. The following were present:

1. Mr. Kaushik Kumar Majumdar, the complainant present, but could not connect due to technical reasons.
2. Ms. Ashwini, Chief Executive, ISI, on behalf of the respondent.



### Observation/Recommendations:

The written submissions of the complainant have been gone through and as well as the written reply of the respondent have also been perused.

2. Every person with disabilities in general and specific, the complainant suffering with 85% locomotor disability who is confined to a wheelchair deserves to be treated with dignity at par with all other faculty members in ISI. This Court fails to understand the resistance in the management of the institute to provide suitable office transport to the complainant as it is available to other faculty members of the institute. The institute instead of proactively taking any step to either modify the existing vehicle or purchase a new vehicle to suit the need of the complainant is giving all kind of options, which are difficult for the complainant to exercise, that for his official movement.

3. Section 41(1)(b) of the Rights of Persons with Disabilities Act, 2016 is also reproduced as under for information and implementation of these provisions by the respondent:

*"41(1)(b) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design."*

4. This Court recommends that the respondent will arrange a suitably modified accessible vehicle or a new vehicle for official movement of the complainant from time to time within three months of issue of these orders. A Compliance Report may be sent to this office within 90 days of receipt of these orders.

5. The case is disposed off.

Dated: 13.10.2020



(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. 11185/1022/2019

Complainant : Shri Vijay M. Lonkar, Saraswati Colony College Road, Distt. : Akola, Akot, Maharashtra - 444101.

Versus

Respondent : The Chief Postmaster General, O/o Chief Postmaster General, Maharashtra Circle, Mumbai - 400 001.

### Gist of Complaint:

Shri Vijay M. Lonkar vide his complaint dated 20.05.2019 submitted that his son, Shri Pankaj Vijayrao Lonkar, a person with 75% locomotor disability has been selected in the examination for PA/SA post in Postal Department through category of disabled OBC PH-III in the year 2013-14. He stood at Sr. No.5 in the list published by Assistant Director Postal Services (Rectt.) Maharashtra Circle, Mumbai. Out of 12 selected pwd candidates, his son was given Goa Division. However, one Shri Suyog D. Nemane who has also been selected from this category had been given allotment at Akola Division. As Shri Suyog D. Nemane informed him that he is not willing to join as Postal Assistant at Akola Division, therefore, on 02.01.2018 his son requested CPMG Mumbai for posting him at Akola Division in place of Shri Suyog D. Nemane. However there was no response from the management. The CPMG, Mumbai vide their letter dated 07.02.2018 informed that the competent authority would issue a fresh appointment order, but his son did not receive the fresh appointment order yet. Ultimately his son joined Goa Division on 18.02.2019. The complainant has requested for transfer of his son in the vacant post of Postal Assistant at Akola Division in Maharashtra.

2. No reply has been received from the Respondent.

### Hearing :

3. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

4. The following persons were present during the hearing;

- 1) None for the complainant.
- 2) Mr. F.B. Sayyed, Assistant Postmaster General, on behalf of the respondent.

TRUE COPY

Sign.



5. An e-mail dated 05.10.2020 has been received from the complainant stating that due to old age and hearing impairment, his complaint may be treated as his argument and he may be allowed to remain absent for online hearing.

6. The complaint was regarding change of region for Shri Pankaj Vijayrao Lonkar, a person with 75% locomotor disability from Goa Division to Akola Division.

7. The respondent informed that the Goa Division was given to the complainant's son Shri Pankaj Vijayrao Lonkar on grounds of his preference and as per the procedure followed by Chief Postmaster General for allocation of divisions. The respondent did not answer as to why the complainant could not be given a different region when the vacancy in that division was available. However, the respondent stated that they can always transfer the complainant to Akola Division as per their internal policy and as per the waiting list prepared for persons with disabilities.

8. The rule position in respect of transfer of persons with disabilities and Equal Opportunity Policy as per the Rights of Persons with Disabilities Act, 2016 is as under:

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

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

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

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



...3/-



9. In view of the aforesaid, this Court recommends to the respondent that the complainant's son may be transferred to Akola Division expeditiously and on priority. Further the Respondent may consider revisiting the matter of allocation of Akola Division on grounds of disability

10. Accordingly the case is disposed off.

Date : 13.10.2020

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



361



सत्यमेव जयते

Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 11191/1014/2019

Complainant: Dr. P. Muthu, 3/12, Krishnan Street, Pillaiyarpalayam, Kanchipuram - 631501

R-23672

E-mail: <drmuthulingam6@gmail.com>

Respondent: The Director, National Institute of Epidemiology, Second Main Road, Tamil Nadu Housing Board, Ayapakkam, Near Ambattur, Chennai - 600077

R-23673

E-mail: <directorne@dataone.in> <arockiasamy@nie.gov.in>

Complainant: 50% locomotor disability

### GIST of the Complaint:

Complainant in his complaint dated 27.05.2019 submitted that he had applied under PwD category for Master of Public Health Programme and appeared in selection test and interview on 14.03.2019. He alleged that the selection list was released without providing reservation to PwDs.

2. The matter was taken up with the Respondent vide letter dated 04.06.2019 under Section 75 of the Rights of Persons with Disabilities Act, 2016. But despite reminder dated 27.08.2020, the respondent did not submit any reply; therefore, the hearing was scheduled for 01.10.2020.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 01.10.2020. The following were present:

- Dr. P. Muthu, the complainant.
- Mr. Michael Antony Joseph, Administrative Officer, on behalf of the respondent

### Observation/Recommendations:

3. Both the parties were heard.



Signature



...2...

4. The respondent informed that the complainant had in the same matter approached the Hon'ble High Court of Judicature at Madras, which in turn has disposed off the writ appeal of the complainant in August, 2019.

5. In view of the above said, the case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 13.10.2020





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. 11254/1023/2019

**Complainant :** Smt. Madhusmita Sarangi, W/o. Shri Manoranjan Sarangi, Qr. No.B/114, MCL Complex, Anand Vihar, P.O.: Jagriti Vihar, Burla, Sambalpur, Odisha – 768 020.

**Respondent :** Coal Mines Provident Fund (Through the Commissioner), Head Quarters Office, Police Line, Hirapur, Dhanbad, Jharkhand – 826 014.

**Disability:** 60% Locomotor disability

### Gist of Complaint:

Smt. Madhusmita Sarangi vide letter dated 06.06.2019 complained against deliberate & willful harassment of her husband Mr. Manoranjan Sarangi by his colleagues. He has been posted at Regional office of CMPFO, Sambalpur for last 17 years. Complainant claimed that her husband had been harassed by Shri Upendra Panda and Shri Hari Pachauri with the help of some subordinates. Shri Upendra Panda had changed the sitting arrangement of her husband and also allocated him unsuitable work.

2. The Regional Commissioner-II, RO, CMPF, Sambalpur, Odisha vide letter dtd 31.01.2020 submitted that Shri Manoranjan Sarangi was posted in Accounts Group of settlement of PF/Pension/Advances and Estt./Adm./Section from 2007 onwards. He used to engage himself in corrupt practices in nexus with middle men operating in Collieries and thereby allowing Advances to members beyond eligibility and against provisions of CMPF Act & Scheme in connivance with Officers like Shri Mahendra Singh, Regional Commissioner and Shri Megharaj Singh, Assistant Commissioner-I. After joining of Shri Upendra Panda, Regional Commissioner-I, he did not allow any wrong doing by Shri Sarangi which was unacceptable to him as a substantial amount he earned in bribery through wrong practices was stopped. Since then Shri Sarangi started conspiring against Shri Panda to oust him from RO, CMPF, Sambalpur so that he can regain his earlier status. He filed several false and fabricated complaints against Shri Panda to various authorities in pseudo names which did not yield him anything. Being frustrated, he planned bigger conspiracy against Shri Panda in connivance with a lady contractor worker namely Smt. Pramila Rana, who was favoured by him with an irregular allotment of Govt. Quarters by wrongful use of his position in Estt. Section and proximity to the then Regional Commissioner Shri Mahendra Singh. The contract workers are not their employees and hence are not entitled for Govt. accommodation. Shri Sarangi instigated Smt. Rana to file a false case of sexual harassment on 13.01.2018 against

....2/-

TRUE COPY

Sign.





Shri Panda. Smt.Rana was assured that she could not only retain the quarters but also her job would be regularized as administration would succumb to her demand. The Respondent submitted that this was a false complaint. The Office was almost destabilized by the anti office activities of Shri Sarangi. As such, being frustrated, the entire staff of the office prayed before the CMPF, Commissioner for his transfer. Shri Sarangi was then transferred by Commissioner, CMPFO to Bhubaneswar which is a place close to his home town and was allowed a chamber without much work, but he represented to return to RO, CMPF, Sambalpur which was also considered by the competent authority within a month with sympathetic ground, he being a person with disability. Shri Sarangi used to bring false allegations against senior officers, if they do not fall in his trap. A warning letter was issued to Shri Sarangi, Sr. SSA for his omission and commission as per direction of CMPF Commissioner.

3. The complainant vide his letter dated 31.03.2020 submitted that the averments in the first para of Respondent's reply dated 31.01.2020 is false, frivolous and fabricated as her husband had worked under Shri Upendra Panda without any complaint for more than three years from April 2015. Shri Panda never issued memorandums to her husband prior to the complaint of sexual harassment of women at workplace against Shri Panda. The complainant submitted that there is no nexus between her husband and Smt. Pramila Rana.

**Hearing :**

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 06.10.2020.

5. The following persons were present during the hearing ;

1. Ms. Madhusmita Sarangi, the complainant heard on telephone.
2. Mr. Hari Pachauri, Regional Commissioner, CMPFO, on behalf of the respondent.

Both the parties were heard.

6. The complainant stated that her husband a person with disability is being harassed and humiliated by his office colleagues from time to time. She did not seek any transfer out of office or any other relief apart from ensuring that the harassment should stop.

7. The respondent explained that there was no such harassment in the small office in which the complainant was working and the entire staff of 18 members was working like a family. He further expressed that this complaint was motivated as the complainant wanted that some violations of rules & regulations may not be reported to higher authorities in CMPFO.



8. In view of the above said, this Court recommends that the Commissioner, CMPFO may ensure that both the complainant and the Regional Commissioner and other officials at Sambalpur may be counseled appropriately by the Head Office, so as to sort out the differences and preventing any harassment or humiliation to any person with disability.

9. The case is disposed off.

Date : 13.10.2020

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities





384



सत्यमेव जयते

5/2/19

## 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. 11257/1022/2019

**Complainant :** Shri Patimidi Rajeshwar Reddy, Assistant Geophysicist, Geophysics Division,  
Geological Survey of India, North Eastern Region, Rynjah, Shillong-793 006.

**Respondent :** The Director General, Geological Survey of India, Ministry of Mines, 27, Jawaharlal  
Nehru Road, Kolkata - 700 016.

### Gist of Complaint:

Shri Patimidi Rajeshwar Reddy submitted that he has been working as Senior Technical Assistant, a Group 'B' post in Geological Survey of India's Hyderabad office since 06.01.2012. He was selected through Staff Selection Commission under PH category. He was promoted to the post of Assistant Geophysicist on 06.08.2018. Without considering his disability, he was transferred from GSI, SR. Hyderabad to GSI, NER, Shillong on 15.06.2019. He submitted that it would be very difficult for him to work at such a high altitude in Shillong. He has requested to exempt him from rotational transfers.

2. The Deputy Director General (HRD), Geological Survey of India vide letter dated 09.08.2019 submitted that Geological Survey of India (GSI) has more than 3000 Gazetted Officers posted under different streams including technical as well as non-technical stream. The transfer and posting of these Officers are done based on the guidelines of the extant Transfer and Placement Policy for Group 'A' and 'B' Officers dated 27.07.2016. It has made provision to protect the interest of the Officers as well as department as a whole and was framed as per the guidelines issued by DoP&T from time to time. Apart from the other guidelines contained in the Policy, the Competent Authority has been empowered vide Para no. 11 to post any Gazette Officer in any of the offices of GSI based on the functional requirement & domain expertise.

The transfer of Shri Patimidi Rajeshwar Reddy, Assistant Geophysicist from RHQ, SR, Hyderabad to NER, Shillong is an outcome of the above para. He has been transferred purely based on the functional requirement. So far as the OH status of the Officer is concerned, the competent authority declined to approve the request of the Officer to cancel his transfer in question due to the following reasons, which may otherwise be termed as 'administrative constraints.

....2/-

3. The Complainant submitted that keeping in view his disability and the guidelines issued by the DoP&T, he had requested the competent authority for cancellation of his transfer from Hyderabad to Shillong. However, the competent authority declined his request. He submitted that if there is acute shortage of work force at GSI, Shillong to take up all the approved projects of FS 2019-20, then why the officers have been transferred from NER, Shillong to Hyderabad. If there are more than sufficient officers in Hyderabad as per the project-man power scenario of FS:2019-20, the complainant is questioning the Respondent then why the six officers from other places (GSI, M&CSD), Vishakhapatnam and GSI, RSAS, Bangalore) were deployed as SR, Hyderabad for FS 2019-20

**Hearing :**

4. The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 01.10.2020.

5. The following persons were present during the hearing.

- 1) None for the complainant.
- 2) Ms. Niharika Jha, Dy. Director (HR) & Mr. Venu Behera, on behalf of the Respondent.

6. The complainant a 50% orthopedically disabled employee of Geological Survey of India has been requesting for cancellation of his transfer from Hyderabad to Shillong on accounts of difficulties in managing the terrain and climate of Shillong. The respondent stated that the request of the complainant as per their policy and functional requirements cannot be acceded to and orthopedic disability cannot be accepted as a reason for effecting transfer. The respondent further stated that there is acute need of Geophysicist in every region of the organisation and that was the reason of posting Shri Reddy at Shillong.

On inquiry, the respondent informed this Court that earlier they did not have a record on disability of the candidate and thereafter COVID-19 situation has prevented them from considering the case of the complainant. The respondent further stated that there were 200 Geophysicist at present in the organization.

**Observation/Recommendations:**

7. The rule position in respect of transfer of persons with disabilities as per the Rights of Persons with Disabilities Act, 2016 is as under:

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

....3/-





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

8. The respondent are recommended to accept the request of the complainant and post him out of Shillong to a place close to his home town from where he can function efficiently and effectively for a long period of time.

9. The case is disposed off.

Date : 13.10.2020

  
(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:11331/1014/2019

Complainant: Shri Nand Kishore  
E-mail: <nandknifm@gmail.com>

Respondent: The Secretary, Reserve Bank of India, 16<sup>th</sup> Floor, Central Office  
Building, ShahidBhagat Singh Marg, Mumbai – 400001  
E-mail: <recruitment@rbi.org.in>

Complainant: 60% locomotor disability

### GIST of the Complaint:

Complainant Shri Nand Kishore, Sr. Library Information & Assistant in National Institute of Financial Management vide complaint dated 10.07.2019 submitted that as of 01.07.2018, he was having 6 years and above experience; therefore, he had applied for the post of Assistant Librarian. But RBI Services Board did not shortlist him.

2. The matter was taken up with the Respondent vide letter dated **22.07.2019** under Section 75 of the Rights of Persons with Disabilities Act, 2016.

3. In response, General Manager, Reserve Bank of India vide letter dated **30.08.2019** submitted that as per the advertisement for the post of 'Asst. Librarian' in Grade 'A', three years professional experience in a Library under Central/State Government/Autonomous or Statutory Organization/PSU/University or Recognized Research or Educational Institution or any major automated library was essential for the post. No vacancy (current or backlog) was reserved for PwBD category and the Board had raised the minimum experience from 03 years to 05 years in order to restrict the number of candidates to be called for interview, commensurate with the number of vacancies. They further submitted that Shri Nand Kishore had a work experience of 06 years 4 months 22 days as Sr. Library & Information Assistant in NIFM. This experience was not considered as professional work experience by the Board. Hence, he was not shortlisted for the interview for the said post.

TRUE COPY





...2...

4. After considering the respondent's reply dated 30.08.2019 and the complainant's rejoinder dated 12.03.2020, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **01.10.2020**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **01.10.2020**. The following were present:

- Mr. Nand Kishore, the complainant.
- Mr. S.D. Bodalkar, AGM, RBI, on behalf of the respondent.

**Observation/Recommendations:**

5. Both the parties were heard.

6. The respondent informed the Court that in the earlier advertisement, (a) the post was not reserved for persons with disabilities, and (b) they were looking for professional experience at the level of officer only. As the complainant had experience at an Assistant/non-supervisory level, he could not be shortlisted for the said post of Assistant Librarian in RBI.

7. However, the respondents have since reviewed their decision and are now considering candidates with experience in this field at any level. The criteria have been relaxed and interviews have been scheduled in the coming 15 days where the complainant also has been shortlisted for appearing in the interview. The previous process has been cancelled by the RBI.

8. In view of the above, the complainant being satisfied with the reply of the respondent, the case is accordingly disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 13.10.2020

