



सत्यमेव जयते

Extra 13

## 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. 12785/1081/2021

### Complainant:

Shri Ved Prakash,  
R/o D-3/41 G.F. Sector-11,  
Rohini, Delhi-110085  
Email: [vedprakash.rohini@gmail.com](mailto:vedprakash.rohini@gmail.com);  
Mobile: 8851194972

— P30339

### Respondent:

Delhi Development Authority,  
Through: Vice Chairman,  
D-Block, Vikas Sadan, INA, New Delhi-110023  
Email: [vcdda@dda.org.in](mailto:vcdda@dda.org.in)

— P30340

### 1. Gist of Complaint:

1.1 Shri Ved Prakash, M-51, a person with 40% Locomotor Disability, filed a complaint dated 05.07.2021 regarding not issuing allotment letter by Delhi Development Authority (DDA) for the Flat allotted to him under PwD quota in DDA Housing Scheme 2019 for SC/ST.

1.2 DDA announced Special Housing Schemes 2019 for SC/ST, which reserves 5% flats for Persons with Disabilities. The Allotment of flats was on Cash Down basis except under PD (Persons with Disability) category, who will have the option of making payment either on Cash Down basis or in Installments. The complainant was allotted a MIG Flat No.148 Pkt.7, Sec. 23 Rohini Delhi, costing ₹61,93,475/-. The total cost of the Flat was ₹58,65,031 which included Land Cost + Construction Cost. But in Online Allotment Letter, DDA Charged extra amount of ₹4,06,118+22,326/- in the name of Ground Rent and Fire Safety, while it was not mentioned anywhere in the Information Brochure. DDA also announced 5% rebate in the cost subject to a maximum of ₹1.00 Lakh to the persons with disabilities, who are allotted the flat under the PWD quota. The Flats offered in the Scheme were of the Old Inventory and more than 20 years old, windows, balconies and gates were broken. After seeing such bad condition of the flat and extra amount charged by DDA in the name of Ground Rent and Fire Safety, Complainant cancelled the allotted flat on 08.02.2020 through online. After this, DDA officials (DD MIG) assured the complainant that all the deficiencies related to payment and other construction related work would be done away with and flat would be handed over in good condition at the time of possession. So after the

(Page 1 of 4)

8

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

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

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

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

assurance from the officials, the complainant again restored the cancelled flat on 13.02.2020, as there was an option to restore the cancelled flat through online mode. But after restoration of the flat, more than two years have passed neither Allotment Letter was issued to the complainant by DDA, nor was any information given to him in this regard.

1.3 As per Information Brochure, the Flat was on Hire Purchase/ Installment basis for Persons With Disabilities and the Initial Payment of Higher Purchase Allotment would be 25%, rest of amount with applicable interest would be taken in equated monthly installment over a period upto 15 Years. Why DDA added Ground Rent of ₹40,6118+22,326 as Fire Safety, as it showed in online Allotment Letter, while it was not mentioned anywhere in Information Brochure. Complainant prayed that DDA may be directed to remove it, as this facility is only for PwDs. DDA is refunding the Registration Amount which the complainant never demanded instead of issuing Demand-cum-Allotment Letter to him.

## 2. Submissions made by the Respondent

2.1 DDA filed their reply dated 12.08.2021 and submitted that the Flat No.148, Ground Floor, Pocket-7, Sector-23, Grp-2, Rohini was allotted to the complainant Shri Ved Prakash on Hire-Purchase basis in the draw held on 23.12.2019 vide Demand-cum-Allotment letter No.M/353(52)2020/ DDAS19/RO with Block Date 14.02.2020.

2.2 The complainant surrendered/cancelled the flat and submitted documents for refund on 08.02.2020, therefore, the Demand-cum-Allotment letter could not be issued to him. Later, the complainant applied for restoration on 13.02.2020, but the Competent Authority of DDA accorded approval for the cancellation of the flat on 14.02.2020. There was no provision for restoration of the flat in the Brochure of DDAS19 Housing Scheme. However, there was a flaw in the online portal that an option for restoration of the flats was available there.

2.3 As per the terms & conditions of the Special Housing Scheme 2019 for SC/ST, it has been clearly mentioned in the:

- Sub Para 3(iv), that “the applicant may satisfy himself with regard to location, cost, existing facilities in the surrounding area and other related issues before applying for the allotment of the flat.”
- Sub Para 2(viii), that the “applicant can apply according to his/her requirement and affordability.”
- Para (16) of DDAS19 Brochure that “DDA shall not entertain a complaint about cost of flat”,
- Sub Para 8(ii), that DDA should not be responsible for delay/non-receipt of the Demand Letter by the applicant/allottee.”

A tentative disposal cost is given in the Brochure, the allottee/complainant cannot challenge the costing of flat. Digitally Demand letter was available with the applicant

and the same cannot be denied by the complainant as he himself has submitted a copy of the same in his representation dated 20.02.2020. He did not make payment in respect of the cost of the flat and applied for surrender/cancellation of the allotment. The Scheme Brochure did not contain any provision to restore the flat once the allottee cancels the flat. Competent Authority had accorded the approval for refund of Registration amount as the allottee/complainant had surrendered the flat within the prescribed time. The complainant cannot have it both ways that he/she surrenders the flat and at the same time get his discrepancy resolved regarding the flat, which must have been got clarified prior to allotment. DDA provided with the rebate of ₹1.00 Lakh in the cost of the flat and preferentially allotted the Ground floor in terms of Section 37(a) of RPwD Act, 2016.

### 3. Submissions made in Rejoinder

The complainant filed his rejoinder on 20.08.2021 and reiterated their stand that it was not mentioned anywhere in Information Brochure that extra amount of ₹4,06,118+22,326/- would be charged in the name of Ground Rent and Fire Safety, while it was not charged on Cash Down payments. Allotment of the flat was made on Cash Down Basis except the PwDs category, who would have the option of making payment either on Cash Down or in instalments. DDA took 02 years for approval of refund and got letter to refund of Registration amount on 12.07.2021, but had hurriedly approved cancellation within 06 days,

### 4. Hearing:

The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on 05.10.2021. The following were present:

- (1) Complainant: In person
- (2) Respondent: Shri Kulbeer Singh, Sr. Law Officer

### 5. Observations & Recommendations:

5.1 Complainant alleged that the Respondent announced special housing scheme for SC/ST. 5% flats were reserved for Divyangjan. Original Cost of each flat was ₹58,65,031. Later, Respondent further charged ₹4,28,444/- towards ground rent and fire safety. After inspecting the flat, Complainant discovered that the flat was very old and he cancelled the flat on 08.02.2020. Later, on the assurance of the Respondent, the Complainant decided to restore the cancelled flat. The option for restoration was available on the website. Respondent cancelled the flat and rejected the application for restoration. Respondent is insisting on refunding registration amount and is refusing to issue allotment letter.

5.2 Respondent refuted the claims by submitting that the Complainant applied under Special Housing Scheme 2019. His application was accepted and flat was allotted to him. He failed to deposit the requisite amount on time. Later he applied for



(4)

cancellation of flat on 08.02.2020. He applied for restoration on 13.02.2020. Competent authority approved his cancellation request on 14.02.2020. Reason for not accepting his request for restoring the flat was that there was no provision for restoration of flat in Brochure of 2019 scheme. Option for restoring the cancelled flat was made available on the Respondent website by mistake.

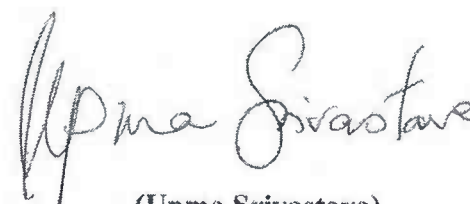
5.3 During online hearing Respondent further assured that Order for refunding the amount paid was passed by the Respondent and refund would be made soon. This court is not inclined to intervene in the issue of reinstatement of cancelled flat. Since, there was no provision for reinstatement of cancelled booking under that scheme for any category of persons who booked flat under the scheme, hence non-restoration of Complainant's flat after cancellation does not amount to discrimination.

5.4 However, the delay caused in refunding the amount paid by the Complainant is questionable and reflects gross injustice. Hence this court recommends that the Respondent shall refund the amount as soon as possible along with interest from the date of cancellation till the date of actual payment.

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

5.6 The case is disposed off.

**Dated: 15.11.2021**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities





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Extra  
5

## 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.12868/1101/2021

Complainant:

Suo-motu

Respondent:

General Manager, Southern Railway,  
General Manager Office, General Branch,  
1<sup>st</sup> Floor, NGO Main Building, Park Town,  
Chennai- 600003. Phone: 044-25332157  
Email: [gm@sr.railnet.gov.in](mailto:gm@sr.railnet.gov.in)

— P30445

### 1. Gist of Complaint:

State Commissioner for Persons with Disabilities (SCPD), Tamil Nadu, vide letter dated 19.08.2021 forwarded a Tweet of Shri Vijay Kumar with a photograph which was published in the daily, 'The Hindu' in the month of February, 2021 regarding inaccessibility at Mambalam Railway Station, Chennai (Southern Railway). In the photograph, a person with locomotor disability is struggling to come down the stairs with his all four limbs.

### 2. Submissions made by the Respondent

Southern Railway, Chennai filed their reply dated 04.10.2021 and submitted that Mambalam Suburban Railway Station, Chennai has got two platforms namely 1 and 2. No.1 Platform is provided with double discharge platform facility which enables the passengers with disabilities easy exit towards western side of the Railway Station. In the year 2018, a proposal was made to provide two (02) numbers of passenger escalators at the Mambalam Railway Station. At the eastern side, erection work of the escalator has been completed and is in use. Another escalator has been proposed to install at Platform No.1 and No.2, due to pandemic engineering work could not be completed, the work

(Page 1 of 2)

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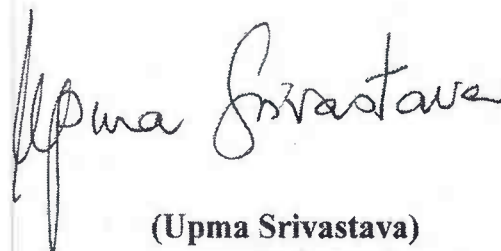
would be completed in April, 2022. A lift has been proposed to install on the western side adjoining the booking office of the Station, as soon as the issues are resolved with the contractors for civil work, the lift would be installed.

**3. Observations/Recommendations:**

3.1 In the light of the reply filed, the respondent is advised to take expeditious action for completion of installation of Escalator/Lift as proposed within time bound manner and completion report be filed before this Court.

3.2 The case is disposed off.

Dated: 15.11.2021



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

Copy to:

R30446

SCPD, Govt. of Tamil Nadu



extra

7

## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment  
भारत सरकार/Government of India

Case No. 12744/1033/2021

**Complainant:**

Shri Bishan Singh, S/o Shri Dashrath Singh  
Department of Management,  
Dr. Shakuntala Misra National Rehabilitation University,  
Sarosa Bharosa, Lucknow- 226017 (UP)  
Email: [bishansingh585@gmail.com](mailto:bishansingh585@gmail.com):

— P30341

**Respondent:**

Secretary,  
University Grants Commission,  
Bahadurshah Zafar Marg, New Delhi-110002  
Email: [secy.ugc@nic.in](mailto:secy.ugc@nic.in)

— P30342

**1. Gist of Complaint:**

Shri Bishan Singh, M-35, a person with 50% Locomotor Disability, filed a complaint dated 26.04.2021 regarding not granting National Fellowship for Persons with Disabilities (NFPwD) to him despite uploading his online application on UGC Website on 03.11.2020 successfully. The Registration ID of his online application is NEPWD-2018-20-UTT-8421.

**2. Submissions made by the Respondent**

2.1 The respondent – UGC in their reply inter-alia submitted that the Notification inviting application for NFPwD through online mode on the designated portal of UGC was brought out on 17.01.2020 for the Selection Years 2018-19 and 2019-20. The last date for receiving the online application was 29.02.2020 at 05.00 PM. UGC brought out another Public Notice on 20.05.2020 whereby the receipt of online application for grant of NFPwD was extended by 19.06.2020. A provision list of selected candidates for NFPwD was published on the website of UGC on 26.10.2020.

2.2 The complainant had applied online for NFPwD on UGC Website on 03.11.2020 which was miserably time barred and even beyond the date of publication of provisional results.

(Page 1 of 2)



**3. Submissions made in Rejoinder**


The complainant in his rejoinder dated 20.09.2021 submitted that if the last date of receipt of application for NFPwD was 19.06.2020, why his application was accepted after 19.06.2020; and why did UGC not close the option for receiving application NFPwD on online portal.

**4. Observation/Recommendations:**

4.1 The reply filed by the respondent is satisfactory and there appears no violation of government rules/instructions. Hence, no intervention of this Court is warranted.

4.2 The case is disposed off.

**Dated: 15.11.2021**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



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9

## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

भारत सरकार/Government of India

Case No. 12792/1011/2021

Complainant :

In the matter of:-

Shri Babalu Yogi,  
Ward No.13,  
Makkan Seth ka Mohalla,  
Tehsil : Kathoomar,  
Dist. : Alwar,  
Rajasthan – 321605  
Mob : 7891401168  
Email : babaluyogiktmr@gmail.com

— R30233

.... COMPLAINANT

Versus

Railway Recruitment Cell,  
( Through the Chairman),  
Western Railway, Parcel Depot,  
Alibhai Premji Road,  
Grant Road (East),  
Mumbai – 400007.  
Email : rrcgtrwr@gmail.com

— R30234

..... RESPONDENT

Disability : 53% Multiple Disability (OH + HI)

Gist of Complaint:

Shri Babalu Yogi submitted that he had applied for Group 'D' post against Railway Recruitment Board, Ahmedabad's Advertisement No. RRC CEN 2/2018 dated 10.02.2018. He qualified the Computer Based Test (CBT). His Registration Number is 1180889316 and Roll Number is 112060012710005. He had his Document Verification and Medical Examination done successfully on 05.02.2020. More than 1 ½ years have passed, but he has still not received the Division Allotment letter from the Western Railway.

*[Signature]*

1

2. The matter was taken with the Chairman, RRC, Western Railway vide letter dated 23.07.2021.
3. The Dy. CPO (Gaz), Western Railway vide letter No. E(Rectt)891/1/Group D/02/2018(B-192) dated 12.08.2021 submitted that after Document Verification at RRC, Mumbai Office, Shri Babalu Yogi was sent to MD-JRH (Jagjivan Ram Hospital, Mumbai) for Medical Examination on 05.02.2020 for Multiple Disability (MD) category claiming Locomotor Disability (LD) of 50% and Hearing Impairment of 6% issued by the Medical Department of Medical and Health, Rajasthan (Certificate No. 1517 dated 26.12.2019). He was examined by an Orthopaedic Doctor at JRH and was certified for 50% Locomotor Disability. His hearing disability was also examined by an ENT Specialist at JRH and Ali Yavur Jung National Institute of Speech and Hearing Disability. Ali Yavur Jung National Institute of Speech and Hearing Disability evaluated his hearing disability within **Normal Limits**. The candidate was therefor **not** fit for Multiple Disability. As there was a case of disagreement on percentage of disability, it was referred to the State/Central Government. The Competent Authority to intervene in a certificate for physically challenged is Director General, Health and Family Welfare under Ministry of Health and Family Welfare. Accordingly, the case was referred by MD-JRH, Mumbai to State Medical Authority (CM & HO, Deptt. of Medical & Health, Alwar, Rajasthan) vide letter dated 08.01.2021. The reply received from CM & HO, Alwar vide letter dated 22.02.2021 does not match with the findings of MD-JRH and Ali Yavur Jung. He submitted that therefore the case of Shri Babalu Kumar was referred to DG (Health) by MD-JRH, Mumbai vide their letter dated 24.02.2021 and further action in the matter will be taken by MD-JRH on receipt of clarifications from DG (Health), New Delhi.
4. Shri Babalu Yogi vide his rejoinder dated 26.08.2021 submitted that RRCWR has stated in their reply that in the Medical Examination, his disability was found to be 50% locomotor disability but his hearing disability was not taken





into account. He is dissatisfied with this conclusion because Al-Yavar Jung (Bandra) has done only one Audiometry and he was declared ineligible only on the basis of Audiometry Report. He submitted that the Disability Certificate issued to him by the Rajiv Gandhi Hospital (Alwar) is correct.

5. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 12.10.2021.

6. The following persons were present during the hearing ;

1. Complainant : Shri Babalu Yogi

2. Respondent : Ms. Uma Natraj along with Sh. Rajesh Chowdhary

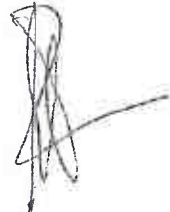
#### **OBSERVATIONS & RECOMMENDATIONS**

7. Complaint is related to Recruitment of the Complainant. Complainant submits that the Respondent issued notification to fill vacancies on 10.02.2018. Exam was conducted and the Complainant was declared successful on 04.03.2019. Documents were verified and subsequently he was called for medical examination on 05.02.2020. After documents were verified on 05.02.2021, Respondent has not sent any intimation or communication and has not appointed the Complainant despite of qualifying examination.

8. Respondent has not refuted the facts submitted by the Complainant and has submitted the reason for not appointing the Complainant. Respondent submits that during physical examination, Complainant's locomotor disability was found 50%, as mentioned in the disability certificate, however his percentage of disability relating to hearing impairment was found 0%. Hence, Respondent did not accept his claim of 'multiple disability'. Medical Examination was conducted by Ali Yavur Jung National Institute of Speech and Hearing Disability.



9. His case was referred to State Medical Authority. State Medical Authority found him 'Multiple Disabled' and found his 'Physical Disability' Certificate as genuine. These findings were contrary to findings of Ali Yavur Jung Institute, hence his case was referred to DG (Health), New Delhi. Since the issue is pending with D.G. (Health), New Delhi hence no action has been taken by the Respondent.
10. Dispute which lies at the heart of the Complaint is whether the Complainant has 'Multiple Disability' or not. Fact that Complainant has Locomotor Disability (50%) is not disputed. Disability Certificate produced by the Complainant is found genuine by the State Medical Authority and has not been disputed by the Respondent as well. Hence, it is astonishing that the Complainant has not been appointed till date and the issue is kept in abeyance.
11. Respondent's attention is also attracted towards Rule 19 of The Rights of Persons with Disabilities Rules, 2017. As per the Rule, the Certificate of Disability issued is considered valid for all purposes. This certificate is not been disputed. Complainant also relied upon this certificate while applying for the advertisement. Hence, keeping this whole issue in abeyance reflects discrimination with divyang candidate.
12. It is also pertinent to note that issue of employment of Divyangjan is directly connected with dignity and self-dependence of Divyangjan. Since there is conflict in findings of State Medical Authority and Ali Yavur Jung National Institute of Speech and Hearing Disability, Respondent is duty bound to solve the whole issue.

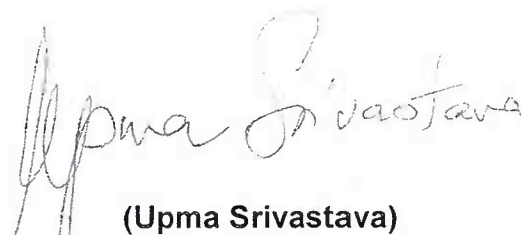


13. Hence this Court recommends that the Respondent shall get the Complainant examined from 3rd independent medical board or organisation other than the State Medical Authority or Ali Yavur Jung National Institute of Speech and Hearing Disability within 1 month of date of this Recommendation-Order. Respondent shall further ensure that the third independent medical board or organisation will ensure that full process of examining the candidate is to be conducted, so that correct position of disability may be ascertained. Thereafter, decision may be taken, on the complainant's appointments.

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

15. The case is disposed off accordingly.

Dated: 15.11.2021

  
(Upma Srivastava)  
Chief Commissioner  
for Persons with Disabilities





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14

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No. 12776/1011/2021

### Complainant:

Shri Ingale Sopan Haridas,  
A/P Jalgaon KP,  
Tal. Baramati,  
Dist. Pune,  
Maharashtra – 413102.  
Mobile : 9850872752 / 7769041751  
Email : sopaningale3@gmail.com

— R30235

.... Complainant

Versus

### Respondent :

R30236

Food Safety and Standards Authority of India (FSSAI),  
(Through the Chairperson)  
FDA Bhavan,  
Kotla Road,  
New Delhi – 110 002.  
Email : [chairperson@fssai.gov.in](mailto:chairperson@fssai.gov.in) / [director-ga@fssai.gov.in](mailto:director-ga@fssai.gov.in)  
Phone : 23237436 / 23214135 / 23216582

..... Respondent

**Disability** : 42% Locomotor Disability

### Gist of Complaint:

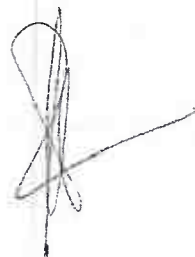
Shri Ingale Sopan Haridas, a person with 42% locomotor disability (Both Arms affected) submitted that he has been working as Food Safety Officer in Maharashtra since 04.09.2017. He had applied for the post of Central Food Safety Officer (Post Code 05) against FSSAI's Advt No. DR-02/2019 dated 26.03.2019 vide Application No.FSSAI075332. There was only one option while applying, i.e LD-OA. LD-BA option was not there in the

1 | Page

application form. LD-OA is subset of LD-BA and LD-BA person invariably has one arm affected. To complete the application form, it was necessary to fill the disability sub-category. Therefore, he was constrained to write LD-OA (Locomotor Disability – one arm affected) option in the application form. FSSAI declared the final result of CFSO post on 09.12.2020. His name appeared at serial number 14. He received a clarification letter dated 01.03.2021 informing that he had submitted wrong information while applying. He gave his reply but his candidature was cancelled by FSSAI vide letter dated 22.06.2021 mentioning that CFSO post is not identified suitable for LD-BA. He submitted that there is violation of D/o EPwD's Notification dated 04.01.2021 and RPwD Act, 2016.

The following are the prayers of the complainant :-

- i) He is presently working as a Food Safety Officer in Maharashtra State. Whether in a State or Central govt, both are one and the same as far as powers and responsibilities are concerned. Therefore, he has prayed that Food Safety Officer is deemed to be identified for LD-BA, hence to direct FSSAI to issue him an appointment letter for CFSO post.
- ii) Requested the Court to decide the matter on the merit and legal precedents established in Case No. 11968/1011/2021 in the matter of Shri Pranjit Das vs Chief Postmaster General, West Bengal Circle.
- iii) To quash FSSAI letter No. E.12013/03/2019/HR (VOL.II) dated 22.06.2021.
- iv) To direct FSSAI to make LD-BA suitable for CFSO post.



- v) Despite repeated follow-up, he was not given compensatory time for preliminary exam of CFSO post and also there were lacunas in designing of application form.
- vi) To direct the Cadre Controlling Authority (FSSAI) to exempt functional classification and to give him appointment order for CFSO post.
- vii) The complainant has prayed to the Court to give preference to substantive aspect over procedural aspect by brining amendments in identification of CFSO post, make the identification process inclusive, representative and give him justice.

2. The matter was taken up with the Chairman, FSSAI vide letter dated 07.07.2021.

3. The Assistant Director (Rectt), FSSAI vide letter no. E-19016/03/2020-HR (Pt.) dated 05.08.2021 submitted that the complainant being LD-BA was not eligible to apply for the post of CFSO. But he filled up the form under LD-OA category, thereby submitting wrong information in the application form. The candidate qualified the written examination. At the time of verification of documents, it was found that he was LD-BA and was not eligible to apply for the post of CFSO in FSSAI. Since the complainant had submitted false information about his disability status in the application form, his candidature was cancelled with the approval of the competent authority. The result of the post of CFSO in Advertisement No.DR 02/2019 was declared on 09.12.2020. The rank provided to the complainant was based on the presumption that his sub-category LD-OA was correct information provided by the candidate. However, this information was found false at the time of verification of his Disability Certificate which consequently resulted in cancellation of his candidature. Although, the post of FSO is neither defined under the list as mentioned in Notification No. 38-16/2020-DD-IH dated 04.01.2021, the





respondent organisation had constituted an Expert Committee required under Section 33 of RPwD Act, 2016 and the criteria for the PwBD candidate for the post of CFSO was delineated by the Expert Committee. The sub-categories identified suitable for Locomotor Disabilities are OA, OL, BL and OAL. The Respondent submitted that as regards employment of complainant with the Govt. of Maharashtra, it is submitted that the respondent is not in a position to comment at this juncture. The Respondent has followed the laid down procedure for recruitment of CFSO in letter and spirit.

4. The complainant vide his rejoinder dated 31.08.2021 submitted that as per the advertisement, the post of Central Food Safety Officer was advertised as per identification suitable for OA (One Arm affected), OL (One Leg affected), BL (Both Legs affected), OAL (One Arm and One leg affected). He had requisite qualification and experience to the post applied. He submitted that he was not holding the aforesaid physical requirement in the nature of his disability. Since, no option and / or window has been provided in online application form to bring to the notice of respondents about his both hands' disability, he was constrained to mention OA (One Arm affected) disability in lieu of BA (Both Arm affected) and there is no malafide or wilful intention to suppress his both hands' disability. The complainant is successfully working as a Food Safety Officer in Maharashtra State since 04.09.2017 and his disability category is LD-BA (Locomotor Disability-Both Arms affected). He submitted that in the said identification of said post, in remarks column, the respondent should have provided aids and appliances to consider his candidature for the said post but the respondent have failed to do so.



5. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 28.09.2021.

6. The following persons were present during the hearing ;

a) Complainant : Shri Ingale Sopan Haridas

b) Respondent : Advocate Rakesh Chowdhary and Ms. Smita Singh,  
Assistant Director (Legal)

### **Observations & Recommendations**

7. Complainant who is already employed on the post of Food Safety Officer in Maharashtra State has filed a Complaint submitting that Respondent issued advertisement dated 26.03.2019, to fill the post of Central Food Safety Officer (CFSO). As per the advertisement, post of CFSO was not found suitable for 'Both Arms' category, it was suitable only for 'One Arm' category. Since the Complainant is effected with Both Arms, he was not eligible for the post and could not fill the online form because option of 'Both Arms' did not appear in drop down bar. Therefore, Complainant mentioned his category as 'One Arm'. Complainant qualified examination conducted for the post. Thereafter, his candidature was rejected on the ground that he submitted wrong information. Complaint alleges that Respondent's decision to exclude 'Both Arms' category is regressive. Note 3 of MoSJE list lays down that if a post is already held by Divyangjan with a category then such post automatically stands identified for that category. Complainant claims that since he holds the post of Food Safety Officer in Maharashtra State organisation hence, post of Central Food Safety Officer must automatically stand identified for the category of 'Both Arms'.



8. In its defence, Respondent submits that Post of Food Safety Officer or Central Food Safety Officer is not mentioned in MoSJE list of 2021 or 2013. Hence, Respondent constituted an 'Expert Committee' which recommended to exclude 'Both Arms' category for the post of Central Food Safety Officer. The decision to exclude this category was taken because nature of job performed by CFSO includes lifting, pushing and pulling.

9. Respondent further submits that the post currently held by the Complainant is not equivalent to the post of CFSO because responsibilities of the two posts are different. Respondent submits that in State Department duties of CFSO does not include field duties, whereas in Central Government, post of CFSO include field duties like collection of samples. Respondent has not submitted any documents to support this submission.

10. This Court finds merits in Complainant's submissions. Department of Empowerment of Persons with Disabilities issued list of jobs identified suitable for Person with Disabilities. Objective of this process of identification of jobs is to broaden the scope of employment for persons with benchmark disabilities in Government establishments. With this purpose, Department clearly laid down in the Notification attached that the list is not exhaustive and only indicative. Further, both the lists issued by Department of Empowerment of Persons with Disabilities in year 2013 and 2021 mention that if the post is already held by a divyang employee of certain category of disability, then it automatically stands identified suitable for that particular category of disability. Hence, this Court concludes that the Respondent has erred in law by excluding 'Both Arms' category from the list of categories identified suitable for Divyangjan to perform the job of CFSO.



11. As far as Respondent's submission relating to difference of nature of CFSO job in State Government and Central Government is concerned, this Court concludes that Respondent failed to implement principle of 'Reasonable Accommodation' enshrined in Rights of Persons with Disabilities Act, 2016. Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per the provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.

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

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

12. This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans.





This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

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

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

14. Physical and social environment are unfortunately designed in such ways that at times consciously and other times unconsciously, Divyangjan are subjected to exclusion, segregation. Misconceptions and preconceived



notions relating to divyang employees' incapability to perform job also exist. Concept of Reasonable Accommodation plays a crucial role in removal of such barriers. Respondent submitted that the nature of duties of CFSSO in State Government and Central Government differ. Even if this argument is taken into consideration, Respondent could take into consideration the concept of Reasonable Accommodation and could provide assistive devices or could make necessary changes and modifications to enable Divyangjan of 'Both Arms' category. Instead of implementing the concept of 'Reasonable Accommodation', Respondent altogether excluded 'Both Arms' category from the recruitment process. It is noteworthy that concept of 'Reasonable Accommodation' and 'Identification of jobs suitable for PwBDs' cannot be read in exclusion with each other.

15. As far as issue of furnishing wrong information is concerned, since the Respondent excluded 'Both Arms' category from the recruitment process and the Complainant was not able to furnish the correct information regarding his disability. Complainant exercised due diligence and it cannot be denied that he filled this information in good faith.

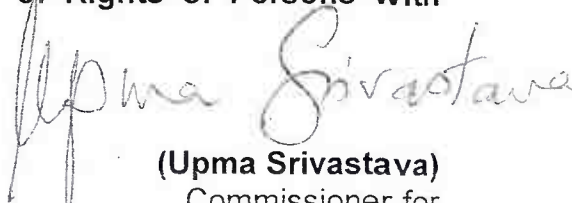
16. This Court concludes that exclusion of 'Both Arms' category of Disability is regressive approach of the Respondent. Complainant qualified examination and thereafter his candidature was rejected. This Court recommends that the Respondent shall ignore the wrong information furnished by the Complainant and shall appoint the Complainant on the basis of his merit and arguments stated in paras 10 to 16 above.

**17. Respondent is directed to submit the Compliance Report of this Order within 03 (Three) months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 03 months**



from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

Dated: 15.11.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12880/1023/2021

Complainant: Shri Lakhan Singh  
E-mail: <lakhan170375@gmail.com>

Respondent: The Director General  
Employees State Insurance Corporation  
Panchdeep Bhawan, CIG Marg, New Delhi - 110002  
e-mail: <dir-gen@esic.nic.in> <med6-hq@esic.nic.in>

Complainant 40% locomotor disability

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 02.09.2021 में कहना है कि कर्मचारी राज्य बीमा निगम (क.रा.बी.नि.), मुख्यालय, पंचदीप भवन, नई दिल्ली के आदेश दिनांक 03.04.2020 द्वारा दिव्यांग कर्मचारियों को कोरोना महामारी के दौरान ड्यूटी से exempt रखा गया तथा इस आदेश में यह उल्लेखित नहीं था कि मेडिकल और नर्सिंग में कार्यरत दिव्यांग कर्मचारी exempted है या नहीं। प्रार्थी का आगे कहना है कि डाइरेक्टर जनरल, क.रा.बी.नि. ने अपने आदेश दिनांक 31.02.2021 द्वारा सूचित किया है कि मेडिकल तथा नर्सिंग संवर्ग के कर्मचारी exempted नहीं है तथा इन कर्मचारियों के कोरोना महामारी के दौरान के अवकाश के नियमन के लिए कर्मचारी का अर्जित अवकाश या चिकित्सा अवकाश काटा जाएगा। प्रार्थी ने निवेदन किया है कि दिव्यांग कर्मचारियों के अवकाश नियमन में विशेष अवकाश लगाने के लिए आदेश पारित करें।

2. The matter was taken up with the Respondent vide letter dated 16.09.2021 under Section 75 of the RPwD Act, 2016. But despite reminders dated 04.10.2021 & 20.10.2021, respondent has not submitted reply.

### Observation/Recommendations:

3. After perusal of the documents available on record, it is recommended to the respondent to follow necessary government instructions timely and implement the same for all employees who are persons with disabilities as per following DOP&T's OM :



....2...

**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 19<sup>th</sup> May, 2020 – entitled “Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19) Attendance regarding”, states.....** “In continuation of this Ministry’s O.M. of even number dated the 18<sup>th</sup> May, 2020, it has been decided that the Government servants who have underlying conditions (co-morbidities) and were undergoing treatment for these ailments before lockdown, may, as far as possible, be exempted from roster duty upon production of medical prescription from treating physician under CGHS/CS(MA) Rules, as applicable. **Similarly, Persons with Disabilities and Pregnant Women may also not be included in the roster to be prepared.”**

**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 7<sup>th</sup> October, 2020 – entitled “Preventive measures to contain the spread of Novel Coronavirus (COVID-19) – Attendance of Central Government officials regarding”, Para 1(f) states.....** **“Persons with Disabilities and Pregnant women employees shall continue to work from home till further orders.”**

4. In view of the aforesaid orders, the respondent shall re-examine the entire matter and ensure that no injustice is carried out.
5. Accordingly respondent is recommended to adhere with the DoP&T OM in letter & spirit. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 18.11.2021



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

**Case No: 12770/1023/2021**

Complainant: Shri Umashankar Verma  
41/5, N S Road, Khatal Gali, 1<sup>st</sup> Floor  
Behind Canara Bank, Post Rishra  
Distt. Hooghly, West Bengal  
e-mail: <usv8rvp@gmail.com>

— R30239

Respondent: The General Manager  
Office of the General Manager  
(Postal Accounts & Finance), West Bengal  
Postal Circle, P – 36, CR Avenue, Yogayog Bhawan  
Kolkata – 700012  
e-mail: <paokolkata@gmail.com>

— R30240

Complainant: 84% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **06.05.2021** submitted that after successfully qualifying in UDC/JA examination 1990 conducted by SSC in 1990, he was posted as JA in DAP, Kolkata on 17.12.1992 and all directly recruited JA had to pass the confirmatory examination for confirmation of service and suitability to job in respective departments. He further submitted that he appeared in the said confirmatory examination in April 1995 and was successful in confirmation to job. His ACP was due on completion of 12 years of service in December 2004 but the department did not recognize it.

2. The matter was taken up with the Respondent vide letter dated **30.06.2021** under Section 75 of the RPwD Act, 2016.

3. In response, respondent vide letter dated **16.08.2021** submitted that the above issue has been reviewed by the competent authority in terms of provision available in connection with financial upgradation under ACP/MACP scheme and it is revealed that no further ACP/MACP is due and the admissible to Sri Umashankar Verma.

*[Handwritten signature]*

4. After considering the respondent's reply dated **16.08.2021** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **05.10.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.10.2021**. The following were present:

- Shri Umashankar Vema – complainant
- Sri Pulab Sinha, SEO on behalf of respondent

**Observation/Recommendations:**

5. Complainant alleges that MACP was not granted on time. Reservation of 4% is not extended to PwDs. Terms derogatory to Divyangjan are used to address divyang employees.

6. Respondent submits that service records of the Complainant have been reviewed and no MACP is due.

7. This court expresses its displeasure with the fact that no suitable reply was given by the Respondent on the issue of MACP which may have been due in the past. Respondent also failed to inform this court on this issue during online hearing.

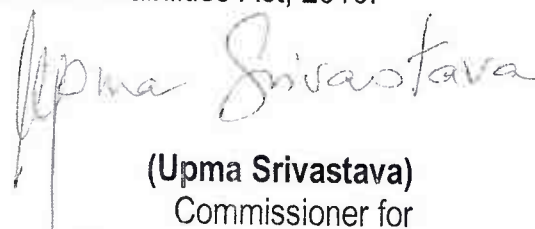
8. On the issue of use of derogatory terms, this Court recommends that the Respondent shall conduct counselling of all the staff members. Sensitization programmes of the staff shall also be conducted by the Respondent.

9. On the issue of MACP this Court recommends that the Respondent shall review the issue of MACP and shall examine, if MACP with respect to the Complainant was due in past and has not been given. Respondent shall make sure that in future only those representatives are sent to attend online hearing who are well about the facts of the case.

.....3.....

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

11. Case is disposed off.



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

Dated: 18.11.2021





सत्यमेव जयते

29

## 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: 12772/1023/2021

Complainant: Shri Jasbir Singh  
G-21/263, Sector - 7  
Rohini, Delhi - 110085  
E-mail: <jasbir.sin86@gmail.com>

— R30243

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

— R30244

Complainant: 55% Locomotor disability

### GIST of the Complaint:

Complainant Shri Jasbir Singh, Credit Analyst (Manager Scale III) at SBI Bank, Karol Bagh, New Delhi vide complaint dated **28.06.2021** submitted that he had informed to the RM & DGM that he was detected with Covid positive on 07.05.2021 and requested them for allotment of work from home but he was forced & humiliated by RM & DGM to join office. He alleged that his salary for June month 2021 has been stopped and also marked as absent till date.

2. The matter was taken up with the Respondent vide letter dated **30.06.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager, State Bank of India vide letter dated **16.08.2021** inter-alia submitted that the salary of the complainant was stopped w.e.f. 01.06.2021 as per the procedure and as per policy of Bank "No work, No Pay". The entry in respect to stoppage of salary of the Complainant was marked by the HRMS team at the corporate Centre of the Bank. The unauthorized absence of the complainant, due to system error or due to some other reason, however, seem to have been entered from 01.06.2021 to 24.02.2024 which can be pursued up and got corrected.

4. Complainant vide rejoinder dated **03.09.2021** inter-alia submitted that the Bank has not paid/held his salary for June, July and August 2021 as well as other benefits.

5. After considering the respondent's reply dated **16.08.2021** and the complainant's rejoinder dated **03.09.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **05.10.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.10.2021**. The following were present:

- Shri Jasbir Singh – complainant
- Shri Soran Suri, Advocate on behalf of respondent

**Observation/Recommendations:**

6. Both the parties were heard.

7. Complainant alleges that the Respondent is forcing him to attend office during Covid-19 lockdown period despite of clear exemption guidelines of DoPT. Further, Complainant alleges that the Respondent is not making arrangements to allot work from home, for eg, laptop has not been provided. Complainant also alleges that salary has not been paid since June 2021.

8. Respondent submits that it is willing to allow the Complainant to do Work From home. Work from home is allotted only to those employees who apply for the same on HRMS Portal of the Bank (Human Resource Management System) To allot work from home, it was important to allot a laptop to the Complainant, for which set procedure is required to be followed and necessary permissions are required to be obtained. On 31.05.2021, Complainant was informed that necessary procedure to allot laptop has been completed and he has to come to office to collect the laptop and for discussion regarding nature of work which he may perform from his own home. Complainant did not object to the same, on the contrary, Complainant expressed his willingness to come to office for collection of the



laptop and discussion. Complainant neither came to office nor applied on HRMS portal for work from home. Complainant was never asked to come to office on regular basis. He was asked to come for one day only, to collect laptop and for discussion regarding future course of action. Complainant came to office on 01.07.2021 unannounced. On that day, reporting officer of the Complainant was on leave. However, DGM and AGM were present and he was asked to meet those officers. He chose not to meet either of the officers. The Complainant was asked to collect laptop and discuss future course of action on 01.06.2021. Complainant did not come to office on 01.06.2021, further when he came on 01.07.2021, he did not meet or discuss anything with the officers. Therefore, he was marked absent since 01.06.2021 and his salary was stopped.

9. It is certain that DoPT exempted divyang employees from attending office. Respondent did not object to this legal position and is ready and willing to allot work from home to the Complainant. The main issue between the Complainant and the Respondent is related to non payment of salary.

10. Considering the fact that Covid-19 presented challenging times for everyone Respondent is recommended to adopt relaxed and compassionate approach. From the facts there seems that the main cause of the complaint is communication gap or confusion regarding process of allotment of work which can be performed from home.

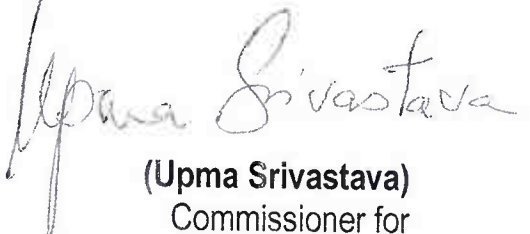
11. This court recommends that the Respondent shall adopt compassionate approach to resolve the differences with its own employee, i.e. Complainant and shall release the salary of the Complainant and correct the leave record. Further, it is recommended that Respondent shall guide the Complainant regarding process related to allotment of work from home. Complainant is also recommended to follow due procedure and cooperate with the Respondent.

12. **Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the**



Compliance Report within 3 (three) months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

13. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 18.11.2021





सत्यमेव जयते

33

## 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: 12881/1023/2021**

Complainant: Ms. Raj Bala  
E-mail: <bharajdwaj45@gmail.com>

— R30241

Respondent: The Director General.  
Employees State Insurance Corporation  
Panchdeep Bhawan, CIG Marg, New Delhi – 110002  
e-mail: <dir-gen@esic.nic.in> <med6-hq@esic.nic.in>

— R30242

Complainant 40% locomotor disability

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 02.09.2021 में कहना है कि कर्मचारी राज्य बीमा निगम (क.रा.बी.नि.), मुख्यालय, पंचदीप भवन, नई दिल्ली के आदेश दिनांक 03.04.2020 द्वारा दिव्यांग कर्मचारियों को कोरोना महामारी के दौरान ड्यूटी से exempt रखा गया तथा इस आदेश में यह उल्लेखित नहीं था कि मेडिकल और नर्सिंग में कार्यरत दिव्यांग कर्मचारी exempted है या नहीं। प्रार्थी का आगे कहना है कि डाइरेक्टर जनरल, क.रा.बी.नि. ने अपने आदेश दिनांक 31.02.2021 द्वारा सूचित किया है कि मेडिकल तथा नर्सिंग संवर्ग के कर्मचारी exempted नहीं है तथा इन कर्मचारियों के कोरोना महामारी के दौरान के अवकाश के नियमन के लिए कर्मचारी का अर्जित अवकाश या चिकित्सा अवकाश काटा जाएगा। प्रार्थी ने निवेदन किया है कि दिव्यांग कर्मचारियों के अवकाश नियमन में विशेष अवकाश लगाने के लिए आदेश पारित करें।

2. The matter was taken up with the Respondent vide letter dated 16.09.2021 under Section 75 of the RPwD Act, 2016. But despite reminders dated 04.10.2021 & 20.10.2021, respondent has not submitted reply.

### Observation/Recommendations:

3. After perusal of the documents available on record, it is recommended to the respondent to follow necessary government instructions timely and implement the same for all employees who are persons with disabilities as per following DOP&T's OM :

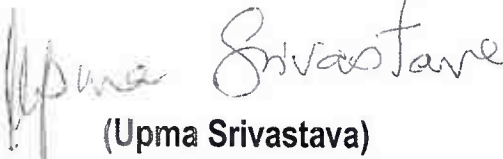
**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 19<sup>th</sup> May, 2020 – entitled "Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19) Attendance regarding", states..... "In continuation of this Ministry's**

.....2.....

O.M. of even number dated the 18<sup>th</sup> May, 2020, it has been decided that the Government servants who have underlying conditions (co-morbidities) and were undergoing treatment for these ailments before lockdown, may, as far as possible, be exempted from roster duty upon production of medical prescription from treating physician under CGHS/CS(MA) Rules, as applicable. **Similarly, Persons with Disabilities and Pregnant Women may also not be included in the roster to be prepared."**

**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 7<sup>th</sup> October, 2020 – entitled "Preventive measures to contain the spread of Novel Coronavirus (COVID-19) – Attendance of Central Government officials regarding", Para 1(f) states..... "Persons with Disabilities and Pregnant women employees shall continue to work from home till further orders."**

4. In view of the aforesaid orders, the respondent shall re-examine the entire matter and ensure that no injustice is carried out.
5. Accordingly respondent is recommended to adhere with the DoP&T OM in letter & spirit. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 18.11.2021



सत्यमेव जयते

35

## 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: 12820/1023/2021**

Complainant: Shri D. Arumugam  
17/13, CMDA Plot, Karunilam Post  
Gudalore Village, S.P. Koil (via)  
Chengalpet Taluk, Chengalpet District – 603204

— P30246

Respondent: The Director  
Pandit Deendayal Upadhyaya Institute for  
Physically Handicapped, 4, Vishnu Digamber Marg  
New Delhi – 110002  
E-mail: <iphmsje@gmail.com>

— P30247

Complainant: 60% MR daughter of complainant

### GIST of the Complaint:

Complainant vide complaint dated **22.07.2021** submitted that he had retired from PDDUIPH, New Delhi as a Driver on 29.12.2012 but he has not received pensionary benefits as per the laws of IPH.

2. The matter was taken up with the Respondent vide letter dated **12.08.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **17.09.2021** inter-alia submitted that Shri D. Arumugam filed the petition before Hon'ble High Court of Madras challenging the order passed by Hon'ble Central Administrative Tribunal and Hon'ble Supreme Court of India for grating of pensionary benefits. .

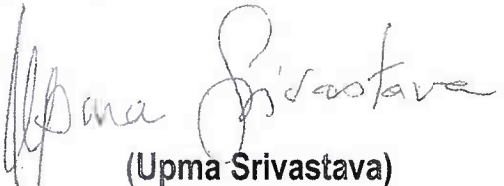
4. A copy of the above reply was forwarded to the complainant on **30.09.2021** for submission of his comments/rejoinder but till date no reply has been received.

....2....

**Observation/Recommendations:**

5. After perusal of the rival submissions, it has been found that a Writ Petition No. 29557/2012 on the issue is pending before the Hon'ble High Court of Madras at Chennai. Therefore, no further intervention is required in the matter being a sub-judice.

6. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 18.11.2021





सत्यमेव जयते

37

## 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: 12879/1023/2021**

Complainant: Shri Mahesh Singh  
E-mail: <mahesh.hansawat@gmail.com>

— P30248

Respondent: The Director General  
Employees State Insurance Corporation  
Panchdeep Bhawan, CIG Marg, New Delhi – 110002  
e-mail: <dir-gen@esic.nic.in> <med6-hq@esic.nic.in>

— P30249

Complainant Above 40% locomotor disability

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 02.09.2021 में कहना है कि कर्मचारी राज्य बीमा निगम (क.रा.बी.नि.), मुख्यालय, पंचदीप भवन, नई दिल्ली के आदेश दिनांक 03.04.2020 द्वारा दिव्यांग कर्मचारियों को कोरोना महामारी के दौरान ड्यूटी से exempt रखा गया तथा इस आदेश में यह उल्लेखित नहीं था कि मेडिकल और नर्सिंग में कार्यरत दिव्यांग कर्मचारी exempted है या नहीं। प्रार्थी का आगे कहना है कि डाइरेक्टर जनरल, क.रा.बी.नि. ने अपने आदेश दिनांक 31.02.2021 द्वारा सूचित किया है कि मेडिकल तथा नर्सिंग संवर्ग के कर्मचारी exempted नहीं है तथा इन कर्मचारियों के कोरोना महामारी के दौरान के अवकाश के नियमन के लिए कर्मचारी का अर्जित अवकाश या चिकित्सा अवकाश काटा जाएगा। प्रार्थी ने निवेदन किया है कि दिव्यांग कर्मचारियों के अवकाश नियमन में विशेष अवकाश लगाने के लिए आदेश पारित करें।

2. The matter was taken up with the Respondent vide letter dated 16.09.2021 under Section 75 of the RPwD Act, 2016. But despite reminders dated 04.10.2021 & 20.10.2021, respondent has not submitted reply.

### Observation/Recommendations:

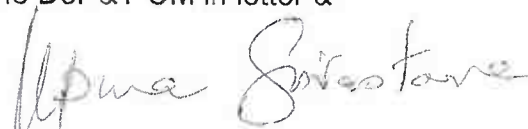
3. After perusal of the documents available on record, it is recommended to the respondent to follow necessary government instructions timely and implement the same for all employees who are persons with disabilities as per following DOP&T's OM :

**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 19<sup>th</sup> May, 2020 – entitled “Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19) Attendance regarding”, states.....** “In continuation of this Ministry’s O.M. of even number dated the 18<sup>th</sup> May, 2020, it has been decided that the Government servants who have underlying conditions (co-morbidities) and were undergoing treatment for these ailments before lockdown, may, as far as possible, be exempted from roster duty upon production of medical prescription from treating physician under CGHS/CS(MA) Rules, as applicable. **Similarly, Persons with Disabilities and Pregnant Women may also not be included in the roster to be prepared.”**

**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 7<sup>th</sup> October, 2020 – entitled “Preventive measures to contain the spread of Novel Coronavirus (COVID-19) – Attendance of Central Government officials regarding”, Para 1(f) states.....** **“Persons with Disabilities and Pregnant women employees shall continue to work from home till further orders.”**

4. In view of the aforesaid orders, the respondent shall re-examine the entire matter and ensure that no injustice is carried out.

5. Accordingly respondent is recommended to adhere with the DoP&T OM in letter & spirit. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 18.11.2021



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

**Case No: 12877/1023/2021**

Complainant: Ms. Sita Gurjar  
E-mail: <sita.gurjar7891@gmail.com>

Respondent: The Director General  
Employees State Insurance Corporation  
Panchdeep Bhawan, CIG Marg, New Delhi – 110002  
e-mail: <dir-gen@esic.nic.in> <med6-hq@esic.nic.in>

Complainant Above 40% locomotor disability

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 02.09.2021 में कहना है कि कर्मचारी राज्य बीमा निगम (क.रा.बी.नि.), मुख्यालय, पंचदीप भवन, नई दिल्ली के आदेश दिनांक 03.04.2020 द्वारा दिव्यांग कर्मचारियों को कोरोना महामारी के दौरान ड्यूटी से exempt रखा गया तथा इस आदेश में यह उल्लेखित नहीं था कि मेडिकल और नर्सिंग में कार्यरत दिव्यांग कर्मचारी exempted है या नहीं। प्रार्थी का आगे कहना है कि डाइरेक्टर जनरल, क.रा.बी.नि. ने अपने आदेश दिनांक 31.02.2021 द्वारा सूचित किया है कि मेडिकल तथा नर्सिंग संवर्ग के कर्मचारी exempted नहीं है तथा इन कर्मचारियों के कोरोना महामारी के दौरान के अवकाश के नियमन के लिए कर्मचारी का अर्जित अवकाश या चिकित्सा अवकाश काटा जाएगा। प्रार्थी ने निवेदन किया है कि दिव्यांग कर्मचारियों के अवकाश नियमन में विशेष अवकाश लगाने के लिए आदेश पारित करें।

2. The matter was taken up with the Respondent vide letter dated 16.09.2021 under Section 75 of the RPwD Act, 2016. But despite reminders dated 04.10.2021 & 20.10.2021, respondent has not submitted reply.

### Observation/Recommendations:

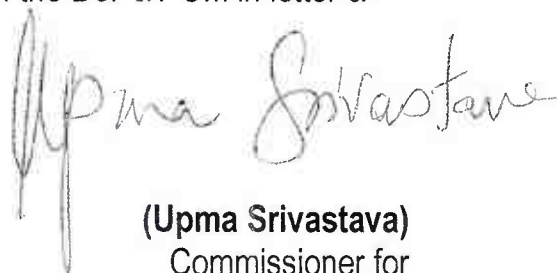
3. After perusal of the documents available on record, it is recommended to the respondent to follow necessary government instructions timely and implement the same for all employees who are persons with disabilities as per following DOP&T's OM :

**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 19<sup>th</sup> May, 2020 – entitled “Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19) Attendance regarding”, states.....** “In continuation of this Ministry’s O.M. of even number dated the 18<sup>th</sup> May, 2020, it has been decided that the Government servants who have underlying conditions (co-morbidities) and were undergoing treatment for these ailments before lockdown, may, as far as possible, be exempted from roster duty upon production of medical prescription from treating physician under CGHS/CS(MA) Rules, as applicable. **Similarly, Persons with Disabilities and Pregnant Women may also not be included in the roster to be prepared.”**

**DOP&T O.M. No.11013/9/2014-Estt.A.III dated 7<sup>th</sup> October, 2020 – entitled “Preventive measures to contain the spread of Novel Coronavirus (COVID-19) – Attendance of Central Government officials regarding”, Para 1(f) states.....** **“Persons with Disabilities and Pregnant women employees shall continue to work from home till further orders.”**

4. In view of the aforesaid orders, the respondent shall re-examine the entire matter and ensure that no injustice is carried out.

5. Accordingly respondent is recommended to adhere with the DoP&T OM in letter & spirit. The case is disposed off.



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

Dated: 18.11.2021





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

**Case No: 12791/1023/2021**

Complainant: Smt. Jyoti  
W/o Ranjeet Singh Bharti  
E-mail: <jyoti.j.u.y@gmail.com>

— R30252

Respondent: The Regional Manager  
Bank of Baroda, Regional Office  
118/330, Kaushalpuri, Gumti No. 05  
Kanpur Nagar, U.P. – 208012  
E-mail: <rm.kanpur@bankofbaroda.com>

— R30253

Complainant: Shri Ranjeet Singh Bharti, a person with 55% locomotor disability

### GIST of the Complaint:

Complainant vide complaint dated **08.07.2021** has raised three points (i) her husband is being pressurized by the Management of Bank of Boarda to transfer from Vinobha Nagar Branch, Kanpur (ii) her husband medical bills of heart surgery, domiciliary treatment of critical illness of heart & nerve paralysis of Rs. 47428 not reimbursed. (iii) not sanctioned special leaves from 05.12.2005 to 12.08.2006 due to critical accident of her husband.

2. The matter was taken up with the Respondent vide letter dated **15.07.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Deputy Regional Head, Bank of Baroda vide letter dated **10.08.2021** inter-alia submitted that (i) job rotation within city municipal limits is mandatory after duration of every 05 years. (ii) reimbursement of medical expenses is assigned to insurance company under tie up arrangement. Medical bills are settled as per service conditions and in case there is any objection, concerned staff may escalate the matter through his/her reporting authority. (iii) Shri Ranjeet Singh Bharti became disabled after a road accident on 13.10.2005 and his spouse is claiming special leave for the period from 05.12.2005 to 12.08.2015 after a lapse of 15 years and therefore, request is not admissible.

4. Complainant vide rejoinder dated **02.09.2021** reiterated her grievance and submitted that as per her husband knowledge, there is no such instructions of rotational transfer of clerks in five years. She further submitted that till date no decision has been taken on Medical Bills.

5. After considering the respondent's reply dated **10.08.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **05.10.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **05.10.2021**. The following were present:

- Smt. Jyoti & Shri Ranjeet Singh Bharti – complainant
- Shri Deependra Shukla, Deputy Regional Manager on behalf of respondent

**OBSERVATION:**

6. Both the parties were heard.

7. Complaint is filed by representative of the bank employee. Complainant on behalf of the employee who is presently posted in Vinoba Nagar, Kanpur submits that he got to know from reliable sources that the management of the Bank may transfer him to another location. Further he submits that the medical bills raised in year 2019, relating to nerve paralysis and heart disease are not been reimbursed by the Respondent. In 2005 the employee met accident. His leave was not sanctioned by the Respondent.

8. Respondent submits that the allegations relating to transfer are baseless and false. Power to transfer clerical staff lies with Regional Head. Bank takes note of transfer and posting of lady staff and divyang employees. Further, as per 10<sup>th</sup> Bi-Partee Settlement dated 25.05.2015, Medical Bills are reimbursed by the insurance company. In case of any objection, issue may be raised with employee's reporting authority. With respect to sanctioning of special leave is concerned, the Respondent submits that as per service rules, there is no provision to sanction special leave.



9. There are three issues which are focus of the complaint. First is related to transfer, second is related to reimbursement of medical bills and third one is related to sanctioning of special leave.

### **TRNAFER**

10. During online hearing, Respondent submitted that there is no proposal to transfer the aggrieved employee. Aggrieved employee also failed to present any reliable document or information to support the claim of transfer. Therefore on the issue of transfer this court concludes that the issue is merely apprehension of the Complainant and does not warrant interference of this Court.

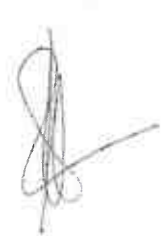
### **REIMBURSEMENT OF MEDICAL BILLS**

11. On this issue, the Respondent submitted that there is policy to reimburse the medical bills. Respondent submitted that the aggrieved employee faced this problem because he did not report this issue to the Reporting Authority within proper format.

12. Respondent submission is evidence of callous approach towards rights divyang employees. If the issue was so small that the format of the aggrieved employee's representation was not appropriate, Respondent could guide the aggrieved employee about the proper format and procedure to report the issue to the reporting authority.

### **SANCTIONING OF SPECIAL LEAVE**

13. This Court is anguished with the fact that the Respondent does not care to implement the Recommendations of this Court and also do not provide any reason for the same. This issue was raised by the aggrieved employee previously and this Court passed Recommendation on 02.08.2016. as per the Order of this Court, Respondent was recommended to sanction the special leave.



14. Respondent not only ignored the Recommendation but also was not aware of the same at the time of hearing. Again this is evidence of the callous approach of the Respondent establishment towards divyang employees.

### **RECOMMENDATIONS**

15. On the issue of reimbursement of medical bills, this Court recommends that the Respondent shall reimburse the medical bills according to the rules prescribed in this behalf at the earliest possible opportunity. Further, if any representation is needed to be made or any other procedure is needed to be followed, Respondent is recommended that it shall guide the aggrieved employee about the procedure and rules in this respect.

16. On the issue of sanctioning of leave, this Court recommends that the Respondent shall implement the Order of this Court dated 02.08.2016, attached herewith and shall file the compliance report within 30 days from the date of this Order.

17. Case is disposed off.

Encl: as above

Dated: 18.11.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12801/1023/2021

Complainant: Shri Kodakkal Shivaprasad  
Founder & Chairman  
Indian Divyang Empowerment Association  
E-mail: <indiandivyangempowerment@gmail.com>

— R30254

Respondent: The Secretary  
Visakhapatnam Port Trust (VPT)  
Port Area, Visakhapatnam – 530035  
E-mail: <gad.tvg.vpt@gov.in> <tvenugopal@vpt.shipping.gov.in>

— R30255

### GIST of the Complaint:

Complainant vide complaint dated **22.07.2021** submitted that Shri M.Bhaskara Rao, a person with disability was working in Visakhapatnam Port Trust as a Checker and he was demised on 19.08.2020 due to COVID – 19. Complainant alleged that it was happened due to negligence of VPT as they have not exempted persons with disabilities from roster duties. Complainant has requested to provide Permanent Employment to his spouse or dependent and also provide double the monetary compensation to his spouse i.e. 01 Crore.

2. The matter was taken up with the Respondent vide letter dated **28.07.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Secretary, VPT vide letter dated **18.08.2021** inter-alia submitted that Rs. 50 Lakh monetary compensation was already paid to the spouse of deceased employee and there is no such provision/direction to pay one crore compensation to the employee who died due to Covid-19 pandemic. He further submitted that with regard to compassionate appointment, it has been clearly mentioned in the Draft Compassionate Scheme defined by IPA, that there are not entitled to compassionate appointment except the eligible compensation.



5. After considering the respondent's reply dated **18.08.2021** and the complainant's rejoinder dated **27.08.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **21.09.2021** but due to administrative exigencies hearing rescheduled on **23.09.2021**

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.09.2021**. The following were present:

- Adv. Anajana Sharma on behalf of complainant
- Shri B. Sama Murty, Sr. P.O on behalf of respondent

**Observation/Recommendations:**

6. Both the parties were heard.

7. Complaint is filed on behalf of Late M. Bhaskar Rao who was divyang employee. Complainant alleges that Mr. Bhaskar Rao was forced to attend office during Covid. On 19.08.2020, he succumbed to Covid. Complainant has sought relief that the dependant of the deceased employee must be granted compensation of Rs. 1 crore and job on compassionate basis.

8. Respondent submits that when Sri Bhaskar Rao got Covid all medical benefits were extended to him. As per the existing policy, dependant is awarded compensation of Rs. 50 Lakhs. In the present case, Rs. 50 Lakhs have been given to the dependant of the deceased employee. Rules do not allow to award 1 Crore compensation.

9. It is astonishing that divyang employee was called to office despite of Covid – 19 exemption guidelines. Respondent's submission that it is not bound by DoPT Orders is not legally tenable. Respondent is bound by guidelines issued by Department of Public Enterprises (DPE). DPE issued Office Memorandum dated 23.09.2020. The Office Memorandum dated 23.09.2020 endorsed DoPT O.Ms. which exempted divyang employees from attending office.



...3.....


divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by O.M. dated 14.06.2021. Hence, this court concludes that Respondent's act of compelling the Complainant is violative of DoPT guidelines.

11. This court takes cognizance of the fact that Ministry of Port, Shipping & Waterways by letter dated 28.04.2020 mandates that major ports may grant ex-gratia compensation of Rs. 50 Lakhs. It is also to be noted further that Para 18(c) of Scheme of Compassionate Appointments lays down that if ex gratia compensation has been granted to dependant of deceased employee then such dependant's case shall not be considered for compassionate appointment.

12. It is to be noted that Respondent's policies relating to compensation and compassionate appointment of deceased employee are of general nature. These policies do not reflect any special provision for divyang category. This Court concludes that there is no separate policy for divyang employees in this regard and particularly for those divyang employees who were made to attend duties even during Covid – 19 lockdown despite DoPT's exemption Orders endorsed by DPE.

13. This Court recommends that the Respondent shall increase the compensation amount of Rs. 50 Lakhs to 1 crore which is justified on the aforesaid grounds.

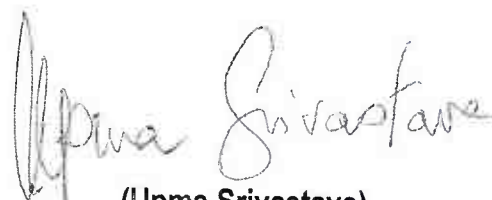
14. **Respondent is directed to submit the Compliance Report of this Order within 3 (three) months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed**

 ....4.....

that the Respondent has not complied the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

15. The case is disposed off.

Dated: 18.11.2021



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



सत्यमेव जयते

49

## 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: 12764/1022/2021

Complainant : Shri Rajkumar B. Biradar  
Sr. Manager, Canara Bank  
Near Dyaneshwar Temple  
Osmanabad District, Maharashtra  
Pin No: 413501  
Email : [syndrbb@gmail.com](mailto:syndrbb@gmail.com)  
Mobile No : 07755926580

— R30257

Respondent : The Chairman/General Manager  
Canara Bank, Head Office  
No. 112, JC road, Bangalore-560002  
Karnataka  
E-mail : [hopm@canarabank.com](mailto:hopm@canarabank.com)

— R30258

#### GIST OF COMPLAINT:

The complainant Rajkumar B. Biradar working as Sr. General Manager in Canara Bank, having 50% orthopedically disable submitted that presently he is posted at Karad Branch as a branch in-charge.

The complainant had joined as Assistant Manager, Rural Development in July 2008. He has worked as Assistant Manager at different places such as Kudchi, Ainapur (Belgum district) and Horti (Bijapur district) which are Rural branches, Afterwards, he was posted as Branch Manager in Bhalki (Bidar district) and Yedrami (Kalburgi district) where he put his best effort to achieve all targets. As a result, as a branch head, he was outstanding performer and got appreciation by the Bank.

The complainant further submitted that in 2017, he was posted at Latur branch as Branch Manager where he was appreciated as MD club member for 2018. Later, in 2019 he was posted at Karad branch where he was a winner of Special Recovery Campaign. Further, as a manager of Canara bank, Karad he was able to reduce NPA by almost 4 crore.

The complainant further stated that while performing duties, he met a major accident in 2012 in which he left hand elbow and left shoulder got seriously injured which caused permanent disability of 50 percent. The complainant now suffering from severe back pain, left hand elbow pain, Tigling and numbness, difficulty in standing and walking in both legs. He was admitted in New Spandan Hospital, Panvel for treatment from 24.05.2021 to 29.05.2021 and he is on medical leave and taking bed rest as per doctor's advice.

The complainant further submitted that being Orthopedically handicapped and having ill health and present Covid-19 scenario, it is difficult for him to manage very large branch. The complainant stated that he is Sr. Manager and he is posted in a branch which is to be headed by a Chief Manager. The complainant stated that 13 staffs working in the same branch in 2019 as against 05 staffs as of now. Therefore, the complainant is prayed to Court of CCPD to kindly consider his case and posted at Latur Branch or RO Kalburgi which is near to his native place on disability ground.

*[Handwritten signature]*

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

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



2. The matter was taken up with the Respondent vide letter dated 12.07.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Sr. Manager, Canara Bank, vide their letter dated 05.08.2021, submitted the following facts:

i) The transfer/ posting of persons with disabilities, bank in due compliance with Govt. guidelines, post such persons with disabilities to the branch/administrative unit. In the matter of subject complainant also the same procedure has been adopted by the bank without any deviation in any respect.

ii) As per the transfer policy applicable to Officers of the bank, all officers are eligible for transfer after three years of service in one Administrative Unit Branch. In case of complainant, bank has always given him convenient posting during all his postings.

iii) The complainant senior manager joined the services of the bank on 07.07.2008 as an Assistant Manager (RD) and later promoted to various posts. The complainant disability is occurred due to an accident in 2012 post joining the bank and he has submitted his disability certificate dated 11.07.2015. It is humbly submitted before this Hon'ble Commission that Shri Rajkumar B. Birader got promoted as Senior Manager, Scale III, on 01.04.2019 while working at Latur branch. On promotion to Scale III, considering his long experience in the Bank, he was posted at Karad Branch of the bank.

iv) The respondent further submitted that bank had given opportunity to all officers for Inter-Circle transfer but Shri Rajkumar B Biradar did not opt for Inter-Circle transfer. Instead, he opted for transfer within our Pune Circle Office as second line officer at Latur Branch and not applied for Inter-Circle transfer to Hubballi. However, the bank has noted his request for transfer and the same is being examined as per the rule & regulations of the bank.

4. In response, the complainant filed their rejoinder by email dated 22.09.2021 and submitted the following facts:

i) The complainant submitted that as per the transfer and posting of PwDs, the bank in due compliance with government guidelines, post such person with disabilities to the Branch /Administrative Unit.

ii) The complainant sated that Transfer proforma filed on 11.03.2021, he has applied for transfer to the Latur branch which is near to his native place on disability ground. He has requested for transfer to Latur branch or Kalburgi RO. However, unfortunately, his request for posting at Latur has not been considered despite of having 3 branches at Latur and he is posted at Osmanabad branch which is almost 180 Kms away from his native place.

iii) The complainant prayed to CCPD Court to give him justice by giving posting to RO Kalburgi under Hubballi Circle which are near to his native place.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.09.2021. The following were present:

- i) Shri Rajkumar B. Biradar – Complainant
- ii) Shri B. Sarvanan, AGM (HR) – Respondent

**Observation / Recommendations:**

i) Complainant submits that he joined Respondent bank in July 2008. In year 2012, he acquired disability. Presently he is posted at Karad branch. Grievance of the Complainant is that he is facing medical issues in the effected arm. Hence not able to handle work load. Another



reason for not being able to handle work load is that the present office is large office and there is acute shortage of staff. Relief he wants from this court is transfer to Latur Branch or Kalburgi branch, both are near to Complainant's native place. He further submits that he was posted at different rural locations in past. Always performed good and received appreciation from Respondent establishment.

ii) Respondent submits that the Complainant got promoted to the post of Senior Manager on 01.04.2019 while he was posted in Latur branch. On promotion he was transferred to Karad branch. Bank gave opportunity for Inter circle transfer vide memo dated 09.03.2021. Complainant did not opt for Inter circle transfer, he applied for transfer to Pune circle. Later by application dated 15.06.2021 Complainant applied for transfer to Kalburgi, which is situated in different circle, i.e. Hubli Circle and hence he was transferred to present location. i.e. Karad Branch.

iii) During online hearing Respondent informed that on 20.08.2021, the Complainant was transferred to Osmanabad which is near to Latur. Latur is the place of Complainant's choice. Complainant expressed dis-satisfaction with his posting in Osmanabad branch, considering that this branch is also heavy work load branch and because of nature of the Complainant's disability, it will not be possible for him to perform his job efficiently in Osmanabad. Respondent expressed its inability to transfer the Complainant before month of April considering the administrative exigencies.

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

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

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

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

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

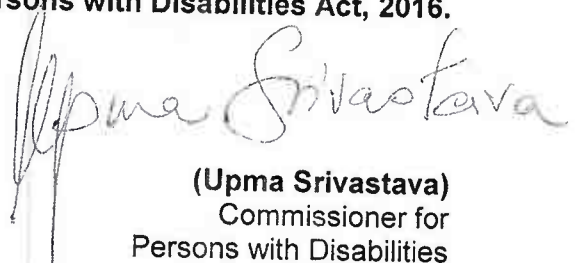
vi) This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications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

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

viii) Hence, this Court recommends that the Respondent shall adopt a Compassionate approach and shall transfer the Respondent to Kalburgi at the earliest possible time. Moreover, if at present location work load is heavy then the Respondent is recommended to post one more employee to assist the Complainant in dispensation of his duties.

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

This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 18.11.2021



सत्यमेव जयते

53

## 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: 12755/1022/2021**

Complainant : Shri Madan Kumar, MTS  
Village Gopalpur Shampur, Police Station-Shampur  
Post Office-Shampur, Distt. Office-Shampur  
Distt. Munger, State-Bihar, India, Pin-811211

Mobile no : 09429875395, 09572882043

E-mail : [madanshampur3@gmail.com](mailto:madanshampur3@gmail.com)

Respondent : The Office of Pr. Chief Commissioner of  
Income Tax, Gujarat  
Room No. 205, 2<sup>nd</sup> Floor, Ayakar Bhawan,  
Ashram Road, Ahmedabad, 380009  
Tele : 079-27544157 Fax: 079-27546740  
E-mail : [Ahmedabad.dcit.hq.pers@incometax.gov.in](mailto:A Ahmedabad.dcit.hq.pers@incometax.gov.in)

### GIST OF COMPLAINT:

The complainant Madan Kumar, MTS, having 55% Physical Disability stated that he joined the Income Tax Department through SSC (Staff Selection Commission on special ground PH quota on 04.10.2016 in Gujarat Region of Income Tax Department at the post of Multi Tasking Staff (Group C).

The complainant further submitted that from the date of joining on 04.10.2016 he posted in Gujarat region. He further stated that as per rule any Physical handicapped officials should be transferred after one year of lock in period or cooling period to his home state region.

The complainant further submitted that he applied for Inter Charge Transfer on 24.11.2017 and his application has been processed by the Committee for ICT which recommended forwarding his ICT application on 26.06.2018 to the Bihar & Jharkhand Region.

The ICT committee has sent letter to the Pr. CCIT, Bihar & Jharkhand for NOC on 19.09.2018. The NOC has been issued by the Pr. CCIT, Bihar & Jharkhand on 09.07.2020. The placement order issued by the Pr. CCIT, Gujarat on 11.12.2020 which was forward to the Pr. CCIT, Bihar & Jharkhand.

The complainant further stated that Pr. CCIT, Gujarat in his letter no. Pr. CCIT, Gujarat in his letter No. dated 31.05.2021 has written a letter to the Pr. CCIT, Bihar & Jharkhand wherein by quoting the letter of the HRD, CBDT, New Delhi's letter dated 27.04.2021 has informed that goodself office is unable to process the posting orders issued by Pr. CCIT, Bihar & Jharkhand for the purpose of his relieving from Gujarat Region.

The complainant submitted that DGIT (HRD) has issued clarification for ICT vide letter dated 27.04.2021, wherein it is mentioned that relieving of those persons may be made whose ICT formalities has been completed before 22.12.2020 the formalities of ICT in his case are already finalized/completed by Pr. CCIT Gujarat vide order dated No. 109 dated 11.12.2020 i.e. prior to issuance of the above referred DGIT (HRD) letter dated 22.12.2021 for ICT.



Therefore, the complainant is prayed to Court of CCPD to kindly consider his case and transfer to Patna-Bihar & Jharkhand Region.

2. The matter was taken up with the Respondent vide letter dated 26.06.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent Smt. Akta Jain, DCIT (HQ) (Pers.) vide their mail dated 24.08.2021, submitted the following facts:

i) The complainant joined the Income Tax Department on 04.10.2016 in Physical Handicapped Category (PH Category for Short) as Multi Tax Staff (MTS for short).

ii) The complainant made a request for inter charge transfer from Gujarat to Bihar on the grounds sated therein. In the said letter he was also stated that he had completed one year service in the cadre he joined and therefore he is eligible for same.

iii) Considering his request, a letter dated 19.09.2018 was addressed to Pr. CCIT, Bihar and Jharkhand seeking No Objection Certificate.

iv) The respondent further stated that Pr. CCIT, Ahmedabad, Gujarat was in process of completing the procedural requirements and other formalities, a communication dated 22.12.2020 was circulated to all administrative commissioners from CBDT-HRD in relation to Inter Charge Transfer.

v) The Inter charge transfer being administrative action criteria laid down under letter dated 22.12.2020 is to be considered by administrative authority on stand-alone basis.

vi) Therefore the allegation of injustice or inaction is without basis. The authority has acted in terms of the instructions on the subject, which please considered.

vii) The respondent further submitted that there is no violation of any of the provisions of the Rights of Persons with Disabilities Act, 2016 particularly Section 21, which mandates that every establishment shall notify equal opportunity policy to the Physical Handicapped Persons. Therefore, the respondent requested to dismiss the case.

4. In response, the complainant has not submitted the rejoinder reply against the letter issued by this Court on 16.08.2021.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.09.2021. The following were present:

- |     |  |               |
|-----|--|---------------|
| i)  | Shri Madan Kumar   | – Complainant |
| ii) | Shri Ravish Bhatt, Dy. Commissioner<br>Income Tax, Headquarter, (Pers) | – Respondent  |

**Observation / Recommendations:**

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

2. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted

to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

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

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

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

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

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

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

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





7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.
- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T– This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T– This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T –This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.
- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T –This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.
- i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who

57

serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

#### ANALYSIS OF THE PROVISIONS & GUIDELINES

8. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

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

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

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

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

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

13. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by

Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

**24. Social security.**—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

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

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

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

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

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

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

28. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached Hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various



ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

#### PRESENT CASE

29. Complainant submits that he Joined Respondent establishment on 04.10.2016. Currently posted in Gujrat region. Applied for transfer to Bihar & Jharkhand region on 24.11.2017. NOC has been issued by Bihar & Jharkhand region, Placement Orders were issued by Gujrat region and was sent to Bihar & Jharkhand region on 29.01.2021. On 31.05.2021, Gujrat region denied to issue relieving orders.

30. In response, Respondent submits that Complainant applied for transfer on – 24.11.2017. Respondent sought NOC from Bihar circle on – 19.09.2018. NOC was issued by Bihar circle on – 09.07.2020. While the transfer was under process, Central Board of Direct Taxes issued communication dated 22.12.2020 to all offices, declaring that Inter Charge Transfer from one region to another shall not be considered except on medical grounds, disability, working spouse etc. Even if Inter-Charge transfer is done on the basis of any one such ground, it will be done on loan basis only. Since, the transfer of the Complainant was under process hence, clarification was sought from DGIT. DGIT by communication dated 27.04.2021 stated that ban on Inter-Charge Transfer imposed by communication dated 22.12.2020 shall not be applicable in case of an employee whose transfer process, including relieving of the employee from his current place of posting, completed before 22.12.2020.

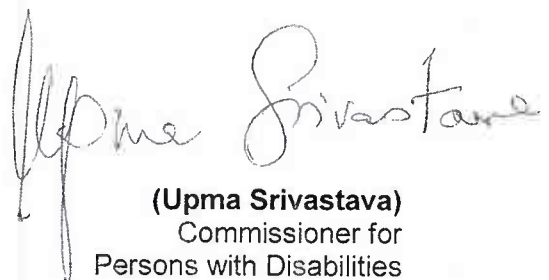
31. Order of the Respondent prohibiting transfer is a trick to bypass statutory provisions and executive guidelines relating to transfer of divyang employees. Respondent prohibited Inter Charge transfer of all the employees and further it created exceptions for divyang employees but further laid down that such transfer shall be only on 'loan basis'. Transfer of divyang employees on loan basis would further augment the problems of divyang employees because such employee would be compelled to move from one place to another on frequent basis. Firstly, such employee would be moved to the region where he would be posted on loan basis and once the tenure of loan would come to an end, he will have to move back to the region where he was originally posted. Therefore, the exception which Respondent claims to have created for divyang employees is merely a trick to bypass the laws related to transfer of divyang employees delineated above.

32. Another issue which is peculiar to this case is that, Complainant applied for transfer in 2017. Bihar region, to which the Complainant applied for transfer, issued NOC in July 2020. CBDT prohibited Inter Charge Transfer of all employees by communication dated 22.12.2020. It is transpicuous from the above facts that Gujrat region failed to issue relieving orders to the Complainant and unreasonable and unjustified delay was caused in issuing relieving orders even though Bihar region issued NOC in July 2020. Moreover, the whole process to transfer the Complainant was initiated in November 2017, 3 years before CBDT issued prohibition on Inter Charge Transfer.

33. Taking into consideration the fact that delay in issuing relieving orders was caused because of no fault of the Complainant, and various laws and guidelines relating to transfer of divyang employees, this court recommends that Complainant must be transferred to Bihar & Jharkhand region. Further, this court recommends that the Respondent shall not consider transfer of the Complainant on 'loan basis' rather such transfer shall be done in accordance with transfer rules of Respondent establishment prevailed before CBDT prohibition dated 22.12.2020. This court further recommends that Respondent shall review Inter Charge Transfer policy to transfer divyang employees on 'loan basis'.

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

This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 18.11.2021



सत्यमेव जयते

63

## 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: 12809/1023/2021

Complainant: Shri Rajesh Kumar Pandey  
E-mail: <rk\_pandey71@rediffmail.com>

— R30333

Respondent: The Registrar  
Gurukula Kangri Vishwavidyalaya  
Haridwar – 249404  
E-mail: <registrar@gkv.ac.in>

— R30334

Complainant: 41% locomotor disability

### GIST of the Complaint:

प्रार्थी का अपने पत्र दिनांक 23.07.2021 में कहना है कि उनका चयन दिनांक 17.05.2014 को उप-कुलसचिव – अनुसूचित जाति जनजाति प्रकोष्ठ गुरुकुल कांगड़ी (समविश्वविद्यालय), हरिद्वार में एक वर्ष के अनुबंध पर फिक्स मानदेय पर हुआ था जिसमें समय समय पर सेवा विस्तार दिया जाता रहा। प्रार्थी ने आरोप लगाया है कि विश्वविद्यालय ने अपने पत्र दिनांक 19.04.2021 के द्वारा उनकी फिक्स वेतन पर अनुबंध की वर्तमान सेवा बिना किसी पूर्व सूचना के अचानक दिनांक 28.04.2021 को अपराहन को समाप्त कर दी।

2. The matter was taken up with the Respondent vide letter dated 29.07.2021 under Section 75 of the RPwD Act, 2016.

3. कुलसचिव, गुरुकुल कांगड़ी, हरिद्वार का अपने उत्तर दिनांक 28.08.2021 में कहना है कि शिकायतकर्ता श्री राजेश कुमार पाण्डेय विश्वविद्यालय में उप-कुलसचिव के पद पर (OBC Grant के अन्तर्गत) Tenure/Contract आधार पर अस्थायी रूप से कार्यरत हैं तथा शिकायतकर्ता श्री राजेश पाण्डेय ने अपनी नियुक्ति के नियमितीकरण से संबंधित एक Writ Petition No. 202/2021 (SB) माननीय उच्च न्यायालय उत्तराखण्ड, नैनीताल में भी योजित की हुई है जो माननीय उच्च न्यायालय में विचाराधीन है।

4. उपरोक्त जवाब की एक प्रति प्रार्थी को दिनांक 03.09.2021 को उनके टिप्पण हेतु भेजी गई परन्तु अभी तक कोई जवाब नहीं आया।

**Observation/Recommendations:**

5. After perusal of the rival submissions, it has been found that Complainant has already filed a Writ Petition No. 202/2021 (SB) before the Hon'ble High Court of Uttarakhand at Nainital. Therefore, no further intervention is required as the matter is sub-judice.

6. Case is disposed off.

Dated: 18.11.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

Case No: 12756/1022/2021

Complainant : Shri Dinesh Prasad Yadav,  
MTS, Group-C  
Village Reghopur Tikar,  
Post Office-Nathnagar,  
Police Station-Madhusudanpur  
Dist. Bhagalpur, Bihar-812006  
Mobile No : 08051773241, 09429877859  
E-mail : [dineshpv14021985@gmail.com](mailto:dineshpv14021985@gmail.com)

— P30337

Respondent : The Principal Chief Commissioner of  
Income Tax, Gujarat,  
Room No. 205, 2<sup>nd</sup> Floor,  
Aayakar Bhavan, Ashram Road,  
Ahmedabad-380009  
Mobile No : 08051773241, 09429877859  
E-mail: [Ahmedabad.dcit.hq.pers@incometax.gov.in](mailto:Ahmedabad.dcit.hq.pers@incometax.gov.in)

— P30338

#### GIST OF COMPLAINT:

The Complainant vide complaint dated 30.07.2021, submitted that he joined the Income Tax Department through SSC (Staff Selection Commission) on special ground PH quota on 30.09.2016 in Gujarat Region of Income Tax Department at the post of Multi Tasking Staff (Group- C). From the date of joining on 30.09.2016 till today he is posted in Gujarat Region.

The complainant further stated that as per the rule physically handicapped officials should be transferred after one year of lock in period or cooling period to his home state region. He further stated that other officials have been transferred to their home state.

The complainant has requested to CCPD Court to consider the Inter Region Transfer from Gujarat Region to Bihar & Jharkhand Region.

2. The matter was taken up with the Respondent vide letter dated 03.08.2021 under Section 75 of the RPwD Act, 2016.

3. In response, DCIT(HQ) (Pers), Pr. Chief Commissioner of Income Tax, Gujarat vide letter dated 10.09.2021, submitted that Shri Dinesh Prasad Yadav joined the Income Tax Department on 30.09.2016 in PH category as Multi Tax Staff (MTS).

The respondent further stated that considering his request, a letter dated 19.09.2018 was addressed to Pr. CCIT, Bihar and Jharkhand seeking No objection Certificate. In response thereto \*NOC\* under letter dated 09.07.2020, was received from the office of Pr. CCIT, Bihar & Jharkhand.

The respondent further stated that when the office of Pr. CCIT, Ahmadabad, Gujarat was in process of completing the procedural requirements and other formalities, a communication dated 22.12.2020 was circulated to all administrative commissioners from CBDT-HRD in relation to Inter-Charge Transfer.



The respondent stated that Inter charge transfer being administrative action criteria laid down under the letter dated 22.12.2020 is to be considered by administrative authority on a standalone basis. As per the new direction, the ICT application of Shri Dinesh Prasad Yadav could not be processed. However, if the fresh application for transfer on a loan basis is made, it will be considered as per the extant rules.

4. The complainant filed his rejoinder dated 30.09.2021, submitted that his transfer application is based on the transfer of Shri Dilip Kumar Choudhary, who was relieved on 31.12.2020. However, when the other official can be transferred so why could he not be considered for the transfer from Gujarat Region to Bihar & Jharkhand Region.

**Observation / Recommendations:**

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

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

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

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

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;



- (f) accessibility;
  - (g) equality between men and women;
  - (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.
4. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.
5. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.
6. Issues related to transfer and posting to divyang employees may be divided into three categories -:
- a) Posting of divyang employee at native place,
  - b) Exemption from routine transfer of divyang employee,
  - c) Posting of employee who serves as care giver of divyang dependant.

#### STATUTORY PROVISIONS AND GUIDELINES

7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1983 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.
- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T– This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T– This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place.

O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

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

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

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

#### ANALYSIS OF THE PROVISIONS & GUIDELINES

8. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

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

10. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is



certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

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

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

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

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

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

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

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

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

18. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, Hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in

PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

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

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

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

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

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



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

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

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

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

**24. Social security.**—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

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

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

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

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

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

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

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

#### PRESENT CASE

29. Complainant submits that he Joined Respondent establishment on 04.10.2016. Currently posted in Gujrat region. Applied for transfer to Bihar & Jharkhand region on 24.11.2017. NOC has been issued by Bihar & Jharkhand region, Placement Orders were issued by Gujrat region and was sent to Bihar & Jharkhand region on 29.01.2021. On 31.05.2021, Gujrat region denied to issue relieving orders.

30. In response, Respondent submits that Complainant applied for transfer on – 24.11.2017. Respondent sought NOC from Bihar circle on – 19.09.2018. NOC was issued by Bihar circle on – 09.07.2020. While the transfer was under process, Central Board of Direct Taxes issued communication dated 22.12.2020 to all offices, declaring that Inter Charge Transfer from one region to another shall not be considered except on medical grounds, disability, working spouse etc. Even if Inter-Charge transfer is done on the basis of any one such ground, it will be done on loan basis only. Since, the transfer of the Complainant was under process hence, clarification was sought from DGIT. DGIT by communication dated 27.04.2021 stated that ban on Inter-Charge Transfer imposed by communication dated 22.12.2020 shall not be applicable in case of an employee whose transfer process, including relieving of the employee from his current place of posting, completed before 22.12.2020.

31. Order of the Respondent prohibiting transfer is a trick to bypass statutory provisions and executive guidelines relating to transfer of divyang employees. Respondent prohibited Inter Charge transfer of all the employees and further it created exceptions for divyang employees but further laid down that such transfer shall be only on 'loan basis'. Transfer of divyang employees on loan basis would further augment the problems of divyang employees because

such employee would be compelled to move from one place to another on frequent basis. Firstly, such employee would be moved to the region where he would be posted on loan basis and once the tenure of loan would come to an end, he will have to move back to the region where he was originally posted. Therefore, the exception which Respondent claims to have created for divyang employees is merely a trick to bypass the laws related to transfer of divyang employees delineated above.

32. Another issue which is peculiar to this case is that, Complainant applied for transfer in 2017. Bihar region, to which the Complainant applied for transfer, issued NOC in July 2020. CBDT prohibited Inter Charge Transfer of all employees by communication dated 22.12.2020. It is transpicuous from the above facts that Gujrat region failed to issue relieving orders to the Complainant and unreasonable and unjustified delay was caused in issuing relieving orders even though Bihar region issued NOC in July 2020. Moreover, the whole process to transfer the Complainant was initiated in November 2017, 3 years before CBDT issued prohibition on Inter Charge Transfer.

33. Taking into consideration the fact that delay in issuing relieving orders was caused because of no fault of the Complainant, and various laws and guidelines relating to transfer of divyang employees, this court recommends that Complainant must be transferred to Bihar & Jharkhand region. Further, this court recommends that the Respondent shall not consider transfer of the Complainant on 'loan basis' rather such transfer shall be done in accordance with transfer rules of Respondent establishment prevailed before CBDT prohibition dated 22.12.2020. This court further recommends that Respondent shall review Inter Charge Transfer policy to transfer divyang employees on 'loan basis'.

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

This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 22.11.2021





सत्यमेव जयते

74

## 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: 12831/1023/2021**

Complainant: Shri Mohammad Majid Qureshi  
E-mail: <majidshekh007@gmail.com>

— 1230335

Respondent: The Director General  
Employee's State Insurance Corporation  
Panchdeep Bhawan, Comrade Indrajeet Gupta Marg  
New Delhi – 110002

— 1230336

Complainant: 60% locomotor disability

### GIST of the Complaint:

प्रार्थी श्री मौहम्मद माजिद कुरेशी, सहायक ग्रेड-03, कर्मचारी राज्य बीमा चिकित्सालय, ग्वालियर का अपनी शिकायत दिनांक 30.07.2021 में कहना है कि कोरोना संक्रमण लॉकडाउन के दौरान उनके कार्यालय ने दिव्यांग कर्मचारियों को उपस्थिती में छूट न देते हुए उक्त लॉकडाउन अवधि में अनुपस्थित कर्मचारियों से अवकाश स्वीकृत कर वेतन का भुगतान करना सुनिश्चित किया है। प्रार्थी ने निवेदन किया है कि उन्हें छूट प्रदान एवं काटा हुआ वेतन दिलवाया जाए।

2. The matter was taken up with the Respondent vide letter dated 17.08.2021 under Section 75 of the RPwD Act, 2016. But despite reminders dated 02.09.2021 & 20.09.2021, no response has been received from the respondent.

### Observation/Recommendations:

3. This court concludes that Respondent's act of compelling the Complainant to attend office during Covid lockdown is contrary to guidelines issued by DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by latest O.M. dated 14.06.2021 and is still in force.



4. Hence, this court concludes that Respondent's act of compelling the Complainant is violative of DoPT guidelines.
5. Furthermore, kind attention of the Respondent is attracted to Section 20(2) of Rights of Persons with Disabilities Act, 2016. The provision makes it mandatory for the government establishments to provide conducive environment to divyang employees.
6. Hence, this court recommends that the Respondent shall not compel the Complainant to attend office. Further this court recommends that the Respondent shall re-examine the entire matter of with-holding salary and ensure that no injustice is carried out.
7. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 23.11.2021



78

## 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: 12701/1021/2021

Complainant: Shri Karri Balasubrahmanyam, MTS  
Operation East Coast – II, Marine & Coastal Survey  
Division, Geological Survey of India, NH-16, Marripalem  
Visakhapatnam – 530018  
E-mail: <kbsubrahmanyam36@gmail.com>

— R30395

Respondent: The Director General  
Geological Survey of India  
Op. EC – II, MCSD, NH – 16  
Marripalem, Visakhapatnam – 530018  
E-mail: <ddgmcsd.vizag@gsi.gov.in>

— R30396

Complainant: 100% Hearing Impairment

### GIST of the Complaint:

Complainant vide complaint dated **07.04.2021** submitted that he was appointed as a Safaiwala in Geological Survey of India, Lucknow on 26.12.2002 and thereafter transferred to Marine & Coastal Survey Division, Visakhapatnam on 06.08.2007. He further submitted that his designation was changed as a MTS on 01.01.2010. He alleged that he did not get any promotion till date despite having good academic background.

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

3. In response, respondent vide letter dated **16.07.2021** inter-alia submitted that complainant had given representations dated 20.05.2016 & 14.12.2020 for promotion but as per RR provisions, the post of Lab. Assistant Gr. II (Geophy) can only be filled up through promotion (DPC) from the employees of feeder grade post of Lab. Assistant Gr. III (Geophy) and not from MTS post presently holding by Shri Subrahmanyam.

4. Complainant vide rejoinder dated **02.08.2021** has requested to consider his promotion under PwD quota.

5. After considering the respondent's reply dated **16.07.2021** and the complainant's rejoinder **02.08.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.10.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.10.2021**. The following were present:

- Shri Karri Balasubrahmanyam – complainant
- Shri Anil Kumar, Director, Shri Debanshu Banerjee, Superintending Geophysicist & Shri Madhusudan Banik, Administrative Officer on behalf of respondent

**Observation/Recommendations:**

6. Both the parties were heard.

7. Complainant submits that he got appointed as Safaiwala in Respondent establishment in year 2002. Thereafter, on his own request his designation was changed to MTS in year 2010. Complainant's grievance is that since his appointment, Complainant has not been promoted even once. He gave representation to the Respondent, However no action was taken. From this court, Respondent has sought relief to promote him to the post of Lab Assistant Grade- II since it is vacant.

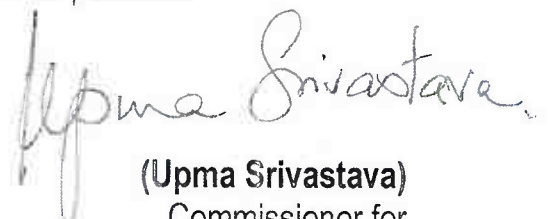
8. Respondent submits that as per Recruitment Rules of the Respondent establishment, there are only seven posts to which MTS may be promoted. MTS cadre is not the feeder cadre for promotion to the post of Lab Assistant Grade – II. MACP has been given to the Complainant in year 2012 and next MACP is due in year 2022.

9. This court concludes that reply of the Respondent is satisfactory. Further this court concludes that no instance of discrimination is made out by the Complainant in the present



Complaint on account of disability. However, Respondent may take the sympathetic view and explore avenues for promotion of the Complainant, as soon as possible.

10. Case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 26.11.2021





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

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

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

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

भारत सरकार/Government of India

**Case No: 12752/1023/2021**

Complainant: Shri Chandra Prakash Gupta  
E-mail: <cpgupta9499@gmail.com>

— P30397

Respondent: The Chairman, DLF Limited, DLF Gateway Tower  
R-Block, DLF City Phase-III, Gurugram, Haryana  
E-mail: <k-sandeep@dlf.in>

— P30398

Complainant: 90% visual impairment

### GIST of the Complaint:

Complainant vide complaint dated **13.06.2021** submitted that he has been terminated on 04.06.2021 without his acceptance.

2. The matter was taken up with the Respondents vide letter dated **23.06.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **14.07.2021** inter-alia submitted that Shri Chander Prakash Gupta vide e-mail dated **05.06.2021** has informed to the Respondent about the case filed by the him against Chairman, DLF before Hon'ble High Court of Delhi bearing Civil Suit (OS) dated 17.08.2020 bearing no. 629067/2020. However, till date the officials of DLF Company have not been able to locate the aforesaid litigation despite diligent attempts.

4. Complainant vide rejoinder **29.07.2021** inter-alia submitted that he had been working with DLF HOME DEVELOPERS LTD from 24/5/1993 and during Covid-19 period & lockdown in Gurgaon, DLF office was closed and Company sent an illegal termination letter to him. He further submitted that after illegal termination, compensation of balance service along with Health insurance lifetime, accidental insurance, long term disability insurance, a deposit of EPF, SAF till Superannuation age (up to 62 years ) plus violated live Company circular (like retirement policy, Delta increase guaranteed variable etc.) balance Gratuity amount to be paid as per policy.

He further submitted that regarding Hon'ble Delhi High Court case, he has not been sent any notice to the Company. In the last para, he has requested to retain him again from 05/6/2021 for same or equal designation and increased salary & benefits along with claimed compensation amount from the Organization in hearings time to come to visually disabled person during employment.

5. Respondent vide counter rejoinder dated 15.09.2021 inter-alia submitted that complainant deliberately did not work and perform his duties, therefore, the respondent was constrained to terminate the services of the complainant vide termination letter dated 04.06.2021. Even though in terms of the complainant appointment letter, he was entitled to one month's salary, however, as a gesture of good will, the respondent offered to pay him three month's salary in lieu of notice period as per the Respondent company's policy

6. After considering the respondent's reply dated **14.07.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **26.10.2021** but due to Technical issues, hearing rescheduled on **28.10.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.10.2021**. The following were present:

- Shri Chandra Prakash Gupta – complainant
- Adv. Shri Praveen Bahadur, Shri Sandeep Kumar Gupta, Manager Legal on behalf of respondent

**Observation/Recommendations:**

7. Both the parties were heard.

8. Complaint is filed against termination of the Complainant. Complainant alleges that the Respondent terminated his services because of his disability. Respondent countered the allegations by submitting that the Complainant was terminated because of dereliction of



duties. To support its claim, Respondent submitted that till October 28, 2020 he was posted in a road project. On 28 October 2020, he was assigned a new team but he was never shifted away from the city in which he was employed. Instead of reporting to the team, the Complainant insisted on reporting in a specific office.

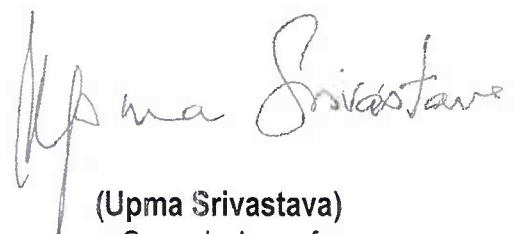
9. Further Respondent submits that the Complainant was requested to not be intransigent and was requested to report to work. However the Complainant did not change his attitude.

10. Another grievance of the Complainant is that the Respondent did not settle the termination dues of the Complainant.

11. This Court concludes that the Complainant has not made out any case of discrimination on the ground of disability. Hence, on the issue of termination, intervention of this court is not warranted.

12. This Court recommends that the Respondent shall revisit afresh the payment of legitimate dues and shall inform this Court about status of payment of such dues to the Complainant. A copy of the same shall also be sent to the Complainant, within three months of issue of this order.

13. The case is disposed off.



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 26.11.2021



सत्यमेव जयते

82

## 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: 12827/1023/2021

Complainant: Ms. Kavita Sharma  
105 Seemant Vihar 14  
Link Road, Kaushambi, Gaziabad – 201010  
E-mail: <kavita.sharma1978@gmail.com>

— P30399

Respondent: The Commissioner  
Kendriya Vidyalaya Sangathan  
18, Institutional Area, Shaheed Jeet Singh Marg  
New Delhi – 110016  
E-mail: <kvse2section@gmail.com>  
<hindankv2@gmail.com>

— P30400

Date of Hearing: 28.10.2021

Present:

- Complainant - Ms. Kavita Sharma
- Shri Anurag Bhatnagar, Asstt. Commissioner on behalf of Respondent

### RECORD OF PROCEEDINGS

Both the parties were heard.

2. The Respondent submitted that the enquiry has been ordered in the present case. Respondent further assured that outcome of the enquiry proceedings shall be sent to this court within 2 weeks. Respondent has failed to inform the outcome of the enquiry proceedings even after expiry of 3 weeks from date of hearing.

3. **Section 77 of Rights of Persons with Disabilities Act, 2016** confers power on the Chief Commissioner for Persons with Disabilities to requisition any public record or its copy from any court or office or to require discovery or production of any document. Section 77 of Rights of Persons with Disabilities Act, 2016 is mentioned below –

#### SECTION 77 - Powers of Chief Commissioner:

(1) The Chief Commissioner shall, for the purpose of discharging his functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—




...2...

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

4. The Respondent is directed to submit the enquiry report along with its comments within 7 days from the date of this Order, failing which the Respondent shall forfeit its right to file Reply and Complaint shall be decided ex-parte.



**(Upma Srivastava)**

Commissioner for Persons with Disabilities

Dated: 26.11.2021



सत्यमेव जयते

84

## 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: 12773/1022/2021

Complainant : Shri Ajit Kumar Gupta  
Manager (OSD) MMGS III  
State Bank of India  
Chhatarpur Road, Near Anumandal Bhawan  
Po-Japla, District-Palamau  
Jharkhand, Pin-822116  
Mobile No : 08210249779, 08084737489  
Email : [ajit\\_gupta@sbi.co.in](mailto:ajit_gupta@sbi.co.in)

—P30404

Respondent : The Chairman & Managing Director  
State Bank of India  
Central Offices, State Bank Bhawan  
Maidane Cama Road, Nariman Point  
Mumbai-400021  
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### GIST OF COMPLAINT:

शिकायतकर्ता का अपनी शिकायत में कहना है कि वह 70 प्रतिशत भस्कूलर डिस्ट्राफी (लोकोमोटर) दिव्यांगजन है तथा वर्ष 2009 में लिपिकीय संवर्ग में एसबीआई से जुड़े थे। शिकायतकर्ता वर्तमान में प्रबंधक (ओएसडी) के पद पर हुसैनाबाद शाखा में कार्यरत था। दिनांक 01.10.2020 को अचानक से शिकायतकर्ता का ट्रांसफर वर्तमान पोस्टिंग से 80 किलोमीटर दूर डालटनगंज कर दिया गया और दिनांक 14.10.2020 को ईमेल के द्वारा कार्यमुक्त कर दिया गया। शिकायतकर्ता ने इस विषय में पुनर्विचार के लिए दिनांक 23.10.2020 को एजीएम एचआर को प्रार्थना पत्र दिया जिसका 5 महीने बाद शिकायतकर्ता को पटना पहुंचने पर जवाब दिया गया की उनके प्रार्थना पत्र को स्वीकृति नहीं प्राप्त हुई है। साथ ही उन्हें यह भी सलाह दी गई कि वह नए केन्द्र पर बैंक से ऋण लेकर अपने रहने लायक घर बना ले।

शिकायतकर्ता ने आगे कहना है कि उनका घर उनकी शारीरिक जरूरतों के अनुसार बना है जिस कारण से वह नित्यक्रिया के लिए आत्मनिर्भर है। शिकायतकर्ता का आना जाना इलेक्ट्रॉनिक व्हीलचेयर के द्वारा होता है तथा दैनिक जरूरतों तथा स्वास्थ्य देख रेख के लिए परिवार पर निर्भर है। शिकायतकर्ता ने आगे कहा है कि दिव्यांग होने का कार्य क्षमता पर ज्यादा प्रभाव नहीं पड़ता और वह एक नियमित असाइनमेंट संभालने में सक्षम है। शिकायतकर्ता वर्ष 2016 में स्केल 2 होकर क्षेत्र अधिकारी बना और इस कार्यभार को अच्छे से संभाला। इस काम में नियमित क्षेत्र की यात्रा की भी जरूरत होती है।

शिकायतकर्ता निम्नलिखित बिंदुओं की ओर ध्यान आकृष्ट कराना चाहता है---

1) हुसैनाबाद शाखा स्केल 4 की शाखा है। यहाँ स्केल 3 के नियमित पद सृजित है। मेरी पदस्थापना इस शाखा में अभी रखी जा सकती है। यदि इस शाखा में रहना असंभव हो तो इस सेंटर की अन्य शाखाओं में दिया जाना चाहिए था। इसी शहर में एक दूसरी शाखा भी है, जहाँ लिफ्ट लगा देने से मेरी समस्या का हल हो सकता है।

वैसे भी वर्तमान तथा भावी दोनों असाइनमेंट कार्यभार दिए गए हैं, तो विशेष परिस्थितियों में इसी केन्द्र पर स्पेशल कार्य देने का विकल्प भी हो सकता है।

2) निश्चित रूप से कार्य देने का अधिकार नियंत्रक के विवेक पर निर्भर है, लेकिन यह निर्णय केवल दिव्यांगता के आधार पर लेना बहिष्करण और गैर भागीदारी को बढ़ावा देने वाला है।

3) शिकायतकर्ता ने आगे कहा है कि वर्ष 2019 में स्कैल 3 में प्रमोशन होने पर उन्हें आगे पदोन्नति ऑफ्ट-आउट करने को कहा गया, जिसके लिए शिकायतकर्ता ने प्रार्थना पत्र दिया। उसका कोई जवाब तो नहीं मिला बल्कि प्रबंधक डालटनगंज के रूप में डालअनगंज स्थानांतरण कर दिया गया।

4) दिव्यांगों को कोविड 19 के कारण कार्यालय आने से भी छूट दी गई थी। ऐसे समय में शिकायतकर्ता को अचानक से कार्यमुक्त कर कार्यालय से दूर कर दिया गया। कोविड 19 के पुनः प्रसार के कारण 15 अप्रैल से पुनः धर से काम शुरू हुए। शिकायतकर्ता के बार बार अनुरोध करने के बावजूद उन्हें काम नहीं दिया गया और हुसैनबाद शाखा द्वारा उन्हें लगातार 1 फरवरी से ही अनुपस्थित दर्शाया जा रहा है।

अतः शिकायतकर्ता ने निवेदन किया है कि उनके स्थानांतरण आदेश को निरस्त कराने की अनुशंसा करें, और बिना किसी गलती के ही उन्हें हो रही ~~अधिका~~ हानि को वापस दिलाया जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत दिनांक 06.07.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. In response, the respondent, State Bank of India, vide email dated 27.07.2021, Inter-alia submitted the following points:-

i) The complainant got promoted to officer cadre as Trainee Officer on 22.11.2013. On confirmation of his services after completion of his probation period as trainee officer, he got confirmed as Deputy Manager (Middle Management Grade Scale-II on 02.03.2016. Thereafter, he got further promotion on 06.05.2019 as Manager (Middle Management Grade Scale – III) from his initial appointment as Junior Associate (CSS) on 05.01.2009 till 01.10.2020 he remained posted at Hussainabad branch.

ii) That on promotion of the complainant as Manager in Middle Management Grade Scale-III (MMGS-III) of the bank, the complainant was for the first time ordered for transfer to Daltonganj Branch on 05.09.2019. It is worthwhile to state here that at the time of promotion of complainant to MMGS-III, Hussainabad branch was headed by a scale IV officer as Branch Manager. At that time as there was no other suitable position for MMGS-III at nearby branches (given the physical and also as there is, in banking business inherent risk involved in retaining a person at same branch in higher capacity, the complainant was transferred out of Hussainabad branch to Daltonganj branch in the State of Jharkhand.

iii) The respondent further submitted that the promotion in MMGS-III in Bank is done on the basis of vacant position existing on Circle basis and the complainant Shri Ajit Kumar Gupta had given undertaking whereby he had confirmed that he was aware that promotion to MMGS-III is based on the vacancy of the Circle.

iv) The respondent further stated that Hussainabad branch and Daltonganj branch are situated in same district of Palamu. Daltonganj branch is situated in district headquarter of Palamu district. More facilities and amenities are available at Daltonganj Centre than what is available at Hussainabad centre. Further the respondent submitted that Daltonganj branch is situated at ground floor making it convenient for the complainant.

v) Despite there being no position available for MMGS-III officer, the bank accepted the representation of the complainant for the time being and allowed him to remain at Hussainabad branch by posting him as manager (OSD) on 22.11.2019. Posting as manager (OSD) is for intermittent period as there is no designated post as Manager (OSD) at any branch.

vi) At the time of his transfer to Daltonganj branch there was no vacant position of MMGS-III officer available at Hussainabad branch or any other nearby branches. The bank handles public money and discharges public functions. A long stay of any operating functionaries at one place is always fraught with risk and to mitigate such risk, rotational transfer is done periodically. There is not many scales III branch at Hussainabad.

vii) The respondent further submitted that Shri Ajit Kumar Gupta, despite his transfer order has not joined at his place of posting and he is remaining absent without taking any approval of sanction from the competent authority of the bank.

viii) The respondent humbly prayed that the complainant of Shri Ajit Kumar Gupta may please be dismissed as his transfer does not violate any of the provision of the RPwD Act 2016 or any policy framed therein by the bank and the same is done under the administrative exigencies prevailing at the relevant time.

4. In response, the complainant filed their rejoinder by email dated 13.08.2021 submitted the following facts:

i) The complainant is unmarried & dependent on his family for his daily life. It is impossible for him to have a living alone at Daltonganj (80 km), in the absence of family support. It can be manageable if he is kept at nearby branches so that he may get assistance.

ii) The complainant stated that when PwDs were even exempted from attending office due to Covid. He is being marked absent during Covid exemption period by Hussainabad branch & not allowed to work from home. Due to Covid, the transfer guidelines has been relaxed even for the normal employees and in such times, he was relieved & expected to join after going 80 km away, find the inclusive accommodation, and start him livelihood afresh.

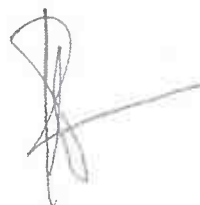
iii) The complainant was posted as Manager (OSD) on 06.06.2019 & later asked to opt-out future promotion. He represented against opting-out. Consequently on 05.09.2019 he was transferred as Manager Daltonganj. Transfer order got cancelled on representation & he continued as Manager (OSD).

iv) Daltonganj is the farthest (80km) center of the district. Many branches of the district, even 1 branch of Bihar is relatively close by. It is also not nearest/next possible branch from Hussainabad. MMGS-III post is available in 4 branches of Hussainabad, and 3 nearby branches. There are also some branches of lower grade. All except 2 are on the ground floor.

v) The complainant not agree with the comments submitted by the respondent and he again requested to consider his complaint for cancellation of transfer order from Hussainabad to Daltonganj Branch.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 12.10.2021. The following were present:

- i) Shri Ajit Kumar Gupta - Complainant
- ii) Shri Suvendu Das, DGM – Respondent





### Observations / Recommendations:

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

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

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

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

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

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



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

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

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

#### STATUTORY PROVISIONS AND GUIDELINES

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

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

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

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

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

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

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

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

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

#### ANALYSIS OF THE PROVISIONS & GUIDELINES

8) It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

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

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

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

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



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

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

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

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

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

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

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



Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

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

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

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

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

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

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

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

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

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

**24. Social security.**—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

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

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

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

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

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

**27)** Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD

Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

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

#### PRESENT CASE

29) In the present case, Complainant was posted in Hussainabad Branch in Palamau District of Jharkhand. Before 2019 he was not transferred to any place. The transfer which became point of contention was done in 2019 when the Complainant was promoted and transferred to Daltonganj branch. Complainant alleges that new place of posting, i.e, Daltonganj branch is situated at 82 KMs away from his home. Complainant has sought relief from this court to cancel the transfer to Daltonganj branch.

30) Respondent in its reply has submitted that the Complainant is posted at same location since 2009. Considering the serious nature of the Complainant's post, no senior level officer can be posted at same location for long time. Further it is submitted that no vacancy for MMGS-III level officer at Hussainabad branch or other nearby branches. Daltonganj was the nearest branch where the Complainant could be posted. Other nearby branch where vacancy was available was situated on First Floor and cannot be accessed by the Complainant.

31) Complainant in his rejoinder submits that two nearby branches, i.e. Hussainabad Bazar and Kuawal have vacant posts for MMGS-III officers, Complainant may be posted there. Till vacancy arises in nearby branch, may be retained in Hussainabad branch on supernumerary position.

32) Considering the nature of disability of the Complainant, it is certain that under no circumstances Complainant can travel 82 KMs to attend his workplace. Case of the Complainant squarely falls under guidelines laid down in O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T (read with O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T) and in O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. all the three O.Ms are delineated in preceding paragraphs. Crux of all these OMs is to post the divyang employee near to his native place and also to give preference to Divyangjan's place of posting at the time of transfer.

33) In the present case, this Court was also apprised with the fact that the Complainant is holding a supernumerary post at his new place of posting.



34) This court recommends that the Complainant shall be posted at a branch which is situated in vicinity of 10-20 KMs of his home. Considering the fact that, at present the Complainant is holding a supernumerary post at his new place of posting, i.e. Daltanganj, this court further recommends that if no vacancy in branch situated near to Complainant's home is available then the Complainant shall be posted in Hussainabad Branch on supernumerary post. If Complainant is compelled to hold a supernumerary post at his new place of posting, the fact that he was transferred 82 KMs away from his home is bereft of reason and logic.

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

This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 26.11.2021





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12803/1023/2021

Complainant: Shri Ruvit Kumar  
Flat No. 103, Tower-VII, Rangoli Greens  
Apartments, Maharana Pratap Road  
Panchyawala, Jaipur-302034  
E-mail: <ruvit.kumar@mca.gov.in>

— R30406

Respondent: The Secretary  
Ministry of Corporate Affairs  
5<sup>th</sup> Floor, A – Wing, Shastri Bhawan  
Dr. R.P. Road, New Delhi – 110001  
E-mail: <secy.mca@nic.in>

— R30402

Complainant: 59% Locomotor Disability

### GIST of the Complaint:

Complainant Shri Ruvit Kumar, Dy. Registrar of Companies-cum-Official Liquidator, Jaipur (DRoC-cum-DoL) vide complaint dated 19.07.2021 submitted that his batch mate Shri C.M. Karlmarx has been posted as DROC-cum-DoL, Jaipur with additional duties of ROC-cum-OL and also reporting officer of the complainant i.e. same office where he is working. He alleged that posting of his batch mate as a reporting officer is being caused mental agony to him. He further submitted that he and Shri Karlmarx are on the cusp of promotion to JAG very soon and promotion would have to affect his present place of posting as two JAG level officers cannot be posted in the O/o RoC-cum-OL, Jaipur. He has requested to revoke/recall the illegal Office order dated 09.07.2021 of Shri Karlmarx as a reporting officer.

2. The matter was taken up with the Respondent vide letter dated 28.07.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Under Secretary, Ministry of Corporate Affairs vide letter dated **27.08.2021** inter-alia submitted that Shri Ruvit Kumar is trying to secure his posting as 'Head of the Office' in ROC-cum-OL, Jaipur on promotion as the post of JAG is presently vacant and could not be filled up by the Ministry due to administrative exigencies of other offices. But, the post can be filled up anytime by the Ministry as the situation improves. If that be so, it would also lead to transfer of Shri Ruvit Kumar on promotion as two JAG Officers cannot be retained in the same office. It is thus, evident that Shri Ruvit Kumar is expecting that none of his batch mates who is senior to him nor any other senior (JAG) Officer should be posted in the office of ROC-cum-OL, Jaipur till his promotion. The attempt to secure the post of ROC-cum-OL, Jaipur in anticipation of promotion, based on conjectures and expectations, is not genuine and therefore cannot be at the post of public interest. They further submitted that the charge of the 'Head of the office' has been assigned to Shri Karlmarx who is senior most officer at Jaipur and his posting is based on recommendations of the multi-member 'Transfer Committee' of the Ministry.

4. Complainant vide rejoinder dated **14.09.2021** reiterated his grievance and submitted that directions may be given that even subsequent to the joining of Shri Karlmarx as HOO in Jaipur, he should not be allowed to be made the reporting officer of the petitioner in the APAR of FY 2021-22.

5. After considering the respondent's reply dated **27.08.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.10.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.10.2021**. The following were present:

- Shri Ruvit Kumar – complainant
- Sri Manish Raj, Company Prosecutor on behalf of respondent

**Observation/Recommendations:**

6. Both the parties were heard.

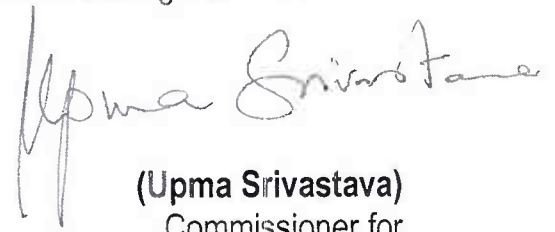


7. Grievance of the Complainant is that he feels harassed because another officer, Sri. C.M. Karl Marx was posted in the same station as reporting officer of the Complainant. Complainant submits that Sri Karl Marx belongs to the same batch as that of the Complainant. Hence, Complainant claims that posting of officer as reporting officer, who is of same batch, is discriminatory.

8. Respondent refuted the submissions made by the Complainant. Respondent submits that though, the Complainant and Sri C.M. Karl Marx are of same batch, Complainant is junior to Sri Karl Marx. In seniority list the Complainant is placed at Sr. No. 30 whereas Sri Karl Marx is placed at Sr. No. 25. Respondent adopted 'first among equals' principle and appointed Sri Karl Marx as reporting officer of the Complainant. Respondent submits that similar practice is followed in other establishments also.

9. After online hearing, this Court concludes that since the Complainant is feeling discriminated, hence, the Respondent may explore avenues for changing the reporting officer of the Complainant. This Court recommends that suitable administrative arrangements may be made, to change the reporting channel within the organisation.

10. Case is disposed off.



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

Dated: 26.11.2021



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12722/1023/2021

Complainant: Shri Jayachandran T  
Manager, State Bank of India  
Local Head Office, Anytime Channels Vertical (8<sup>th</sup> Floor)  
16, College Road, Nungambakkam, Chennai  
E-mail: <jaya.t@sbi.co.in>

— P30408

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

— P30409

Complainant: 100% visual impairment

### GIST of the Complaint:

Complainant vide complaint dated **29.03.2021** submitted that he is working as a Manager in State Bank of India at Anytime Channels Vertical of LHO, Chennai. He alleged that since his resumption to office after COVID restrictions on 01.02.2021, Shri Venkatesan, AGM has started ill-treating, torturing and harassing him in many of the aspects. He further submitted that Bank's intranet is inaccessible for any visually impaired as key board shortcuts are not working in most of their web pages.

2. The matter was taken up with the Respondent vide letter dated **28.05.2021** under Section 75 of the RPwD Act, 2016.

3. In response, DGM, Anytime Channels, SBI vide e-mail dated **23.07.2021** inter-alia submitted that Investigation Officer inquired the matter with officials/staff members of the office but no one advised that they heard any such words as narrated by the complainant in his complaint. Shri Jayachandran was away from office from 27.03.2020 upto 31.01.2021 and again from 16.04.2021, due to special leave applicable to PwDs on account of COVID and he has over-reacted to the work situations-hampered as he was by the lack of touch with workload for the previous several months.



4. Complainant vide rejoinder dated **09.08.2021** has requested for third party investigation in detailed and complete manner by interacting all the staffs and officials who were working during the occurrence of the incident,

5. After considering the respondent's reply dated **23.07.2021** and the complainant's rejoinder **09.08.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **12.10.2021**.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.10.2021**. The following were present:

- Shri Jayachandran T – complainant
- Shri T.S. Lata, DGM on behalf of respondent

**Observation/Recommendations:**

6. Complaint is made against one Mr. Venkatesan, Assistant General Manager. Grievance of the Complainant is that Mr. Venkatesan used derogatory language against the Complainant. Further grievances are filed by the Complainant relating to infrastructure of the Respondent establishment. Complainant submits that Bank's computer systems are not compatible for Divyangjan with visual impairment. On 11<sup>th</sup> March Complainant received complaint regarding a kiosk at Elumali branch. Since it was not possible for visually impaired employee to access contact details of Elumalai branch hence the issue could not be resolved immediately.

7. Respondent submits that after receiving representation from the Complainant, an investigation was conducted by Senior Officer, Vigilance. No evidence of the alleged incident was found by the investigators. Based on the investigation report no action was taken against Mr. Venkatesan.

8. This court concludes that it is compulsory duty of the establishment to provide conducive environment to divyang employees. Section 20 of Rights of Persons with Disabilities Act, 2016 provides for the same.



**SECTION 20 – NON DISCRIMINATION IN ENVIRONMENT** - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

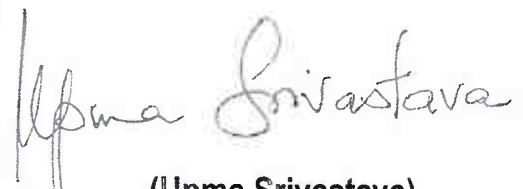
9. The essential element of 'conducive environment' in a government establishment is cordial relationships with divyang employees. Objective of providing conducive environment to divyang employees is twofold. Firstly, such an environment will ensure that the divyang employees are able to work and live with respect and dignity at work place. Secondly, it will increase the output and efficiency of all the employees including divyang employees.

10. As far as screen reading software is concerned, this court brings the kind attention of the Respondent to DoPT O.M. No. 36035/03/2013, dated 31.03.2014. Heading 'C' of the O.M. is titled as 'Providing aids/assistive devices'. Under this heading, O.M. provides that government establishments must assist the divyang employees by providing them high tech/latest technology assistive aids and devices.

11. On the point of providing conducive environment this Court recommends that the Respondent shall conduct counselling of all the employees of the establishment to sensitize all the employees of the establishment towards persons with disabilities.

12. Further with respect to latest technology devices this court recommends that the establishment shall provide all the assistive aide/devices and software of latest technology to assist the Complainant and other divyang employees of the establishment to work efficiently and achieve optimum level of performance. Till the time Respondent provides such assistive aids, devices and software, only such work shall be allotted to the Complainant which can be performed as per his disability.

13. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 26.11.2021



Extra

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12872/1102/2021

### Complainant:

Shri Tanna Jigneshkumar Arvindbhai  
17, Adarsh Society, Shri Nathji Kripa,  
Kodinar-362720, District - Gir Somnath (Gujarat)  
Email: [tanna.jig@gmail.com](mailto:tanna.jig@gmail.com) ; Mobile: 9228268366

— P30392

### Respondent:

Principal Nodal Officer, HDFC Bank,  
HDFC Bank Ltd., 5<sup>th</sup> Floor, Tower-B,  
Peninsula Business Park, Lower Parel West,  
Mumbai-400013; Phone: 022-62841505,  
Email: [pno@hdfcbank.com](mailto:pno@hdfcbank.com)

— P30393

### 1. Gist of Complaint:

1.1 Shri Tanna Jignesh, M-38, a person with 80% Locomotor Disability (both lower limbs) filed a complaint dated 01.09.2021 regarding removal of Relationship Manager (RM) facility from his bank account by HDFC Bank, Kodinar Branch, District Gir Somnath (Gujarat).

1.2 The complainant submitted that the respondent bank had provided RM facility to sort out the grievance relating to banking operation because he could not visit bank frequently due to his disability. After 15<sup>th</sup> June, 2021, the respondent bank removed the RM facility from his bank account, due to which he is not able to resolve his grievances relating to his bank account. The complainant requested that RM facility be provided to him.

### 2. Submissions made by the Respondent

The matter was taken up with the respondent bank, but despite issuance of final reminder and lapse of statutory time, no reply was received from the respondent.

(Page 1 of 2)


### 3. Observation/Recommendations:

3.1 In the light of the complaint filed by the complainant, the respondent bank is advised to attend to the grievances of the complainant relating to his bank account and suitable action be taken to sort out the grievances.

3.2 With regard to no reply filed by the respondent HDFC Bank, this Court viewed it seriously, as the respondent bank has violated Section 77 of the Rights of Persons with Disabilities Act, 2016. A copy of this Order be endorsed to the Chief General Manager/Secretary, Reserve Bank of India, for information and taking appropriate action for not filing the reply by the HDFC Bank.

3.3 The case is accordingly disposed off.

**Dated: 29.11.2021**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities

Copy to:

Chief General Manager-in-Charge and Secretary,  
Secretary's Department  
Reserve Bank of India  
16<sup>th</sup> Floor, Central Office Building,  
Shahid Bhagat Singh Road,  
Mumbai-400 001

— R30394