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: 12639/1021/2021 | R28250

Complainant: Shri Shiv Prakash Dubey
E-mail: <spdubey2633@irctc.com>

Respondent: The General Manager (HR) R28250
Indian Railway Catering & Tourism Corporation Ltd
11th Floor, B – 148, Statesman House
Barakhamba Road, New Delhi – 110001
E-mail: <info@irctc.com>

Complainant: 45% locomotor

GIST of the Complaint:

शिकायतकर्ता श्री शिव प्रकार, सहायक प्रबंधक का अपनी शिकायत दिनांक **01.03.2021** में कहना है कि वह आई.आर.सी.टी.सी. में वर्ष 2006 में दिव्यांग कोटे के तहत भर्ती हुए थे तथा मैनेजमेंट द्वारा उनको अवगत करवाया गया कि पदोन्नति में दिव्यांग कोटा केवल समूह 'सी' और 'डी' में ही लागू है जबकि डी.ओ.पी.टी., ओ.एम. दिनांक 03.12.2013 में स्पष्ट से निर्देशित किया गया है कि दिव्यांग व्यक्ति के पदोन्नति में आरक्षण की गणना समूह 'ए','बी','सी' एवं 'डी' के सभी पदों में एक समान तरीके से की जानी है ।

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

3. Addl. General Manager (HRD), IRCTC vide letter dated **30.03.2021** inter-alia submitted that PwD quota in promotion is applicable only in Group 'C' & 'D' posts and DOP&T OM dated 03.12.20213 does not provide reservation in promotion for PwDs.

4. Complainant vide rejoinder dated **08.04.2021** inter-alia submitted that para 03 and 08 of DOP&T OM dated 03.12.2013 have neither mentioned nor implemented, even though said guidelines were issued in accordance with Judgement of Hon'ble Supreme Court, arising out of SLP (Civil) No. 7541 of 2009 & Civil Appeal No. 1567 of 2017.

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

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

- Adv. Anurag Tripathi on behalf of complainant
- Sidhartha Singh, ADM (HR) on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. He was appointed in 2006 on the post of Chief Supervisor, S-4 grade, under PwD quota and since his appointment he has not been given benefits of reservation in promotion.

8. Respondent submits that as per promotion policy there is minimum residency period for promotion to higher grade. In year 2009 the Complainant was given opportunity to appear in promotion exam after he competed residency period on 3 years, he failed to clear the exam. Thereafter, in 2010 he again an appeared in promotion exam which he qualified and was promoted. Reservation in promotion for PwBD is not applicable to group A and B posts. In 2010 when complainant cleared written examination he was promoted to E-0 Grade. E-0 Grade is Group B post and therefore, reservation in promotion is not given in Group B post. Similarly in year 206 and 2020 he was given promotion on completing residency period and qualifying promotion exam. However, both in 2016 and 2020 he was not given reservation in promotion because as per the respondent reservation for PwBDs is not available in Group B posts.

9. Plethora of Complaints are filed before this court whereby denial of reservation in promotion is alleged. After perusal of various such Complaints this court has identified following two issues which need to be addressed in such matter:

...3...

10. Whether reservation in promotion to Group A and B is applicable for Persons with Benchmark disabilities (hereinafter mentioned as 'PwBD') and can be implemented being a horizontal reservation as against vertical reservation for other categories;

11. Whether Government instructions are mandatory to be issued before implementation of reservation for PwBD in promotion to Group A and B.

Issue No. 1

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

> "*24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.*
> *In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed.*"

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

...4....

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

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

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

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

> *"10) After hearing learned counsel appearing on behalf of all the parties including the learned Additional Solicitor General, we are of the view that the judgment of this Court cannot be faulted when it stated that IndraSawhney dealt with a different problem and, therefore, cannot be followed.*
> *We may also note that review petitions were filed and have since been dismissed against both the 2013 and 2016 judgments. Consequently, the reference stands answered by stating that the 2013 judgment as clarified in National Federation of the Blind vs. Sanjay Kothari, Secy. Deptt. Of Personnel and Training, 2015 (9) Scale 611 and the judgment in Rajeev Kumar Gupta & Others v. Union of India & Others – (2016) 13 SCC 153 case will bind the Union and the State Governments and must be strictly followed notwithstanding the Office Memorandum dated 29.12.2005, in particular. Since the reference has been disposed of by us today, contempt petitions be listed for hearing."*

....5...

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

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

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

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

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

...6....

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

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

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

Issue No. 2

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

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

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

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

.....7....

26. In this regard it is imperative to mention the judgment of Hon'ble Supreme Court in matter of GOVERNMENT OF INDIA v. RAVI PRAKASH GUPTA; (2010) 7 SCC 626. One of the issues in the case was whether reservation to PwDs under s.33 of 1996 Act can be denied till executive identifies posts for reservation under Section 32 of 1996 Act. Court held that waiting for the executive to identify posts in order to extend reservation to PwDs shall be violation of the intent of the legislature. Relevant Para of the judgment is reproduced below -:

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

27. Incidentally, Hon'ble Uttarakhand High Court in its judgment delivered in matter of UMESH KUMAR TRIPATHI v. STATE OF UTTARAKHAND; 2018 SCC OnLineUtt865 reiterated the same with respect to Section 34 of RPwD Act of 2016. Relevant Paras of the judgment are reproduced below -:

> *"First proviso to Section 34 of the new Act provides that reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. We have been informed that such instructions are yet to be issued by the State Government.*
> *Rights of Persons with Disabilities Act, 2016 is a beneficial legislation and Section 34 thereof confers statutory right of reservation in public employment to persons with benchmark disabilities. This valuable right cannot be denied to persons with disabilities due to inaction on the part of the State Government in issuing instructions."*

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

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

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

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

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

33. Hence, this court concludes that the Respondent establishment discriminated by not providing reservation in promotion. On the date of hearing, Complainant was posted in Group B post.This court recommends that whenever the Complainant's promotion would be

due in future, whether to Group B post or Group A post, the Respondent may give reservation in promotion to the Complainant and to other PwBD employees in all groups of posts including Group A and Group B posts in accordance with the judgment of the Supreme Court in Rajeev Kumar Gupta and others Vs Union of India and others. The matters of Complainant may be considered accordingly.

34. Case is disposed off.

(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 02.08.2021

सत्यमेव जयते

(10)

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: 12624/1023/2021

Complainant: Shri Mukesh Kumar Prajapati R28252
E-mail: <nice4mukesh@gmail.com>

Respondent: The Commissioner R28253
NavodayaVidyalaya Samiti, B – 15
Institutional Area, Sector – 62, Noida
Uttar Pradesh – 201307

Dy. Commissioner R28254
Navodaya Vidyalaya Samiti
Regional Office, 7/24, Gomti Nagar Extension
Near Police Head Office, Shaheed Path, Lucknow-226010

Complainant: 60% Locomotor disability

GIST of the Complaint:

प्रार्थी श्री मुकेश कुमार प्रजापति, कला शिक्षक, नवोदय विद्यालय कांसगांज, उत्तर प्रदेश का अपनी शिकायत दिनांक 23.02.2021 में कहना है कि विद्यालय के प्राचार्य एवं कार्यालय लिपिक, स्टाफ के सामने अपशब्दों का प्रयोग करते हुए उन्हें अपमानित एवं प्रताड़ित करते है तथा दीवारों पर पेंटिंग करने को कहते है। प्रार्थी का आगे कहना है कि उन्होंने दिनांक 19.02.2021 को दुगुना परिवहन भत्ता का प्रमाण पत्र चिकित्सा अधिकारी द्वारा बनवा कर प्राचार्य को प्रस्तु किया परन्तु उन्होंने मानने से इन्कार कर दिया। प्रार्थी का आगे कहना है कि वह अपने परिवार से लगभग 1000 किलोमीटर दूर अकेले रहते है तथा प्राचार्य एवं कार्यालय लिपिक स्टाफ के व्यवहार के कारण उनके शारीरिक एवं मानसिक दशा पर बुरा असर पड़ रहा है।

2. The matter was taken up with the Respondent vide letter dated **01.03.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **01.04.2021**, no response has been received, therefore, the case was listed for personal hearing on **05.07.2021**.

3. Before hearing, Dy. Commissioner, Navodaya Vidyalaya Samiti vide letter dated 19.04.2021 inter-alia submitted that Shri Sukivir Singh, Principal, JNV, Agra was appointed as Inquiry Officer and he initiated an independent enquiry. The matter was sorted out amicably during the inquiry proceedings and complainant was satisfied with the enquiry dated **15.03.2021**.

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

- Shri Mukesh Kumar Prajapati – complainant
- Shri P.R. Prasad Rao, Assistant Commissioner on behalf of respondent

Observation/Recommendations:

4. During the hearing complainant has informed that his case has been resolved by respondent followed by his email dated 16.07.2021.

5. Accordingly, the Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 02.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12627/1011/2021

Complainant:

Shri Mohak Kumar, R-28227
173, Nehru Apartments,
Kalkaji,
New Delhi – 110 019

Versus

Respondent :

The Chief Postmaster General, Delhi Circle, R-28228
Meghdoot Bhavan,
Dr. Bhim Rao Ambedkar Marg,
Central Ridge Reserve Forest,
New Delhi – 110 001.

Disability : 50% Intellectual Disability.

Gist of Complaint:

Shri Mohak Kumar, the complainant vide his complaint dated 01.03.2021 submitted that the Chief Postmaster General, Delhi Circle vide Advt. No. III/2020-2021 has advertised for recruitment of Gramin Dak Sevaks. He submitted that Deptt. of Posts has not included Intellectual Disability in their notification to this post which is a clear violation of Notification no. 16-15/2010-DD-III dated 29.07.2013 of Ministry of Social Justice and Empowerment.

2. The Asst. Director (Legal & Inv.), Deptt. of Posts, Delhi Circle vide letter no. CC/50-14/13 dated 30.03.2021 submitted that a notification for Delhi Circle GDS Online Engagement Cycle-3 was made live on website w.e.f. 27.01.2021 for candidates to apply online. The complainant has referred to the GDS Cycle-3 notification of Delhi Circle complaining that there is no mention of Intellectual

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

person in the PwD category which is a clear violation of the notification dated 04.01.2021 issued by the Deptt. of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment. As regards notification dated 04.01.2021, no such notification has been received in their office. As per para 04 of the said Postal Directorate letter as per recommendations of the committee constituted for identification of posts in Gramin Dak Sevaks as suitable for persons with benchmark disabilities in pursuance of Rights of Persons with Disabilities Act, 2016 in para 4(e) of the following categories of disability are suitable for the posts in GDS:

Name of the Posts	Categories of disability suitable for the post
BPM / ABPM / Dak Sevaks	a) Low Vision (LV) b) D (Deaf), HH (Hard of Hearing), c) One Arm (OA), One Leg (OL), Leprosy Cured, Dwarfism, Acid Attack Victim. d) Specific Learning disability e) Multiple Disabilities from amongst disabilities mentioned at (a) to (d) above except Deaf and Blindness.

3. The complainant vide his rejoinder dated 10.04.2021 submitted that the Respondent has accepted about non receiving of Notification dated 04.01.2021 although the same is available on the public domain. The Respondent has also given reference to the Postal Directorate letter no. 17-08/2017-GDS dated 26.02.2019, which is outdated now as the present notification supersedes all the previous orders. There is also violation regarding Section 21, 23, 33 of the RPwD Act, 2016 especially Section 34 where they have extended the benefit of reservation to persons with benchmark disabilities in the new category of :-

Autism,
Specific Learning Disability,
Mental Illness and Intellectual Disabilities.

4. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 01.07.2021.

5. The following persons were present during the hearing ;

1) Complainant: Adv. Rajan Mani for Complainant.
2) Respondent: Shri Varun Mishra, Associate Director (Recruitment) for Respondent

Observations & Recommendations

6. Complainant submits that posts of Gramin Dak Sevak were advertised by the Respondent establishment. As per the notification issued by the Respondent establishment, Divyangjan with Intellectual Disability could not apply for the post.

7. Respondent submits that as per Postal Directorate No. 17-08/2017, dated 26.02.2019, Intellectual Disability is not recognised for the post of Gramin Dak Sevak. Further, M/o SJE Notification dated 04.01.2021 was not received by the Respondent.

8. M/o SJE notified list of posts suitable for Divynagjan vide Notification No. 38-16/2020-DD-III, dated 04.01.2021. On Sr. No. 198, post of Village Postman/Gramin Dak Sevak is identified suitable for Divyangjan with Intellectual Disabilities. Respondent is bound by this notification and hence Respondent's submission that Postal Directorate No. 17-08/2017, dated 26.02.2019 does not recognise Intellectual Disability as suitable for Gramin Dak Sevak lacks merit. By- laws of Respondent establishment cannot derogate specific guidelines issued by Government of India under Rights of Persons with Disabilities Act, 2016.

9. This court concludes that by precluding Intellectual Disabled from applying for the post of Gramin Dak Sevak, Respondent has committed violation of RPwD Act, 2016.

(15)

10. Hence, this court recommends that the Respondent shall withdraw the impugned advertisement and re-issue the same after examining it under the provisions of RPwD Act, 2016 and guidelines issued by Government of India from time to time, particularly M/o SJE Notification dated 04.01.2021.

11. Further, this court recommends the Respondent to send copy of this Order and copy of M/o SJE Notification dated 04.01.2021 to Postal Directorate for necessary amendments in by-laws of Respondent establishment.

12. The case is disposed off.

Dated: 02.08.2021

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12654/1011/2021

Complainant:
Shri Anjani Lal Prajapati, R-28225
Bada Bharwara,
Viraj Khand-2,
Gomti Nagar,
Lucknow
Uttar Pradesh – 226 010.

Versus

Respondent :
Reserve Bank of India, R-28226
(The Executive Director),
16th Floor, Central Office Building,
Shahid Bhagat Singh Marg,
Mumbai – 400001.

Disability : 70% locomotor

Gist of Complaint:

Shri Anjani Lal Prajapati, the complainant, a person with 70% locomotor disability vide his complaint dated 11.03.2021 submitted that Reserve Bank of India had advertised for 841 posts of Office Attendants for its various offices vide Recruitment Advertisement dated 24.02.2021. He submitted that post of Office Attendants is a Group 'D' post and such type of posts are identified for candidates with locomotor disabilities of both legs. He submitted that there is no provision in Rights of Persons with Disabilities Act, 2016 to exclude any post identified by MOSJ&E. The category of wide group of candidates with locomotor disabilities of both legs affected is deprived to get equal opportunity and participation in the Government establishments. He has requested to postpone / stop the process of recruitment and pass an order in the light of RPwD Act, 2016 so that LD/OH/Both legs affected candidates may also get

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

equal opportunity and participation for the post of Office Attendant notified by RBI, Mumbai.

2. The Assistant General Manager, Reserve Bank of India vide reply dated 15.04.2021 submitted that an expert committee duly constituted by the Bank under the Rights of Persons with Disabilities Act, did not deem LD, BL as a category suitable for the post of Office Attendant (or peon) in the Bank. A perusal of the notified Group D posts reveals that the Ministry has not recognized LD, BL as a category fit for the posts such as Peon (Office Boy), Messenger Dak Peon and Office Attendant. These posts are similar to the post of 'Office Attendant' advertised by the Bank. The Respondent submitted that the benchmark disabilities highlighted as appropriate for the post of Office Attendant by the Bank are well-aligned with those identified by the Ministry. The Bank thus compliant with the Ministry's policy/notification on the subject matter. The expert committee constituted by the Bank has identified posts for persons with benchmark disabilities in accordance with the relevant provisions, such as Sections 33, 34 of the Act. The complainant's allegation that the Bank has excluded a post otherwise identified by the Ministry is thus without merit and strongly opposed. The nature of work of an Office Attendant in the Bank includes taking papers/files/letters from one table/department/office to another, distributing letters against acknowledgement preparing envelopes supplying stationery, arranging files, tying bundles, operating Zerox machine, opening cupboards/shelves etc. Further the Bank's office premises are spread across two or more buildings at some centres, thus a lot of physical movement is envisaged. Hence the said post has not been identified for LD-BL category. The Respondent further submitted that postponement of the ongoing recruitment process under the Notification at this stage would be detrimental to applicants/candidates and

against public interest. Moreover, the complainant has not been able to demonstrate a reasonable cause or premise justifying a rather extreme suggestion of deferment of the entire recruitment process. The exam for recruitment to the post of Office Attendant pre-scheduled to be held on April 09 and 10, 2021 at various centres across India has already been completed.

3. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 14.07.2021

4. The following persons were present during the hearing ;

1) Complainant : Shri Anjani Lal Prajapati spoke over phone.
2) Respondent : Shri Neeraj Sakalle, Manager for Respondent.

Observation/Recommendations:

5. The Court observed that the post of Office Attendant is not identified for Both Leg (BL) disability in the Notification dated 04.01.2021 of Ministry of Social Justice and Empowerment. The Court found no discrimination on the grounds of disability.

6. The case is disposed off.

Dated: 02.08.2021

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12638/1011/2021

Complainant:

R-28223

Shri Kshitij Ahuja,
C 9, Rashmi Apartments,
Harsh Vihar,
Pitampura,
Delhi – 110 034.

Versus

Respondent :

R-28224

Software Technology Parks of India,
(Through the Director General),
1st Floor, Plate 'B',
Office Block-1,
East Kidwai Nagar,
New Delhi – 110 023

Disability : 90% Hearing Impaired

Gist of Complaint:

Shri Kshitij Ahuja, the complainant aged 36 years vide his complaint dated 03.03.2021 submitted that he had applied for the post of Member Technical Staff-E-III (Scientist 'D') against the Recruitment Advt. No.2(5)/I/STPI-HQ/2019-20 of Software Technology Parks of India in August 2020. In the advertisement it was mentioned that during selection preference will be given to candidates having hearing impairment and suitable relaxation will also be given. The complainant exceeds the experience requirement for the said post and has 58.98% marks against 60% required marks. His application has been screened without according 5% relaxation in marks which is in contravention to the respondent's own advertisement. This is a violation of RPwD Act, 2016. The complainant has requested to direct the Respondent to given 5% relaxation in marks for the said vacancy.

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

2. The Respondent vide letter dated 24.03.2021 submitted that they had advertised 03 vacancies (UR-1, SC-1, OBC-1) to the post of Member Technical Staff (MTS) E-III (Scientist –'D') in Level-12 vide Employment Notice No.2(5)/I/STPI-HQ/2019-20 on 19.08.2020 inviting application from the eligible candidates meeting the advertised essential qualification and experience. The vacancies were reserved for PwD candidates. The complainant had also applied against the said employment notice. The complainant's application could not be shortlisted for further process as he was not meeting the requisite essential educational qualification criteria. He possesses 2nd Division in BE against the requirement of 1st Division. The eligibility of the candidates has been determined in terms of educational qualification, experience, age etc in accordance with the condition mentioned in the employment notice. The complainant himself has admitted that he possesses 2nd Division in BE with 58.98% marks against the requirement of 1st Division. The complainant has claimed that he did not find response to his emails inter-alia to the respondent organization. In this connection, the Respondent has stated that the complainant had filed a similar grievance online on CPGRAM on 21.02.2021 vide Registration No. MINIT/E/2021/00737. The reply against his grievance has already been sent to him by the Respondent vide email dated 01.03.2021. The Respondent further stated that they have appointed a Grievance Office vide Order dated 11.04.2011 who is looking after the complaints received from PwDs.

3. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 05.07.2021.

4. The following persons were present during the hearing ;

1) Complainant: Shri Kshitij Ahuja in person
2) Respondent: Shri Rakesh Gairola for Respondent

Observations & Recommendations

5. Complainant submits that the Respondent establishment conducted recruitment examination for the appointment of member technical staff – E-3 (Scientist D). As per the advertisement issued by the respondent, eligibility criteria for applying for the post was bachelor degree in engineering with first class marks (60%). Complainant scored 58.98% marks and in his bachelor degree course. His application was screened out and he was not given opportunity to appear in the examination. He claims that relaxation of 5% marks was not extended to him.

6. Respondent submits that total number of vacancies advertised were three. No vacancy was reserved for PwBD category. Since, the complainant did not score first class marks in his bachelor degree, therefore, his application was screened out. 5% relaxation was not given because there was no reservation for PwBD category.

7. Issue is whether relaxation can be given to the Complainant even if no vacancies were reserved for PwBD candidates.

8. Hon'ble Delhi High Court in MANEESH SHARMA v. LT. GOVERNOR & ORS.; W.P. (C) 747/2018 held that there is a clear-cut distinction between grant of reservation viz. grant of relaxation; both these aspects lie in separate domains. While reservation for physically handicapped candidates is statutorily mandated under the PWD Act, grant of any relaxation to such candidates would be for the employer to examine after taking into consideration the nature of duties required to be discharged on the post as also the number of candidates from the said category who may be found to be eligible for the said post. It may be possible that an establishment decides to reserve some vacancies for PwBD candidates in accordance with rules and guidelines even if no such vacancies are reserved in accordance with rules and guidance. Such establishments are not stopped from extending relaxation in eligibility criteria.

9. Another aspect related to relaxation is that there is no rule or guideline which lays down that relaxation in eligibility criteria shall be automatically granted to PwBD candidates. Hence, it is prerogative of the employer to decide the nature and quantum of relaxation. Such decision must be in accordance with the Recruitment Rules of the employer. If recruitment rules are silent on this aspect then such decision shall be taken after taking into consideration the nature of duties needed to be discharged on the post and number of PwBD candidates may be found eligible.

10. Respondent submitted that written examination has been conducted for the present recruitment process. Hence, this court concludes that it would not be fair to disturb the current recruitment cycle.

11. This court recommends that even though Respondent is not bound by statutory duty to provide relaxation in eligibility criteria, with objective of following the principles laid down in RPwD Act 2016 in spirit, Respondent may extend relaxation in eligibility criteria to PwBD candidates in recruitment process in future.

12. Further, this court recommends that if Recruitment Rules of the Respondent establishment provides for relaxation in eligibility criteria to PwBD candidates, Respondent shall extend such relaxation even if no vacancies are reserved for PwBD candidates.

13. The case is disposed off.

Dated: 02.08.2021

(Upma Srivastava)
Commissioner for
Persons with Disabilities

सत्यमेव जयते

Extra 23

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. 12758/1092/2021

Complainant:

Shri Gopal Pandappa Naik, R-28221
R/o C-5-D, Government Quarters,
Near Kendriya Bhandar, Altinho-Panaji,
Goa-403001;
Email: gopalvasco@gmail.com

Respondent:

Project Director – PIU; R-28222
NHAI Regional Office,
4th Floor, Opp: CBD Belapur Railway Station,
CBD-Belapur, Navi Mumbai-400614
Email: romumbai@nhai.org; exemptedFASTag@nhai.org

1. Gist of Complaint:

1.1 Shri Gopal Pandappa Naik, M-38, a person with 40% Locomotor Disability (Lower Limb) filed a complaint regarding refusal to dispatch exempted FASTag to his residence or to the nearest NHAI Office at Goa.

1.2 The complainant had applied for FASTag online. NHAI Team, Regional Office, Mumbai informed him come Mumbai with the registered vehicle to collect the Tag. Being a long distance i.e. 1200 km both way, the complainant requested NHAI Team to send the Tag via Speed Post to his residence or send it to NHAI Office in Goa. But the respondent refused and said that if he wanted exempted FASTag to be fixed on his vehicle then he had to come to RO Mumbai Office and there is no other alternative.

2. Submissions made by the Respondent

2.1 Respondent filed their reply dated 08.07.2021 and submitted that Ministry of Road Transport and Highways have issued a detailed Manual for issuance of FASTags under exempted category vide SoP dated 09.12.2019. Based on the SoP, NHAI has also published an operating manual for issuance of FASTag under exempted category to be followed. As per Para 3.8 of the SoP and Para 2.3 of the Manual, the applicant has to visit Regional Office of NHAI in the

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

State physically with the vehicle to affix the Tag and an acknowledgement is taken from the applicant.

2.2 In the instant case, the applicant's inability coming physically to Mumbai was considered. A feedback request was sent to NHAI HQ for improving the SoP/Manual and permit distribution of FASTag under exempted category from PIUs of NHAI also. The improvement of such change in SoP/Manual/Software is still awaited from HQ to limited working on account of Covid-19. However, in anticipation of formal approval from HQ, Regional Officer dispatched the FASTag of the complainant to its NHAI PIU, Goa. There is no toll plaza in Goa by MoRTH/NHAI.

2.3 The appeal of the complainant has been granted, the respondent, therefore, requested to close the case.

3. Submissions made in Rejoinder

The complainant vide email dated 15.07.2021 expressed his thanks and submitted that FASTag was affixed by NHAI PIU-Goa on his Car, No.GA 07 N 0253 on 14.07.2021. He prayed that NHAI-PIU, Goa may be made a permanent venue to affix the FASTag under exempted category for Persons with Disabilities of Goa State.

4. Observations/Recommendations

4.1 Considering upon the facts of the case and similar complaints being received, it is recommended that a permanent venue suitable for affixing the FASTag under exempted category for Persons with Disabilities may be made in Goa as well as in other States/UTs.

4.2 Since the grievance of the complainant has been redressed, no further intervention is required in this matter; and the case is accordingly disposed off.

Dated: 02.08.2021

(Upma Srivastava)
Commissioner
for Persons with Disabilities

(25)

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. 12742/1011/2021

Complainant:

Shri Pritish Nandwani, R-28229 ....Complainant
3305, Nova West,
Supernova Complex,
Sector 94,
Noida - 201301
Email<nknandwani@yahoo.co.in>

Versus

Respondent :

Employees' Provident Fund Organisation, ...Respondent
(Through the Central Provident Fund Commissioner),
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, R-28231
New Delhi - 110066
Email<rpfc.exam@epfindia.gov.in>

Disability : 74% Specific Learning Disability

Gist of Complaint:

Mr. Naresh Nandwani F/o Mr. Pritish Nandwani, a person with 74% specific learning disability vide his complaint dated 09.06.2021 submitted that his son applied for the post of SSA in EPFO and appeared in required tests in 2019. The EPFO did not qualify him in phase III of tests. EPFO did not qualify any candidate from D&E category of disability despite 6 numbers of vacancies. Phase III of test is only a computer typing test, EPFO referred to clause 22 of their notification which clearly mentioned that qualifying marks will be decided as per discretion of EPFO and cut off are applied at two stages i.e. (a) on scores in individual test and (b) on total scores. The qualifying marks for PwBD candidates was kept at 5% less than that of

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

General Candidates. The PwBD (D&E) category will be accounted for in the next recruitment cycle as per rules. Above criteria of cut off marks 5% less than general candidates was not specified in the notification, rather it was mentioned to shortlist candidates in 1:5 ratio for phase III. The EPFO mentioned that concession on the minimum qualifying marks has already been given for PwBD candidates and it will not be possible to consider candidates who did not get the minimum qualifying mark. Though Clause 22 of the recruitment notification did not declare qualifying marks and cut off and kept it at EPFO discretion. EPFO later on kept cut off marks so high that not even a single candidate under category D & E got shortlisted from an All India open competition test.

2. The matter was taken up with the Central Provident Fund Commissioner, Employees' Provident Fund Organisation vide letter dated 09.06.2021.

3. Regional P.F. Commissioner-I (Exam.) of Employees' Provident Fund Organisation vide letter no. A-12034/3/2021-EXAM/168 dated 05.07.2021 submitted that the notification for direct recruitment to the post of Social Security Assistant in EPFO was issued on 21.06.2019 in respect of 19 regions. As per the notification, the above said examination was to be conducted in three phases. The marks obtained in Phase–II will be considered for final selection. Phase –III - Computer skill test is qualifying in nature. The qualifying marks for all categories of PwBDs in both Phase–I and Phase –II of the examination were kept at a very low percentage of 35% for each test of the examination. This is 5% lower than General norm. The same was fixed uniformly for all the regions including Delhi Region. Once PwBD candidates obtain the minimum qualifying marks, the candidates are

shortlisted upto the ratio fixed for the next phase of examination or, in case of final selection, up to the number of vacancy irrespective of the total marks they obtain as compared to other category candidates. In Delhi region, a total of 05 candidates under PwBD category D&E including Shri Pritish Nandwani obtained the qualifying marks i.e. 35% in phase – I examination and declared successful for appearing in Phase-II examination. Shri Pritish appeared in the Phase – II(Mains) examination but did not obtain 35% in some of the tests of Phase – II examination, he did not qualify in Phase – III of the examination. In phase II of the examination, 02 candidates under PwBD category D&E obtained 35% or more marks in each test of the examination and were shortlisted for appearing in the Phase – III (Computer Data Entry Skill Test). Both the candidates did not appear in the Phase – III examination. Hence, no candidate in this category was selected for appointment to the post of SSA.

4. The complainant by rejoinder vide his email dated 12.07.2021 submitted that EPFO did not mention the cut off marks for SC/ST candidates and declared 5:1 selection ratio in the notification. This means they envisaged to comfortably shortlist 30 SLD candidates for 6 vacancies in the test 2. The EPFO did not mention 35% cut off in the recruitment notice. They fixed 35% cut off only after the test and shortlisted only 2 candidates against requirement of 30 candidates.

Observation/Recommendations:

5. After going through the replies of both the parties, it is observed that the Complainant could not qualify the Phase-III Examination and therefore was not selected. The reply of the Respondent is satisfactory and it is observed that there is no discrimination to the Complainant on account of disability.

6. The case is disposed off accordingly.

Dated: 04.08.2021

Upma Srivastava

(Upma Srivastava)
Commissioner
for Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12644/1011/2021

Complainant: R28336
Shri Mohak Kumar,
173, Nehru Apartments,
Kalkaji,
New Delhi – 110 019.

Versus

Respondent : R28337
University of Delhi,
(Through the Registrar)
Main Campus,
Delhi – 110007.

Disability : 50% Intellectual Disability.

Gist of Complaint:

Shri Mohak Kumar, a person with 50% Intellectual Disability vide his complaint dated 04.03.2021 submitted that the National Testing Agency has advertised for recruitment of non teaching posts on behalf of University of Delhi. He submitted that 4% reservation has not been given to persons with disabilities by University of Delhi. Moreover persons with Intellectual Disability have been totally ignored. He submitted reservation was given only to one or more specific candidates with disabilities.

2. The matter has been take up with the Registrar, University of Delhi vide letter dated 11.03.2021 but no comments have been received from the University so far.

3. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 14.07.2021.

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

4. The following persons were present during the hearing ;

1) Complainant : Shri Mohak Kumar in person
2) Respondent : Prof. Anil Aneja, on behalf of Respondent.

Observations & Recommendations

5. Complainant submits that Respondent invited applications for filling various Group B and C posts on 23.02.2021. Respondent failed to reserve 4% vacancies.

6. Respondent submits that the posts advertised are those which remained unfilled in previous recruitment cycle. Further, Respondent committed that in next 6 months new as well as backlog vacancies shall be computed and fresh advertisement shall be issued whereby vacancies shall be reserved for Divyangjan.

7. This court recommends that the Respondent establishment shall advertise the vacancies arising in the establishment within 6 months after extending reservation of minimum 4% as also the backlog vacancies of Persons with Disabilities in compliance with Section 34 of Rights of Persons with Disabilities Act, 2016 and subsequent guidelines issued by the Government. Further, Respondent shall also file the compliance report in this court after taking the necessary action.

8. The case is disposed off.

Dated: 09.08.2021

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12629/1011/2021

Complainant:

Shri Pawan K Mishra, R28340
RZG 601, Gali No 1,
Raj Nagar 2 ,
Palam Colony,
Delhi – 110 077

Versus

Respondent :

Bank of Baroda, R28341
(Through the Chief General Manager (Strategic HR & HR Integration),
Baroda Corporate Centre,
Bandra-Kurla Complex,
Mumbai - 400051

Disability : 75% Locomotor Disability

Gist of Complaint:

Mr. Pawan K Mishra, a person with 75% locomotor disability vide his complaint dated 01.03.2021 submitted that he appeared in Departmental Examination for promotion from Clerk grade to Officer on 28th December, 2019 with Roll No.2101101609 in Bank of Baroda. He has been suffering from Wilson disease which hampers his hand activity making it too slow. Therefore, he requested for extra time/scribe to the concerned authorities. His status of Pwd under OH category is also updated in Dena HRMS since 30.05.2015 which makes him eligible for all the facilities of Divyang candidate. When he reached the Exam Centre, he was shocked when the Exam Centre Superintendent refused to give him extra time/scribe by stating that they do

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

not have any order from his Head Office to provide the said facility. However, he appeared in the examination without availing the said facility with his best efforts and commitment to fulfil his dreams.

2. The case was taken up with the Chief General Manager, Bank of Baroda vide letter dated 03.03.2021.

3. The Head – HR operations of Bank of Baroda vide letter dated 26.04.2021 submitted that Shri Pawan Mishra joined the Dena Bank in June 2015 in Clerical cadre and was posted at Mayapuri branch, New Delhi. Dena Bank got amalgamated with Bank of Baroda on 01.04.2019. Complainant appeared for promotion exam conducted by IBPS on 28.12.2019. Bank has always made sure the facility to be provided to employees with disability related to scribe or extra time. Complainant did not produce requisite documents required for availing Scribe facility. Also, he completed all 120 questions in stipulated time frame. The final merit list was prepared by aggregating the marks secured by the candidates in the online test, interview and annual performance appraisal. Shri Pawan could not secure a position in the final merit list. Bank further submitted that there is no reservation for PwD candidates for promotion from Clerical to Officers' cadre and therefore, bank has not violated the reservation guidelines. Concerns were raised by the complainant after 8 month of conclusion of the exercise.

4. The complainant submitted the rejoinder vide letter dated 16.06.2021 that all the points made by respondent is invalid. As the result came on 30.06.2019 and he made the representation to the Management of the Bank

of Baroda in July, 2019 itself. Bank has not informed the examination centre regarding the requirement of scribe or extra time.

5. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 07.07.2021.

6. The following persons were present during the hearing ;

1. Complainant: Shri Manoj Mishra, the complainant in person.
2. Respondent: Shri C.M. Tripathi, Head (HR) for Respondent.

Observations & Recommendations

7. Complainant submits that departmental exam for promotion from clerk grade to officer grade conducted on 28.12.2019 in which facility of Scribe and Extra time was not given to him. Complainant qualified written exam even without scribe and extra time, then appeared in interview. Final merit list was prepared on the basis of marks scored in written exam and interview. Though, Complainant scored good marks in interview, he failed to make it to merit list, because total marks scored in written exam and interview fell short of cut off marks. Complainant submits that if scribe facility has been given to him, he would have qualified the exam.

8. Respondent submits that scribe is provided for every department – promotion exam. Details of such employee who needs scribe are always given to IBPS, the agency which conducts exam.In case of communication failure, exam venue officer is empowered to allow examinee to bring his own scribe. In case of Complainant, he was not given scribe facility because he did not provide requisite documents on the venue of examination.

9. Submissions of Respondent are self-contradictory. On one hand it is submitted that details of eligible employee are given to IBPS and on the other hand it is submitted that Complainant failed to provide requisite documents on the venue.

10. Respondent's attention is invited to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. This O.M. lays down detailed guidelines for providing scribe facility. As per the OM, it is mandatory to provide scribe facility to a Divyang candidate, who has limitation in writing. Further OM directs that, the candidate may opt for his own scribe or request the examining body to provide scribe. OM also makes it mandatory for all the examining bodies to prepare panel of scribes at state, division and district levels. OM also provides for educational and other essential requisites with respect to scribe.

11. Respondent's submission that the Complainant was not provided scribe facility is violation of M/o SJE guidelines in OM dated 29.08.2018. OM provides that the examining body must adopt flexible attitude in accommodating any change in scribe in case of emergency. Examination in question is promotion exam, hence it is certain that the Respondent had knowledge about disability and inability of the Complainant to write the examination. Respondent must have adopted pro-active approach and should have arranged for scribe in advance. On the contrary, Respondent failed to adopt flexibility in accommodating scribe facility and consequently failed to provide scribe facility.

12. In the present fact, since the examination process is now complete and final merit list has been released, hence intervention of this court at this stage is not warranted.

13. This court recommends that the Respondent shall provide scribe facility in examinations conducted for promotion or for recruitment or for any other purpose in accordance with the guidelines issued vide OM dated 29.08.2018 of M/o SJE.

14. The case is disposed off.

Dated: 11.08.2021

(Upma Srivastava)
Commissioner
for Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12677/1011/2021

Complainant:

Dr. Neha Nema,
Block E, House No.254/255,
Gandhi Vihar,
North West Delhi- 110009

R28338

Versus

Respondent :

Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya,
(Through the Registrar),
Post Hindi Vishwavidyalaya,
Gandhi Hills,
Wardha,
Maharashtra - 442001

R28339

Disability : 50% Locomotor Disability

Gist of Complaint:

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

2. The matter was taken up with the Registrar, Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya vide letter dated 01.04.2021.

3. Acting Registrar of Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya vide letter no. Estt./006/PwDs/2016/11/710 dated 30.06.2021 submitted that one post of Assistant Professor was advertised vide advertisement no. MGAHV/8/2019 dated 30-07-2019, which was

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

earmarked for OBC category and the Post code was 46. Dr. Neha applied for the same category. A screening committee scrutinised the applications and called 37 candidates including Dr. Neha Nema for the online interview conducted on 09.11.2020. The recommendations of the selection committee were placed before the appointing authority i.e. Executive council of the university in its 67th meeting held on 18-12-2020 which got approved too. On the basis of the recommendations, offers of Appointment were issued to candidates, selected for the post. Selected candidate has accepted the offer and joined the post on 19-12-2020. There is no such provision for counting API scores in UGC Regulation, 2018 for the selection to the post of Assistant Professor. Date, Time of interview and slot applicable was telephonically informed to the candidates.

Observation/Recommendations:

4. After going through the submissions made by both the Complainant and the Respondent, the Court observed that the reply of the Respondent is satisfactory and found no discrimination on grounds of disability.

5. The case is disposed off.

Dated: 09.08.2021

(Upma Srivastava)
Commissioner for
Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12778/1102/2021

Complainant:

R28354

Shri Rajendra Pujari,
At: New Street, Park Lane,
Po: Jeypore – 764001,
Dist – Koraput (Odisha);
Email: pineshgoudo@gmail.com

Respondent:

(1) The Branch Manager, R28355
Utkal Gramya Bank,
Main Branch (IFSC - SBIN0RRUKGB)
Jeypore Town, District: Koraput-764001 (Odisha)

(2) The Chairman, Utkal Grameen Bank, R28356
Head Office, Club Para, Bolangir-767001 (Odisha)
E-mail: chairman.ugb@gmail.com

1. Gist of Complaint:

1.1 Shri Rajendra Pujari, M-42, a person with 48% Locomotor Disability filed a complaint dated 22.07.2021 regarding denial of DRI Loan (Differential Rate of Interest Loan) by Utkal Grameen Bank.

1.2 The complainant runs a small Tiffin hotel near Government Bus Stand, Jeypore, District Koraput (Odisha). He has a Bank Account in Utkal Grameen Bank, Jeypore Branch. He had applied for DRI Loan, under the DRI Loan Scheme for persons with disabilities.

2. Section 19 (1) and 19(2)(d) of the Rights of Persons with Disabilities Act, 2016 provide as under:-

"19. (*1*) The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

(*2*) The schemes and programmes referred to in sub-section (*1*) shall provide for—

(*d*) loans at concessional rates including that of microcredit;"

3. Submissions made by the Respondent

3.1 Chairman, Utkal Grameen Bank filed their reply dated 09.07.2021 and submitted that Utkal Grameen Bank being a Regional Rural Bank is not authorised to sanction loan to the beneficiaries under Differential Rate of Interest Scheme as spelt out in RBI Circular No.2006-2007/358.

3.2 Condoning for the difficulties, Shri Rajendra Pujari was requested to approach other Public Sector Banks to fulfil his credit requirement; and in this regard he also submitted a letter of satisfaction (in vernacular language).

4. Submissions made in Rejoinder

Complainant in his rejoinder dated 28.07.2021 submitted that he would open an account in another bank and apply for DRI loan.

5. Observations and Recommendations

5.1 No discrimination appears in this matter on the ground of disability as the rural bank is not authorised to sanction DRI loan as spelt out in RBI Circular No.2006-2007/358. The complainant may apply in another public sector bank for loan as per his own submissions.

5.2 The case is accordingly disposed off.

Upma Srivastava.

Dated: 09.08.2021

(Upma Srivastava)
Commissioner
for Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No	:	12682/1022/2021 R28370
वादी	:	श्री शिवलाल बाबुलाल दहीकर खलासी/चौकीदार पीएफ : 50881302232 स्थान : इंदोर
मोबाइल नंबर	:	09834150724
ईमेल	:	dahikarshivlal@gmail.com rajkumarverma066@gmail.com
प्रतिवादी	:	मडल कार्मिक अधिकारी, R28371 मंडल रेल प्रबधक कार्यालय रतलाम (प.रे.)
E-mail	:	personneldeptrtm@gmail.com drm.rtl@wr.railnet.gov.in gm@wr.railnet.gov.in

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत मे कहना है कि वह 40 प्रतिशत दृष्टिबाधित दिव्यांगजन है तथा खलासी/ चौकीदार/ एसएसई/एसआईजी/इदौर रतलाम मंडल वेस्टन रेलवे के अंतर्गत कार्यरत है। शिकायतकर्ता का कहना है कि वह शारीरिक रूप से दिव्यांगजन दृष्टिबाधित (एल.वी) की श्रेणी में आता है। शिकायतकर्ता अमरावती जिला महाराष्ट्र का निवासी है। शिकायतकर्ता ने अपना स्थानातरण नागपुर मंडल (मध्यरेल) के हेतु आवेदन दिया था जिसकी एनओसी दिनांक 26.03.2019 को रतलाम मंडल में आ चुकी है परन्तु शिकायतकर्ता को रतलाम मंडल वेस्टन रेल्वे से कार्यमुम्त कर नागपुर मंडल के लिए रिलिव नही किया गया है, शिकायतकर्ता इसके संदर्भ में बार बार अपने सिनियर डीएसटीई और डीआरएम से मिल चुके है और आवेदन भी दे चुके है लेकिन अब तक उस पर कोई कार्यवाही नही हो पाई है।

अतः शिकायतकर्ता ने निवेदन किया हैं कि उन्हे रतलाम मंडल से नागपुर मंडल मे स्थानातरण करने की कृपा की जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 30.03.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. मडल कार्मिक अधिकारी, मंडल रेल प्रबधक कार्यालय रतलाम (प.रे.) का अपने पत्र दिनांक 27.04.2021 मे कहना है कि शिवलाल बाबुलाल दहीकर इंदौर स्टेशन पर खलासी (सिग) के पद पर सिनी. से.ईजी. (सिग) इंदौर के अधीन कार्यरत है। कर्मचारी का रतलाम मंडल से नागपुर मंडल, म.रे. पर स्वय के अनुरोध पर स्थांनातरण हेतु आवेदन किया गया था।

प्रतिवादी का आगे कहना है कि कर्मचारी को नागपुर मंडल पर कार्यमुक्त करने हेतु प्रकरण दिंनाक 12.04.2021 को प्रस्तुत किया गया जिस पर सक्षम अधिकारी (वरि.मंडल संकेत एवं दूरसंचार इंजी.) ने निम्न आदेश दिए:

i) सिगनल विभाग में हेलपर/खलासी का पद सुंरक्षा की दृष्टि से अत्यंत ही महत्वपूर्ण व संवेदनशील पद है मंडल पर चल रहे नियमित निरीक्षण, परीक्षण एवं अनुरक्षण कार्य तथा नवीन कार्य जैसे Electronic interlocking, IBH, Inter Locking of LC Gate, वर्क के दौरान को संपन्न करने में हेल्पर/खलासी की भूमिका महत्वपूर्ण होती है इसके साथ ही मण्डल पर चल रहे नवीन कार्य जैसे Electronic interlocking, IBH, Inter Locking of LC Gate, वर्क के दौरान सामान ले जाना/साईट पर

इलेक्ट्रोनिक्स इंस्टूमेंटों में संरक्षा एवं सुरक्षा करने हेल्पर का महत्वपूर्ण योगदान रहता है जो कि रेल परिचालन की सुगमता, सरंक्षा एवं सुरक्षा हेतु अति महत्वपूर्ण है।

ii) प्रतिवादी का आगे कहना है कि वर्तमान में सिगनल विभाग में स्वीकृत संवर्ग 347 के विरूद्ध 85 पद रिक्त हैं इस प्रकार ग्रुप डी की मुल 24 प्रतिशत रिक्ति है तथा अन्य किसी स्रोत से ग्रुप डी कर्मचारियो के मण्डल पर आने को कोई संभावना नही है। अतः प्रतिवादी ने वर्तमान में कर्मचारी को स्वयं की प्रार्थना पर अंतर रेलवे स्थानानतरण पर कार्यमुक्त नही किया जा सकता है।

iii) शिकायतकर्ता श्री शिवलाल बाबुलाल दहीकर ने रतलाम मंडल से आये पत्र सख्यां ई/सिग/1140/5/3 vol-21 दिनांक 27.04.2021 के संदर्भ में कहा है कि सिगनल विभाग में कर्मचारियो की कमतरता के कारण और अन्य दुसरे मंडल से कोई कर्मवारियो की आने की संभावना न होने के कारण कर्मचारियो को कार्यमुक्त नही किया जा सकता है जो कि अन्य मंडलो से स्वय के अनुरोध पर कर्मचारि रतलाम मंडल में आ चुके है। लेकिन शिकायतकर्ता की एनओसी नागपुर मध्य रेल मंडल से आने के बाद सामान्य कर्मचारियों को स्वय के अनुरोध पर छोडा गया है जबकी भारत सरकार के रेल बोर्ड ने दिव्यांगजन कर्मचारियों को स्वय के अनुरोध पर स्थानांतरण के लिए प्राघान्य दिया गया गया है, जिसका पत्र शिकायतकर्ता ने कार्यालय दिखाया था लकिन जवाबी तौर पर शिकायतकर्ता से कहा गया कि पत्र पर कही भी लिखा नही है कि दिव्यांगजन कर्मचारियों को स्वयं के अनुरोध पर स्थानातरण में छोडा जाए। नागपुर मध्य रेल मंडल से एनओसी आने के बाद मे कई बार रतलाम मंडल में अपने कार्यमुक्ति के सदंर्भ में अपने सिनियर डीएसटीई से मिलने गया। लेकिन सारा समय उनके चेंबर के आगे बैठने के बावजूद भी शिकायतकर्ता को उनसे मिलने नही दिया गया। इसी संदर्भ में शिकायतकर्ता एपीओ तथा डीआरएम से भी मिल चुके है लेकिन शिकायतकर्ता का कहना है कि उनकी समस्या कोई सुनने को तैयार नही है।

अतः शिकायतकर्ता ने अनुरोध किया है कि उन्हे रतलाम मंडल से नागपुर मंडल में कार्यमुक्त करने की कृपा की जाए।

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

i) Shri Shivlal Babulal Dahikar, (Complainant)

ii) Shri Deepak Parmar, Divisional Personal Officer, (Respondent)

5. **Observations & Recommendations :**

i) Complainant submits that he is posted in Ratlam circle (Madhya Pradesh), whereas his native place is Amravati, Maharashtra. He applied for transfer to Nagpur circle where the native place is. NOC has also been sent to Ratlam circle office from Nagpur circle office, however, he has not been relieved by Ratlam circle hence he is not able to join services in Nagpur circle. Complainant has asked this court to Order the Respondent to issue relieving letter.

ii) Respondent in its written reply submits that the Complainant is posted on the post of helper/khalasi in signal department. Duties performed by the Complainant in Ratlam circle are important and sensitive. Crucial work like periodic inspection of railway tracks is in continuation. His duties are indispensable. Hence, it was not possible to relieve him. Further, during online hearing, Respondent submitted that by the end of this month, the Complainant shall be relieved from his services in Ratlam circle.

iii) Kind attention of the Respondent is attracted to DoPT O.M. No. A-B 14017/41/90-Estt. (RR) dated, 10.05.1990 read with another O.M. of DoPT, No AB 14017/16/2002-Estt. (RR), dated 13.03.2002. Both these O.Ms, lay down that divyang employees may be posted at their native place. Further DoPT O.M. No.36035/3/2013 – Estt. (Res) dated 31.05.2014 provides that divyang employees may be given preference in place of posting. Practice of considering choice of place of posting in case of divyang employees may be continued.

...2...

iv) Applying the principle laid down in these three guidelines issued by DoPT, this court concludes that Respondent has violated rights of divyang employees. Hence this court recommends that the Respondent shall issue relieving letter to the Complainant within 1 week of receiving copy of this Order.

6. This case is disposed off.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 09.08.2021

Extra

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. 12650/1101/2021

Complainant:

Dr. Satendra Singh, R28357
Professor of Physiology,
University College of Medical Sciences &
GTB Hospital, Delhi-110095
Email: dr.satendra@gmail.com

Respondents:

(1) Director, R28358
Lady Hardinge Medical College &
Associated SSK and KSC Hospitals,
C-604, Shahid Bhagat Singh Road,
Ridge Area, Connaught Place,
New Delhi-110001
Email: directorlhmc@gmail.com

(2) Secretary, R28359
National Medical Commission,
Pocket-14, Sector-8, Dwarka, Phase-1,
New Delhi-110077
Email: secy-mci@nic.in

(3) Dean, Faculty of Medical Sciences, R28360
6th Floor, Vallabhai Patel Chest Institute Building,
University of Delhi, Delhi-110007;
Email: dean_medical@du.ac.in

1. Gist of Complaint:

1.1 The Complainant, Dr. Satendra Singh, M-44, a person with 70% Locomotor Disability, filed a complaint that the campus of Lady Hardinge Medical College (LHMC) and its associated hospitals are inaccessible and disabled-unfriendly. The website of LHMC is also inaccessible for persons with visual impairment.

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

1.2 National Medical Commission (NMC) [erstwhile Medical Council of India (MCI)] had issued directions vide letters No.MCI-34(1)(UG)(Gen.)/2012-Med./67890 dated 29.03.2013 and No.MCI-34(1)(UG)(Gen.)/2012-Med./24842 dated 16.08.2016 to the Deans/Principals of all the Medical Colleges/Institutions that all medical institutions in the country to become disabled-friendly and instructed to submit compliance report.

1.3 Ministry of Health & Family Welfare on the communication, to make Delhi a model accessible city, vide F.No.A-14019/01/2018-SCT dated 6 July 2018 had issued directions to ensure compliance in all the Hospitals to make public buildings and websites accessible to all in letter and spirit. Despite all of these statutory requirements under the law and directions from the National Medical Commission (NMC), LHMC-the sole medical college for women in the Capital is still not disabled-friendly. The examination hall, academic section and the Department of Physiology on the first floor are not accessible and without the elevator. Similarly, there are lots of other areas in the LHMC & associated hospital campus which are not barrier free, yet LHMC National Institutional Ranking Framework 2021 reports 'yes' in response to whether college has access facilities.

1.4 The complainant alleged that LHMC authority violated the instructions issued by NMC and M/o H&FW. LHMC neither submitted mandatory compliance report on accessibility of its premises to MCI nor to the Court of CCPD in 2013 as the undersigned was petitioner in that case.

1.5 The website of LHMC has 349 errors as per web accessibility evaluation tool. June 15, 2019 was the deadline for both government and private websites to comply with Section 46 (Time limit for accessibility by service providers) of the RPwD Act, 2016 and Rule 15(c) (Rules for Accessibility - Information and Communication Technology) of the Rights of Persons with Disabilities Rules, 2017. Yet, as of today, LHMC webpage is inaccessible for persons with visual impairment, who are protected under Clause 1(B) of the Schedule to RPDA 2016. Section 42 of RPDA 2016 imposes a statutory obligation on the government to ensure that all information and communication technology is accessible to patients with disabilities.

1.6 LHMC website does not have details of Equal Opportunity Cell & Grievance Redressal Officer both of which are mandated under RPwD Act, 2016 and a copy of Equal Opportunity Cell has to be submitted to CCPD too. All of these factors prevented the complainant as well as other students', faculty, non-

teaching staff, patients, NMC assessors, examiners and visitors with disabilities participation on an equal basis in LHMC activities.

1.7 The complainant prayed –

(i) To direct the Director LHMC making the entire institution & its associated hospitals disabled-friendly (including the website) in a time-bound manner at the earliest;

(ii) To not to hold any examinations, meetings, lectures etc at any of the inaccessible venue;

(iii) To frame the Equal Opportunity Cell of LHMC in consultation with employees with disabilities at LHMC and upload it on the website along with details of Grievance Redressal Officer as mandated under RPDA 2016;

(iv) To direct NMC to check the MCI/NMC inspection reports and Dean's Declaration Form submitted by LHMC to check the information submitted on accessibility and if found to be in contravention with the RPDA 2016, appropriate action be taken including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and withdrawal of recognition;

(v) To direct the NMC to issue another reminder to all medical institutions in the Country to adhere to the accessibility standards as per RPDA 2016 else appropriate action may be taken on the Dean/Principal of the institution in addition to de-recognition of the institution;

(vi) To direct Dean, Faculty of Medical Sciences, University of Delhi to ensure that none of the 13 medical institutions under Faculty of Medical Sciences, University of Delhi including LHMC hold/conduct any examination (UG, PG, Super Speciality etc.) at an inaccessible (disabled-unfriendly) venue; and to ensure that all of the 13 medical institutions under Faculty of Medical Sciences, University of Delhi frame and upload Equal Opportunity Policy prominently on their website; and

(vii) CCPD may further issue a writ, order or direction or pass any other or further order or orders in the interest of justice, as it may deem fit, in the facts and circumstances of the present case. Our Hon'ble Prime Minister launched the flagship Sugamya Bharat Abhiyan but it is sad to see that medical institutions which should have been the first place to be completely accessible, flout the respect for inherent dignity of people with disabilities, put up barriers to their full and effective participation and inclusion; and perpetuates inequity.

2. Submissions made by the Respondents:

2.1 Director, LHMC [Respondent No.1] filed their reply dated 06.04.2021 annexing therewith photographs of ramps and Tactile Paths (37 Nos.) and submitted that the historical background of LHMC building may be taken as part and parcel of their comment, foundation stone of which was laid in 1914 and the college started in 1916. LHMC is undergoing with a major infrastructural change under Comprehensive Redevelopment Project and new blocks are being constructed which are nearly completion. All such accessibility as provided in the RPwD Act, 2016 have been provided in the new block. The academic Block will get new examination hall well connected with lifts with 24 x 7 power back up.

2.2 LHMC has complied with the revised Standard Assessment Form of MCI and it has always been endeavour to ensure that there is no discrimination to the persons with disabilities.

2.3 The two letters dated 29.03.2013 and 16.08.2016 of MCI had not received in LHMC, therefore, the compliance report could not be submitted. Cognizance of the aforementioned letters stated to have been taken for furnishing mandatory compliance report.

2.4 Concerns were noted for due modifications in the Webpage of LHMC with the Guidelines issued by MeitY.

2.5 Once the new buildings are operational, the Institution would be one of the disabled friendly not only in NCR but in PAN India. Recently, tactile pavings have been put in all the Hospital area, Administration Block of LHMC and Associated Hospitals. Each Department on each of the Floor in the new building is well connected with the ramps and Lift Lobby making it disabled friendly.

2.6 The complainant has just submitted the photograph of Swarn Jayanti Auditorium of the Institution. Had he been liaised with any of the Officers deputed with the functioning of the Auditorium, he would have been informed that the Auditorium had ramps on its both left and right sides providing access to Stage/Dias. Ramp has been provided to the Departments of Anatomy; SPM; Pharmacology which also provides to approach the Convocation Hall meant for the UP/PG Students and to the Office of the Director; and Office of Vice Principal of LHMC. Apart from this, the 'ONCOLOGY Building in Kalawati Sharan Children Hospital too had ramps on its both sides for disabled friendly entry. LHMC & Associated Hospitals are disabled friendly and not as portrayed by the complainant. It is also being modified towards betterment for times to

come. Tenders have been floated for installation of four lifts to be installed for the accessibility to Department of Pathology; Department of Forensic and Replacement of UG Hostel Lift.

2.7 The possibility of installation of a Lift for approaching the Department of Physiology is also being explored. Provision of a ramp with tactile paving for reaching to Medicine Ward, Skin (Dermatology) Ward, Lux Room/Swine Flu Ward, Gynae Ward, Eye & ENT Ward and ENT Operation Theatre has been made. Entry Gate of LHMC has been designed in such a way that persons with disability can comfortably enter the premises. Under Graduate Hostel for housing the MBBS students too has a ramp where three lifts are installed.

3. No reply was filed by the National Medical Commission and University of Delhi.

4. Submissions made in Rejoinder

4.1 Complainant in his rejoinder dated 26.04.2021 submitted that in response to RTI, LHMC had stated that in the last ten years they have had 18 Undergraduate and 06 Postgraduate candidates with disabilities admitted to LHMC. Currently, they have 01 Senior Resident and 13 non-teaching staff with disabilities at LHMC. How those 18 girls with disabilities completed their year-long professional-I & II respectively in the departments of physiology and pathology which are disabled-unfriendly. It is no less than physical and mental torture.

4.2 Moreover, complainant has been assigned the duty of external examiner for the MD Physiology Examination 2021 for the three medical colleges under the University of Delhi (LHMC, MAMC, UCMS) at the Department of Physiology, LHMC which is inaccessible. How will he be provided dignified reasonable accommodation to fulfil his responsibility on equal basis with others? This violates Section 20(2) and Section 3(1) of RPwD Act, 2016. The complainant has alleged to have been threatened by the Director LHMC to take him to the Court calling the complaint as malicious.

4.3 Section 21(1) of the RPwD Act, 2016 mandates every establishment to notify Equal Opportunity Policy and Section 21(2) mandates that every establishment shall register a copy of the said policy with Chief Commissioner. LHMC has not complied with the same nor has appointed a Grievance Redressal Officer as per Section 23(1) of RPwD Act, 2016.

4.4 With regard to the photographic evidence of new buildings annexed by LHMC, complainant assumed it to be the best example of accessibility but

submitted that LHMC had poor idea about accessibility. LHMC did not provide photographic evidence of accessible toilets, OPD counters and host of other public utilities in its newly constructed state of the art buildings. Access Audit Report conducted on 04.01.2020 had indicated "No toilet for PwD with grab bars" in the new building, nurses hostel, Ortho OPD, SSK hospital building, LHMC College building and Pathology Block.

4.5 LHMC never involved any doctor with disabilities or Disabled People Organisations to solve inaccessibility problems and preserve historical character of LHMC building. It is dereliction of duty to say that they do not have the most urgent letters sent by MCI. Copy of the Dean's declaration form of the inspections conducted by MCI in the last five years, was not provided.

4.6 The complainant countered photographs that Tactile Pavings have obstructions by cooler and seating block. Department of Psychiatry has Tactile Path on the ramp, the open gate obstructing the path, no signage depicting L or T shaped intersection for warning. Tactile Pavings have no Warning Blocks, ends abruptly, only Guiding Blocks. No Warning Blocks have been placed 300 mm at the beginning and end of the ramps & steps. Notice Board has been placed at the bottom making difficult to read for crutch users. Examination hall floor seems slippery. One sided railings, no continuous handrails.

5. Observations/Recommendations

5.1 The concerns raised by the complainant of accessibility, barrier free and disabled friendly premises including OPD Counters, Wards, Class Rooms and Toilets etc. in LHMC and associated hospitals as well as the Website of LHMC, have to be considered and provided with by the LHMC authority. Although, the building of LHMC is old and having historical background, yet LHMC is undergoing a major infrastructural change and new blocks are being constructed. It is appreciated that all such accessibility as envisaged in the RPwD Act, 2016 would be provided in the new block. It is pertinent to mention Section 44 of the RPwD Act, 2016 which stipulates as under:

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

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

5.2 LHMC Authority is advised to make the LHMC and its associated hospitals' campus/premises and its Website accessible, barrier free and disabled

friendly in all respects in terms of Sections 40 to 46 of the RPwD Act, 2016 and Rule 15 of the Rights of Persons with Disabilities Rules, 2017. The Website of LHMC should be brought to the GIGW standards. LHMC should also notify and put on its website the Equal Opportunity Policy in terms of Section 21 of the RPwD Act, 2021. The Grievance Redressal Officer may also be appointed.

5.3 The case is accordingly disposed off.

Dated: 09.08.2021

Upma Srivastava.

(Upma Srivastava)
Commissioner
for Persons with Disabilities

Copy for information to –

(1) All Hospitals in Delhi
(2) Secretary, M/o Health & Family Welfare

(50)

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. 12655/1011/2021

Complainant:
Shri Manmohan Bajpai, R28334
H. No. 2158, D-Block,
Indira Nagar,
Lucknow – 226 016

Versus

Respondent :
Indian Institute of Technology R28335
(Through the Registrar)
Recruitment Section,
IIT Kanpur,
Uttar Pradesh – 208016.

Disability : 40% visual impairment.

Gist of Complaint:

Shri Manmohan Bajpai, the complainant, a person with 40% visual impairment vide his complaint dated 11.03.2021 submitted that IIT Kanpur had advertised for recruitment of more than 500 Group 'A' Teaching and non Teaching Staffs vide their Advt. No. 1/2019. He applied for the post of Deputy Registrar. Only one person with locomotor disability is working in Group 'A' in IIT Kanpur while no person is working in Group 'A' post under VH category. No post is seen reserved for Non-Teaching staffs in Group 'A' category in the above mentioned advertisement. As per DoP&T 4% reservation is to be made in Group 'A' cadre which has been violated by IIT Kanpur. More than one year has passed since he submitted the application, but still nothing has been processed so far. IIT Kanpur has not been maintaining reservation roster in Group 'A' for persons with disabilities. The complainant has prayed to direct IIT Kanpur to give reservation as well as relaxation in Group 'A' non

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

(51)

teaching category for persons with disabilities as per Govt. of India guidelines and to direct the Respondent to fill all the vacant posts in Group 'A' which can be filled by PwDs as per Reservation Roster etc. and also to give relaxation in standards to persons with disabilities.

2. The Registrar, IIT Kanpur vide letter dated 03.06.2021 submitted that the statement made in Para-1 of the complaint regarding number of Group-A staff of the Institute is correct. However, the Recruitment Section is dealing with only the non-teaching staff of the Institute and the number of Group-A non-teaching staff is 45, as on the date. All recruitments pertaining to academic staff is carried out by the office of the Dean of Faculty Affairs (DOFA). It is a fact that at present unfortunately only one Group-A non-teaching staff is on the roll of the Institute and he belongs to OH category of disability. The Institute is following the guidelines on reservations issued by the Govt. of India and adopted by the Board of Governors of the Institute. As on the date, the Institute has full number of staff members under PwD category in the Group –B and Group-C category as per the PwD Roster. In Group-A, non-teaching staff, out of the thee PwD posts, one staff member had resigned and one has not accepted the offer of appointment. Presently only one Group-A staff is in PwD category in Group-A and this is because of the said reasons. The complainant is a candidate for the post of Deputy Registrar against Advt. No. 1/2019. The age relaxation for PwD category candidate will be extended to the complainant if he is meeting the other eligibility criteria. No other relaxation can be extended to him other than age relaxation. The Respondent submitted that they could not process the applications form due to pandemic conditions and lockdowns. However, during the current unlock period, the scrutiny of the application forms has been resumed by them and

further processes would be followed in a couple of months. The institute if maintaining a PwD reservation roster and is ensuring the appointment of PwD candidates if they are eligible and have met with other essential requisites of reservation. The Respondent submitted that in order to reach out specifically to the candidates belonging to PwD category, it is mentioned in the advertisement itself that preference would be give to persons with disabilities, even where reservation is not marked for them in the advertised posts.

3. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was fixed on 07.07.2021.

4. The following persons were present during the hearing ;

1) Complainant: Shri Manmohan Bajpai in person
2) Respondent: Shri K.K. Tiwari, Registrar, on behalf of Respondent.

Observations & Recommendations

5. Complainant submits that total number of Group A posts in Respondent establishment, inclusive of teaching and non teaching staff is 500, out of which, only one Divyangjan is employed, who is Orthopedically Handicapped. Complainant applied for the vacancy of Deputy Registrar and requested the Respondent for providing reservation according to provisions of RPwD Act, 2016.

6. Respondent submits that total number of non-teaching Group A posts in the establishment is 45 only. Out of 45, 3 are earmarked for Divyangjan. Out of these 3, one post is held by Divyangjan. One person resigned and the other post could not be filled because the person recruited refused to join. Further respondent informed that total Group A teaching posts in the establishment

are 437. This number keeps on fluctuating as per the strength of students studying in the establishment.

7. Issue of contention in the present Complaint is reservation of vacancies which are filled by 'direct recruitment'. Legal position on this issue is settled. Section 34 of Rights of Persons with Disabilities Act, 2016 makes it compulsory for every government establishment to appoint not less than 4 percent of vacancies in cadre strength in each group of posts. This provision lays down guiding principle on this issue.

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

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

10. During online hearing, Respondent informed this court that it is bound by guidelines issued by 'IIT Council', which is controlling authority of all the IITs. Further, Respondent informed that vacancies are reserved in accordance with guidelines issued by 'IIT Council'.

(59)

11. Reservation for Divyangjan is mandated by the statute passed by legislature. In case the guidelines issued by the council are in contradiction with the provisions of RPwD Act, 2016, mandate of the legislature supersedes guidelines issued by 'IIT Council'. Hence, Respondent cannot overlook the mandate of the legislature. Provision of statute passed by the legislature cannot be curtailed by the guidelines passed by the council. Hence, it is duty of the Respondent to reserve minimum 4% of vacancies for Divyangjan.

12. Further, since the nature of PwD reservation is vacancy based hence Respondent is bound to reserve minimum 4% vacancies in each recruitment cycle.

13. Hence, this court recommends that the Respondent shall reserve not less than 4 percent of vacancies in the cadre strength in each group, irrespective of the fact that vacancies are arising in teaching or non-teaching posts.

14. The case is disposed off.

Dated: 11.08.2021

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12687/1023/2021

Complainant: Shri Vikas Chaudhari R28343
E-mail: <cvikas4@gmail.com>

Respondent: The Divisional Railway Manager R28342
North Central Railway, Agra – 282001

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक **05.04.2021** में कहना है कि वह उत्तर मध्य रेलवे के आगरा मंडल के ईदगाह रेलवे अस्पताल में Hospital Attendant के पद पर कार्यरत है तथा उनके सहकर्मी श्रीमती मंजु रानी और श्री राहुल कुमार आज़ाद ने प्रार्थी पर जानलेवा हमला करवाया जिसकी शिकायत उन्होंने रेलवे के उच्च अधिकारियों को एवं स्थानीय थाने में भी दर्ज करवाई लेकिन अधिकारियों द्वारा कोई उचित कार्यवाही नहीं हुई।

2. The matter was taken up with the Respondent vide letter dated **09.04.2021** under Section 75 of the RPwD Act, 2016.

3. वरि. मण्डल कार्मिक अधिकारी, उत्तर मध्य रेलवे, आगरा का अपने पत्र दिनांक **22.04.2021** में कहना है कि रेलवे हॉस्पीटल में एक डॉक्टर, एक फार्मासिस्ट श्री राहुल कुमार आज़ाद, श्रीमति मंजुरानी चपरासी व श्री विकास चौधरी कार्यरत है तथा दिनांक 18.03.2021 को श्री विकास चौधरी हॉस्पीटल में अकेले थे तभी किसी अनजान व्यक्ति ने उनके साथ मारपीट की व मोबाइल छीन लिया जिसकी शिकायत उन्होंने नज़दीकी थाने में दर्ज करवाई। विपक्षी का आगे कहना है कि पुलिस सिविल, पुलिस रेलवे विभाग द्वारा दो उच्च अधिकारियों ने मामले की जाँच की तथा जाँच रिपोर्ट में सारांश बताया गया है कि कर्मचारी झाँसी मण्डल जाना चाहता है इसलिए कर्मचारी के स्थानातंरण की कार्यवाही पूर्ण की जा चुकी है झाँसी मण्डल में जुलाई 2021 में हॉस्पीटल अटेन्डेन्ट का एक पद रिक्त होने पर श्री विकास चौधरी को आगरा मण्डल से झाँसी मण्डल हेतु उनके अनुरोध पर स्थानान्तरण कर दिया जायेगा।

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

4. प्रार्थी का अपने पत्र दिनांक **05.05.2021** में कहना है कि उन्होंने स्थानांतरण की मांग ग्वालियर के लिए की थी ताकि वह अपने माँ की देखभाल कर पाए। प्रार्थी ने अनुरोध किया है कि उन्हें ग्वालियर रेलवे स्टेशन पर स्थानांतरण दिलवाया जाये तथा उत्तर मध्य रेलवे को निष्पक्ष एवं गहन विभागीय जाँच के आदेश दें।

5. After considering the respondent's reply dated **22.04.2021** and the complainant's rejoinder dated **05.05.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **14.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.07.2021**. The following were present:

- Shri Vikas Chaudhari – complainant
- Shri G.P. Mishra, DPO & Shri Yagyesh Kaushal on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that on 18.03.2021 two people came and assaulted him physically, also snatched his mobile phone. Complaint of this incident has been made to senior officials, however no strong action was taken. The incident has also been reported to the regional Police Station.

8. Respondent submits that at the time when the incident happened, Complainant was alone in the hospital. It was lunch break between two shifts. Further, no camera was placed at the location where the incident took place, hence no video recording of the incident is in record.

9. Section 3 of Rights of Persons with Disabilities Act, 2016 lays down that the appropriate government shall ensure that Divyangjan enjoy right to life with dignity and respect equally with others.

10. Facts stated by the Complainant points towards gross violation of Section 3 of the Act. Respondent clearly failed to protect the 'right to life with dignity' of the Complainant. It was the duty of the Respondent to provide adequate security to its own employee, particularly who is 100% Visually Impaired.

11. This court recommends that the Respondent shall take adequate steps to protect the life and limbs of divyang employees employed in the establishment. The hospital may be equipped with CCTV and security guard. Under no circumstances should a 100% visually impaired person should be left alone in office premises.

12. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 11.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12751/1023/2021

Complainant: Shri Pitambar Gana R28344
E-mail: <pitambargana79900@gmail.com>

Respondent: The Wing Commander R28345
06 Wing Air Force Station
Barrackpore, 24, Parganas (N), West Bengal

Complainant: 51% person with visual impairment

GIST of the Complaint:

Complainant vide complaint dated **14.06.2021** submitted that he had not attended office from 06.05.2021 due COVID -19 pandemic situation but before leaving the station, he had informed to Office. He alleged that Department has stopped his salary.

2. The matter was taken up with the Respondent vide letter dated **23.06.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **09.07.2021**, no response has been received from the respondent.

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 19th 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 18th May, 2020, it has been decided that the Government servants who have underlying conditions (co-morbidities) and were*

TRUE COPY
Sign.

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 7th 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 of withholding salary etc 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 of.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 11.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12667/1023/2021

R 28350

Complainant: Shri Vikas Kumar
E-mail: <vikasdtu1618@gmail.com>

Respondent: The Chairman & Managing Director
M/s Oil & Natural Gas Corporation Ltd
Pandit Deen Dayal Upadhaya Urja Bhawan
5, Nelson Mandela Marg, Vasant Kunj, New Delhi - 110070

R 28351

Complainant: 71-99% Mental illness

GIST of the Complaint:

Complainant vide complaint dated **20.03.2021** submitted that he was appointed as a Assistant Executive Engineer (Drilling) in Oil & Natural Gas Corporation Ltd on **27.08.2018** and posted at Office of Head Drilling Services, Karaikal. He further submitted that during the service, he was suffering from mental illness and continuously undergoing medical treatment from Institute of Human Behaviour & Allied Science, New Delhi and hospital certified that the complainant is a person of disability with severe disabilities of Mental illness-Brain-Schizophrenia. Thereafter, he has requested to respondent transfer from Karaikal to ONGC, Delhi but did not receive any response.

2. He has requested that: (i) the unauthorized absence being marked by the respondents since 05.12.2020 be treated by the respondent as void and the absence of the complainant be treated by the respondent as paid medical leave till the period he is provided with suitable alternative job at Delhi. (ii) the salary be released for the month of January 2021, February 2021 and March 2021 and his salary be continued to be paid as per Section 20 of RPwD Act, 2016

3. The matter was taken up with the Respondent vide letter dated **23.03.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **28.04.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **12.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.07.2021**. The following were present:

- Kanwal Nain, Adv along with Bhavya Nain, Adv – complainant
- Gaurav Aggarwal, Adv. Along with Shri A.P. Singh, Director (Cord) on behalf of respondent

Observation/Recommendations:

4. Both the parties were heard.

5. Complainant submits that he joined Respondent establishment on 27.08.2018. He was posted on Oil rig near Karaikal, Puducherry. In year 2019, he completed job training and probation period. PAR Assessment for 2018 and 2019 are A+ and A respectively. Later during service, he acquired disability. Due to disability, he became dependant on his parents and went to live with them in Delhi. Because of his stay in Delhi, he was not able to join the duties in Karaikal, due to which he was marked 'absent without authorisation' since 05.12.2020.Respondent constituted medical board to examine disability of the Complainant, which was convened on 05.01.2021 and examined the Complainant. Reliefs sought by the Complainant are his transfer to Delhi and his unauthorised leaves be treated as 'paid medical leave'.

6. During online hearing Respondent submitted that the case of the Complainant has been examined and process of the Complainant's transfer to Delhi is under process and assured the the same shall be done in near future. Further, Respondent submitted that with intention of giving Complainant a better chance, delay in transfer was caused.

7. It is settled principle of law that any employee who acquires disability during service, cannot be discriminated against. In the present facts, Complainant acquired schizophrenia during his service. Schizophrenia is a chronic brain disorder which causes delusions, hallucinations, disorganized speech, trouble with thinking and lack of motivation. It is certain that any person with this medical condition need rehabilitation and support. Hence, this

...3.....

court expresses its satisfaction with the assurance forwarded by the Respondent to transfer the Complainant to Delhi. Further, on the issue of regularisation of leave, kind attention of the Respondent is attracted towards judgment of Hon'ble Bombay High Court in **Edward Swalin D'Cunha v. Commissioner for Persons with Disabilities and Shipping Corporation of India; decided on 18.03.2010 – MANU/MH/0230/2010.** In this case hon'ble Bombay HC quoted another judgment in which the issue was same, i.e. salary of the employee was withheld, who acquired disability during service. Relevant paras of the judgment are quoted below –

> *"37. The unreported judgment delivered by the Division Bench of this Court in Ashwini Ashok Desai v/s Chattrapati Shivaji Maharaj General Hospital (supra) cited by the learned Counsel for the petitioner, deals with a case where also the petitioner had developed mental illness Schizophrenia and the petitioner was made to retire from the service on the ground of mental illness. This Court, relying on the judgment in the (supra) held in para 12 as under:*
>
> > *"12. In the result, the order of the Commissioner as well as the order terminating the service of the petitioner are quashed and set aside. The respondents are directed to identify a suitable post for the petitioner and in case no suitable post is available create a supernumerary post for the petitioner in accordance with section". **The respondents are also directed to forthwith release the salary of the Petitioner for the period from 4th January, 2003 and continue to pay her salary as per section 47 of the Act."***

8. Judgment of the Hon'ble High Court enforces the provisions of Disability laws in spirit. This court is inclined to tread on the same lines. Hence this court recommends that leave taken by the Complainant which are marked as 'unauthorised absent leave' shall be treated as 'paid medical leave'. Further, this court recommends that assurance forwarded by the Respondent to transfer the Complainant to Delhi shall be honoured by the Respondent within 1 week of receiving copy of this Recommendation Order.

9. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 11.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12666/1023/2021

Complainant: Smt. Sumangala J
#327/A, Anugraha, 4th Block, Sir M Vishveshwariah Layout
Near Federal Bank, Bangalore – 560110
E-mail: <sumaashok7@gmail.com>

R28361

Respondent: The Director
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road, Bengaluru – 560091
e-mail:<niumhospital2004@gmail.com>

R28362

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **18.03.2021** submitted that she has been working as a staff Nurse in National Institute of Unani Medicine and doing shift duties since 2008. She further submitted that now she is unable to do shift duties in various wards due to disability and in this regard, she has given several representations but her request was not considered by competent authorities. Therefore, she has requested to consider and allot her General shift duties.

2. The matter was taken up with the Respondent vide letter dated **23.03.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated **28.04.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **12.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **12.07.2021**. The following were present:

- Smt. Sumangala J – complainant
- Shri Nadeem Ahmad Sidiqqui, Administrative Officer on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.

4. Complainant submits that she is compelled to attend office during evening and night shifts. She raised the complaint in year 2019, however her Complaints were not redressed.

5. Respondent submits that she raised certain aspects in her Complaint filed in 2019. Thereafter, she was assigned duties on ground floor wards. Problem related to evening and night shift duties could not be redressed because all the employees are assigned shift duties on rotational basis. Since 6 out of 10 sanctioned posts are vacant hence, to uphold the employment rights of all the staff members, it is not possible for the Respondent to assign morning shift duties to the Complainant.

7. This court is satisfied with the Reply filed by the Respondent. This court expresses satisfaction with the fact that the Complainant has been assigned duties on ground floor.

8. Section 20(2) of Rights of Persons with Disabilities Act, 2016 provides that every government establishment is duty bound to provide conducive environment to employees with disability. In the present facts, if the Respondent will assign only morning shift to the Complainant, it may lead to violation of employment rights of other employees of the establishment. Intent of RPwD Act, 2016 is not to violate the rights conferred by other statutes.

9. Hence, this court recommends that the Respondent shall continue to assign duties to the Complainant on the ground floor only. Further intervention of this court is not warranted.

10. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 11.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12652/1023/2021

R28363

Complainant: Shri Om Prakash Dhakar
E-mail: <opdhakargaroth09@gmail.com>

Respondent: The Director
Postgraduate Institute of Medical Education & Research
Chandigarh – 160012

R28364

Complainant: 45% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 08.02.2021 submitted he is working as Nursing Officer in PGIMER, Chandigarh and Smt. Veenus Pardeep (Ward Incharge AEC 5th – ANS) is continuously harassing and humiliating him. Because of this, he has been transferred from AEC to Heart Command which is busy and highly COVID-19 prone area, therefore, he has requested to quash transfer order.

2. The matter was taken up with the Respondent vide letter dated **15.03.2021** under Section 75 of the RPwD Act, 2016.

3. Sr. Admn. Officer (H), PGIMER, Chandigarh vide letter dated **04.05.2021** inter-alia submitted that grievance of Shri Om Prakash Dhakar has been listened personally by the Sr. Officers of the establishment and no evidence of any kind of discrimination emerged. They further submitted that there is an issue of interpersonal conflict and both the Nursing Officers and the ANS have submitted the complaint against one another.

4. Complainant vide rejoinder dated **18.06.2021** inter-alia submitted that there is not interpersonal conflict between them, while ANS knowingly harass and humiliate him and another divyangjan.

5. After considering the respondent's reply dated **04.05.2021** and the complainant's rejoinder dated **18.06.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **14.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.07.2021**. The following were present:

- Shri OM Prakash Dhakar – complainant
- Shri Viajay Kumar Tadia on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that two people namely, Mrs. Veenus Pradeep, Assistant Nursing Staff and Sunita T, DNS. use abusive language and hurl insensitive remarks referring to disability of the Complainant. The two people behave similarly with other divyang employees of the establishment.

8. During online hearing, Respondent submitted that the Complaint was filed before the appropriate authorities within the organisation. The Complaint was forwarded to Liaison Officer. Thereafter to resolve the issue a committee was also formed under the chairmanship of a divyang employee. The committee met association of divyang employees of the Respondent establishment.

9. Section 7 of Rights of Persons with Disabilities Act, 2016 mandates that the appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents.

...3.....

10. Respondent's initiative to constitute a committee to resolve the whole issue are in consonance with Section 7 of RPwD Act, 2016 and are worthy of appreciation.

11. Further Clause (b), (c) and (d) of Section 7(1) of RPwD Act, 2016 makes it mandatory for appropriate government to take steps for avoiding such incidents and prescribe the procedure for its reporting; take steps to rescue, protect and rehabilitate victims of such incidents; and create awareness and make available information among the public this court recommends that the committee constituted by the Respondent shall make active intervention in the whole issue and will try to resolve the same within short span of time.

12. Hence, this court recommends that the Respondent shall conduct sensitization programmes and counselling of all the staff of the establishment and particularly of the employees named by the Complainant. Further, if counselling fails to sensitize the employees, the Complainant shall be posted away from the employees named by the Complainant. Further, this court recommends that the Committee shall actively intervene in the issue to resolve it within short span of time.

13. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 11.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12690/1022/2021

Complainant	:	Shri Piramanayagam P28352 H/o Sorna Krishnammal M-21 Thirunagar Tirunelveli, Tamilnadu
Mob	:	08220609699/09592083505
E-mail	:	piramanayagam.tvl@gmail.com
Respondent	:	The Chairman & Managing Director, P28353 State Bank of India (SBI) Central Office, State Bank Bhawan, Madam Cama Marg, Mumbai-400021
Phone No	:	022-26445211, 26445208, 26445212
E-mail	:	aseem.bhushan@sbi.co.in agmhr.lhomah@sbi.co.in

GIST OF COMPLAINT

The complainant Piramanayagam (age 66) on behalf of his 40% Mentally & Physically disabled wife Smt. Sorna Krishnammal, (age 64) who is suffering from chronic neurological problem due to cancer (since 2014) and brain secondary (since 2019). She is having problems like memory problem, language and speech problem, intellectual problem (unable to express what is going in and around her and unable to perform her day to day activity on her own), involuntary urination and defection, locomotive problem and frequent felldown. The complainant being old and with conditions like diabetes and breathing problem and recovered from 70% lung infection due to covid 19, he is not in a condition to lift her and do the necessary activity like bathing her cleaning her defecation to take care of her.

The complainant further submitted that both of them depending on his son who is care giver for both of us who working in State Bank of India Mumbai now. Earlier, both were travelling back and forth to Mumbai till September 2019. After September 2019, due to severity of the disease and for further treatment they permeated moved back to Tamil Nadu as they are state govt pensioners.

The complainant submitted that after March 2020, his wife is completely physically and mentally unstable with above said conditions (nearly bed ridden) and they are in extreme stress. His son (Gomathi Sankar) is working in State Bank of India Maharashtra circle has applied transfer several times since 2017 and latest on September 2020 but State Bank of India (SBI) management has not responded for the transfer application since last seven months and his son has taken 3 months leave to take care as a temporary measure and joined duty.

Therefore, the complainant has requested to consider his son transfer which is a basic right of the disabled person to have care giver to provide support for day to day activity.

2. The matter was taken up with the Respondent vide letter dated 12.04.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Shri Alok Kumar Chaturvedi, Dy. General Manager & Circle Development Officer vide letter no: HR/IR/0091 dated 12th May 2021 inter-alia submitted that based on the extant instructions of the bank and the office memorandum issued by the Govt. of India in respect of the transfer/posting of employees, who are care giver of disabled dependents, the transfer of the official cannot be considered as these instructions state about exemption of the care giver from routine transfer.

However, they have noted his request for transfer, and they may consider the same subject to bank's requirements and vacancies available.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

i) Shri Piramanayagam along with Mr. Raja, (Complainant)

ii) Circle Dev. Officer & DGM (HR), (State Bank of India)

5. **Observations & Recommendations:**

i) Complaint is filed by the husband of effected person, their son is employee. Wife of the Complainant (mother of the employee) is intellectually disabled. Complainant and his wife, who are in their declining years, live in Tirunelvelli, Tamil Nadu. Son is sole care taker, he is working in Mumbai. Complainant seeks transfer of his son/employee to Tamil Nadu as he and his wife can't move to Mumbai because both of them are Tamil Nadu state pensioners.

ii) Respondent submits that guidelines and circulars issued by the Government of India provide for exemption of routine transfer of employee who is care taker of divyang child or parents; there is no guideline or circular which provides for transfer of such employee.

iii) Reply of the Respondent is in consonance with DoPT O.M. No. 42011/3/2014-Estt. (Res) dated 08.10.2018, which provides for exemption from routine transfer of employees who serve as main caregiver of divyang parents.

iv) In the absence of clear guideline on this point, this court refrains from forming any new guideline which has not been formed by the policy maker. However, this court is inclined to note that at number of times, a guideline or statute is upheld by following it in spirit rather than in letter. Considering the age and nature of disability of the effected person, i.e. mother of the employee concerned, the Respondent may consider to transfer the employee to the State of Tamil Nadu, nearby Tirunelvelli.

6. This case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12704/1022/2021

R28365

Complainant	:	Shri Virendra Kumar Tripathi No. 971299874 HC (GD) SHQ BSF SGNR (Rajasthan) Mob: 07888944066/09530778105
E-mail	:	virendrakumartripathi6@gmail.com
Respondent	:	The Directorate General Border Security Force (BSF) Force Headquarters, Block 10, CGO Complex, Lodhi Road, New Delhi
E-mail	:	dgbsf@bsf.nic.in

R28366

GIST OF COMPLAINT

The complainant Virendra Kumar Tripathi of SHQ BSF Sriganganagar (Rajasthan), his daughter Ms. Seema Tripathi, who is suffering from Mental Retardation and she is 90% disabled person. The complainant submitted that his daughter has been issued disability certificate from the Government Medical College Jammu and he also a registered person under Persons with Disabilities Act and has been issued Unique Disability Certificate by Government. of India.

The complainant submitted that his daughter is fully dependent on him for day to day chores and he is the caregiver for his daughter. His wife is also there in his family but since her childhood her daughter is attached with him for day to day needs and the children with special disability develop an attachment with one person/parent who takes care of them on daily basis and become comfortable and dependent on them for everything and in his case her daughter is solely dependent on him for everything. She does not eat without him presence, does not sleep, go to the school or hospital without him.

The complainant further submitted that he was posted in Frontier Headquarter, Jalandhar, Punjab since 02.04.2016 and his daughter was enrolled in special in Jalandhar namely St. Josesh Convent School, Cantonment Road, Jalandhar, Punjab. His daughter was undergoing her medical treatment at hospitals in Jalandhar, Punjab and he was the one who was taking her to school and hospital and she does not go to school or the hospital without him company. The children with disability like mental retardation as in case of his daughter goes to special schools and the special schools try to develop them or teach them day to day chores like waking, eating etc... The Special schools are very necessary and play vital role in development/rehabilitation of a specially abled child.

Further, the complainant submitted that a Signal No. R/1131 dated 27.03.2020 was issued for ATO 2020 and he was posted to Rajasthan Frontier for further disposal of FTR HQ BSF Rajasthan, Thereafter, vide Signal No. A/4416 dated 29.05.2020 posted to 125 Bn BSF Sriganganagar (Rajasthan). Accordingly, he joined 125 Bn BSF on 3rd January 2021. Further, the complainant stated that 125 Bn BSF asked application for posting/transfer to SHQ BSF

Sriganganagar as per direction of FHQ (Pers Dte), New Delhi Signal No. R/3414 dated 09.01.2021. The complainant submitted the application regarding posting/transfer to SHQ BSF SGNR from 125 Bn BSF and He posted to SHQ BSF SGNR from 125 Bn BSF vie FTR HQ BSF Rajasthan order No. 10630-35 dated 29.12.2020.

As per FHQ (Pers Dte), New Delhi further him posting order has been issued from SHQ BSF SGNR to 125 Bn BSF vide FHQ Signal No. A/4404 dated 13.03.2021.

The complainant further submitted that he had given a representation on 07.04.2020 to IG BSF Punjab, requesting that he should be posted out to a location where his daughter can undergo treatment and attend special school. Thereafter, he gave another representation on 28.09.2020 addressed to the Director General, FHQ BSF, New Delhi for posting him to a location where his daughter can undergo medical treatment in his presence and she can attend special school but no action was taken on the same.

The complainant submitted that since then he was on leave from 29.10.2020 to 14.12.2020, he was not able to attend the proceedings of departmental committee for redressal of grievance of force personnel with disabled children and thereafter, he was again asked to appear before the committee on 17.12.2020. No committee proceedings took place on 17.12.2020 and it was only IG which took his interview and forwarded his request only for allotment of quarter to Rajasthan Frontier without request for posting him at a location where his daughter can attend special school and undergo medical treatment.

Therefore, the complainant humbly requested that the recently posted order issued vide FHQ(Pers Dte) Sig No. A/4404 dated 13/03/2021 may please be cancelled and posted at same place i.e. SHQ BSF Sriganganagar (Raj) or FTR HQ BSF Jodhpur 95 Bn BSF and 126 BN BSF.

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

3. The respondent filed their reply dated 21st May 2021 and submitted the following fact-

In response, Shri Indraj Singh, S/o Shri Badan Singh, Deputy Inspector General (Estt). on behalf of respondent submitted reply and stated that the complainant Virendra Kumar Tripathi of 125 Bn BSF joined BSF on 22.08.1997. He remained posted at Ftr HQ Punjab (Jalandhar) w.e.f 05.06.2013 to 23.12.2020 (7.6 Yrs), After completion of normal tenure of 6 years in PB Ftr, Individual was granted 01 year extension by HQ SDG (WC) Chandigarh vide their O/o No. 9256-58 dated 06.05.2019 during ATO-2019. After completion of 7 years 6 months in Punjab FTR, services of indvl was placed at the disposal of Rajasthan Ftr by HQ SDG (WC) for further adjustment in under command HQs/Unit. Accordingly the complainant vide Ftr HQ Rajasthan signal dated 29.05.2020 indvl was adjusted in 125 Bn BSF at Sriganganagar which is nearby Unit of SSHQ BSF Sriganganagar (Rajasthan).

The case was received from SDG HQ Western Command and FHQ Adm Dte (r R Cell) for posting to Ftr HQ BSF NB/SB/FHQ New Delhi/SHQ Kolkata/SHQ Sriganganagar on medical ground of his daughter who is having 90% disability being a case of mental retardation. The case was examined and complainant was given opportunity for posting to field unit under Ftr HQ

BSF NB/SB/SGQ Kolkata including unit under SHQ BSF Sriganganagar, but the complainant again submitted his choice for static location i.e. 95/25//STC BSF Tekanpur. As per choice given by the complainant his case was examined, but could not be acceded for posting at requested places being ineligible due to less cooling off period, non-completion of Mandatory Field Service (MFS) between posting to static to static HQ in present rank and non availability of vacancy at respective location/HQs. The decision was conveyed to Ftr HQ PB/Raj/125 Bn for further information to the complainant vide FHQ Pers Dte (Estt Section) Signal No. R/3411 dated 18.01.2021 and R/3412 dated 11.02.2021.

The respondent further submitted that beside completion of normal tenure (6+1 Years) about 7 years 6 months in Ftr HQ PB, individual remained posted /attached with static location i.e. STC BSF Tekanpur from 26.08.2008 to 04.06.2013 and Ftr HQ PB (Jalandhar) from 05.06.2013 to 23.12.2020 thus, has been posted for 12.4 Yrs in static location continuously. As per request of complainant, he has been posted to 126 Bn BSF locations at Chop, Jaipur (Rajasthan) vide Ftr HQ Rajasthan BSF Order No. Estt-II/Ftr/PB&T-NGO's/Raj/2021/4383-88 dated 03.05.2021.

The respondent further stated that the complainant that his disabled daughter is fully dependent on him for her day to day chores and he caregiver for his daughter, they submitted that disabled daughter of the complainant is now of more than 20 years of age and in family there is her mother, who is best suited to help her in day to day chores and other help. Moreover, there are two young sons of the complainant, who are more than 18 years of age they can also be helpful to their sister. Moreover, the complainant has now been posted to Jaipur, where number of Special School are available and also Specialist Hospitals available for treatment of his daughter Moreover, while in service, he has to attend his normal duties and can't be left free all the time to attend her daughter. Considering the grievances of the complainant, the administrative constraints of the Department, the Respondents have already posted the petitioner at Jaipur where both the Specialist Hospital and Special School for the need of the complainant's daughter are available.

4. The complainant filed his rejoinder by email dated 14.06.2021 in r/o of comments submitted by the respondent and he is not agreed with his comments.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

i) Shri Virendra Kumar Tripathi - Complainant

ii) Shri Shailesh Kumar, 2nd in Command – Respondent

6. **Observation / Recommendations:**

i) Complainant joined BSF on 22.08.1997. Remained posted in Jalandhar from 05 June 2013 to 22 August 2020 for 7.6 years approximately. Complainant submits that he was posted in frontier HQ Jalandhar Punjab since 02.04.2016. Daughter was enrolled in Jalandhar, Punjab school where she was undergoing her medical treatment. Complainant was posted to Sriganganagar, Rajasthan w.e.f. 29.05.2020. Further he submits that since there are no medical

facilities available in Sriganganagar to cater the special needs of the Complainant's divyang daughter, hence he must be given posting to some place where such medical facilities are available.

ii) Respondent submits that before filing Complaint in this court, he filed an application before Respondent establishment for retention in Jalandhar, since it was not possible hence, he was given choice for posting to Field unit in Kolkata. Instead, he chose Tekanpur. He could not be posted in Tekanpur because it is static location. No employee of similar rank cannot be posted in static location before completion of minimum cooling period and non-completion of mandatory field services. He was posted in Tekanpur from 2008 to 2013. Hence, he was on static location for 12 years, first in Tekanpur then in Jalandhar.

iii) During online hearing it was informed that the Complainant has been posted in 95th Unit situated in Jaipur, as per his own choice. However, Complainant submitted that in future, this unit may be shifted out of Jaipur and in such case, he shall also be shifted out of Jaipur which will again cause set back to systematic rehabilitation of his divyang child.

iv) These submissions made by the Complainant do not give rise to any cause to file the Complaint in present time. These are mere apprehensions and conjectures. Hence, intervention of this court is not warranted.

7. This case is disposed off

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12696/1022/2021

R 28367

Complainant	:	Shri Jatinder Arora S/o Shri Heera Pal Flat No. 406, GHS, 6, Sector-20 Panchkula, Haryana-134116
E-mail	:	chdjatinderarora@gmail.com

R28368

Respondent	:	The Chief Executive Officer, Employee Provident Fund Organisation (EPFO), Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, NewDelhi-110066
Contact No	:	011-26172671
E-mail	:	cpfc@epfindia.gov.in

R28369

		The Regional Commissioner Employee Provident Fund Organisation Ministry of Labour and Employment Govt. of India Regional Office, sCO-4-7, sector-17-D Chandigarh-160017
Contact No	:	2701190, 2701158, 2701135
E-mail	:	ro.chandgarh@epfindia.gov.in

GIST OF COMPLAINT:

The complainant Shri Jatinder Arora, person with 100% Visual impairment, recently he has got selected as SSA in EPFO and now for posting allotted in the Regional office Amritsar to join by 12th April 2021. The complainant made his representation to the EPFO office dated 26th March 2021 wherein he requested before the competent authority to change his regional office from Amritsar to Chandigarh on the ground that it would be very challenging and difficult to live along in a totally new city as no family member can go along with him. The complainant further stated that due to the blindness it is very difficult for him to manage daily household work for fulfilling his basic necessities such as food cloth etc...

The complainant further stated that he has permanently residing at Panchkula for the last many years with his family and Chandigarh regional office is nearest to his residence. Hence he is familiar with this city and also he will have support of his family members. So the complainant requested to EPFO to give joining in Chandigarh regional office.

The complainant further submitted that he got reply from the EPFO on dated 7th April 2021 in which competent officers has refused to consider his request and asked him to join the Amritsar regional office by 12th April 2021. Thereafter, he met the officer personally and he was forced to join the Amritsar office. EPFO officer asked him to first join the regional office Amritsar then they well get him transfer herein Chandigarh office but he don't understand why EPFO wants to cause him unnecessary hardship.

Therefore, the complainant has requested to consider his request and transfer him to regional office Chandigarh which is a basic right of the disabled person to posting near their native place.

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 Sh. Shashank Kumar Pandey, Regional P.F.Commissioner-II (Legal), Regional Office, Chandigarh, vide letter no: PB/CHD/Legal/Notices/183 dated 20.05.2021 inter-alia submitted that Employees Provident Fund Organisation is an Autonomous/Statutory Organisation under the Ministry of Labour, Govt. of India and that it follows rules and provisions of the Govt. of India issued on the subject matter from time to time and adopted as such by the Central Board of Trustees (CBT) of EPFO. The respondent stated that no discrimination has been made against the complainant either in the course of his recruitment and subsequent appointment, or at the time his initial posting. None of the newly recruited Social Security Assistants (SSAs) have been posted to any office of EPFO other than Regional Office, Amritsar, and this decision to post all the newly recruited SSAs including one appointed on Compassionate Grounds to Regional Office Amritsar has been taken under the compelling circumstances of acute shortage of staff to the extent of 65% and expected vacancy due to retirement of 15 officials by December, 2021/within the year 2021-2022, further exacerbating the staff posting in that office.

The respondent further submitted that posting of complainant has been considered by Addl Central PF Commissioner (Zone) being the Cadre Controlling Authority purely on the administrative exigencies due to acute shortage of staff (65% shortage) at present and expected shortage due to retirements in Regional Office, Amritsar. Hence the Cadre Controlling Authority has not violated the provisions of the Circular dated 31.03.2014 which clearly specifies that the transfer of person with disabilities may be considered subject to administrative constraints.

The respondent further submitted that 06 candidates selected to the post of Social Security Assistant (SSA) in the Punjab region, out of which 03 candidates have joined till date. Since, in Regional Office, Amritsar, there are only 22 SSA/SSSAs in-position against 63 Sanctioned posts leading to shortage of 65.01% in clerical staff, Addl Central PF Commissioner (Zone), being the Cadre Controlling Authority had decided to post all newly recruited SSAs of Punjab region to Regional Office, Amritsar. The provisional order of appointment of the complainant was issued by Regional office, Chandigarh (the erstwhile region) as there is no Regional PF Commissioner-I in Regional office Amritsar, asking to complainant to join on duty at Regional office, Amritsar, by 12.04.2021.

The respondent submitted that the complainant was called for a meeting with Addl. Central PF Commissioner (Zone) and that he has apprised of the shortage of staff position at Regional Office, Amritsar, and the administrative exigencies arising due to the same. He has also been informed by office email dated 07.04.2021 that his request has been carefully considered, but could not be accepted at this stage due to acute shortage of staff at Regional Office, Amritsar, with a request to him join at Regional Office, Amritsar by the due date. He has also been intimated through email dated 07.04.2021 that his request may be considered at an appropriate time.

The respondent stated that as in the case of other newly recruited SSAs, the posting to Regional Office, Amritsar is the initial posting of Shri Jatinder Arora and not his transfer as averred by the complainant. The complainant is a newly recruited SSA who has not yet reported for initial duty as the SSA and, therefore, the question of his transfer at this stage does not arise. As it has been submitted, the initial posting of the complainant to Regional office, Amritsar, as in the case of other newly-recruited SSAs, was driven by administrative exigencies of acute shortage of staff (65% shortage) at present and additional shortage by December, 2021/ within the year 2021-22 due to expected retirement of another 15 officials in Regional Office, Amritsar.

The respondent further submitted that the initial positing of the complainant at Regional office Amritsar, consequent upon his appointment in Employees Provident Fund Organisation Punjab Region, is a purely administrative decision without any bias, mala-fide or arbitrariness and even the Hon'ble Supreme Court of India has held that when the transfer of any employee is not tainted by arbitrariness, illegality or bias, the Courts should not interfere.

The respondent further stated that the complainant is not entitled to any relief and that the present complainant is liable to be dismissed as such.

4. The complainant in their rejoinder dated 03.06.2021 submitted the following facts:-

i) Respondent in his reply has totally ignored the challenges and difficulties suffered by a person with visual impaired in his day to day life. It seems that responded has not even idea of the life of an employee with visual impairment, further it shows insensitivity of respondent towards his employees with visual impairments. Respondent should have not put together his normal employees and employee with visual impairment.

ii) Cadre controlling authority is underestimating day to day dependency and challenges of visually impaired person. The authority has relied on outer appearances while making the decision but in reality my outer appearance does not depict the severity of visual impairment because Petitioner is patient of retinitis pigmentosa in which patient looks absolutely fine by his appearance. Right now he is 100% blind at night and just have light reflection in morning and also he do not have side vision hence he has always need some caretaker or one of his family member along with him to fulfilment of his daily basic needs such as food etc. further to proof above sited facts he is ready to go under medical examination by eye specialist if required by respondent.

iii) The complainant is living alone in EPFO Accommodation in Amritsar, where he is facing huge hardship and challenges when it comes to fulfilment of basic needs such as food etc, which are necessary for every citizen to live life with dignity, also recognised as fundamental right under article 21 of constitution of India. In this Covid-19 pandemic it is also not safe to have some made to cook food for him due to permanent engagement of family in Panchkula this if not possible for his any family member to come in Amritsar to live along with petitioner.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

i) Shri Jatinder Arora - Complainant

ii) Shri Gaurav, Advocate – Respondent

6. **Observation / Recommendations:**

i) Complainant submits that he was selected on the post of Social Security Assistant. He was asked to report in Amritsar on or before 12 April 2021. Complainant requested to change the posting from Amritsar to Chandigarh. His native place is Panchkula, near Chandigarh.

ii) Respondent submits that there is acute shortage of staff in Amritsar. Further, all 6 persons who were recruited along with the Complainant are posted in Amritsar office, none has been posted in any other office than Amritsar.

iii) Complainant is Blind. Nature of disability of the Complainant compels him to be assisted in successful performance of basic functions of day-to-day life. Posting the Complainant away from his native place shall augment the difficulties and challenges faced by the Complainant.

iv) Disability does not mean inability. A divyang person can perform an assigned task efficiently if conducive environment is provided to him to overcome natural barriers which hurdles her/his daily life. With same objective, Section 20(2) of Rights of Persons with Disabilities Act, 2016 assigns government establishments with duty to provide barrier free and conducive environment to divyang employees. Similarly, DoPT OM No. 36035/3/2013, dated 31.03.2014, provides in Para H that divyang employee must be given place of posting of choice. Guidelines and statute contain provisions for providing conducive environment to divyang employee. Objective behind these provisions is that services of divyang employees may be optimally utilised by enabling them to overcome natural barriers.

v) Section 20(2) of RPwD Act, 2016 and Para H of DoPT OM are hereinafter produced -:

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

DoPT OM – "Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints. The practice of considering choice of place of posting in case of persons with disabilities may be continued."

vi) Therefore, this court recommends that the Respondent shall transfer the Complainant to Chandigarh, his native place. Further if there is no vacancy in Chandigarh office, Respondent shall explore the possibility of mutual transfer.

7. This case is disposed off

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12753/1024/2021

Complainant: Smt. Vishakha Malviya R28333
E-mail:<vishakhamalviya@yahoo.co.in>

Respondent: The Chief Engineer, HQ Chief Engineer (N) Mumbai R28332
26, Assaye Building, Colaba, Mumbai – 05
E-mail: [illegible]
<cezNM2-MES@nic.in>

Complainant: Master Shashwat Nath – a Child having multiple disability

GIST of the Complaint:

Complainant vide complaint dated **18.06.2021** submitted that her husband Shri Swapnil Nath is working as Joint Director (Architect) in HQ Chief Engineer (N), Mumbai and their one child has a multiple disability and presently they are residing in Govt. Accn. **Chitralekha Bldg** (Type V without Servant Qtr), Nofra, Colaba, Mumbai. She further submitted that there are two buildings for MES Civilian Officers namely **Chitralekha Bldg** (11 Nos Type V Qtrs **without servant Qtr**) and **Vishwakarma Bldg** (07 Nos Type V Qtrs **with servant Qtr**) and they had repeatedly applied for change of Accommodation i.e. from Chitralekha Bldg to Vishwakarma Bldg for proper care of her disabled child but neither intimated since last 05 years nor allotted Type V Accn. She alleged that Type V Accn at Vishwakarma Bldg being allotted to other officer's in-spite of being on priority on medical grounds of my son.

2. The matter was taken up with the Respondent vide letter dated **18.06.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **15.07.2021** inter-alia submitted that this case shall be considered only from next month in terms of Rule 12 (2) of SRO - 308.

(80)

4. Complainant vide e-mail dated **02.07.2021** reiterated her grievance.

5. After considering the respondent's reply dated **15.07.2021** and the complainant's rejoinder dated **02.07.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **04.08.2021**.

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

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

Observation/Recommendations:

6. The Complaint is related to accommodation. Main cause of the Complaint lies in two buildings, one is called Chitralekha Building and another one is called Vishwakarma Building. Both buildings have Type – V residential apartments with only one difference, i.e. in Vishwakarma Building, servant quarter is attached with the residential unit, whereas in Chitralekha building, servant quarter is not attached with the residential unit. Complainant's husband who is employed in Respondent establishment is allotted a residential unit in Chitralekha Building. Complainant submits that her son is has Multiple Disabilities including intellectual disability up to 90% and needs rehabilitation. Her grievance is that attached servant quarter will help in availing better rehabilitation facilities for her child, however the Respondent has failed to consider her husband's demand for allotment of accommodation in Vishwakarma Building. Time and again application for the same has been rejected by the Respondent. Moreover, due to ongoing special repair work there is frequent movement of workers in the apartment she is residing in along with her husband and the child, which causes hinderance in rehabilitation of her child.

7. Respondent submits that it has been very kind and has taken care of the interests of the Complaint in the past. Out of turn allotment has been done thrice in the past. In seniority list another employee is on the top and husband of the Complainant is on Sr. No. 2. Out of turn allotment to the husband of the Complainant shall result into violation of rights of the employee who is at Sr. No. 1 in the list.

....3...

(81)

8. Rehabilitation process of the child with intellectual disabilities is sine qua non for development of divyang child. Comfortable living accommodation is the most basic necessity for successful rehabilitation of the Person with Intellectual Disability. Section 5 of Right of Persons with Disabilities Act also focuses on the same. As per the provision, it is positive obligation of the appropriate government to endeavour to provide access to range of residential facilities to Persons with Disabilities. Provision is reproduced below -:

> *"Section 5 - Community life—(1) The persons with disabilities shall have the right to live in the community.*
> *(2) The appropriate Government shall endeavour that the persons with disabilities are,—*
> *(a) not obliged to live in any particular living arrangement; and*
> *(b) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender"*

9. Relief sought by the Complainant is of simple nature. Her husband is employee of Respondent establishment. Their child is in need of rehabilitation process by virtue of his disability. Residential accommodation of same type with extra servant room may help in better rehabilitation process of the child. If allotted, Respondent will not incur unbearable financial implications.

10. Moreover, Respondent also failed to prove that the employee who is at Sr. No. 1 in the list has applied for the accommodation in Vishwakarma building or if so then earlier than the complainant. Hence, the Repsondent's argument that out of turn allotment to the Complainant's husband shall lead to violation of rights of other employees bereft merits.

11. Respondent's attention is also invited to principles of Reasonable Accommodation imbibed in RPwD Act, 2016. RPwD Act, 2016 which incorporates principle of 'Reasonable Accommodation' for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures

82

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 Ac 2016."*

12. Hence, this court concludes that combined reading of Section 5 of RPwD Act, 2016 with principles of Reasonable Accommodation is imperative in the present case. This court recommends that Respondent shall allot residential unit in Vishwakarma Building Type V Qtrs with servant quarter to the Complainant irrespective of her position in seniority list as first priority. The compliance report to be submitted to this Court within 90 days of the receipt of this recommendation.

13. Accordingly the case is disposed of.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Dt: 17.08.2021

Case No: 12753/1024/2021

Complainant: Smt. Vishakha Malviya
E-mail:<vishakhamalviya@yahoo.co.in>

Respondent: The Chief Engineer, HQ Chief Engineer (N) Mumbai
26, Assaye Building, Colaba, Mumbai – 05
E-mail:<ceznm2-mes@nic.in>

CORRIGENDUM

Kind attention is invited to the Order in the aforementioned case dated 17.08.2021.

2. Basic facts mentioned in Para 05 of the Order shall be read as under:

"5. After considering the respondent's reply dated **15.07.2021** and the complainant's rejoinder dated **02.07.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **04.08.2021**.

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

- Smt. Vishakha Malviya – complainant
- Col. Rohan Lewis, Additional Chief Engineer and Col. Bhaskar Paranjpe on behalf of respondent"

17/8/2021

(Sudhir Goel)
Desk Officer

(84)

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. 12679/1011/2021 R28383

Complainant:
Shri Maulik Rajendrakumar Pandit,
Kalarvado,
Salvivado,
Dist. : Patan (N.G.),
Gujarat – 384 265

Versus

Respondent :
Oil and Natural Gas Corporation Limited,
(Through the Chairman & Managing Director)
Plot No.5A-5B,
Nelson Mandela Road,
Vasant Kunj,
New Delhi – 110 070

R28384

Disability : 40% Dwarfism

Gist of Complaint:

Shri Maulik Rajendrakumar Pandit, a person with 40% locomotor disability vide his complaint dated 26.03.2021 submitted that he applied for the post of Junior Accountant and Junior Assistant (P&A) in ONGC Recruitment for non Executives on regular basis in Gujarat against the Advertisement No. 01/2019(R&P). He secured good marks in the examination. He was called for document verification. OH(BL) was mentioned in his disability certificate when he applied for the post in January, 2019. In March 2019, a call came from a government Hospital to renew the certificate and he renewed the same. As per the new guidelines, hospitals took his original certificate and provided the renewed one by changing category from OH (BL) to locomotor disability (Dwarfism) but percentage was

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

still the same. After checking his documents, he was not allowed to appear in computer typing exam as no guidelines were mentioned in the advertisement.

2. The matter was taken up with the Chairman & Managing Director, Oil and Natural Gas Corporation Limited vide letter dated 06.04.2021.

3. The DGM (HR) I/C R&P, Oil and Natural Gas Corporation Limited vide letter no. ONGC/BDA/R&P/Jr. Asst (P&A)2021 dated 31.05.2021 submitted that Shri Maulik Rajendrakumar Pandit had appeared in the Computer Based Test (CBT) and has qualified in the CBT meant for the post of Junior Assistant (P&A). He was called to submit relevant documents after being shortlisted. On 22.02.2021, Shri Maulik vide his application dated 22.01.2021 has submitted relevant documents including "Disability Certificate" dated 19.06.2019. The last date for submission of online application for the advertisement was 20.02.2019. The Respondent submitted that the 'validity of the PwD Certificate shall be tested with respect to the last date of the online application (20.02.2019), i.e. the disability should have been acquired before 20.02.2019. He submitted that further the Disability Certificate should have been issued by the Competent Medical Board duly constituted by the Central / State Government. Shri Maulik Rajendrakumar Pandit had furnished a Disability Certificate dated 19.06.2019, i.e. which was after the cutoff date and hence his candidature was not considered for Skill Test (Typing Test).

4. The complainant vide his rejoinder dated 05.06.2021 submitted that he has the Disability Certificate in Gujarati language obtained from the State Government which clearly mentions that he has Orthopaedic disability and is valid till 19.02.2019. Section 34 of the Rights of Persons with Disabilities Act, 2016 provides for 4% reservation for persons with disabilities in recruitment. He renewed his certificate as per the government guidelines. He has requested that if he is not eligible under the disabled category, if he can be included in general category.

5. **Hearing** : A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 19.07.2021.

6. The following persons were present during the hearing ;

1) Complainant: Shri Maulik Rajendrakumar Pandit,
2) Respondent: Shiv Kumar and Rajesh Kumar, on behalf of Respondent

Observations & Recommendations

7. Respondent conducted recruitment examination for the post of Junior Account & Junior Assistant (P&A). He successfully qualified the exam and was subsequently called for documents verification. He submitted disability certificate dated 19.06.2019. However, his candidature was rejected at this stage itself. He was not called for skill test, which was to be conducted after document verification. Complainant claims that in March 2019, he received call from government hospital to renew his certificate. Thereafter, he submitted his Disability Certificate with the hospital. New certificate dated 19.06.2019 was issued to him in accordance with 2016 guidelines.

8. Respondent submits that it was mentioned in the advertisement that successful candidate has to produce Disability certificate issued on or before 20.02.2019. Whereas, disability certificate produced by the Complainant was issued on 19.06.2019. Hence, his candidature was rejected and he was not called for next round, i.e. skill test. Further, old certificate issued before 20.02.2019 was rejected because disability mentioned therein was 'locomotor disability'.

9. Error was committed by both the parties in the case. Complainant committed error by not updating his Disability Certificate on time. Respondent committed error by not accepting the certificate issued before 20.02.2019 (hereinafter mentioned as 'old certificate'). Respondent's reason that the old certificate was rejected because it certified Complainant's disability as 'Locomotor Disability' and not 'Dwarfism' is incorrect in law. Prior to 2017, Persons with Disabilities Act, 1995 was under force. Under the 1995 Act, Dwarfism was not recognized as separate disability. It was assumed under wide umbrella of locomotor disability. Dwarfism was recognized as separate disability for the first time under Rights of Persons with Disabilities Act, 2016. Certificate dated 19.06.2019 was made in accordance with rules under Persons with Disability Act, 1995. Hence, Respondent committed error in rejecting the certificate dated 19.06.2019.

10. During online hearing Respondent informed the court that total number of 21 vacancies were reserved for Divyangjan. Out of which 12 have been filled, only 9 are remaining vacant which are reserved for 'Visually Impaired' category.

11. It would be injustice with Visually Impaired candidates to convert the vacancy reserved for them. Hence, this court recommends that the Respondent shall refrain from committing similar error in future and Respondent shall consider the candidature of the Complainant in next recruitment cycle.

12. The case is disposed off.

Dated: 18.08.2021

Upma Srivastava.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12702/1092/2021 R28381

Complainant:

Shri Manoj Kumar Anand,
R/o C-67/68-A, Rama Park, Dwarka Mod,
Uttam Nagar, New Delhi-110059
Email: anand.manoj.kumar@gmail.com
Mobile: 98100936816

Respondent: R28382

Department of Heavy Industry (AEI Section)
[Through: Secretary]
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhawan, New Delhi-110011
Email: shioff@nic.in; simmi.narnaulia@nic.in

1. Gist of Complaint:

1.1 The complainant, Shri Manoj Kumar Anand, M-52, a person with 60% Locomotor Disability, filed a complaint regarding not issuing GST Concession Certificate by the respondent, Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprises, for purchase of car.

1.2 The complainant has mentioned his ordeal and submitted that while filling up online application for obtaining GST Concession Certificate, the following two options were required to be filled up –

(i) Name of doctor signing & Registration number of the Doctor signing; and

(ii) Name of the counter signing doctor (civil surgeon/chairman of medical board) and Registration Number of the counter signing doctor (civil surgeon / Chairman of Medical Board).

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

1.3 His Disability Certificate (DC) has been issued by All India Institute of Medical Sciences, Delhi (AIIMS Delhi) but it does not have the Registration Number of "Doctor Signing" and "Counter Signing Doctor". Since his submission for online application could have been possible only after filling the Registration Numbers of the 'Doctor Signing' and 'Counter Signing Doctor', he could not submit it online. His son Shri Tushar Anand met the concerned authorities at AIIMS Delhi and requested to provide the aforesaid Registration Numbers. He was told that the registration numbers could not be provided in any case because the certificate had been issued by AIIMS Delhi as per the format stipulated by the Central Government; all the information needed has already been provided in the DC.

1.4 The complainant further submitted that as per the guideline, the registration numbers are not required if one has UDID /Card issued by the Department of Social Welfare. He has no UDID Card but he has the Disability Card issued by the Dy. Commissioner, Patel Nagar, New Delhi.

1.5 The complainant has also submitted that earlier he had received the Excise Exemption Certificate No.12(41)/2007-AEI dated 21.11.2008 from DHI at the time of buying his first car under PwD category on the basis of the same documents.

2. Submissions made by the Respondent

2.1 The respondent filed their reply dated 13.05.2021 and submitted that as per the ordeal described by the complainant, due to poor response of authorities of AIIMS Delhi registration numbers of the doctors were refused to be provided.

2.2 The registration number/MCI number of doctors is required to safeguard the Department from issuing GST Concession certificate on the basis of forged disability certificates. A few examples are available regarding rackets issuing forged disability certificates.

2.3 Complainant's request for issue GST Concession Certificate was examined and it was found that he had been issued Excise Duty Concession Certificate in 2008, as per then guidelines (at present, GST is applicable replacing Excise Duty). Considering this as a special case, the complainant was advised vide email dated 03.05.2021 to submit application through **'dhigecs portal'** (portal made operational w.e.f. 15th

Nov. 2020 for online issue on GST Concession Certificate) and to mention "file number of Excise Duty concession certificate" issued to him in 2008 in the mandatory field asking for "registration number of the doctor". On receipt of the applicant's online application through designated portal, it would be examined and processed further as per the extant guidelines.

3. Submission made in Rejoinder

3.1 In the rejoinder dated 25.05.2021, the complainant submitted that he has experienced that AIIMS Delhi is most sensitive institute towards people with disabilities and he has no complaint from AIIMS.

3.2 As regards safeguarding the Department from forged disability certificates, the respondent has mislead the Court by providing half-baked information and manipulating the overall case.

3.3 The complainant wished to have a copy of notification issued by Government making aware of people with disabilities to arrange for registration number of doctors and counter signing doctors; and making changes in the disability certificates so that he could take it to the AIIMS and get his DC updated.

3.4 The complainant alleged to have harassed him by the respondent, as the respondent put his 2008 Excise Duty Concession Certificate number in place of doctors' and counter signing doctor's registration numbers. He was asked by the respondent to sent two updates to upload the photo identification documents. The first time he was asked to upload Aadhar, PAN and Signature; second time, he was asked for the signature, which clearly shows the efficacy of the respondent taking information in piecemeal. Deliberately harassing people in all possible manner and not support them seems to be their intent.

3.5 It has been stated by the respondent that as a special case of him the certificate is being issued, which is of course with the wrong detail deliberately to harass him which is still going on.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **19.07.2021**. The following were present:

(1) Complainant in person
(2) Smt. Simmi Narnauliya, Under Secretary for the Respondent

5. Observation/Recommendations:

5.1 Both the parties were heard.

5.2 Complainant filed an application to obtain GST concession certificate for buying a car. After series of communications with the Respondent, on 18.05.2021, GST concession certificate in favour of the complainant was issued by the Respondent. Complainant submits that this is flawed certificate because name of the car dealer mentioned is incorrect.

5.3 On this point Ministry submits that name of car dealer was mentioned by the Complainant himself. Hence, if the name is incorrect it is because Complainant himself mentioned incorrect name of the car dealer at the time of applying for the certificate.

5.4 During online hearing Respondent assured that grievance of the Complainant would be redressed on the basis of an application by the Complainant to the Respondent. There would be no further harassment. Since the Complaint has been resolved amicably, intervention of this court is not warranted.

5.5 The case is accordingly disposed off.

Dated: 17.08.2021

Upma Srivastava

(Upma Srivastava)
Commissioner
for Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12688/1023/2021 | R28394

Complainant: Shri Anand Pratap Singh
E-mail: <Anand.Singh5@sbi.co.in>

Respondent: The Chief General Manager (HR) R28395
State Bank of India, Corporate Centre
State Bank Bhawan, 16th Floor, Madam Cama Road
Mumbai – 400021
E-mail: <agmphr.lhoban@sbi.co.in> <dgm.pm@sbi.co.in>

Complainant: 40% Hearing impairment

GIST of the Complaint:

Complainant vide complaint dated **04.04.2021** submitted he has been working as Assistant in State Bank of India, Gonda Region of Lucknow Circle since 03.12.2012 and submitted the following grievances:

- Gonda Region of Lucknow Circle is approximately 150 km away from his home place of Lucknow, therefore, he had applied for transfer but no action has been taken.
- During demonetization period, he was not paid for overtime announced by Bank, despite claiming the same several times.
- Conveyance allowance for PwD Staff @ Rs. 400/ per month not paid.
- During Covid-19 period, special casual leave for disabled employees was rejected by Branch Manager.

2. The matter was taken up with the Respondent vide letter dated **09.04.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **06.06.2021** submitted that (i) transfer order has been issued on 25.05.2021 (ii) he was not eligible for overtime during the demonetization period because he did not work beyond normal working hours. (iii) Controller of complainant has been advised to pay conveyance allowance for PwD employees from the date it is payable.

4. Complainant vide e-mail dated **07.07.2021** inter-alia submitted that during the demonetization period, he was posted in Sadulllah Nagar Branch which is single man Branch i.e. run by single Manager and single Assistant and Branch ran beyond working hours. He further submitted that Bank is silent on the last point.

5. After considering the respondent's reply dated **06.06.2021** and the complainant's rejoinder dated **07.07.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.07.2021** but due to administrative exigencies hearing rescheduled on **02.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Shri Anand Pratap Singh – complainant
- Shri Ajaya Singh, DGM & Shri Pushkal Pandey, Law Officer on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits the complaint chalking out 4 points of grievances. First pertains to transfer of the Complainant. He submits that he was posted in Gonda whereas hisnative place is Lucknow. Distance between Gonda and Lucknow is 150 K.Ms. Secondly, during demonetization period 'Overtime allowance was announced, but the same was not paid to him. Thirdly, Conveyance Allowance of Rs. 400/- per month was also not paid. Fourthly, during Covid-19 exemption period, he applied for CoVid-19 leave which was also not granted. He also applied for Special casual leave for divyang in February 2021, which was also not granted.

.....3....

95

8. Four main issues at the centre of the Complaint are 'Transfer Issues', 'Overtime Allowance', 'Conveyance Allowance' and non-granting of leave. With respect to issue of transfer and overtime allowance, Reply filed by the Respondent is satisfactory. Since, the transfer order has already been issued and since the Complainant failed to prove that he worked for extra hours, hence intervention of this court on these two issues is unwarranted.

9. Issue of 'Conveyance Allowance' – Respondent submits that the note has been approved and Conveyance Allowance shall be released soon. This court is inclined to attract the kind attention of the Respondent to Section 20(2) of Rights of Persons with Disabilities Act, 2016. As per the provision, it is obligation of the Respondent establishment to provide conducive environment to Persons with Disabilities. Delay in releasing Conveyance Allowance is contrary to mandate of Section 20(2). Hence this court concludes that Respondent shall release Conveyance Allowance with immediate effect.

10. Non sanctioning of leave – DoPT OM No. 36035/3/2013-Estt.(Res) dated 31.03.2014 lays down certain guidelines for providing certain benefits in respect of Persons with Disabilities employed in Government for efficient performance of their duties. In Para – G of the O.M. another DoPT O.M. dated 19.11.2008 is mentioned, in which provision for 4 days of 'Special Casual Leave' in a calendar year for Persons with Disabilities is provided.

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

.....4.....

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 Ac 2016."*

12. Hence, this court recommends that the issue of sanctioning of leave shall be settled according to the principles of Section 20 of RPwD Act, 2016 and of Reasonable Accommodation delineated above.

13. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12626/1024/2021 / R28396

Complainant: Shri BV Ravi Kumar
E-mail: <bvravikumar40@gmail.com>

Respondent: The Divisional Railway Manager R28397
East Coast Railway, Waltair Division
Visakhapatnam
E-mail: <watsrdpo@gmail.com> <adrm@wat.railnet.gov.in>

Complainant: 100% Hearing impairment

GIST of the Complaint:

Complainant vide complaint dated **nil** inter-alia submitted that he joined as 'Safaiwala' in January 2001 and later, his cadre was changed as 'Dispensary Cleaner'. He further submitted that in 2016, he had applied for the post of 'Hospital Attendant' which is equivalent cadre to Dispensary Cleaner but till date, no response has been received.

2. The matter was taken up with the Respondent vide letter dated **01.03.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **19.04.2021** inter-alia submitted that his request for change of category from Dispensary Cleaner to Hospital Attendant/Hospital Assistant can't be considered as the same is not in conformity with guidelines for filling up of Hospital Attendant/Hospital Assistant vacancies as provided by PCPO/BBS.

4. After considering the respondent's reply dated **19.04.2021** and the complainant's letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.07.2021** but due to administrative exigencies hearing rescheduled on **02.08.2021**.

98

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Shri BV Ravi Kumar – complainant
- Shri Abanikant Parida, Sr. DPO on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complainant submits that he joined as 'Safaiwala' in January 2001. In 2006, on his own request, his cadre was changed to 'Dispensary Cleaner'. Further, he submits that he applied for the post of 'Hospital Attendant' which is going to be vacant.

7. Respondent submits that Promotion to the post of 'Hospital Attendant' is done from the post of 'Safaiwala'. Since he himself requested for change in category, hence, cannot change the category to 'Safaiwala'.

8. During online hearing Respondent submitted that post of Dispensary Cleaner is not stand-alone post. There are promotion avenues in this post as well. Dispensary Cleaner is promoted to the post of 'Dresser-III'. Further, Respondent affirmed that whenever vacancies for the post of 'Dresser-III' Complainant's candidature shall be considered as per the rules.

9. This court concludes that since the change in category from 'Safaiwala' to 'Dispensary Cleaner' was made in accordance with the choice of the Complainant himself hence, by denying to rechange the category back to 'Safaiwala' is not a violation of rights of the Complainant.

10. This court is satisfied with the Reply of the Respondent and intervention of this court is not warranted.

11. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

(99)

Case No: 12669/1021/2021

Complainant: Shri Mukesh Kumar
E-mail: <mksnt9313@gmail.com>

R28398

Respondent: The Divisional Railway Manager
Northern Railway, Moradabad
Uttar Pradesh – 244001

R28399

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि वह उत्तर रेलवे, मुरादाबाद मंडल में खलासी के पद पर कार्यरत है तथा विभाग द्वारा दिनांक 18.12.2019 को समूह 'घ' से 'ग' की पदोन्नति के लिए लिस्ट जारी की गई जिसमें उनका नाम 15वें स्थान पर दर्शाया गया। परन्तु ट्रेड टेस्ट दिनांक 07.03.2020 के दिन, टेस्ट से 30 मिनट पहले विभाग द्वारा उनकी दिव्यांगता के कारण उनको ट्रेड टेस्ट देने से वंचित कर दिया गया।

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

3. In response, Divl Rly Manager (P), Moradabad vide letter dated **15.04.2021** submitted that Shri Mukesh Kumar had been appointed as a Khalasi under PwD quota in 2013 and notification was issued for filling up the vacancy of TCM III against 50% promottee quota vide letter dated 18.12.2019. Shri Mukesh Kumar had also applied but he is not permit to attend trade test as per instruction contained in Railway PS No. 13436/08 in S&T Deptt as the post of Telecom Technical Assistant is not Earmarked/suitable for visually handicapped.

4. After considering the respondent's reply dated **15.4.2021** 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 **14.07.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.07.2021**. The following were present:

- Shri Mukesh Kumar – complainant
- Sandeep Saxena, Assistant Personnel Officer on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

6. Complainant submits that he joined respondent establishment on 25.05.2013 and wants promotion on the post of Technical Assistant. Promotion exam was conducted again for the post on 07.03.2020. Just 30 minutes before the exam he was precluded from appearing because post of Telecom Technical Assistant is not identified suitable for Visually Impaired Divyangjan.

7. Respondent submits that the post of Technical Assistant - I is identified suitable for Orthopedically Handicapped and not for Visually Impaired. Khalasi is not the feeder post for Technical Assistant post. Moreover, duties of Khalasi and Technical Assistant are different. Duties assigned to Khalasi are of general nature, whereas, duties assigned to Technical Assistant are of technical nature. This post is not identified suitable for Visually Impaired employee.

8. This court finds reply of the Respondent satisfactory. Court's intervention in the present complaint is not warranted.

9. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

(101)

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: 12738/1023/2021 R28408

Complainant: Shri Uppalapti Harikrishna
e-mail: <harikrishnauppalapati0@gmail.com>

Respondent: The Director
All India Institute of Medical Sciences
Basni Industrial Area, Phase – 02, Jodhpur
Pin – 342005, Rajasthan

R28409

Complainant 45% hearing impairment

GIST of the Complaint:

Complainant vide e-mail dated **17.05.2021** inter-alia submitted that AIIMS, Jodhpur neither implementing DoP&T's order nor exempting PwDs employees from roster duty during COVID – 19 period.

2. The matter was taken up with the Respondent vide letter dated **11.06.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Sr. Administrative Officer, AIIMS, Jodhpur vide letter dated **03.07.2021** inter-alia submitted that as per available record Shri Uppalapati is not a regular employee and he has not submitted any complaint in this regard. They further submitted the services of all employees are required during pandemic time, however, Institute follows all Guidelines issued from DoP&T time to time.

4. The above reply was sent to the complainant through e-mail on 06.07.2021 with the direction to submit comments/rejoinder within 15 days but no response has been received from the complainant.

Observation/Recommendations:

5. In light of the reply of the respondent and facts and material available on record, no further intervention of this Court is required.

6. The case is accordingly disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12686/1024/2021 & 12818/1024/2021 R28410

Complainant: Shri Mukesh Gupta
C-5/81, Ground Floor, Sector – 11
Rohini, Delhi – 110085
E-mail:<mukeshgupta6.mg@gmail.com

Respondent: The Principal Chief Personnel Officer
Northern Railway, Baroda House, New Delhi
e-mail: <cpo@nr.railnet.gov.in> R28411

Complainant: 60% Locomotor disability

GIST of the Complaint:

Complainant vide complaints dated **26.03.2021** submitted that Northern Railway is neither implementing the Section 21 & 22 of the Rights of Persons with Disabilities (RPwD) Act, 2016 & Rule – 08 & -09 of the RPwD Rule – 2017 nor considering suggestions of PwD employees & Association of PwDs.

2. The matter was taken up with the Respondent vide letter dated **07.04.2021** under Section 75 of the RPwD Act, 2016. But despite Reminder dated 31.05.2021, no response has been received from the respondent. Accordingly, a hearing scheduled on **20.07.2021** which was further re-scheduled to **22.07.2021.**

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

- Shri Mukesh Gupta – complainant
- Shri Anand Madhukar CPO (IR) on behalf of respondent

Observation/Recommendations:

3. After perusal of the complaint and arguments submitted by both the parties, it is recommended that Section 21 (1) & 22 (1) of the RPwD Act, 2016 and Rules 08 & 09 of RPwD Rules, 2017 should be implemented by the respondent which stipulates that

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

4. **Section 22 (1) – "Every establishment shall maintain records of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information in compliance with the provisions of this Chapter in such form and manner as may be prescribed by the Central Government.**

5. Further, **Rule 8 of the RPwD Rules, 2017 – Manner of publication of equal opportunity policy** – (1) Every establishment shall publish equal opportunity policy per PwDs. (2) The establishment shall display the equal opportunity policy preferably on their website, failing which, at conspicuous places in their premises. (3) The equal opportunity policy of a private establishment having twenty or more employees and the Government establishments shall inter alia, contain the following, namely: -

(a) facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment;

(b) list of posts identified suitable for PwDs in the establishment;

(c) the manner of selection of PwDs for various posts, post – recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation if any, and other facilities;

(d) provisions of assistive devices, barrier-free accessibility and other provisions for PwDs;

(e) appointment of liaison officer by the establishment to look after the recruitment of PwDs and provisions of facilities and amenities for such employees.

....3....

6. **Rule 9 of the RPwD Rules, 2017 – Form and manner of maintaining records by the establishments** – (1) Every establishment covered under sub-rule (3) of the rule 08 shall maintain records containing the following particulars, namely:-

(a) The number of PwDs who are employed and the date from when they are employed;

(b) The name, gender and address of PwDs;

(c) The nature of disability of such persons;

(d) The nature of work being rendered by such employed PwD; and

(e) The kind of facilities being provided to such PwDs.

(2) Every establishment shall produce for inspection on demand, records maintained under these rules, to the authorities under this Act and shall supply such information which may be required for the purpose of ascertaining whether the provisions have been complied with.

7. Reading of provisions delineated above suggests that it is mandatory for establishments to draft and notify 'Equal Opportunity Policy'. Hence, this Court recommends that the Respondent shall discharge its duty in accordance with Section 21 (1) and Section 22 (1) of Rights of Persons with Disabilities Act, 2016 and rules and guidelines issued by the Government.

8. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

(105)

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: 12712/1024/2021 JR28414

Complainant: Shri Asokan, C/o Ponnamma
Mangalayam, Govindamutton – PO
Kayam Kulam, Distt. Alleppey, Kerala – 690527

Respondent: The Asstt. PF Commissioner
Employees Provident Fund Organization
Bhavishya Nidhi Bhawan No. 34763
Karkatpura, Chaman, Hyderabad, Telengana – 500027

R28415

Complainant: 50% Locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **19.04.2021** submitted that he had worked in Sri Venkateshwara Par Boiled Modern Rice Mill, Hyderabad from 1994 to 2000 and he has requested to forward his PF form to the concerned authority to clear the PF amount.

2. The matter was taken up with the Respondent vide letter dated **24.05.2021** under Section 75 of the RPwD Act, 2016. But despite Reminder dated **06.07.2021**, no response has been received from the respondent.

Observation/Recommendations:

3. In the light of the documents available on record, this Court recommends, the respondent to resolve the above issue within 15 days and remit the PF amount to his bankers viz Federal Bank, Devikulam Branch A/c No. 13190100153331 (IFSC FDRL 0001319) as per his request.

4. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

(107)

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: 12714/1022/2021 / R25425

Complainant	:	Shri Prashant Shamrao Karade PF No. 4162536 C/o Madan Bhivgade Plot No. 14, Vishwas Nagar, Near Jaripatika Police Station, Behind Buddha Vihar, Nagpur-440014 Mobile No: 08888269953
Email Id	:	prashant.karade.1@gmail.com
Respondent	:	The Chairman State Bank of India Corporate Centre, State Bank Bhavan, Madam Cama Road, Mumbai-400032
E-mail ID	:	chairman@sbi.co.in ; agmhr.lhomah@sbi.co.in

R25426

GIST OF COMPLAINT

The complainant Shri Prashant Shamrao Karade, vides complaint by email, dated 22nd April 2021, submitted that he is belonging to "Mahar" community which is socially Backward Community i.e. (Scheduled Caste) with "benchmark disability" and is governed by the provisions of the Rights of Persons w1lh Disability Act, 2016 and entitled for the protection from any kind of exploitation, cruelty, abuse and discriminatory treatment in the matter of employment and otherwise, the disable persons need for such entitlement of protection from abuse and exploitation is much more acute, prominent and has been specifically provided under the section 6 & 7 of the Act, by giving statutory protection the required Medical Certificate dated 07.10.2020, certifying the physical disability was issued by the Govt. Medical Hospital. Nagpur, Maharashtra, certifying 60% temporary locomotor disability. This is as per the guidelines for the purpose of assessing the extent of specified disability in a person included under RPWD act 2016 notified by Government of India vide S.O.76 (E) dated 04.01.2018 and this certificate is recommended for 02 Years and therefore this certificate is valid till 07.10.2022.

The complainant further submitted that he was performing his duties at SBI Nagpur Branch as Senior Associate, and was initially asked to report to SBI RBO, Chandrapur vide Award Staff Redeployment Transfer order no. AGM/AS/TRF/16 dated 27.08.2020 issued by Asstt. General Manager, Nagpur Branch instructing him to report to RBO-IV, Chandrapur without availing of any leave or usual joining time.

The complainant stated that after receipt of illegal transfer order he immediately submitted his humble request representation for cancellation of his above said transfer orders on extreme medical grounds by enclosing all his relevant medical documents and certificates. He personally met with Chief Manager (HR) and Dy. General Manager (B&O) and requested them to consider his representation on extreme medical grounds and as per the provision and guidelines issued under Disabilities Act, 2016 where employees with physical disabilities are exempted from routine exercise of transfers. Bu to utter dismay all his request were turned down without even his Physical examination or verification by the Bank's Senior Medical officer.

He was not only harassed but was treated very badly and was humiliated and was forced to join at RBO-IV, Chandrapur.

The complainant submitted that his services were transferred to RBO-IV, Chandrapur under the pretext of Award Staff Redeployment Transfer Policy violating Bank's own circular provisions and guidelines and also violating section 33 of the industrial disputes Act, 1947 as the matter was subjudiced before the Asstt. Labour commissioner (Central), Nagpur as State Bank of India, Staff Union, (MC) Nagpur Module has raised the industrial dispute along with Strike Notice for the wanton violation and breach of all India Settlements agreed and signed by the All India Staff Federation and Bank Management on Award Staff Transfer Policies.

The complainant further submitted that he was transferred illegally from Nagpur Branch, without even having formal intimation, would amount to serious degrading and cruel behaviour and a sheer case of discrimination as many employees who are not even having any serious diseases or any disability are given exemption while myself who is suffering from benchmark disability of nearly 60% is harassed in one way or the other.

The complainant is humbly requested as under:

i) The management of the State Bank of India, DGM (B&O) and CM (HR) State Bank of India Zonal Office is called upon to desist from any further violation of section 6 and 7 of the Act, and also initiate suitable action against all concern.

ii) Declare that his transfer is illegal and contrary to the law as well as Bank's and Governments own circulars;

iii) Issue the direction to the Bank to immediately restore the position and posting at the same branch i.e. SBI Nagpur Main Branch (0432).

2. The matter was taken up with the Respondent vide letter dated 31.05.2021 under section 75 of the RPwD Act 2016.

3 In response, the respondent Dy. General Manager, Circle Development Officer, Human Resource Department, Bandra Kurla Complex, Bandra (E), Mumbai vide letter no: dated 05.07.2021, submitted the following facts:

i) Shri Prashant Karade (Complainant) was posted in State Bank of India (SBI), Nagpur Branch and transfer order was issued on 25.08.2020 under redeployment to Regional Office, Chandrapur.

ii) The employee submitted a representation for cancellation of transfer order with a request to retain at Nagpur Centre under medical grounds for which he submitted medical related documents for consideration.

iii) The medical papers of the complainant were referred to the Senior Medical Officer at Administrative office, Nagpur who opined as under:

"The ailment of the employee is maintaining the status quo does not require any active line of treatment at present. In view of the above, it cannot be considered under exemption/relaxation from transfer as per extant bank's norms."

...2...

4 In response, the complainant has not submitted any comments against the rejoinder letter issued by CCPD Office on 08.07.2021.

Observation/Suggestion:

5. This Court observed that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the complainant may be exempted from routine transfer.

6. Relevant para of DOPT OM dated 31.03.2014 is reproduced as under:-

"As per DOPT OM Para (h) dated 31st March 2014 is that the divyang employee may be exempted rotational transfer and may be allowed to continue same job where he would achieve the desire performance".

7. Section 20(5) of RPwD Act, 2016 is as under:-

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

8 The respondent is recommended to retain the complainant in Nagpur Branch preferably so as to enable him to live with his family.

9. The case is accordingly disposed off.

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

(110)

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: 12697/1022/2021 R28427

Complainant	:	Shri Praveen Kumar Bendi Tradesman Mate (Industrial) P.No. 3740411-Y Indian Navy INS Hansa, Dabolim South Goa-403801
Mobile No	:	07989704109
E-mail:		Praveen.bendi@gmail.com
Respondent	:	The Flag Officer Commanding Headquarters Goa Naval Area, Vasco da Gama Goa
Contact No	:	0832-2582555 Extn. 2400
Fax No	:	0832-2510760
E-mail	:	---

R28428

GIST OF COMPLAINT

The complainant Shri Praveen Kumar Bendi, vide his complaint by email, dated 11th April 2021, submitted that he is working as a Tradesman Mate (Industrial) at INS Hansa, Goa since September, 2017. The complainant further stated that he joined this post under Persons with Disabilities (PwDs) category (Low vision with 40%) against the advertisement no: davp 10702/11/0282/1617.

The complainant further submitted that his parents (senior citizens) staying alone at his home town i.e. Srikakulam, Andhra Pradesh, needs to be taken to doctor for regular checkups and medical assistance for which his presence much required at this stage of their ailment. The complainant stated that he has to travel to his home town at least once in a month which is very difficult due to his disability, both personally and professionally.

The complainant has requested to CCPD transfer him from Goa to Visakhapatnam which is nearest place of his home town so that he can focus on his work and also be there for his parents as and when needed. This will save his time, energy and efforts to travel all the way to his hometown every month and he will be able to give complete time to his professional life and also his personal life.

2. The matter was taken up with the Respondent vide letter no: dated 13.04.2021 under section 75 of the RPwD Act 2016.

3. In response, Shri Prateek Ghosh, Captain, Chief Staff Officer (LA&P), Flag Officer Commanding, vides their letter no: 39/269/1/83 dated 16th June 2021, inter-alia submitted the following points:-

(111)

i) The respondent clarified that Shri Praveen Kumar Bendi, Tradesman Mate has been appointed at INS Hansa in VH category vide this Headquarters Appointment Order No.39/266/66/C dated 21 August 2017 against a vacancy reserved for Persons with Disabilities at Goa Naval Area.

ii) This Headquarters is cadre controller for the industrial cadres at Goa Naval Area and the feasibility of routine transfer of Shri Praveen Kumar Bendi, Tradesman Mate to Visakhapatnam is ruled out as there is no unit/branch/office in Andhra Pradesh under the jurisdiction of this Headquarters as Cadre Controller.

iii) The respondent further clarified that had Shri Praveen Kumar Bendi, Tradesman Mate belonged to any of the centrally controlled cadres viz. Scientific Staff, Drawing Staff and Store House Staff of Indian Navy, his request for transfer to Visakhapatnam could have been considered as per DoP&T instructions. It is also clarified that reservation rosters for the aforesaid 03 in nos. centrally controlled cadres are maintained by the respective directorates at IHQ MoD (N). Therefore, there is no liability to maintain any station specific reservation quota in respect of these Civilian cadres. However, the individual is part of locally controlled cadre and it is mandatory to maintain the quota of reservation in each category/group/block at Goa Naval Area as per extant provisions.

iv) Policy guidelines on various grounds of transfer of Civilian personnel have been promulgated in Indian Navy vide IHQ MoD(N)/PDCP letter CP(G)/2601/Transfer Policy dated 11 August 2015.

v) Therefore, the complainants request for transfer to nearest workplace to home town in accordance with the provisions contained in DoP&T OM No. AB 14017/16/2002-Estt (RR) dated 13th March 2002 and the extant policy thereof is not justified.

vi) In view of the aforesaid, the individual has been advised to apply for transfer on compassionate grounds under the provision of Army Order 12/2020.

vii) The inter-cadre transfer orders on compassionate grounds are issued as per the aforesaid Army Order {Sub-Para (f)}. Based on genuineness of the case reported by OC unit and willingness of the applicant to join post at new station in zero seniority, the transfer/posting orders are issued by IHQ MoD (Army)/AG's Branch. However, in the instant case pertaining to application dated 15 July 2019 of Shri Praveen Kumar Bendi, Tradesman Mate, it is evident that the individual has not applied under the provisions of Army Order in force at that point of time i.e. Army Order 22/2001.

viii) On account of rule position clarified at Sub-Para (f) & (g) above, it is evident that the application dated 15 July 2019 quoted ibid is devoid of merit. Therefore, even though the department/office where Shri Praveen Kumar Bendi, Tradesman Mate has been working, had forwarded the case file to Administrative/Civilian Section vide Staff Minute Sheet 420/36/SMS dated 16 Jul 19, the same has been returned to the department unactioned view aforesaid reasons.

ix) The respondent further submitted that the Shri Praveen Kumar Bendi, Tradesman Mate has not been subjected to any rotational transfers within the Goa Naval Area and therefore directives contained in DoP&T OM AB 14017/16/2002-Estt.(RR) dated 31 March 2014 with respect to intra-cadre posting of government servant in Goa Naval Area have been complied with. The individual has not been transferred from INS Hansa to any local unit since his initial appointment.

...2...

x) Subsequent request of Shri Praveen Kumar Bendi, Tradesman Mate for transfer to Visakhapatnam as a case of inter-cadre posting with zero seniority received vide INS Hansa letter 270/55/3-A dated 18th May 2021, has also been examined in this Headquarters. The Head of Office/OC unit of Shri Praveen Kumar Bendi, Tradesman Mate is not satisfied of the genuineness of the grounds on which the individual has applied for transfer to Visakhapatnam. The said matter has been forwarded to the higher authorities as 'not recommended case' as per extant policy. In this regard, this Headquarters letter 39/270/11 (CT) dated 14 June 2021 containing applications and unit's recommendations (all not recommended view reasons recorded in writing therein) in respect of 07 in nos. Persons with Disabilities who applied for transfer on similar compassionate grounds including the applicant, is relevant

xi) It is pertinent to mention that all policy directives pertaining to welfare of Persons with Disabilities (Divyangjan) received from the higher formations have been implemented in letter and spirit in this Headquarters. Nomination of Liaison Officer Order CS/I/3313 dated 12 December 2019. The liaison officer is Grievance Redressal Officer for all Persons with Disabilities (Divyangjan) employed under the jurisdiction of Command Headquarters i.e. Western Naval Command, Mumbai. In view of the above, respondent requested that:-

4. **Observation / Recommendations:**

This Court observed that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and government instructions issued from time to time, the provisions under RPwD Act, 2016 for transfer of persons with disabilities is as under:

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

5. In light of the reply of the respondent, facts and material available on record, the respondent are advised to reconsider the matter of inter-cadre posting afresh so as not to infringe the rights of PwDs, under their Army order 12/2020.

6. The case is accordingly disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 17.08.2021

(113)

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. 12728/1011/2021 R28385

Complainant:

Dr. Rajiv Kumar Chechi,
A-102, Sukhville Apartment,
Vidya Knowledge Park,
Baghpat Road,
Meerut,
Uttar Pradesh - 252002

Versus

Respondent :

Khadi and Village Industries Commission, R28386
(Through the Chairman),
Ministry of Micro, Small and Medium Scale Enterprises,
"Gramodaya",
3 Irla Road,
Vile Parle (West),
Mumbai - 400056

Disability : 44% Locomotor Disability

Gist of Complaint:

Dr. Rajiv Kumar, a person with 44% locomotor disability vide his complaint dated 31.05.2021 submitted that the KVIC declared the final result of the post of Director through Direct Recruitment on 15.04.2021 whereby a total 17 selections were made in addition to 09 waiting list selections for the total 18 posts as there was no candidate found to be eligible for EWS category against 01 EWS category post. He attended the interview on 15.03.2021. He submitted that KVIC has violated the Rights of Persons with Disabilities Act, 2016. He has requested for the immediate joining and

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

issuance of appointment letter for the post of Director from KVIC against the allocated PwD category.

2. The matter was taken up with the Chairman, Khadi and Village Industries Commission vide letter dated 04.06.2021.

3. The Director (Adm. & HR) of Khadi and Village Industries Commission vide letter dated 25.06.2021 submitted that Khadi and Village Industries Commission (KVIC) follows Employees Recruitment Rules, 2016 notified by the Govt. Of India and also the guidelines issued by the DoPT, Govt. Of India from time to time. Further they mentioned that Dr. Rajiv Kumar had clearly mentioned in his application form that he is a general category candidate and also not a person with disability. He has not declared that he is a PwD candidate and also not uploaded any certificate of his disability in his online application. He had neither made any complaint in this regard nor challenged the selection process at any stage till the final result was declared. The Respondent referred to a similar case filed earlier by Shri Manmohan Bajpai and as recommended by this Court they have reserved 1 post of Dy. Director for PwD candidates which shall be filled up by a separate recruitment process. They have not issued any notification for Equal Opportunity Policy but following all the rules and reservations and relaxations policies for Persons with Disabilities. The Grievance Redressal officer has been appointed vide circular dated 09.10.2012. All candidates were shortlisted for interview on the basis of criteria based on educational qualification and experience acquired. The complainant himself was shortlisted for the same. Final selection was done on the basis of total marks obtained in initial scrutiny and performance of the candidates in the interview.

4. The complainant vide his rejoinder dated 22.07.2021 has expressed his dissatisfaction over the reply of KVIC dated 25.06.2021. He requested for a copy of Roster maintained for persons with disabilities by Respondent since last 5 years and also want to know from the Respondent the total number of Special Recruitment Drive conducted for filling the post of Director and Deputy Director during the last five years along with a copy of Advertisement.

OBSERVATIONS & RECOMMENDATIONS

5. Plethora of Complaints is filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.

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

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

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

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

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

9. In an organisation there may be number of posts which cannot be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in

accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 38.16./2020-DD.III dated 04.01.2021 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

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

10. Addition of any post from this list –

a) (a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that this list is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements. The same is mentioned in Note 2 of Notification dated 04.01.2021 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

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

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

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

RESERVATION FOR PERSONS WITH DISABILITIES

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

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

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

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

14. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an

establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

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

16. Maintenance of roster – Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain

group wise vacancy based Reservation Roster Register. Detailed method of maintaining and ear marking vacancies is laid down in Para 7.1 to 7.8 of the OM.

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

a) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.

b) Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, It may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and mental illness; multiple disability from amongst persons above mentioned for disabilities.

c) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.

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

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

ISSUING OF NOTIFICATION

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

a) Number of vacancies reserved for different categories of disability should be indicated clearly.

b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.

c) Persons with disability belonging to such category for which the post is Identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.

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

EXAMINATION FEES

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

EXAMINATION PROCESS

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

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

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

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

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

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

RELAXED MINIMUM CRITERIA

28. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.

SELECTION ON MERITS

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

30. In accordance with guidelines issued on the point of reservation as delineated above, the Respondent is recommended to reserve 4% to persons with disabilities to person with disabilities. The Respondent is further advised to ensure that the rights of persons with disabilities are not infringed.

31. The Respondent vide their submission submitted that the complainant had mentioned in his application form that he is a candidate under general category and not a person with disability. The complainant cannot demand reservation as he has not declared his disability while applying to the post.

32. The case is disposed off.

Dated: 18.08.2021

(Upma Srivastava)
Commissioner
for Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12730/1011/2021 | R28387

Complainant:

Dr. Raj Kumar Das, ...Complainant
Research Scholar,
A.K. Golder Laboratory (AR6B),
Chemical Engineering Department
IIT Guwahati,
Assam – 781039

Versus

Respondent : R28388

CSIR-Institute of Minerals & Materials Technology, ...Respondent
(Through the Director)
Sachivalaya Marg,
RRL Campus,
Acharya Vihar,
Bhubaneswar,
Odisha – 751013

Disability : 70% Hearing Impairment

Gist of Complaint:

Dr. Raj Kumar Das, the complainant, a person with 70% hearing impairment submitted that he had applied to the post of Scientist (Post Code:S03) in CSIR-IMMR Bhubaneswar which is reserved for HH category against their Advt. No.01/2019 dated 16.09.2019. He has been selected for the interview. He was the only candidate with hearing impairment for the said post. He attended the interview on 22.09.2020 at CSIR-IMMT Bhubaneswar. As the panel members were in virtual mode and as the Director was about 15 feet away from him with protective mask due to Covid-19, he could not do any lip reading on account of these constraints and this affected his answers as well as selection to the post. During his 9 months of teaching as Guest

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली–110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

Faculty at NIT, Arunachal Pradesh, he had successfully conversed with students by aiding verbal sounds with lip reading.

2. The matter was taken with the Director, CSIR-Institute of Minerals and Materials Technology, Odisha vide letter dated 03.06.2021.

3. The Controller of Administration, CSIR-Institute of Minerals & Materials Technology, Bhubaneswar vide letter dated 29.06.2021 submitted that the Complainant had applied for the post of Scientist (Post Code S03) against Advt. No. 01/2019 vide Application No. 2485. Under the said Post Code 02 posts were reserved for SC category. 11 posts of Scientists were notified, out of which one post was reserved horizontally for HH category. Dr. Raj Kumar Das was shortlisted by the Screening Committee with relaxed standards to be called for interview. Accordingly, call letter was issued to Dr. Raj Kumar Das for appearing for interview for the post of Scientist scheduled on 22.09.2020. Keeping in view the risk of infection in the event of travel by the candidates and in order to avoid exposure during Covid pandemic situation, both the option for appearing in interview, i.e. virtual mode as well as physical appearance mode as was kept open for the candidates and accordingly the applicant preferred to appear in physical presence mode and he appeared in person before the Selection Committee for the interview at CSIR-IMMT, Bhubaneswar. The interview was held as per procedure. Before the commencement of interview, the audio and video quality for the interview was thoroughly checked by expert IT professionals for all the candidates including Dr. Das so as to ensure that the candidates do not face any problem in the interview and was suitably adjusted to their requirements. The same procedure was also scrupulously followed for Dr. Das before commencement of his interview. As was given to understand by Dr. Das, he was very much

comfortable with the Selection Committee. The interview commenced and completed in a friendly and cordial manner. During the course of interview, the complainant did not raise any issue of problem of difficulty in hearing or difficulty in lip reading due to protective mask etc. Had he raised any such issue during the course of interview, the selection committee would have taken proper care and would have definitely solved the issue. As regards the statement that one of the members of the Selection Committee was sitting at a distance of 15 feet, the Respondent submitted that one of the members of the Selection Committee was present physically inside the Interview Room wearing mask within the audible limit the complainant during the course of interview and the distance between the complainant and the member was maintained at around 6 to 7 feet in order to comply with the norm for social distancing. The audio quality and video quality was thoroughly checked by the expert I.T. professional before the commencement of the interview of Dr. Das and it was suitably adjusted as per his requirements and satisfaction. Had he raised the issue of difficulty in hearing or lip reading, then and there the member would have solved the issue in consultation with the whole Selection Committee, but he did not do so. The Selection Committee gave due care and weightage to the performance of the complainant in the interview with relaxed standards as per provisions of law but unfortunately, he could not secure the threshold mark for selection.

4. The complainant vide his rejoinder dated 18.07.2021 submitted that he had exercised his choice of appearing in the interview physically with the hope that he would have been able to face the interview board more comfortably. He requested the IMMT Recruitment Cell by email on 08.09.2020 for a possible guest house accommodation. Unfortunately, he did not get any Guest House accommodation. On the day of interview he contacted the

officials at the interview front desk and intimated and alerted them of his physical limitation. Their response was quite apathetic and they even told him rudely to come back at 10:30 a.m. for document verification. On that day, there were only two candidates (including him) for the physical interview. The interviewer was around 15 feet away and the monitor was around 4 feet away. He was asked questions by four interviewers. One was sitting in the room. The second interviewer was online in video mode and the other two were online in audio mode. The interviewer, who was in the room, was sitting with face mask on. He submitted that he was struggling to get the questions asked by the interviewer as he was not able to lip read because of the mask he was wearing. He was quite satisfied with his performance and felt his presentation was well appreciated but he was deeply disheartened and demoralised to see the final result.

Observation/Recommendations:

5. The reply of the Respondent is satisfactory. It is observed that the complainant did not raise the issue of difficulty in hearing or lip reading anytime during the interview. However, Respondent is advised to ensure that candidates with disabilities are provided with facilities required depending on their disability during the interview so that they are comfortable during their interview and also to ensure that there is no discrimination to the persons with disabilities on account of his/her disability.

6. The case is disposed off accordingly.

Upma Srivastava

Dated: 18.08.2021

(Upma Srivastava)
Commissioner
for Persons with Disabilities

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12739/1023/2021 R28400

Complainant: Smt. Uma Mahesh Panchal
e-mail: <piyagaikwad021@gmail.com>

Respondent: The Commandant
Military Hospital Kirkee
Range Hills, Khadki, Pune – 411020
E-mail: <dglpmhke@gmail.com>

R28401

Complainant: 100% Hearing impairment

GIST of the Complaint:

Complainant vide complaint dated **11.05.2021** submitted that she is working in Military Hospital Kirkee Ranghills Khadki Pune as a Ward Sahayika and due to the Covid-19 pandemic, she is not getting any transport facility to reach the hospital and don't have own vehicle also. She further submitted that she cannot work from home as she is unable to communicate on telephone and electronic means on phone call, therefore, she has requested to sanction the special casual leave in the Lockdown period from 12th May 2021 till the Lockdown ends.

2. The matter was taken up with the Respondent vide letter dated **11.06.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Col Sr. Registrar, Military Hospital, Kirkee vide letter dated **05.07.2021** inter-alia submitted that her request for exemption from attending the office during lockdown cannot be acceded to and in case Smt. Uma Panchal is having difficulties in performing her duties in a hospital, she may be advised to apply seeking employment in a non-hospital set up. They further submitted that the unlock down process has already been started by the Govt. of Maharashtra, hence there is no substance in the complaint.

Observation/Recommendations:

4. Non sanctioning of leave – DoPT OM No. 36035/3/2013-Estt.(Res) dated 31.03.2014 lays down certain guidelines for providing certain benefits in respect of Persons with Disabilities employed in Government for efficient performance of their duties. In Para – G of the O.M. another DoPT O.M. dated 19.11.2008 is mentioned, in which provision for 4 days of 'Special Casual Leave' in a calendar year for Persons with Disabilities is provided.

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

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

....3.....

(131)

6. Hence, this court recommends that the issue of sanctioning of leave shall be settled in accordance with DoP&T's OM and of Reasonable Accommodation delineated above as the complainant is entitled for leave/exemption from duty during lockdown period.

7. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12731/1021/2021 / R28402

Complainant: Shri Rajendra Kumar Kushwaha
E-mail: <rjkk12@gmail.com>

Respondent: The General Manager (Personnel) R28403
Coal India Ltd, "Coal Bhawan"
Personnel/EE, Div. 2nd Floor, Premises No. 04
Mar, Plot No. AF – III, Action Area – 1A, New Town
Rajarhat, Kolkata – 700156, West Bengal
E-mail: <cmd.ncl.cil@coalindia.in>

Complainant: 100% visual impairment

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक **02.06.2021** में कहना है कि वह कोल इंडिया लिमिटेड में सहायक प्रबंधक (सचिव/राजभाषा) ग्रेड ई–3 के पद पर कार्यरत है तथा वरीयता–सूची के अनुसार 04 अधिकारियों के नाम में से उनका नाम सबसे ऊपर था प्रार्थी का आगे कहना है कि नियमानुसार प्रार्थी की पदोन्नति उप प्रबंधक, ग्रेड ई–4 पर सबसे पहले होनी चाहिए थी परन्तु जूनियर अधिकारी को पदोन्नति कर दिया गया।

2. The matter was taken up with the Respondent vide letter dated **07.06.2021** under Section 75 of the RPwD Act, 2016.

3. In response, General Manager (Personnel), Coal India Ltd vide letter dated **01.07.2021** inter-alia submitted that in the DPC, the Performance appraisal ratings (PRIDE) of last 03 years corresponding to cut off dates i.e. 2018 – 19, 2017 – 18 & 2016 – 17 of eligible candidates were considered and the PRIDE ratings in respect of Sri Kushwaha for the year 2018-19, 2017 – 18 & 2016 – 17 were 'very good', 'very good' and 'zero' respectively, therefore, Sri Kushwaha was considered by DPC in the meeting held on 10.04.2021, but Committee did not recommend him for promotion to E4 grade due to zero rating for the year 2016-17.

4. प्रार्थी का अपने प्रति उत्तर दिनांक **02.07.2021** में कहना है कि वह अपना PRIDE किसी दृष्टिवान की सहायता से कार्यालय में भरवाते है जिसमें कभी–कभी त्रुटियां भी होने की संभावना बनी रहती है तथा इसी वजह से वर्ष 2016–2017 के दौरान वह Online PRIDE भरने में असमर्थ रहे। प्रार्थी का आगे कहना है कि इस बारे में उन्होंने उच्च अधिकारियों कों भी लिखा था परन्तु कोई जवाब नही आया।

5. After considering the respondent's reply dated **01.07.2021** 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 **29.07.2021** but due to administrative exigencies, hearing rescheduled on **02.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Adv. Rajendra Kumar on behalf of complainant
- Suarapureddi Ravindranathan on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that his name was on Sr. No.1 in seniority list, however he was denied promotion from Assistant Manager Post (E-3 grade) to Dy. Manager post (E-4 grade). Further he submits that DPC while considering his promotion considered ratings of 2016-17 as 'Zero'. This act of DPC is act of discrimination because ratings are given on the basis of 'PRIDE' form, which is filled by the employee himself on the online portal. Complainant has to take help of the other employee to fill the form. Because of his nature and severity of disability he failed to fill the form on time. He applied for filling the form on later date, however, Respondent did not permit him to do the same.

....3....

8. Divyang employees have special needs. Respondent is duty bound to take care of special needs of the divyang employees. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it positive obligation of the Respondent to provide barrier free and conducive environment to divyang employees. For interpretation of term 'barrier free and conducive environment' DoPT O.M. dated 31.03.2014 must be referred to. Para C of the O.M. lays down that special furniture, wheel chairs (motorised if required by the employee), software scanners, computer and other hardware, etc. must be provided to divyang employees in accordance with their requirement, which would improve their efficiency.

9. Respondent's act of not promoting the Complainant is perfect example of discrimination with divyang employees. It is admitted fact that because of nature and severity of the disability, Complainant could not fill online PRIDE form. He informed the Respondent about his inability to fill the form and requested the Respondent to permit him to fill the form on later date. On receiving the application from the Complainant, Respondent should act according to Section 20(2) of RPwD Act and DoPT OM dated 31.02.2014. However, respondent not only failed to act accordingly, also failed to promote the divyang employee by considering his rating for 2016-17 as 'Zero'. This is grave injustice with divyang employee. All help should be extended to ensure that APAR is submitted by the PwD by cross checking with the person.

10. Hence, this court recommends that Respondent shall again constitute DPC, since the Complainant could not fill the online PRIDE form with no mistake on his part. Reconstituted DPC shall consider ratings of 2019-20 for considering the promotion of the Complainant.

11. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12689/1023/2021 / R28404

Complainant: Shri Pawan Kumar G Patil
e-mail: <pawankumar_patil@yahoo.com>

Respondent: The Zonal Manager
LIC of India, Western Zonal Office, Yogakshema R28405
Mumbai – 400021
E-mail: <wz_pirdesk2@licindia.com>

Complainant: 100% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **06.04.2021** submitted that he had appointed as a Assistant in LIC of India on 07.02.2020 and as per rule, his probation period was 06 months from date of joining i.e. on August 2020 but till date he has not received confirmation letter.

2. The matter was taken up with the Respondent vide letter dated **09.04.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Regional Manager (P&IR), LIC of India vide letter dated **10.05.2021** inter-alia submitted that Shri Pawan Kumar G Patil has been confirmed in the services of the confirmation of the Corporation w.e.f. **04.12.2020**.

4. Complainant vide rejoinder dated **07.06.2021** alleged that his confirmation date was intentionally extended for approximately 04 months without any reason.

5. After considering the respondent's reply dated **10.05.2021** and the complainant's rejoinder dated **07.06.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.07.2021** but due to administrative exigencies, hearing rescheduled on **02.08.2021**.

136

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Shri Pawan Kumar G Patil – complainant
- Shri R.Y. Mohite on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that he joined Respondent establishment in February 2020. As per the Appointment Letter, duration of Probation Period was 6 months. Hence Respondent was bound to confirm him in August, 2020, after completion of 6 months of probation period. He alleges that despite of completing probation period, he has not been given confirmation letter. Hence, the Complainant is not able to avail benefits like medical leave etc.

8. Respondent replied that the Complainant has been confirmed with effect from 04.12.2020. The same has been conveyed to the Complainant vide letter dated 19.04.2021.

9. Further issue was raised by the Complainant in his Rejoinder that he was confirmed after 4 months of the due date. Respondent during online hearing informed the court that Probation Period of the Complainant was extended because performance of the Complainant was not satisfactory.

10. Complainant informed the court that basic infrastructure like desk and computer were not disabled friendly. No special arrangements were there in the office to take care of the needs of divyang employees.

11. This court finds merit in the argument of the Complainant. There is direct corelation between conducive environment provided to the divyang employees and their performance. It is unjust to expect world class performance from divyang employee when even basic infrastructure facilities are not provided to him.

....3.....

12. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it positive obligation of the Respondent to provide barrier free and conducive environment to divyang employees. For interpretation of term 'barrier free and conducive environment' DoPT O.M. dated 31.03.2014 must be referred to. Para C of the O.M. lays down that special furniture, wheel chairs (motorised if required by the employee), software scanners, computer and other hardware, etc. must be provided to divyang employees in accordance with their requirement, which would improve their efficiency.

13. Respondent failed to act accordingly. Respondent did not approach this court with clean hands. Respondent's act of extending probation period because of unsatisfactory performance is violative of RPwD Act, 2016. Unsatisfactory performance of the Complainant, if any, is result of the lack of infrastructure facilities extended to the employee. Moreover, no notice was issued to the complainant as to why his probation may not be extended. He was not given an opportunity to defend himself. Hence, this court concludes that decision of extending probation period of the Complainant is violative of Principles of Natural Justice as well.

14. This court recommends that Respondent shall review the decision of extending the probation period of the Complainant and shall confirm him from the same date on which his confirmation was due according to the Appointment Letter issued to the Complainant.

15. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12707/1023/2021 28406

Complainant: Shri Surendra Prasad
E-mail: <sprasad12@rediffmail.com>

Respondent: The Director, Bhabha Atomic Research Centre, Trombay, Mumbai – 400085
E-mail:<caoa@barc.gov.in>

R28407

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **15.04.2021** inter-alia submitted that his all APAR from period 2014 – 2015, 2015 – 2016, 2016 – 2017 is showing good grading but after some differences with Head, the officers marked low grades in APAR i.e. 'B'. He further submitted that there is complete denial/delay in promotion by providing low grade again and again.

2. The matter was taken up with the Respondent vide letter dated **17.05.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **16.06.2021** inter-alia submitted that BARC implements 'Merit based promotion', and NOT time-based promotion, in which an employee is promoted to the next grade only if he/she completes minimum years in the present grade and is also found eligible for the promotion based on his/her performance in the preceding years. They further submitted that there is no complete denial/delay of promotions as he has been promoted to higher grades from time to time based on his performances and APAR grading.

4. Complainant vide e-mail dated **02.07.2021** reiterated that there has been delay in promotion by marking low grade 'B' or "B" in APAR due to his disability

139

5. After considering the respondent's reply dated **16.06.2021** 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 **26.07.2021** but due to administrative exigencies case rescheduled on **02.08.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2021**. The following were present:

- Shri Surendra Prasad– complainant
- Shri D. Srinivas Rao and Ms. Laxmi Devi on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Two issues are raised by the Complainant in his Complaint. One is related to his transfer to the office situated nearby to his place of accommodation. Second one is related to his APAR Grading.

8. On the issue of transfer, Respondent submitted that the Complainant was posted in the office situated nearby to his place of accommodation. However, after various Complainants filed by the female employees against the Complainant in the present case, he was transferred to the present office. Reply on the point of transfer is accepted and court is not inclined to intervene on this issue.

9. On the issue of APAR gradings, reference is made to APARs dated 14.09.2020 and 06.08.2019. In both report dated 14.09.2020 and 06.08.2019, he has been given 'B+, Good' grading, along with a remark by Head of Section that 'due to health reasons, he is unable to provide dedication to plant/lab work assigned to him'.

10. Respondent has failed to fulfil the duties assigned to him by virtue of Section 20(2) of Rights of Persons with Disabilities Act, 2016 and subsequent guidelines. Section 20(2) of Rights of Persons with Disabilities Act, 2016 makes it positive obligation of the Respondent to provide barrier free and conducive environment to divyang employees. Work which can be handled well by the complainant should be allotted to him.

....3....

11. In the present case, instead of providing barrier free environment, Respondent took into consideration the challenges faced by the Complainant because of his disability while assigning grades in the APAR.

12. Hence, this court recommends that the Respondent shall review the entire matter of APAR gradings and his performance through a Committee which is independent of his immediate superiors. Further, respondent shall not downgrade APAR because of complainant's inability to perform work due to his disability.

13. The case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021

सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No: 12703/1023/2021 R28412

Complainant: Shri Devendra Meena
L – 1542, Gali No. 09, Church Colony
Sangam Vihar, New Delhi
E-mail: <devondrakatrawat1999@gmail.com>

Respondent: The Executive Director
Nehru Yuva Kendra Sangathan
M/o Youth Kendra Sangathan
4, Jeevan Deep Building, Ground Floor
Parliament Street, New Delhi
e-mail: <ddpersonnel@gmail.com>

R28413

Complainant: 40% visual impairment

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक **15.04.2021** में कहना है कि वह नेहरू युवा केन्द्र, यमुना विहार में मल्टी टास्किंग स्टाफ (MTS) के पद पर कार्यरत है तथा वहाँ के जिला युवा समन्वक (District Youth Coordinator) प्रार्थी को अन्धा कहा कर बात करते एवं परेशान करते है जैसे जानबूझ कर फिल्ड का कार्य देना और फिर ऑटो का किराया भी न देना। प्रार्थी ने आरोप लगाया है कि दिनांक 17.03.2021 को उन्हें धक्का मारकर ऑफिस से निकाल दिया गया और अब ऑफिस में नहीं बैठने दे रहे है। जिसकी रिपोर्ट प्रार्थी ने प्रधान कार्यालय में की परन्तु कोई कार्रवाई नहीं हुई।

2. The matter was taken up with the Respondent vide letter dated **15.04.2021** under Section 75 of the RPwD Act, 2016. But despite Reminder dated **31.05.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **20.07.2021** but due to administrative exigencies, hearing rescheduled on **22.07.2021.**

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

- Adv. Raja Panda on behalf of complainant
- Sudhir Pandey, Asst. Director (Legal) on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.

4. Complainant submits that despite of his disability he is assigned field work. Travelling expenses incurred by him for performing field work are also not reimbursed. Further Complainant submits that abusive terms are hurled at him by some of the officers of the establishment and on 17.03.2021 he was refrained from attending office.

5. Respondent submits that 1 member Committee has been constituted to investigate the issue of assigning field work and use of abusive terms. Further, respondent submits that the Complainant is not attending office since last one year approximately and his salary is continued to be paid. Respondent also assured that the Complainant will not be refrained from attending office if he will join the office.

6. Reply filed by the Respondent is satisfactory. This court recommends that the committee shall investigate and resolve the issue as soon as possible. Further, Complainant shall join office and shall not be refrained from attending the office.

7. Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 18.08.2021