



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. 12452/1014/2020

Complainant:

Ms. Rekha Kumari,
Vill : Bhavani Bigha,
Post : Apsad,
Thana : Warisaligang,
Dist. : Navada,
Bihar – 805 108.

Versus

Respondent :

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

Disability : 61% Multiple Disability

Gist of Complaint:

Ms. Rekha Kumari, the Complainant vide her complaint dated 01.12.2020 submitted that the Railway Recruitment Cell, Western Railway had advertised for recruitment of Group-D employees vide Notification No. RRCEN 02/2018. Her Roll Number is 112014042730014. Railway Recruitment Cell Western Railway Ahmedabad has done the Medical and document verification of the complainant. She was advised to go for re-medical even though her Disability Certificate was issued by the Civil Surgeon of a Government Hospital. She submitted that she was not called for re-medical so far by the Respondent even after lapse of more than 9 months.

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2. The Chairman, RRC, Mumbai vide letter dated 02.02.2021 submitted that Ms. Rekha Kumari has been examined with regard to the appeal of Re-medical. No appeal for Re-medical has been received from the complainant till date. The Respondent vide their another reply dated 17.02.2021 submitted that the complainant has since submitted an appeal for re-medical which was promptly put up to the competent authority, i.e. Principal Chief Medical Director for perusal and consideration. The papers submitted with the appeal were examined by the Principal Chief Medical Director. The complainant was initially examined by a team of specialists including Ophthalmologist and Orthopedic Surgeon. As there was discrepancy of visual disability as per assessment of Ophthalmologist / JRH, the matter was referred to concerned state authority and in view of the State Authority's agreement to Railway Ophthalmologist finding, the unfit certificate was issued. Therefore, the appeal for re-medical Board was not considered by the Principal Chief Medical Director which has also been conveyed to Ms. Rekha Kumari separately.

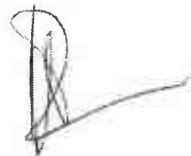
Hearings : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 19.03.2021.

3. The following persons were present during the hearing ;

- 1) Ms. Rekha Kumari, Complainant in person.
- 2) Shri Rajesh Chaudhari, Chairman, RRC Mumbai for Respondent.

Observations & Recommendations

4. Complainant submits that Disability Certificate certifying her 'Multiple Disabled' (Locomotor Disability and Visual Impairment) was issued. She successfully passed written examination conducted for the purpose of recruitment to Group D posts. However, her candidature was rejected as she was not found suffering from Multiple Disability because she was found Visually fit.



- 5. Respondent submits that the Complainant successfully passed recruitment examination under the category of 'Multiple Disability'. Her candidature was rejected because she was found Visually fit. Further, her claim of being suffering from 'Locomotor Disability' was found true, however, because of lesser marks she could not qualify under the category of 'Locomotor Disability'.
- 6. Though it is an unfortunate incidence that a person suffering from locomotor disability was wrongly certified as 'Multiple Disabled', however, the Respondent cannot be said to have caused discrimination with the Complainant. Hence, interference of this court is not warranted.
- 7. The case is disposed off.

Dated: 01.04.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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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. 12440/1011/2020

Complainant :

Shri Sunil Kumar Bind,
House No. J 12/84 A,
Dhoopchandi,
Varanasi – 221 002.

R-26972

Versus

Respondent :

Banaras Hindu University,
(Through the Registrar)
Varanasi,
Uttar Pradesh – 221005.

R-26973

Disability : 60% Locomotor

Gist of Complaint:

The complainant vide his complaint dated 27.11.2020 submitted that Banaras Hindu University had advertised for the post of Junior Clerk (Post Code :4384054445) vide its Advertisement No.06/2018-19 on 14.02.2019. The Examination Centre was Jamshedpur, Jharkhand and the date of examination was 22.09.2019. The complainant had requested for a Scribe while applying for the post. As per practice the form for Scribe is also given along with the Admit Card for the examination, but it was not done in his case. The Admit Card was given one week before the commencement of the examination and Scribe form was given one day before the examination. This causes inconvenience to the person with disabilities and he has to appear before the examination alone without any Scribe. Thus candidate with disabilities is also denied 20 minutes of extra time per hour for the examination.

2. The Joint Registrar (Recruitment & Assessment Cell), Banaras Hindu University vide letter dated 08.01.2021 submitted that the benefit provided to incumbent to apply for the particular post is being given as per Gol norms. As far as, the matter of scribe is concerned, instructions have already been mentioned for the candidates at point no.22 of the admit card which is reproduced below;

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"Candidate may note that compensatory time of 20 minutes per hour of examination (with or without scribe) will be provided to the following eligible persons with Disability (PwD) candidates – OH (OA, OL, OAL, BL, AAV,D)/VH (LV)/HH/MD"

The candidates coming under PwD category are awarded 20 minutes extra time to complete the examination as per Govt. of India norms. The Provisional admit card was issued to all the candidates on 16.09.2019 and at the point no.23 of 'Important Instructions to the Candidates' section of the said admit card, it is clearly mentioned that candidates requiring a scribe shall make a formal request to the JR (RAC) through email latest by 17.09.2019 but neither Shri Sunil Kumar Bind has requested the Joint Registrar (RAC) regarding scribe through email prior to stipulated date, i.e. 17.09.2019 nor he has requested at the time of Written Test (CBT) held on 22.09.2019. The Respondent submitted that no request was attached with the application form contrary to his claim of applying for scribe at the time of filling of application form. 4% reservation has already been provided by the University for the post of Junior Clerk.

3. **Hearing** : The case was fixed for video conferencing by the Commissioner for Persons with Disabilities on 16.02.2021. The said hearing has been postponed to 12.03.2021 due to administrative exigencies.

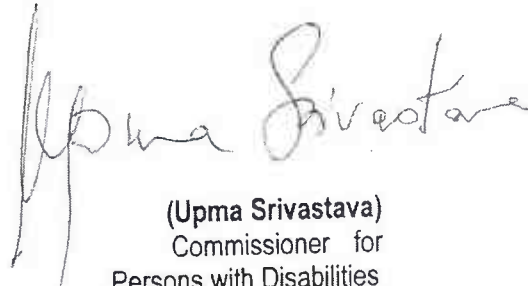
4. The following persons were present during the hearing on 12.03.2021 ;
1. Shri Sunil Kumar Bind, Complainant.
 2. Shri Sunita Chandra, Joint Registrar, on behalf of Respondent.

OBSERVATIONS & RECOMMENDATIONS

5. After hearing both the parties, Court observed that the Complainant had four opportunities to inform the Respondent about his requirements of scribe. However, Complainant failed to apply for the scribe facility. Further, Complainant submitted that he informed the Respondent about requirement of scribe facility. Therefore, the Complainant may provide the evidence of sending the email to the Respondent. Accordingly, Respondent is recommended to revisit the case after receiving the evidence from the complainant.

6. The case is disposed off.

Dated : 01.04.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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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. 12485/1011/2020

Complainant :

Shri Manmohan Bajpai,
D-2158, Indira Nagar,
Lucknow - 226016

R-26974

Versus

Respondent :

Khadi & Village Industries Commission,
(Through the Chairman),
Ministry of MSME,
3, Gramodaya,
Irla Road, Vile Parle (West),
Mumbai - 400 056

R-26975

Disability : 40% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 30.11.2020 submitted that he wanted to apply for the post of Director and Deputy Director against an Advertisement No.KVIC/Adm./Recruitment/Dir-Dy.Dir(DR)/2(30)/2020-21 of Khadi and Village Industries Commission but KVIC has not provided any reservation to persons with disabilities. The sanctioned strength for the post of Director is 44 and for the post of Deputy Director is 43 and there are many other posts in Group A cadre. The Complainant submitted that in a written reply to the RTI, KVIC has replied that at present no officials of PH category are working in the post of Director and Deputy Director in KVIC. This means that KVIC is not interested to fill up 4% quota reserved for persons with disabilities. He submitted that KVIC is not providing any fee relaxation to PH persons. The complainant has requested to give direction to KVIC to provide proper reservation and relaxed standards to visually and physically physically challenged to the post of Director and Deputy Director.

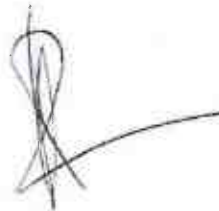
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2. The Director (Adm. & HR), KVIC vide letter dated 07.01.2021 submitted that Shri Manmohan Bajpai submitted that the complainant is 40% visually impaired candidate and has applied for the post of Director in KVIC vide Applicant ID No.107484 and also paid an amount of Rs.1500/- towards the application fee. Due to less number of vacancies, i.e. 18 posts of Director and 16 posts of Deputy Director, the 4% reservation (which comes to less than 1) could not be provided to a PwD candidate. The sanctioned strength of Director is 44 and Deputy Director is 43. Apart from the above Group-A posts, there are only two posts which are above, i.e. Deputy Chief Executive Office (Sanctioned strength is 08) and Joint Chief Executive Officer (Sanctioned Strength is 01). Due to non-availability of suitable candidates in the feeder cadre & after exhausting of all channels of recruitment, i.e. deputation including short-term contract (even after 5 attempts), the Ministry of MSME accorded approval to fill up 18 posts of Director and 16 posts of Dy. Director through Direct Recruitment (DR) as a onetime measure. The post of Directors and Deputy Directors are 100% promotional post and at present no PH person is available/working in the post of Director and Deputy Director in the feeder cadres, The allegation made by the complainant is not correct. The post of Directors and Deputy Directors are 100% promotional post and at present due to non-availability of suitable candidates in the feeder cadre & after exhausting of all channels of recruitment, i.e. deputation including Short Term Contract (even after 5 attempts), the Ministry of MSME accorded approval to fill up 18 posts of Director and 16 posts of Dy. Director through Direct Recruitment as a onetime measure. Since the post has not been reserved for PwDs due to less number of vacancies, i.e. less than 1 number, therefore, no relaxation in fee has been provided.

3. The complainant vide his rejoinder dated 15.01.2021 reiterated that KVIC has not given any reservation in the post of Director and Deputy Director in their advertisement. The Respondent has submitted in their reply that the sanctioned strength of Director is 44, Deputy Director is 43, Deputy Chief Executive Officer is 08 and Joint Chief Executive Officer is 01 which means inspite of the total sanctioned cadre strength is 96, KVIC did not give any reservation for PwD candidates in its advertisement.

4. **Hearing** : The case was fixed for video conferencing by the Commissioner for Persons with Disabilities on 16.02.2021. The said hearing has been postponed to 12.03.2021 due to administrative exigencies.

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5. The following persons were present during the hearing on 12.03.2021 ;
- 1) Shri Manmohan Bajpai, the complainant in person.
 - 2) Shri G. Guru Prasanna, Deputy CEO (Admin) and Shri Sandeep Kotey for Responent.

OBSERVATIONS & RECOMMENDATIONS

6. Responent issued notification for filling 18 vacancies in the post of Director and 16 vacancies in the post of Deputy Director, both Group A posts. Responent admitted that no seat was reserved for Persons with Benchmark Disabilities. Responent submits that reason for not providing reservation was that 4% of 18 and 16 is less than 1 and hence it was not possible to reserve any seat for PwBD candidates.

7. Further, it is also alleged that the Responent charged examination fees from the PwBD candidates. Responent submits that since no seat was reserved for PwBD candidates hence, no exemption from payment of examination fees was given to PwBD candidates.

8. Both acts of the Responent, i.e. non reservation of seats for PwBD candidates and charging of fees from PwBD candidates is violative of settled legal position.

NO RESERVATION FOR PwBDs

9. Clause 2.2 of DoPT O.M. No. 36035/02/2017-Estt (Res), dated 15.01.2018 lays down the formula of calculating total number of vacancies mandated to be kept reserved for PwBD candidates. As per the Clause, 4 percent of total number of vacancies arising in each group of post, i.e. Groups A, B, C and D shall be reserved for PwBD candidates. Responent committed error in calculating 4% of 18 (vacancies for the post of Director) and 16 (vacancies for the post of Deputy Director) separately. Since both the posts of Director and Deputy Director are Group A posts hence as per Clause 2.2 of the O.M., the Responent was supposed to calculate 4% of 34 vacancies (18 and 16 vacancies combined). 4% of 34 results in 1.36, hence, as per the formula of calculation laid down in DoPT O.M., Responent was under obligation to reserve at least 1 vacancy for PwBD candidates.

10. During online hearing it was informed by the Responent that the impugned recruitment process is not complete yet and assured that the Responent shall keep 1 seat vacant and will later conduct recruitment process to fill such vacant seat with Persons with Benchmark Disabilities.

CHARGING OF EXAMINATION FEES

11. Respondent admitted that examination fees was charged from all the candidates who applied against the impugned advertisement/notification, irrespective of her/his PwBD category. Respondent reasoned that since no vacancies for PwBD candidates was reserved hence exemption from payment of examination fees was not given.

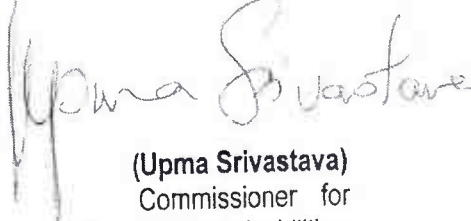
12. DoPT issued O.M. No. 36035/2/2017-Estt.(Res), dated 23.08.2019. As per Clause 3 of the O.M., PwBD candidates are exempted from payment of application fees and examination fees prescribed in respect of various examinations. Exemption given under the O.M. is not based upon the reservation for PwBD candidates, such exemption is based upon the PwBD status of the applicant, irrespective of number of vacancies reserved for PwBD candidates.

13. Therefore, this court recommends that the Respondent shall revisit the Roster and earmark 1 post of either Director or Deputy Director reserved for PwBDs in accordance with the Roster. Such reserved post shall be filled by the PwBD candidate by separate recruitment process. Further, this court recommends that the Respondent shall refund the amount charged from PwBD applicants.

14. During online hearing Respondent submitted that other vacancies will be filled in near future by mode of promotion. Various Complaints are filed before this court whereby grievances related to reservation for PwBD in promotion and recruitment process are raised before this court and this court has passed Orders delineating various judgments of the Hon'ble Supreme Court and various High Courts and various guidelines issued by DoPT and MoSJ&E, U.O.I. Two such Orders passed by this court namely, **SRI UMA PRASAD v. CEO EMPLOYEES PROVIDENT FUND ORGANISATION; 11183/1021/2019** and **SRI RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EXAMINATION; CASE NO. 12349/1011/2020** are attached herewith. This court recommends that the Respondent shall follow these guidelines before conducting fresh recruitment for PwBD candidates against 1 vacancy left vacant and also follow these guidelines before conducting recruitment process to fill the vacant posts by way of promotion.

15. The case is disposed off.

Dated :01.04.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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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. 12248/1011/2020

Complainant :

Shri Shashank Saurabh,
S/o, Shri Nagendra Nath Jha &
Padmaja Jha,
R/o. D4 9E Sail City,
New Pundag,
Ranchi, Jharkhand – 834 007.

Versus

Respondent 1 :

Union Public Service Commission,
(Through the Secretary),
Dholpur House,
Shahjahan Road,
New Delhi – 110 069.

Respondent 2 :

Department of Personnel & Training,
(Through the Secretary),
Ministry of Personnel, Public Grievances and Pensions,
North Block, New Delhi – 110 001.

Disability : 40% visual impairment.

Gist of Complaint:

The complainant vide his complaint dated 25.08.2020 submitted that Shri Shashank Saurabh served in the Indian Armed Forces from 2012 to 2017 and was a Class-A Gazetted Officer. In his distinguished service career, he achieved experience in Counter-Insurgency / Counter-Terrorism Operations, Man-management and served as Commander on appropriate level. He earned distinct qualifications like Para Trooping badge with more than 50 jumps from Aircrafts, Anti Tank Guided Missiles (ATGMSs) badge etc and was an outstanding serviceman. He suffered an injury in his eyes due to a blast while on duty which severely impaired his vision. He is a dual degree graduate from the U.S. and India and is a Mechanical Engineer (Major) from KIIT University, Bhubaneswar and Aerospace Engineer (Minor) from the Henry Samueli School of Engineering, University of California, Los Angeles as another part of dual degree with full Scholarship while on campus. He has many more degrees/certificates to his credit. Shri Shashank Saurabh appeared in CSE-2017, CSE-2018 and lastly CSE-2019 conducted by UPSC

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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)

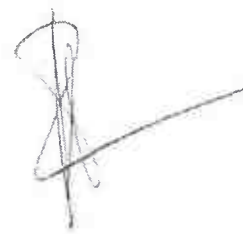
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with Roll Nos. 0358330, 6319679 and 4128558 for respective years. He appeared in all the three examinations as PH-02 category candidate which is a category for visually impaired candidate. It includes both the blind and low vision candidates. However, there is no horizontal sub-classification. Shri Saurabh did not find his name in the final result of CSE-2019.

Shri Shashank Saurabh after declaration of result, perused the trend of the results in PH-02 Category wherein he noted that the low vision candidates were systematically being discriminated amongst the other candidates in various categories. The bare perusal of the result available on the website of the UPSC indicates that the LV-PH-02 candidates are not succeeding / qualifying the minimum threshold and thus being not selected. The complainant submitted that since the year 2014, a new mechanism was put in place after the judgment of the Hon'ble High Court that the LV-PH-02 candidates are to be provided with extra 20 min per hour for enabling them to write the exams in a profound manner. The LV-PH-02 candidates despite being provided with 20 min per hour of extra time are systematically being disqualified owing to the opaque scaling. The complainant conclusively believes that the marks of Shri Saurabh in LV-PH-02 category, has been tampered with due to which Shri Saurabh has not been able to qualify the threshold. Shri Saurabh this year has been expecting his marks between 990-1010 range, which is good enough to crack a top 100-200 rank and well above the general cut-off of 950 marks looking at the cut-off for this year declared by the UPSC and marks received by the successful candidates whereas the VI category cut-off was at 890. The complainant conclusively believes that there is a foul play by Respondent No.1 against the LV-PH-02 candidates whereby the candidates under the said category have been systematically weeded out.

2. The Deputy Secretary, UPSC vide letter No. 12/22/2020-E.IV dated 19.10.2020 submitted that the result of the Civil Services Examination (CSE) is processed strictly in accordance with the Rules of Examination as contained in the Gazette Notification issued for respective years of examination. The Cadre Controlling Authority which is DoP&T in the case of CSE, firm up the vacancy position under different categories for a given examination year and furnished the same to the Commission for the purpose of recommendation of candidates. The Commission processes the result keeping in view (a) the number of vacancies reported under different categories by the Government and (b) the relevant proviso of the Rules of Examination governing CSE for qualifying / recommending candidates under each of the categories for the next stage. While declaring the result of the written (Main) Examination, the Commission applies moderation (intra-subject and inter-subject) which is a widely accepted tool for arriving at parity in the examinations having multi-subject / examiner evaluation. No other methodology for achieving inter-se parity is resorted to by

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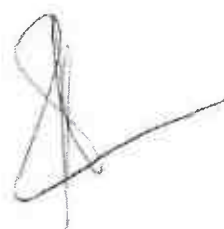
the Commission in CSE. While applying (intra-subject and inter-subject) moderation, only statistics are taken into consideration with full anonymity as regards candidate's details. Hence, question of any discrimination among candidates of different categories including the visually impaired candidates at any stage of examination, does not arise. The minimum qualifying standards at preliminary / Main stage and the marks secured by the last recommended candidates at the final stage in CSE and other structured examinations conducted by the Commission depend upon several factors such as relative performance of the candidates competing in any particular year, the difficulty level of the questions asked and the number of vacancies reported by the government. The trend will vary on yearly basis due to the factors involved. The Commission's control in the matter is limited except subject-wise moderation which is applied to ensure level-playing field across different subject. The Reserve list in CSE is maintained in pursuance of the proviso contained in Rules 16 (4) & (5) of the Notification for respective examination years. Reserve List is maintained for the sole purpose of catering to the choice exercised by the reserved community candidates (EWS/OBC/SC/ST) qualifying on general standards to facilitate them to be considered either against their own community standards or general category standard. Therefore, the Reserve List is not a "waiting list" to cater to unfilled vacancies arising out of other reasons, such as candidates not turning up to join, being found medically unfit. etc. In addition to the above, as regards complaint in respect of any discrepancy in transferring the marks of Shri Shashank Saurabh from the answer books to the mark sheets, it is stated that the same has been checked and no discrepancy has been found. Further, there is no notified provision for re-evaluation of the answer book. However, keeping in view the issues raised in the complaint, re-checking for clerical errors has been carried out in respect of all the nine answer books of the complainant and found that :-

- (i) There is no totaling errors.
- (ii) No part of any answer has been left unvalued.
- (iii) The answer books used are intact and
- (iv) There is no clerical error of any other nature.

The Respondent further submitted that Shri Shashank Saurabh appeared for the Personality Test but could not succeed the Civil Services Examination, 2019. Therefore, his request for his selection on the basis of that examination cannot be acceded to.

3. The complainant vide his rejoinder dated 27.10.2020 submitted that the Respondent has submitted that there is no wait list for PH candidates and the reserve / wait list is exclusively for the EWS/OBS/SC/ST/General candidates, i.e. for everyone except the PH-01, 02 & 03 candidates which is in strict contravention of the Rights of Persons with Disabilities Act, 2016. It is contrary to

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the reasons that if the LV candidates are being treated equally by the Respondent No. 1 as that of the other candidates, then it is highly unlikely that the LV candidates have minimal turnout as that of other category candidates, especially when LV candidates have extra 20 min per hour, thereby making it at a total of 01 Hr per session. The Respondent No.1 did not answer any question pertaining to the systematic discrimination of candidates amongst totally and partially disabled candidates. The Respondent No. 01 has not provided that if a PH category candidate qualifies under the respective Horizontal Category, will they be considered under the same reserved list ? The Respondent submitted despite the highest functional qualification of the Low Vision Candidates, the number of the earmarked seats for LV candidates have been restricted to 03 this year, which is against the right to equal opportunity in jobs for LV candidates as they have only 03 seats to get in and none of the LV candidates, even if they qualify in General Marks, can get into the General Merit List / General Seat. Such a practice is not only the violation of the Rights of Persons with Disabilities Act, 2016, but also gross violation of the Article 16(1) of the Constitution of India, hence perverse and void. The representation of the LV candidates suffers serious bias owing to the discriminatory policies of the Respondent No. 01 & 02 for LV candidates can only get recommended to the extent of limited earmarked seats, whereas they can appear for all the services except technical services, otherwise provided in the notification.

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

5. The Learned Counsel for Respondent No.1 requested for the adjournment of hearing scheduled on 05.01.2021 and requested for a new date of hearing. A new hearing date has been fixed on 29.01.2021 at 3:00 p.m.

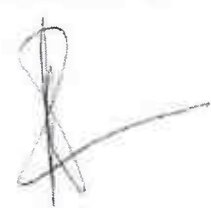
6. The case was heard on 29.01.2021 and the following persons were present during the hearing.

1. Shri Shashank Saurabh, the complainant along with Shri Vibhav Mishra, Advocate for Respondent.
2. Shri Rajeev M. Roy, Advocate for Respondent No.1.
3. Non one represented Respondent No.2.

7. Certain rules were quoted by Respondent No.1 and they requested for 16 days time for clarification.

8. No one represented Respondent No.2

9. The matter was listed for hearing on 16.02.2021. The said hearing has been postponed to 12.03.2021 due to administrative exigencies.



10. The following persons were present during the hearing on 12.03.2021.
- 1) Shri Vibhav Mishra, Advocate, for Complainant.
 - 2) Shri Paramjit Chadha, Under Secretary, UPSC for Respondent No.1 and Shri Rajeev M. Roy, Advocat-on-Record.
 - 3) Non one represented Respondent No.2

11. **Observations & Recommendations**

1. In the present complaint two issues were raised.
 - i) Divyang candidates are made to fill a form unlike non Divyang candidates.
 - ii) Adjustment of Divyang candidates selected on merits without obtaining benefits of relaxed standards against unreserved vacancies.

ISSUE – 1 – FILLING OF FORM

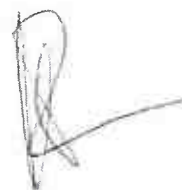
12. Apprehension is raised by the complainant that Divyang candidates who are made to fill a form detailing their personal credentials are discriminated against due to this form. Such forms are not masked and they are attached with answers scripts and are sent to examiners. This causes discrimination in the minds of examiners who award lesser marks to such Divyang candidates particularly visually impaired candidates.

13. No evidence to substantiate the claim is submitted by the complainant. Issues raised are mere apprehensions. The form which is filled by the Divyang candidates is for their own benefit. It makes it possible for the Respondent to ensure that facilities which are provided during an examination like scribe, extra time etc are effectively provided.

14. However, this court recommends that the Respondent shall review this aspect of examination process and if there is even a minuscule possibility of examiner getting to know about this aspect of about details of the candidate's disability then the Respondent shall rectify such error in order to ensure that confidentiality with respect to candidates' personal details is maintained.

ISSUE – 2 – ADJUSTMENT OF DIVYANG CANDIDATES AGAINST UNRESERVED VACANCIES

15. Complainant has raised the issue of non-adjustment of PwBD candidate selected on his own merit without obtaining benefits of relaxed standards, against unreserved vacancies. Respondent submitted that practice of non-adjustment of PwBD candidates selected on his own merit without relaxed standards against unreserved vacancies is followed because of Rule 17 of

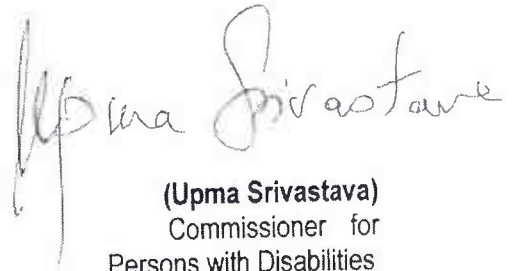


The Rules for Competitive Examination issued by DoPT dated 19.02.2019. As per the rules such adjustment can only be made only when amendment in the rule will be made and notified. Since, such amendment is not yet been notified, therefore, practice of non-adjustment is followed.

16. This court takes serious note of the situation. DoPT OM No. 36035/02.2017-Estt. dated 15.01.2018 clearly lays down that PwBD candidates selected on their own merits without relaxed standards are to be adjusted against unreserved vacancies. Therefore, it is unjust to follow a contrary practice with respect to Civil Service examination. It is also unjust to wait till eternity for making necessary amendments of rules. Guidelines laid down under DoPT OM are clear in this regard. Hence, DoPT cannot bypass its own OM by not notifying/amending the rules with respect to Civil Service examination. Hence, DoPT is recommended to make necessary amendments in the rules with respect to Civil Service examination within 90 days in order to bring them in line with their own OM dated 15.01.2018. Prompt action in this matter will eliminate injustice in the rights of the persons with disabilities.

17. The case is disposed off.

Dated: 01.04.2021



(Upma Srivastava)
Commissioner for
Persons with Disabilities

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न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12555/1011/2021

Complainant:

Dr. Nitesh Kumar Tripathi,
H.No.B-241, Gali No.11, 'B' Block,
Sant Nagar, Burari,
Delhi – 110 084.

R-26993

versus

Respondent :

Cantonment Board Ahmednagar,
(Through the Chief Executive Officer),
AMX Chowk,
Camp,
Ahmednagar – 414 002.

R-26994

Disability : 65% locomotor

Gist of Complaint:

Dr. Nitesh Kumar Tripathi, the complainant vide his complaint dated 08.01.2021 submitted that Cantonment Board Ahmednagar had published a recruitment advertisement vide Advt. No. ANR/ACB/Recruitment/2020-21 on 28.12.2020 for recruitment of Medical Professionals in which not a single vacancy has been reserved for persons with disabilities as per binding provisions under Sec 34 of RPwD Act, 2016 in the posts of Assistant Medical Officers. He submitted that 100 point reservation roster must be maintained and vacancy position number 1, 26, 51 and 76 must be reserved for PwD candidates as per binding provisions of RPwD Act, 2016. All the benefits such as age relaxation, exemption from payment of application fee, single window services for PwD and accessible examination / interview venue must be provided to the applicants with disabilities as per the spirit of RPwD Act, 2020.

-2-

2. The matter has been taken up with the CEO, Cantonment Board Ahmednagar vide letter dated 20.01.2021.

3. The Chief Executive Officer, Ahmednagar Cantonment Board vide reply dated 16.02.2021 submitted that Ahmednagar Cantonment Board has invited online applications for Direct Recruitment of various following posts through Recruitment Portal.

- | | | | |
|----|-------------------|---|---------|
| 1) | Medical Officer | - | 01 No. |
| 2) | Junior Clerk | - | 05 Nos. |
| 3) | Nurse | - | 01 No. |
| 4) | Assistant Teacher | - | 03 Nos. |
| 5) | Electric Lineman | - | 01 No. |

In the above posts, one post out of either Sr. No.02 or 04 is reserved for Visually Impaired or Hearing Impaired candidates. It has been also clarified in the advertisement that, in case no suitable candidate is found in preferred category, other categories of persons with disabilities will be filled against reserved vacancy. Therefore, the Respondent submitted that they have scrupulously followed Sec 34 of Rights of Persons with Disabilities Act, 2016. In the earlier occasion also Cantonment Board Ahmednagar has published an advertisement during the month of January 2015 for Direct Recruitment and at that time also, they had reserved 01 post for Visually Impaired /Hearing Impaired candidates in Group-C and Group-D category. However, the said reserved vacancies were not filled due to non-availability of suitable candidates from the respective category of persons with disabilities and the these posts were carried forward as per the orders of Chief Executive Officer of Ahmednagar Cantonment Board. Thus in the present advertisement the Ahmednagar Cantonment Board has published Backlog Vacancies of PwDs as carried forward from previous year. The Respondent further submitted that as per the requirement of minimum 4% reservation for PwDs and as per Sec 34 of RPwD Act, 2016, only one post can be reserved for PwDs in Group C posts in the present advertisement. As regards



the benefits of age relaxation, exemption from payment of application fees, it has been given in the advertisement. The Cantonment Board Ahmednagar has not appointed Grievance Redressal officer as it is not feasible to appoint separate Grievance Redressal Officer as contemplated under the Act being the vast activities and limited staff of the Cantonment Board. However, this will be put before the General Body Meeting to resolve this issue.

4. The copy of Respondent reply dated 16.02.2021 has been sent to the complainant vide letter dated 26.02.2021 for submission of his comments. No comments have been received from the complainant.

Observation/Recommendations:

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

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

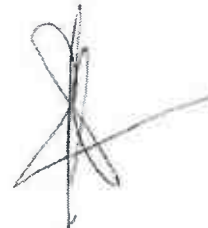
(a) blindness and low vision;

(b) deaf and hard of hearing;

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

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

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:



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

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

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

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

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

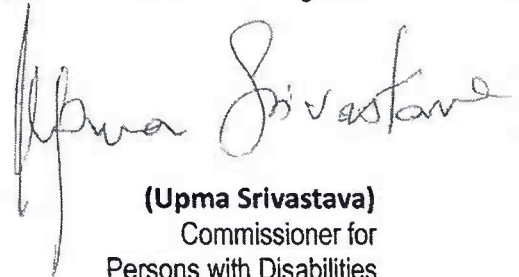


8. As per DoPT OM dated 15.01.2018, it is positive obligation of government establishments to make 100 points reservation roster. Further, as per Section 34 of RPwD Act, 2016, it is mandatory for government establishment to reserve minimum 4 percent of total number of vacancies for PwBDs.

9. Accordingly respondent is recommended to adhere with the provisions of RPwD Act, 2016 and circular issued by Govt. of India for appointment of Persons with Disabilities. It is further recommended to ensure that the rights of persons with disabilities shall not be infringed.

10. Accordingly the case is disposed off.

Dated: 01.4.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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सत्यमेव जयते

Extra 21

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12526/1041/2021

Complainant:

Shri Jagannath Bal
S/o Shri Narayan Ch. Bal
R/o Nischantapur, Post-Golapokhari,
PS – Tihidi, District-Bhadrak-752063 (Odisha)
Email: jjagannathbal@gmail.com

R-26952

Respondent:

National Testing Agency,
[Through: Director General],
UGC-NET Examination,
C-20, 1A/8, Sector 62, IITK,
Outreach Centre, Noida – 201309 (UP);
Email: ugcnet@nta.ac.in

R-26953

1. Gist of Complaint

1.1 Shri Jagannath Bal, M-35, a person with 70% Low Vision, filed a complaint regarding not providing Scribe/Writer by National Testing Agency [Respondent] in the UGC-NET (Computer Based Test) held on 11.11.2020. The complainant submitted that the respondent had mentioned that they would provide Scribe in that exam, but in the Admit Card it was mentioned that "You must bring your Own Scribe".

2. Clause IV, V and VI of the "Guidelines for conducting written examination for Persons with Benchmark Disabilities, issued by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment, vide Office Memorandum No.34-02/2015-DD-III dated 29.08.2018 provide as under:

"IV The candidate should have the discretion of opting for his own scribe/reader/lab assistant or request the Examination Body for the same. The examining body may also identify the scribe/reader/lab assistant to make panels at the District/Division/State level as per the requirements of the examination. In such instances the candidates should be allowed to

(Page 1 of 5)

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

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

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

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

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

meet the scribe two days before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not.

In case the examining body provides the scribe/reader/lab assistant, it shall be ensured that qualification of the scribe should not be more than the minimum qualification criteria of the examination. However, the qualification of the scribe/reader should always be matriculate or above.

In case the candidate is allowed to bring his own scribe, the qualification of the scribe should be one step below the qualification of the candidate taking examination. The persons with benchmark disabilities opting for own scribe/reader should submit details of the own scribe as per proforma at APPENDIX-II."

"V. The candidate should have the discretion of opting for his own scribe/reader/lab assistant or request the Examination Body for the same. The examining body may also identify the scribe/reader/lab assistant to make panels at the District/Division/State level as per the requirements of the examination. In such instances the candidates should be allowed to meet the scribe two days before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not."

"VI. In case the examining body provides the scribe/reader/lab assistant, it shall be ensured that qualification of the scribe should not be more than the minimum qualification criteria of the examination. However, the qualification of the scribe/reader should always be matriculate or above.

In case the candidate is allowed to bring his own scribe, the qualification of the scribe should be one step below the qualification of the candidate taking examination. The persons with benchmark disabilities opting for own scribe/reader should submit details of the own scribe as per proforma at APPENDIX-II."

3. The matter was taken up with the respondent on 04.01.2021 for submission of their comment followed by reminders dated 19.01.2021 and 02.02.2021.

4. Submissions made by the Respondent:

4.1 The respondent filed their reply dated 12.03.2021 and submitted that –

(a) Until the outbreak of COVID-19 NTA was providing Scribe facilities to the Examinees with Disabilities as per the "Guidelines for conducting written examination for Persons with Benchmark Disabilities" [Guidelines] as per the OM No.34-02/2015-DD-III dated 29.08.2018.

(b) The Hon'ble High Court at New Delhi vide its Order dated 04.12.2018 in WP(C) No.12222/2018 in the matter of Aditya Narayan Tiwari & Anr. Vs.

Union of India and Anr. has directed *“that till the panel of scribes is formed, if any examination is conducted by any of the Department wherein the petitioners and similarly situated persons appear in the exam, the guidelines dated 29.08.2018 shall not be applicable, however, the candidate shall appear in terms of guidelines dated 26.02.2013.”*

(c) Accordingly, DEPWD, M/o SJ&E vide OM No.22-07/2020-DD-III dated 09.09.2020 had informed all the Central Ministries/Department/Examining Bodies that the exam shall not be conducted in terms of the aforesaid guidelines dated 29.08.2018 (so long as panel of Scribes are not formed and made available to the examinees with disabilities as per their request). However, the Candidate shall appear in terms of guidelines dated 26.02.2013.

(d) At the same time, it was noted from the OM dated 09.09.2020 (Para-3) that *“It has been brought to the notice of this Department that non formation of panel of scribes/unavailability of scribes/unwillingness of at risk examinees with disabilities (EwDs) to avail the facility of unknown scribes because of situations arising out of COVID-19 pandemic could be a major problem for EwDs eligible to use scribe, as and when exams are announced by different examining bodies.”*

(e) In the light of the above such candidates were advised to bring their own scribe (who were known to them), as precautionary measure for Health and Safety of the candidates.

4.2 From now onwards, taking into account the requirement, the candidates, and need to ensure fairness, NTA would maintain a Panel of Scribes (City-wise) through its City Coordinators concerned and provide the same to such Candidates following the provisions of the Guidelines.

5. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.03.2021**. The following were present:

- (1) Shri Jagannath Bal, Complainant
- (2) Shri Binod Kumar Sahu, Joint Director, for the respondent

6. Observation/Recommendations:

6.1 Both the parties were heard.

6.2 Complainant alleged that scribe facility was not provided to him during examination conducted by the Respondent for the post of Assistant Professor.

6.2 Respondent admitted the allegation levied by the Complainant and submitted that due to Covid-19 pandemic and lockdown panel of scribes could

not be formed and therefore, instead of providing scribe facility, eligible candidates were allowed to bring their own scribes. Respondent submits that such information was intimated by way of Admit cards.

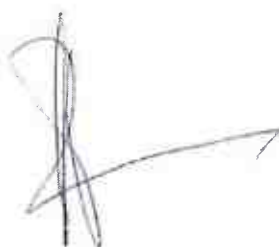
6.3 Respondent further assured that if Complainant had informed the Respondent about inability to bring own scribe, the Respondent could have provided the facility of the scribe to the Complainant.

6.4 Since the Respondent allowed the candidates to bring their own scribe hence the case of discrimination on the ground of disability is not made out. However, keeping in view the difficulties faced by the divyang candidates, more sympathetic approach should be adopted. All the candidates who are eligible for scribe facility must be provided scribe in case the candidate is not able to bring his own scribe.

6.5 Facility of scribe falls under the duty of appropriate government to ensure reasonable accommodation under Section 3(5) of Rights of Persons with Disabilities Act, 2016. The term 'Reasonable Accommodation' is defined in Section 2(y) of RPwD Act, 2016 as necessary and appropriate modification and adjustments, to ensure that Persons with Disabilities can enjoy and exercise rights equally with others.

6.6 Recently Hon'ble Supreme Court in judgment of **Vikash Kumar vs. Union Public Service Commission [Civil Appeal No. 273 of 2021], judgment dated 11.02.2021** explicated the nature of government's duty to provide 'reasonable accommodation'. Hon'ble court laid down that this duty is an individualised duty and case to case approach must be adopted while providing reasonable accommodation. Further court held that relevant body engaged in fulfilling its duty of providing reasonable accommodation must engage in dialogue with Person with Disabilities for effective implementation of policies framed for Persons with Disabilities. Relevant paragraphs of the judgment are quoted below –

"76. While framing the guidelines, we reiterate at the risk of repetition, that the Union Government should be mindful that the duty to provide reasonable accommodation is an individualized duty as has also been noted by the CRPD Committee in General Comment. In other words, a case-by-case approach must be adopted by the relevant body charged with the obligation of providing reasonable accommodation. This requires the relevant body to engage in a dialogue with the individual with disability. While considering the financial cost and resources available for the provision of accommodation, the overall assets




rather than just the resources of the concerned unit or department within an organization must be taken into account. It should also be ensured that persons with disability are not required to bear the costs of the accommodation.

77. We find it apposite to mention here that consultation with persons with disabilities and their involvement in decision making about matters affecting their lives is necessary to bring about any meaningful change in the realization of their rights.

6.7 It is beyond question that the Respondent is bound by the judgment of Hon'ble Supreme Court. Hence, the legal position and mandates as explicated by the Hon'ble Court are applicable on the Respondent. Therefore, this court recommends that the Respondent shall form panel of scribes for providing scribe facilities during recruitment examination and other examinations. In case it is not possible for the Respondent to form panels of scribes, such information shall be intimated to the candidates at least 15 days prior to the examination. Further, at least 7 days prior to exam, Respondent shall ask the Candidates about their ability to bring their own scribe. In case any candidate expresses its inability to bring their own scribe, Respondent is duty bound to provide scribe facility at its own cost to such candidate. Duty of providing scribe is laid down by Ministry of Social Justice & Empowerment in OMs dated 26.02.2013 and 29.08.2018. Further, kind attention of the Respondent is attracted towards the fact that the judgment of Hon'ble High Court of Delhi in WP(C) 12222/2018 does not excuse any government establishment from providing scribe facilities to Persons with Disabilities.

6.8 Accordingly the case is disposed off.

Dated: 01.04.2021


(Upma Srivastava)
Commissioner
for Persons with Disabilities

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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. 12441/1014/2020

Complainant :

Shri Prince Anand,
H.No.10196/13, Jhandewalan,
New Delhi – 110 055

Versus

Respondent :

Central Recruitment & Promotion Department,
(Through Dy. General Manager)
State Bank of India,
Tulsiani Chambers, 1st Floor, West Wing,
212, Free Press Journal Marg,
Nariman Point,
Mumbai – 400 021

Disability : 96.66% Hearing Impairment + 26% Locomotor Disability

Gist of Complaint:

The complainant vide his complaint dated 17.11.2020 submitted that as per notification/advertisement released in the year 2020 for the posts of Probationary Officers by SBI did not allow the use of Scribe. He submitted that he is eligible for services of Scribe. He submitted that the online application should indicate if a person with Benchmark disability can avail the services of Scribe. The candidates with hearing impairment while applying under the sub-category for a Scribe does not open up. The said advertisement allows Scribe for any persons with Benchmark disabilities in PDF advertisement but online application form allows Scribe only for persons with visual disabilities or locomotor disabilities. He further submitted that persons with hearing impairment are not treated at par with persons having visual/locomotor disabilities.

2. The General Manager, SBI vide letter dated 02.01.2021 submitted that SBI is sensitive and committed to persons with disabilities. Appropriate number of vacancies are kept reserved by the Bank for PwD candidates as per the provision of Rights of Persons with Disabilities Act, 2016. Additionally, Bank extends undenoted relaxations to persons with disabilities in the PO recruitment.

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- i) Relaxation of 10 years in maximum eligible age.
- ii) Relaxation of 5% in minimum qualifying marks in Main Examination and Group Exercise & Interview.
- iii) Relaxation in maximum permissible number of attempts
- iv) Waiver of application fee.

A PwD candidate having limitations in writing including that of speed may also avail the undernoted facility during examinations for recruitment of Probationary Officers subject to production of medical certificate on the format prescribed under Government Guidelines.

- i) Extra time of 20 minutes for every 1:00 hour of test and
- ii) Facility of Scribe.

The above facility was clearly stated in the advertisement No. CRPD/PO/2020-21/12 for recruitment of Probationary Officers.

3. **Hearing** : The case was fixed for video conferencing by the Commissioner for Persons with Disabilities on 16.02.2021. The said hearing has been postponed to 12.03.2021 due to administrative exigencies.

4. The following persons were present during the hearing on 12.03.2021.
 1. The Complainant could not join due to technical problem in the network.
 2. Shri Saurabh Kumar Srivastava, DGM, SBI, for Respondent.

OBSERVATIONS & RECOMMENDATIONS

5. The Respondent submitted that the Complainant is not eligible for a Scribe as per his disability. However, the Respondent also submitted that they would have provided a scribe to the Complainant if he had requested them for the same.

6. The Court found no violation of any provision of Rights of Persons with Disabilities Act, 2016.

7. The case is disposed off accordingly.

Dated : 05.04.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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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. 12515/1011/2020

Complainant :

Shri Santosh Kumar Soni,
Durga Charan Lane,
Gulzarbagh,
Patna,
Bihar -800007

Versus

Respondent :

Staff Selection Commission,
(Through the Chairman)
CGO Complex, Block No.12,
Lodhi Road,
New Delhi – 110 003.

Disability : 100% visually impaired

Gist of Complaint:

The complainant vide his complaint dated 20.12.2020 submitted that he passed M.T.S. Tire-1 examination. He submitted that he has put LTI (Left Thumb Impression) on all his documents. In M.T.S. Tier 2 result, his candidature was rejected due to the reason 'without signature' on the documents. The complainant's contention that he always signs by putting his left signature on the documents then he has been rejected.

2. The Under Secretary, Staff Selection Commission vide his reply dated 14.01.2021 submitted that the Commission published a Notice dated 22.04.2019 for recruitment of Multi-Tasking (Non-Technical) staff Examination, 2019. Shri Santosh Kumar Soni was issued Admit Card with Roll No.3206720086 under category OBC (Code 06) and VH (Code 07) to appear for the Computer Based Examination (Paper-I). The said examination conducted from 02.08.2019 to 22.08.2019. After the result the successful candidates were called for Paper-II (Written Examination). Shri Santosh Kumar Soni secured 66.44201 marks (normalized) in Paper-I of the said Examination. His name figured in the list of the candidates qualified in Paper-I for appearing in Paper-II of the Examination. Shri Soni was called for Paper-II Examination by the Regional Office of the Commission concerned on 26.11.2019. The successful candidates in the written Examination

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were shortlisted for Document Verification. In order to maintain the sanctity of the various examinations conducted by the Commission, the Commission strictly enforces the mandatory instructions given to the candidates. The majority of the candidate had followed the instructions of the Commission. Out of 96,478 candidates appeared in Paper-II of the Examination, 783 candidates of Multi-Tasking (Non-Technical) Staff Examination, 2019 were rejected on the grounds of not mentioning signature on the front page of Question Paper-cum-Answer Books and thus awarded 'zero- marks. The Commission rejected the candidature of Shri Santosh Kumar Soni by following the mandatory instructions of the examination without any exception since he did not put his signature on the first page of Question cum Answer Booklet of Paper-II of Multi-Tasking (Non-Technical) Staff Examination. The Respondent has enclosed a copy of first page of Question cum Answer Booklet of Shri Santosh Kumar Soni along with their reply.

3. The complainant vide his rejoinder dated 27.01.2021 submitted that during the examination the Supervisor did not allow his Scribe to put Thumb Impression (L.T.I) on first page of the Question cum Answer Booklet.

4. **Hearing** : The case was fixed for video conferencing by the Commissioner for Persons with Disabilities on 16.02.2021. The said hearing has been postponed to 12.03.2021 due to administrative exigencies.

5. The following persons were present during the hearing on 12.03.2021 ;

1. Shri Santosh Kumar Soni, the Complainant.
2. Shri H.M. Prasad, Under Secretary, SSC, for Respondent.

OBSERVATIONS & RECOMMENDATIONS

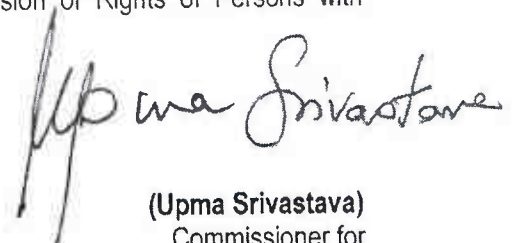
6. The complainant reiterated that his candidature was rejected by SSC as he could not put signature on the documents.

7. The representative of Respondent submitted that along with the complainant, 28 other candidates were such whose answer sheet was not evaluated because of non-signature. Later the Respondent evaluated answer scripts of all these 28 candidates. Evaluation of all the 28 candidates was completed and no candidate was rejected. Out of 28 candidates, five candidates all of whom are PwDs were selected after evaluation. However, the complainant could not qualify even after the evaluation.

8. The Court observed there is no violation of any provision of Rights of Persons with Disabilities Act, 2016.

9. The case is disposed off.

Dated : 05.04.2021



(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: 12535/1021/2021

वादी: श्री चन्द्र शेखर शर्मा, ए-1325/8, इन्दिरा नगर
लखनऊ - 226016
e-mail: <shobhitkrishna830@gmail.com>

प्रतिवादी: केन्द्र निदेशक/केन्द्राध्यक्ष, उत्तर प्रदेश एवं उत्तराखण्ड जोन
आकाशवाणी, 18, विधानसभा मार्ग, लखनऊ।
e-mail: <lucknow@air.gov.in>

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक 01.01.2021 में कहना है कि वह दृष्टि दिव्यांगजन कि विशेष भर्ती अभियान संचालन के प्रयोजन से कर्मचारी चयन आयोग द्वारा संचालित विशेष भर्ती अभियान के अन्तर्गत चयनित होकर दिनांक 03.09.1992 को दूरदर्शन केन्द्र लखनऊ में कनिष्ठ लिपिक के पद पर कार्यभार ग्रहण करके निरन्तर सेवा में रहते हुए सामान्य ज्येष्ठता के अनुरूप एक मात्र पदोन्नति प्राप्त कर श्रेणी लिपिक के पद पर कार्यरत है प्रार्थी ने अनुरोध किया है कि पदोन्नति से भरे गये प्रत्येक चयन समिति को इस आशय का आदेश दिया जाये कि दिव्यांगजनों की आरक्षित श्रेणी तथा सामान्य श्रेणी के अभ्यर्थियों के लिए अलग-अलग पात्रता सूची के काल्पनिक निर्माण तथा रोस्टर में अनुमन्य आरक्षण बिन्दु से नोस्नल पदोन्नति आगणित कर तदानुसार पद स्थापित किये जाने, वेतन निर्धारण एवं अवरोध आदि के नकद भुगतान संबंधी आदेश पारित किये जाये।

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

3. Director (Engg.)/Head of Office, Prasar Bharat, All India Radio, Lucknow vide e-mail dated 03.03.2021 inter alia submitted that with action is being taken to resolve the issue but it will take some time because they have to collect the information from the entire zone i.e. U.P./Uttrakhand regarding similarity situated cases followed by review DPC if required. Further, the reservation in promotion for PwD is to be implemented groupwise and not only to a particular post. So all the posts under Group 'C' are required to be considered and suitable posts under 3% reservation quota for disabled persons are to be identified by the Head of Department.

4. Observation/Recommendations:

5. Complainant submits that the Respondent establishment has not extended reservation in promotion for employees belonging to Persons with Benchmark Disabilities category. As per the Complainant's submissions, reservation in promotion for PwBD employees is denied since year 1996.

6. Respondent submits that the matter is already in consideration and decision will be taken within 2 months.

7. This Court dealt with similar Complaints in the past where Government establishment denied reservation in promotion for PwBD employees. Reasoned Recommendation – Order were passed by this court citing various judgments of Hon'ble Supreme Court and Hon'ble High Courts and also DoPT OMs. This court feels compelled to pass similar Recommendation in the present Complaint. After perusal of various such Complaints this court has identified following two issues which need to be addressed in such matter:

- i) 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;
- ii) Whether Government instructions are mandatory to be issued before implementation of reservation for PwBD in promotion to Group A and B.

Issue No. 1

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

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

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

....

9. 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.

10. 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."

11. 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.

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

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

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

13. 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.

14. 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.

15. Further the hon'ble Supreme Court held in *JUSTICE SUNANDA BHANDARE FOUNDATION v. UNION OF INDIA* (2017) 14 SCC 1 that RPwD Act of 2016 confers more

rights on PwDs and is a sea change and requires a march forward. Relevant Para of the judgment is reproduced below -:

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

16. 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.

17. 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 -:

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

18. 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

19. 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.

20. 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:"

21. 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.

22. 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 -:

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

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

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

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

24. 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.

25. 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.

26. 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.

27. This court appreciates the fact that the Respondent is considering the issue of reservation in promotion in Respondent establishment and expects that swift decision shall be taken by the Respondent establishment. Hence this court recommends that the Respondent establishment shall take into consideration the rule position in preceding

paragraphs while reaching to the conclusion on the issue of reservation in promotion and shall file Compliance Report within 90 days of date of this Order.

28. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 05.04.2021

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सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12613/1023/2021

Complainant: Shri Shib Shankar & others
e-mail: <exemptioncovid@rediffmail.com>

Respondent: The Chairman, State Bank of India
State Bank Bhawan, Madame Cama Road
Nariman Point, Mumbai – 400021
e-mail: <dgm.ir@sbi.co.in>

Complainants: Persons with Disabilities

GIST of the Complaint:

Complainants vide e-mail dated **03.02.2021** alleged that State Bank of India has suddenly withdrawn the facility of work from home from its employees with disabilities, therefore, they have requested to pass an interim order in respect of work from home till the final verdict be passed upon.

2. The matter was taken up with the Respondent vide letter dated **22.02.2021** under Section 75 of the RPwD Act, 2016.

3. In response, Chief General Manager (HR), State Bank of India vide letter dated **03.03.2021** inter-alia submitted that SBI has been continuously granting exemption to PwDs, visually impaired, Employees with High Health Risk and Pregnant women categories of employees since Lockdown was announced in March 2020 but now, matter was reviewed in the light of Ministry of Home Affairs, guidelines dated 27.01.2021 wherein 'Persons with co-morbidities', 'Pregnant Women' who had so far been "advised to stay at home" were now "advised to take necessary precautions". They further submitted that public transport facility across the country had also been restored.

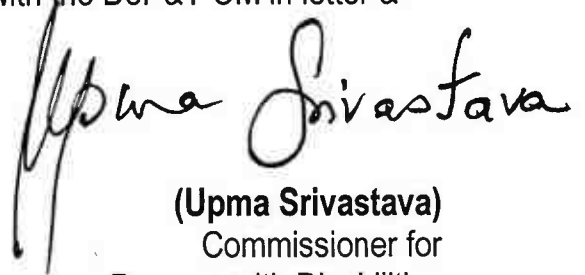
Observation/Recommendations:

4. After perusal of the documents available on record, it is recommended to the respondents to follow necessary government instructions in time 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 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.”

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



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 05.04.2021



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: 12534/1024/2021

Complainant: Shri Mridul Kumar Das, Advocate
E-mail: <dasmridulkumar.gajibabu@gmail.com>

Respondent: The Secretary, Railway Board, M/o Railways
Rail Bhawan, New Delhi – 110001
E-mail: <crb@rb.railnet.gov.in>

The Principal Financial Adviser/Pension
North East Frontier Railway, P.O. Maligaon - 781011 (Guwahati)
E-mail: <gm@nfr.railnet.gov.in>

Complainant: Sri Arpan Chakraborty a person with 43% Locomotor disability

GIST of the Complaint:

Complainant vide complainant dated 15.12.2020 inter-alia submitted that his Client Sri Arpan Chakraborty's father was a pensioner of North East Frontier Railway and after his father death on 28.02.1991 his mother became the family pension holder under PPO No. Pen/Accounts/268(s). After the death of his mother in August 2019, Sri Arpan Chakraborty is an applicant for Secondary Family Pension as he is a person with disability but after several correspondences the concerned authority, they have sought the certificate of incapability to earn a living from the Medical Board. He further submitted that depute his client with official authorization and request to the competent Medical authority for such a certificate or else dispense with this requirement for him or alternatively to pay him the Secondary Family Pension on sanction from the date of his application

2. The matter was taken up with the Respondent vide letter dated 05.01.2021 under Section 75 of the RPwD Act, 2016. But despite reminder dated 05.02.2021, no response has been received from the respondent. Therefore, hearing scheduled on 16.03.2021 but hearing could not hold due to administrative exigencies.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.03.2021**. The following were present:

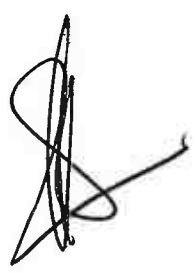
- Shri Arpan Chakraborty, complainant & Shri Mridul Kumar Das, Advocate on behalf of complainant
- Shri Sidharath Barua, Advocate and Shri Rakesh Kumar Sinha, Director, Railway Board on behalf of respondent

Observation/Recommendations:

3. Complainant submits that the Respondent establishment is refusing to grant him Family Pension. Respondent submits that the disability certificate submitted by the Complainant does not declare him 'not able to earn livelihood'. Respondent further submits that as per relevant rules, family pension can only be granted to disabled dependant after attaining the age of 25 years, when he is not able to earn the livelihood.

4. Complainant prayed before this court that the Respondent should constitute a medical board and provide necessary details about the same. Further, Respondent also submits that rule which requires the Complainant to get 'not able to earn livelihood' certificate is not applicable on him as he suffers from temporary disability and the relevant rule is applicable only on those who suffer from permanent disability.

5. Primary issue is applicability of relevant rule in the matter of the Complainant. This court concludes that because of temporary disability, the Complainant is not exempted from eligibility criterion prescribed for family pension. The legal position is certain and clear that irrespective of nature of disability, family pension can only be issued when the applicant of the family pension is certified by the medical board as 'not able to earn livelihood'. Hence, the Complainant in the present case is not exempted from the eligibility criterion prescribed in relevant rules.



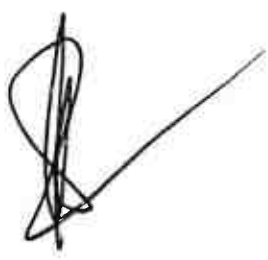
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6. Second question arises that if family pension can only be granted when the applicant is certified as 'not able to earn livelihood certificate, then who shall issue such certificate. The legal position is clear on the issue. This position was made clear by Gujrat High Court in the matter of Naresh BansilSoni v. Union of India; 2016 SCC OnLineGuj 654. Court held that in order to preclude Authority from taking arbitrary decisions, Rule lays down that such certificate has to issued by the Medical Board. Hence, subjective decision of authority is illegal and arbitrary. Further, it was held in a case reported as NarsiSambunathSuval v. G.M. Western Railways; 2015 SCC OnLine CAT 1584 by CAT, Ahmedabad that such certificate cannot be issued even by the private hospital. CAT decided that such certificate would be valid ONLY if it is issued by the prescribing authority, which is medical board. In this case, applicant produced 2 medical certificates, first one issued by Medical Board of Medical and Health Department of State of Rajasthan, another one issued by Private Hospital. Tribunal refused to rely on either one as none was issued by the prescribed authority under the Rules.

7. Hence, this court concludes that the Respondent has erred in not constituting a 'medical board' and asking the Complainant to produce 'not able to earn certificate'. As envisaged in NarsiSambunathSuval case, if the Complainant would produce such certificate, issued by the private hospital, then such certificate shall have no considerable value.

8. Therefore, this court recommends that the Respondent shall constitute a medical board and intimate the Complainant about such constitution so that the Complainant can present himself before such board on a particular date, place and time. Complainant is also recommended to produce such certificates as asked by the medical board.

9. Further, similar Complaint was filed before this court in which similar issues were raised. This court passed a detailed Order in Complaint of Maloy Kumar Banerjee v. South East Central Railway ;Case No: 10030/1024/2018 delineating judgments of Hon'ble Supreme Court, High Courts and tribunals whereby rules relating to grant of family pension



....4....

...4....

in favour of disabled dependant were interpreted by the Hon'ble courts and tribunals. The Order is attached herewith. This court recommends that the Respondent shall examine the order attached and shall follow the rule position as delineated in the attached Order.

10. Case is accordingly disposed of.



(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 07.04.2021

Encl: As above

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सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12538/1021/2021

Complainant: Shri K. Nagarjune
E-mail: <kollu.nagarjune@gov.in>

Respondent: The Director General of Posts
Dak Bhawan, Sansad Marg, New Delhi
e-mail: <dgposts@indiapost.gov.in>

The Chief Post Master General
Krishna Lanka, Vijayawada, Andhra Pradesh - 520013

The Post Master General
Regional Office, Kurnool - 518002

Complainant: 75% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **26.12.2020** submitted that he was recruited as a Postal Assistant in Chittoor Head Post Office, Andhra Pradesh under VH quota in the year 2011 and his MACP - I is due on 07.06.2021 but in between he was given LSG (Lower Selection Grade) promotion linked with financial up gradation and transfer to Cuddapah Division which is approximately 350 kms from his home town as a Sub Post Master of remote areas, where there is neither accessible nor barrier free environment to work and stay. He further submitted that he has given a number of representations to the concerned authority with the request for proper training on modernized web platforms such as CBS, MIS, CSI etc with accessible software accompanying with experienced officials in department but no action has been taken.

The matter was taken up with the Respondent vide letter dated **11.01.2021** under section 75 of the RPwD Act, 2016. But despite reminder dated **12.02.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **16.03.2021** but hearing could not hold due to administrative exigencies.

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

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

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

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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.03.2021**. The following were present:

- Shri K. Nagarjune, complainant and Shri S.K. Rungta, Advocate on behalf of complainant
- Shri Tarun Mittal, Assistant Director General & Shri Hari Prasad Sharma, Assistant Postmaster General on behalf of respondent

Observations & Recommendations

3. Complainant was posted in Chittoor office of the Respondent establishment since year 2011. Later he was promoted and posted to Cuddapah Division 350 KMs away from his native place. Complainant submits that his transfer away from his native place, despite of vacancies in the promoted cadre at Chittoor office is an act of discrimination. Further, Complainant submits that since pre promotion training was not given to the Complainant, he had to deny the promotion and prays before this court for transfer back to Chittoor.

4. Respondent submits that the Complainant was transferred out of Chittoor because employees senior to the Complainant were adjusted against the available vacancies in Chittoor office. Further, the Complainant himself denied the promotion hence, there is no case of discrimination on the basis of disability. Further, Respondent submits that post of LSG in Chittoor are not identified suitable for PwDs.

5. DoPT OM No. A-B 14017/41/90 – Estt, dated 10.05.1990 and further amended by OM dated 13.03.2002 is relevant in the present complaint. As per the OM, employees with disabilities may be given postings at their native place.

6. Further, DoPT OM No. 36035/3/2013-Estt (Res) dated 31.03.2014 lays down certain guidelines for providing certain facilities in respect of persons with disabilities. Induction training is an essential component of the service requirement of an employee. Induction training programme for the persons with disabilities should be imparted together with the



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other employees. Job specific post recruitment as well as pre-promotion training programmes are required to be organised for the persons with disabilities. The OM further mandates that the employee with disability shall be placed with an experienced employee for atleast one month on resuming responsibility of a post. This would help him to pick up skills required to perform the job and also the adaptations that may be required in individual cases.

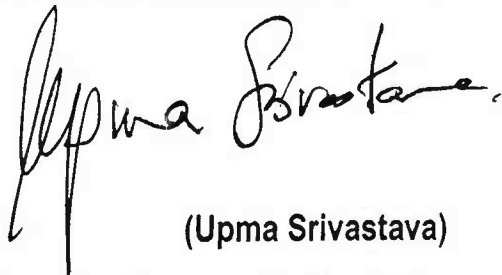
7. Respondent did not provide any pre promotion training to the Complainant. The Complainant was simply transferred to new location and was promoted without letting him adapt for the new post. Under those circumstances the complainant had to be compelled to deny promotion which is very unfortunate.

8. Posts in LSG were available in Chittoor itself and he should have been accommodated there itself and any other out of 05 persons could have been transferred to Cuddapah. This is also laid down in Section 03 and 2 (y) of RPwD Act, 2016 for providing reasonable accommodation.

9. Hence this court recommends that the Complainant shall be posted back to Chittoor office. Further this court recommends that the Complaint's promotion shall be restored and he shall be given training to adapt for the promoted post.

10. Respondent's submission that the post of LSG is not suitable for Divyangjans is fallacious in law because as per MoSJ&E Notification dated 04.01.2021, if post in feeder cadre is identified suitable for Persons with Disabilities then posts in the promotional grade stands identified suitable for Persons with Disabilities. Hence, the Respondent is recommended to consider the posts in promotional cadre as suitable for Persons with Disabilities. A compliance report in this matter may also be sent within 03 months of receipt of this order.

11. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 08.04.2021

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सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12610/1022/2021

Complainant: Shri Kuruva Maheswaraiah
Probationary Clerks
3-102, Gujuladinne Village
Ganegandla Mandal
Kurnool-518463
Mob: Not provided
E-mail: maheshmaheswaraiah@gmail.com

R-27124

Respondent: Canara Bank,
Chairman /General Manager
No. 112, JC Road, Bangalore -560002
Karnataka
Phone No: 080-22116916/20
E-mail: hopm@canarabank.com

R-27125

GIST OF COMPLAINT:

The complainant Shri Kuruva Maheswaraiah, Probationary Clerks, vide complaint dated 15-02-2021 suffering from 90 % Locomotor Disability (both hands problem). The complainant submitted that he is currently working as a clerk in Canara Bank (Karnataka State) for the last three years. He is trying for transfer to his home state (Andhra Pradesh). He further submitted that normal people are transferred within two years with highly recommendations but he is suffering from both hands problem the management not consider his case. He has completed three years service in the bank. He is facing lot of difficulties in his day to day life.

Therefore, the complainant has requested that on the basis of the facts given above and considering the circumstances, Kuruva Maheswaraiah transfer from Karnataka to Andhra Pradesh should be passed and ordered to be benefited and protected.

2. The matter was taken up with the Respondent vide letter dated 22.2.2021 under Section 75 of the RPwD Act, 2016

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3. In response, Chief General Manager, Canara Bank, vide Email/dated 8.3.2021 submitted the following facts:

i) IBPS had conducted recruitment process for CWE VI CLK-Probationary Clerks during 2016-2017. The complainant Shri Kuruva Maheswaraiah had attended the said recruitment process for the State of Karnataka and he got selected and was allotted to Canara Bank. He joined the services of Canara Bank as on 18.12.2017 and is working in our Regional Office Raichur till date.

ii) The Complainant, Shri Kuruva Maheswaraiah was posted within Karnataka State as per the extant guidelines in force by which an employee's who is in workmen cadre are to be recruited for a particular State/Union Territory for which he applies. As the Complainant, as stated above had applied for the State of Karnataka, he is placed within Karnataka State.

iii) The request of the complainant for a transfer to Andhra Pradesh is noted by the Bank and the same shall be considered at an appropriate time.

iv) They further submitted, our bank has an Equal Opportunity Policy as per the provisions of the RPwD Act 2016. They further submitted as per the provision of the RPwD Act 2016, bank has appointed the Grievance Redressal Officer for Persons with Disabilities.

Observation / Recommendations:

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

"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. As per DOPT OM No: AB 14017/16/2002 dated 13.03.2002 and OM No: AB 14017/41/90, dated 10.05.1990 employees with disabilities may be given posting near their native places.



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6. As per RPwD Act, 2016 Section 2(y) indicate that 'reasonable accommodation' means necessary and appropriate modification and adjustments to ensure that Person with Disabilities can enjoy and exercise rights equally with others. Further Section 2(h) of RPwD Act, 2016 defines term 'discrimination'. As per the provision, discrimination includes denial of 'reasonable accommodation'.

Further, attention of the Respondent is attracted to Section 3(5) of RPwD Act 2016 vide which it is mandatory to appropriate government to take necessary steps to ensure reasonable accommodation for persons with Disabilities.

7. Objective behind this policy is to provide such employees a conducive environment where they can utilize their faculties upto maximum extent. Posting such employee with disability at place away from their native place may result into difficulties for such Divyangjan employees like assimilation in different culture because of change in language and social practices.

8. As per the above rule position, the case of the complainant could have been considered appropriately and posted at the place closest to enable to live with his family.

9. The respondent is recommended to post the complainant to Andhra Pradesh preferably so as to enable him to live with his family.

10. This case is disposed off


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 08.04.2021



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. 12536/1011/2021

Complainant:

Dr. Pratibhamoy Das,
143/A, Tirtha Bharati,
P.O. : Sodepur,
Dist. : 24 Parganas (North),
West Bengal – 700 110.

Versus

Respondent :

Indian Statistical Institute,
(Through the Director),
203, Barrackpore Trunk Road,
Kolkata,
West Bengal – 700 108.

Disability : 40% Visually Impaired.

Gist of Complaint:

Dr. Pratibhamoy Das, the complainant, vide his complaint dated 31.12.2020 submitted that he is an academic person and is searching for a faculty position at Indian Statistical Institute, Kolkata which is near to his home. If he gets a position, it will help him and his parents for a medical check up available in a metro city. He submitted that ISI-Kolkata has not been specifying the vacancies for PwDs in its recruitment advertisements released many a time. They had been specifying the number of seats reserved for other categories but not for candidates with disabilities.

2. The Deputy Director, Indian Statistical Institute vide letter No. D.O./2021/54 dated 11.02.2021 submitted that the Institute is following reservations for PwDs as per the PwD roster of the Institute. The advertisement no. PU/507/ADV/2686 dated 14.06.2018 was open for candidates belonging to all categories. Focused advertisement no. PU/507/ADV/2102 dated

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)

18.05.2020 was published to attract shortfall SC/ST/OBC candidates due to non-fulfilment in faculty position against the advertisement no. PU/507/ADV/2686 dated 14.06.2018. The Institute currently has two OH and one VH employees working in faculty positions. The Respondent further submitted that one PwD candidate as per the roster requirement of the institute against advertisement no. PU/507/ADV/2686 dated 14.06.2018 was under consideration for recruitment when the advertisement no. PU/507/ADV/2102 dated 18.05.2020 was released. Due to this PwD vacancy was not published against advertisement no. PU/507/ADV/2686 dated 14.06.2018. The institute has recently published a fresh advertisement vide advt. no. PU/507/ADV/2767 dated 10.02.2021 for faculty positions including PwD vacancies. The institute has reiterated that against the above mentioned advertisement for faculty positions Dr. Das may apply once again.

3. **Hearing** : The case was scheduled for hearing through video conferencing by the Commissioner for Persons with Disabilities on 16.03.2021. The said hearing has been first rescheduled to 23.03.2021 and then to 30.03.2021 due to administrative exigencies.

4. The following persons were present during the hearing :

- 1) Dr. Pratibhamoy Das, the complainant in person.
- 2) Prof. Sanghamitra Bandyopadhyay, on behalf of Respondent.

Observations and Recommendations:

5. In year 2018 Respondent issued advertisement against the vacancies for the post of Professor, Associate Professor and Assistant Professor. It is submitted by the Respondent that seats were reserved for Persons with Benchmark Disabilities in 2018 recruitment cycle. Some PwBD candidates including the Complainant were called for interview round. The 2018 recruitment cycle continued till year 2020. In year 2020, Respondent submits that it anticipated that sufficient number of candidates belonging to SC & ST category could not qualify for interview rounds and hence special recruitment drive for SC & ST candidates was undertaken by the Respondent in year 2020. Further, Respondent submits that since the recruitment drive initiated in year 2020 was specially for SC&ST candidates hence no reservation for PwBDs was given.



6. Kind attention of the Respondent needs to be attracted to legal position on the subject. It is settled legal position that reservation for PwBDs is horizontal in nature. The point was made clear in landmark judgment of Hon'ble Supreme Court in **Indra Sawhney vs. Union of India** [1992 Supp.(3) SCC 217], following is the relevant extract of the judgment –

“all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments.”

7. Since the reservation for PwBDs is horizontal in nature hence government establishment is not exempted from providing reservation for PwBDs when special recruitment drives for SC & STs are undertaken by the establishment. PwBD candidate may belong to any category, i.e. SC, ST, OBC or Open Category. Hence, even when special recruitment drives are undertaken, mandate of Section 34 of RPwD Act, 2016, to reserve 4% of total number of vacancies arising in each group has to be followed by the government establishment.

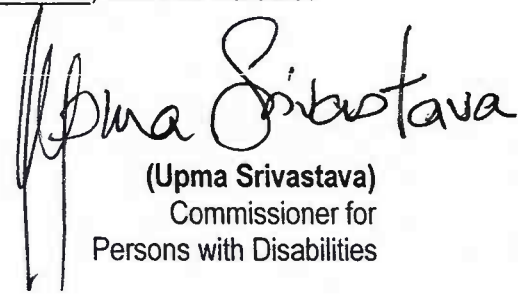
8. Other grievance of the Complainant is that in year 2021, another advertisement against the vacancies of Professor, Assistant Professor and Associate Professor was issued by the Respondent establishment. No seat for sub-category of Visually Impaired was reserved in the said advertisement. Respondent submits that the decision was taken as per roster of the respondent establishment.

9. Hence this court recommends that the Respondent establishment has violated reservation mandate by not reserving vacancies for PwBD category in advertisement dated 18.05.2020. Further, this court recommends that, though no seat is reserved for Visually Impaired category, Respondent cannot reject the candidature of the Complainant.



10. This court receives many Complaints pointing out disability related discrepancies in recruitment process. Importance of time is needed to be understood by the Respondent establishment. Time is equivalent to opportunity. Time is indispensable to determine employees' seniority and exposure to the services. Hence, this court recommends that the government establishment shall follow the guidelines issued from time to time and delineated in Orders passed by this court namely, SRI UMA PRASAD v. CEO EMPLOYEES PROVIDENT FUND ORGANISATION; 11183/1021/2019 and SRI RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EXAMINATION; CASE NO. 12349/1011/2020, attached herewith.

Dated : 12.04.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities

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सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12540/1024/2021

Complainant: Shri Sunil Kumar, S/o Late Shri Mishrilal
Aimanzai Jalalnagar, Near Prabha New Secondary School
Shahjahanpur – 242001, Uttar Pradesh

Respondent: The Divisional Railway Manager, Northern Railway
Moradabad, Uttar Pradesh – 244001
e-mail: <agm@nr.railnet.gov.in> <gm@nr.railnet.gov.in>

Complainant: 45% Locomotor disability

GIST of the Complaint:

प्रार्थी का अपनी शिकायत में कहना है कि उनके पिता जंक्शन लोको शाहजहाँपुर में फिटर के पद पर कार्यरत थे तथा उनकी देहांत के उपरांत उसकी माताजी पी.पी.ओ संख्या 55401/एन.आर.एफ. के अंतर्गत पारिवारिक पेंशन प्राप्त कर रही थी परन्तु उनका निधन 08.03.20218 में हो गया। प्रार्थी का आगे कहना है कि उन्होंने दिव्यांग पारिवारिक पेंशन हेतु प्रतिवादी को अनुरोध किया तो प्रथम अपीलीय अधिकारी ने अपने पत्र दिनांक 02.12.2020 द्वारा अवगत कराया कि मामला 45 वर्ष पुराना होने के कारण रिकार्ड उपलब्ध नहीं हो सका है अतः बिना रिकार्ड के पारिवारिक पेंशन के मामले में कार्यवाही करना संभव नहीं है।

2. The matter was taken up with the Respondent vide letter dated **12.01.2021** under Section 75 of the RPwD Act, 2016. But despite reminder dated 12.02.2021, no response has been received. Therefore, hearing scheduled on **16.03.2021** but hearing could not hold due to administrative exigencies.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.03.2021**. The following were present:

- Shri Sunil Kumar - complainant
- Shri Sandeep Saxena, APO on behalf of respondent


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Observations & Recommendations

3. Complainant submits that the Respondent is refusing to grant him family pension because the service record of the father of the Complainant, who died in year 1975, are lost and hence, decision with respect to the same cannot be taken by the Respondent.

4. Reason for denying family pension to the Complainant is discrimination with Person with Disability. It is clearly not the fault of the Complainant to keep service records of the employees of the Respondent.

5. Therefore, this court concludes that the Respondent shall decide the issue of granting family pension to the Respondent in light of Rule 75 of Railways Estt Rule 198/2013. Further, this court recommends that the Respondent shall peruse Orders of this court passed in **Maloy Kumar Banerjee v. South East Central Railway ;Case No: 10030/1024/2018** in which this court delineated judgments of Hon'ble Supreme Court, High Courts and tribunals whereby rules relating to grant of family pension in favour of disabled dependant were interpreted by the Hon'ble courts and tribunals. The Order of this court is attached herewith.


(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 12.04.2021

Encl: As above



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: 12615/1023/2021

Complainant: Shri Anil Kumar Gehlot
E-mail: <anil.gehlot@nic.in>

Respondent: The Secretary
Room No. 210, Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road, New Delhi
E-mail: <secy-dot@nic.in>

Complainant: 47% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 18.02.2021 submitted that he has joined the Department of Telecommunications after completion of deputation tenure from Central Information Commission on 25.11.2020 and as per the order, he was posted as Director (AS-I) and allotted Room No. 1203 which is very small in size and it is not possible to put office furniture for two officers. He alleged that he was drawing pay in Level 14 band and the allotted office space is not as per the entitlement of the guidelines issued by the Department of Estate.

2. The matter was taken up with the Respondent vide letter dated 23.02.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Under Secretary, Department of Telecommunications vide letter dated 16.03.2021 inter-alia submitted that sharing of the room by two officers of the same Division has been continuing in Sanchar Bhawan since at least 2017 and the issue of space inadequacy is a general problem. They further submitted that presently, many officers of the rank of DDG/Director are compelled to avail office space below their entitlements. However, complainant was allotted a Room No. 317 on the 3rd Floor on sharing basis as it is a more convenient and accessibility/commuting easier for the complainant.

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4. Complainant vide rejoinder dated 25.03.2021 inter-alia submitted that Room No. 317 is smaller in size than the present office space and also there is no ventilation facility available in Room. He further submitted that recently respondent has allotted Room No. 1205 to Shri Mukesh Mangal, DDG (SA-II) and Room No. 1207 to Shri S.C. Rajeev, Director (T), both these officers have posted in the Department in February and March respectively.

Observation/Recommendations:

5. After perusal of submissions made by the Complainant and the Respondent this court concludes that there does not seem any discrimination on the ground of disability. It is not correct ^{for} Complainant to made a case of discrimination on the grounds of disability. Hon'ble Supreme Court laid down the importance of such disclosure in STATE BANK OF PATIALA v. VINESH KUMAR BHASIN (2010) 4 SCC 368 whereby it was held in Para 29 as under:

"29. The grievances and complaints of persons with disabilities have to be considered by courts and authorities with compassion, understanding and expedition. They seek a life with dignity. The Disabilities Act seeks to provide them a level playing field, by certain affirmative actions so that they can have adequate opportunities in matters of education and employment. The Act also seeks to ensure non-discrimination of persons with disabilities, by reason of their disabilities. But the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

6. Hon'ble Court further illustrated the point in following words:

"Illustration:

Let us assume a case where the age of retirement in an organisation is 58 years for all Class II officers and 60 years for all Class I officers. When a Class II officer, who happens to be a person with disability, raises a dispute that such disparity amounts to discrimination, it has nothing to do with disabilities. Persons with disability as also persons without disability may contend in a court of law that such a provision is discriminatory. But, such a provision, even if it is discriminatory, has nothing to do with the person's disability and there is no question of a person with disability invoking the provisions of the Disabilities Act, to claim relief regarding such discrimination."


7. However, the settled rules on the issue of providing feasible and comfortable environment to the employees with disabilities cannot be disregarded. Section 20(2) of Rights of Persons with Disabilities Act, 2016, mandates that every government shall provide appropriate barrier free and conducive environment to employees with disabilities.

8. Further DoPT by OM No. 36035/03/2013 – Estt.(Res) dated 31.03.2014, identified some areas related to Persons with Disabilities which require special attention. This OM lays down certain guidelines, which have to be followed in order to provide conducive environment to employees with disabilities so that they could discharge their duties efficiently. Para D of the OM lays down that all Government offices should take special steps to provide barrier free and accessible work stations to PWD employees, access from main building entrance to their work stations and access to common utility areas such as Toilets, canteens etc. Lifts/elevators should be made accessible by providing Braille signage and audio outputs. Wherever required, suitable colour contrast may also be made available in buildings, utilities, staircases, etc. for the benefit of low vision employees. Needless to say that Para D of the OM is in addition to guidelines for modification in all public buildings including Government offices to provide easy accessibility and barrier free environment for PWDs.

9. Objective behind providing conducive environment to employees with disabilities is to promote full and effective participation of such employees and facilitate inclusiveness of such employees in main stream society.

10. Hence this court recommends that the Respondent shall ensure that the Complainant is provided with comfortable and conducive environment in accordance with DoPT OM, mentioned above and other guidelines issued by the government from time to time.

11. The case is accordingly disposed off.


(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 12.04.2021