



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 & Empowerment

भारत सरकार/Government of India

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Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 13760/1011/2023

In the matter of—

Md. Riyaz Pasha, General Secretary,
Telangana State Federation for the Deaf,
H.No.9-5-44/29/A Anjaiah Nagar Line 4,
Hasmanthpet, Manovikas Nagar, Old Bowenpally,
Secunderabad, Hyderabad-500009 (Telangana)
Email: tsfdeaf@gmail.com Mobile: 9989031125

... Complainant

Versus

The Deputy Director (Employment),
I/c, National Career Service Centre for
Differently Abled,
ATI Campus, Vidya Nagar
Hyderabad-500 007, (Telangana)
Ph: 040-27427381/ Fax: 040-27427381
Email ID: vrchyd@ap.nic.in

... Respondent

1 Gist of Complaint:

1.1 Md. Riyaz Pasha, General Secretary, Telangana State Federation for the Deaf, Hyderabad submitted a representation dated 31.10.2022 and raised the issue of employment of persons with hearing impairment of the State of Telangana. He submitted that on 05.09.2022 a meeting was conducted in collaboration with National Career Service Centre (NCSC); Employment Exchange; and Disability Welfare Department, Govt. of Telangana. In that meeting NCSC was requested to organize a meeting with some Public Sector Organizations of Central and State Govt. of Telangana; Employment Exchange; and State Commissioner for Persons with Disabilities, Govt. of Telangana. But that did not happen and the meeting was not organized properly. On 13.09.2022, NCSC was again asked to conduct the meeting.

1.2 On 15.11.2022, 53 persons with hearing impaired from the State of Telangana had submitted their representation for filling up unfilled vacancies in the NCSC.

2. Submissions made by the Respondent:

2.1 The Respondent filed their reply dated 20.04.2023 inter-alia submitted that NCSC is

I/1941/2023

making concerted efforts for the employment integration of all the PwDs in general and persons with hearing impairments in particular as per the rules. Private Employers are extending support to hire persons with hearing impairment in their companies. However, the Complainant's association is reluctant to accept private jobs and insist for government jobs. The association demands that government vacancies should be filled through NCSC only which is not within the purview of NCSC.

2.2 The Respondent further submitted that on the specific demand of the Complainant, the NCSC had organized a Government Employers' Meet on 05.09.2022 wherein around 65 departments had been invited, out of which 08 departments participated- 02 from Central Government and 06 from State Government. The Complainant had witnessed the event. Since the selection process is within the hands of recruiting agencies based on the performance during screening etc. and the NCSC does not play any role in selection process.

2.3 He further submitted that the President of the Complainant's federation, Mrs. Nasreen approached this Court and also approached before Andhra Pradesh State Human Rights Commission (APHRC). The staff of NCSC feel very embarrassed, unsafe and threat to life in daily discharging of duties due to frequent visit of the members of the Complainant's association in large numbers without prior information or appointment and attacking the Head Office. They also held Dharna and made noises.

3. Submissions made in Rejoinder:

No rejoinder was received from the Complainant.

4. Observations and Recommendation:

4.1 The Complaint filed has been perused. The Complainant has insisted that the Respondent should conduct a meeting with public sector establishment for purpose of providing employment to Persons with Benchmark Disability with Hearing Impairment. The Complainant has not pointed out violation of any provision of Rights of Persons with Disabilities Act, 2016 or any other guidelines made thereunder.

4.2 This Court cannot force any establishment whether public or private to provide employment to any person or group of persons. The Complainant has not made any case of discrimination on the grounds of disability or denial of any rights of its members, i.e persons with hearing impairment, by the Respondent.

4.3 Furthermore, it is also pertinent to note that similar grievances were raised by the complainant/Association in the past and this Court vide orders number 667/1014/2013 dated 21.10.2014 and order number 4196/1014/2015 dated 12.07.2017 disposed of the aforementioned matters. Hence intervention of this Court in the present Complaint is not warranted.

4.4 Accordingly, the case is disposed of.

Signed by Rajesh Aggarwal

Date: 21-11-2023 07:06:01

Reason: Approved

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities



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Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No.: 14045/1031/2023

Complainant:

Shri Shahid Ali
House No. 61, Village & Post - Doochri
Hapur, Pilkhuwa
Uttar Pradesh - 245304
Mobile No - 9412846236
Email - shahid102@gmail.com

Respondent:

- (1) Director General,
National Testing Agency,
IIT Outreach Centre, C-20 1A/8, Sector 62,
Noida - 201309
Email: aiapget@nta.ac.in; genadmin@nta.ac.in
Phone: 011-69095-250
- (2) The Secretary
Ministry of Ayush
Ayush Bhawan, B Block
GPO Complex, INA
New Delhi - 110023
Email - secy-ayush@nic.in

Affected Person: The Complainant, a person with 50% locomotor disability

1. Gist of Complaint:

1.1 Shri Shahid Ali, a person with 50% locomotor disability filed a complaint dated 20.03.2023 and prayed for relaxation in cut-off marks. He has made specific prayers to decrease cut-off marks from 40 to 35 percentile in the All India Ayush Post Graduate Entrance Test (AIAPGET).

2. Submissions made by the Respondent:

2.1 The Under Secretary, Ministry of Ayush filed a reply dated 15.06.2023 on behalf of Respondent No.2 and submitted inter-alia that the eligibility criteria for admission to Unani PG courses is decided as per P.G. Regulation (Unani) notified on 24.07.2019, which is 45th percentile for General PwD candidates and 40th percentile for SC/ST/OBC PwD candidates.

2.2 The Respondent also submitted that the National Commission for Indian System of Medicine (NCISM) had decided not to lower the percentile for admission in Ayurveda, Siddha, and Unani- PG courses for A.Y. 2022-23. The matter of reduction in the qualifying percentile for admission to AYUSH courses in A.Y. 2019-20, was considered by the Hon'ble Supreme Court and was observed as under:

"..... Doctors who are qualified in Ayurvedic, Unani and Homoeopathy streams also treat patients, and the lack of minimum standards of Education would result in half-baked doctors being turned out of professional college"

.....

2.3 The percentage of the corresponding qualifying 40th percentile is 28%; furthermore, lowering qualifying marks will compromise the standard of qualified medical professionals, which may adversely affect public health. The Respondent also cited an earlier decision of this Court in Case No. 13340/1032/2022 dated 06.02.2023 wherein this Court recommended that in future UGC & NTA should strictly reserve 5% of total vacancies for PwD candidates and such vacancies shall not be bifurcated on the basis of caste. Further, Respondent No. 2 submitted the ratio given by the Hon'ble Supreme Court in Mahesh Gupta Vs YK Ahirwal (CA No. 3984 of 2007) that PwD is a category in itself and a PwD belonging to any caste category has to be treated alike in extending the relaxation and concession.

2.4 The Respondent No. 2 at para 8 of their submission has submitted that "the answering respondent hereby recommends that the 5% reservation of physically handicapped persons as provided in the RPwD Act, 2016 should be on the total number of seats without further bifurcation on the basis of caste.

2.5 The Respondent No. 1 did not submit any response to the notice.

3. Submissions made in Rejoinder:

3.1 The Complainant filed his rejoinder dated 20.06.2023 and reiterated his complaint.

4. Hearing: The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **06.09.2023**. The following were

present:

Complainant: Shri Shahid Ali
Respondent No. 1 Dr. SRK Vidyarthi, Director, Ministry of Ayush,
Respondent No. 2 Dr. Sadhna Parashar, Sr. Director (Examination)
Shri Binod Kumar Sahu, National Testing Agency

5. Record of Proceedings

5.1 During the online hearing, Respondent No. 2 submitted that theirs is an examination conducting body and they follow the cut-off and rules of the examination as framed by the indenting organisation. As such, they would not be able to answer the grievance of the Complainant. The Court agreed with the contention and allowed them to leave.

5.2 Respondent No. 1 submitted that the cut-off for the General category candidates is 50% while the same for the SC/ST/OBC category including for the PwD candidates from these vertical categories is 40%. The cut-off marks for the PwD candidates belonging to the General Category have been fixed at 45%. He also submitted that the candidate belongs to the OBC-PwD category and hence the applicable cut-off in his case is 40%. Further relaxation in the cut-off is not desirable as these students will become doctors and treat patients.

5.3 The Complainant informed the court that he was not aware of the rule position while filing this case. He submitted that he is satisfied by the decision of the Respondent and accordingly, he appeared in the examination again in 2023 and has secured 70% marks. He is likely to be selected for the latest round of counseling and will be allotted a course.

6. Observations /Recommendations:

6.1 The issue before this Court in the instant case is already resolved to the satisfaction of the Complainant as mentioned in para 5 above. However, this case involves two significant issues:

- a. Whether denying relaxation in cut-off marks in the present case amount to discrimination on the basis of disability?
- b. Whether relaxation for PwDs can further be bifurcated on the basis of caste?

Law on Issue (a):

6.2 It is important to note that the issue of relaxation of minimum standards was addressed by the Hon'ble Supreme Court in Union of India V. Federation of Self-Financed Ayurvedic Colleges Punjab & Ors. (Civil Appeal No. 603/2020). In this case, the Court upheld the validity of Regulation No. 2(d) of the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2018. This Regulation prescribes a uniform entrance examination (NEET) for all medical institutions and sets the minimum eligibility mark at the 50th percentile for General category candidates and the 40th percentile for Scheduled

Castes, Scheduled Tribes, and Other Backward Classes. In this case, the Hon'ble Supreme Court held that the minimum standards cannot be lowered even for AYUSH courses. Doctors who are qualified in Ayurvedic, Unani, and Homeopathy streams also treat patients and the lack of minimum standards of education would result in half-baked doctors being turned out of professional colleges. Non-availability of eligible candidates for admission to AYUSH Undergraduate courses cannot be a reason to lower the standards prescribed by the Central Council for admission.

Law on Issue (b):

6.3 The Supreme Court, in Mahesh Gupta Vs Yashwant Kumar Ahirwal (Civil Appeal No. 3984 of 2007), held that seats reserved for divyangjan (persons with disabilities) cannot be further subdivided based on caste. The Court emphasized that divyangjan constitutes a distinct class and should not be classified by caste, creed, or religion. This principle was reiterated in Union of India v M. Selvakumar & Ors. (2017) 3 SCC 504, where the Court stated that the Physically Handicapped Category is a distinct category, and individuals with similar disabilities must be treated alike in terms of relaxation and concessions.

6.4 In Sanjeeva Reddy Vs. State of Telangana & Ors, (2022), filed before the Hon'ble Single Bench of the High Court of Telangana, the Appellant, a person with orthopedic disability since birth due to post-polio paralysis to the extent of 57%, challenged the minimum qualifying marks prescribed for him as a person with a disability. The Appellant was deemed to be from the 'Open Category' and had failed to secure the minimum 40% qualifying marks. The Appellant submitted that his cut-off as a person with disability should be at par with candidates belonging to SC and SC categories at 30%. The Single Judge of the HC held that it was not open to the Appellant to demand changes in the minimum qualifying marks for him as a person with disability and disagreed with the contention that the cut-off marks for both disability and SC/ST categories should be at par with each other. The Appellant thus filed an appeal before the Division Bench of the HC. The Division Bench of the HC held that not providing minimum qualifying marks for persons with disabilities to be at par with SC/ST candidates was wholly untenable which was an aspect not considered by the Single Judge before. The HC set aside the order of the Single Judge and directed the Respondents to make the cut-off mark for persons with disability to be at par with the cut off for SC/ST categories, i.e., 30%.

Conclusion on Issue (a):

6.5 While the respondent's submission is factually accurate, the Respondent is

obligated to provide uniform relaxation to all categories of PwBD candidates. This is in accordance with the principles of non-discrimination and reasonable accommodation as enshrined in the relevant regulations and legal precedents.

Conclusion on Issue (b):

6.5 In the light of the principle enunciated by the Hon'ble Supreme Court in the aforementioned cases, it is abundantly clear that the Respondent cannot bifurcate the reservation, relaxations or concessions for PwDs based on their caste. The principle of treating PwDs as a distinct category, irrespective of their caste, is well-established in these and other judgments. While it is totally accepted that the cut-off cannot be relaxed endlessly just to fill up the reserved vacancy at the cost of quality of healthcare being produced by the institutions, the argument doesn't appear to be valid for keeping higher cut-off only for one category. Also, the respondents have not cited any enabling instruction in this regard from the nodal department/ministry of the central government.

6.6 In the future, the Respondent is recommended to implement reservations for PwDs in full accordance with the decisions of the Supreme Court, avoiding any further sub-division based on caste. This approach ensures that PwDs are treated fairly and equally, in alignment with the principles of inclusivity and non-discrimination.

6.7 Further, the Respondent is recommended to provide uniform relaxation in cut-off marks to all categories of PwBD candidates in future exams. The Respondent is also recommended not to bifurcate the reservation for PwDs based on caste and must implement the reservation in accordance with the decisions of the Supreme Court.

6.8 Respondent shall also file the implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and further action will be initiated accordingly.

6.9 Accordingly, the case is disposed of.

Signed by Rajesh Aggarwal

Date: 21-11-2023 07:00:29

Reason: Approved

(Rajesh Aggarwal)

Chief Commissioner for
Persons with Disabilities



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Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 14326/1121/2023

Complainant:

Shri Saksham Mishra
Email - sakshamishra22@gmail.com

Respondent:

The Registrar
All India Institute of Medical Sciences, Nagpur
MIHAN, Nagpur, Sumthana, Dahegaon
Maharashtra 441108
Email - registrar@aiimsnagpur.edu.in

Affected Person: Shri Saksham Mishra, a person with 50% locomotor disability

1. Gist of Complaint:

1.1 Shri Saksham Mishra, a person with 50% locomotor disability filed a complaint dated 17.07.2023 and submitted that he is a candidate of NEET – 2023. In response to the notice of MCC PWD, he visited AIIMS, Nagpur for his physical verification. The AIIMS, Nagpur issued him a disability certificate for 23% disability. However, as per his UDID card, his disability is 50% and according to the NMC forms and the MCI Gazette he belongs to 40-50% category.

2. Submissions made by the Respondent:

2.1 The Medical Superintendent and Chairman, NEET Disability

Certificate Board, AIIMS, Nagpur filed reply dated 09.08.2023 and submitted inter alia that the Complainant appeared before NEET UG Disability Certification Board, AIIMS, Nagpur on 10.07.2023 for Disability Certificate for under graduate admission under PwD Quota. The disability certificate No. 2023-Jul/000349 dated 11.07.2023 for NEET admission has been issued with reference to gazette notification no. DL. 33004/99 No. 162 Dated 13.05.2019 and NMC Notification No- U.14021-8-2023-UGMEB/ dated 12.06.2023 regarding regulations on Graduate Medical admission with respect to admission in MBBS/Appendix H1.

2.2 The Respondent further submitted that the petitioner is admittedly a case of "Congenital deformity of bilateral lower limbs". The medical board constituted by AIIMS Nagpur consisted of a Physical Medicine and Rehabilitation Specialist, an Orthopaedic Surgeon, and a doctor with a disability with the Chairman of the Disability Board, the Medical Superintendent, AIIMS Nagpur. The Medical Board carefully examined the Complainant and concluded that the disability percentage is 23 % (Twenty-three percent) with respect to Gazette Notification No. DL. 33004/99 No. 61 dated 04.01.2018 published under Ministry of Social Justice And Empowerment (Department of Empowerment of Persons with Disabilities (Divyangjan), New Delhi and Gazette notification no MCI - 18(1)/2018/-Med/187262/dated 05.02.2019/14.05.2019 for assessment for locomotor disability.

2.3 The Respondent further submitted that while the Complainant has Congenital bony deformity bilateral lower limb, the old disability certificate issued by the medical authority, Vidisha, Madhya Pradesh has mentioned the wrong diagnosis of "post-polio residual paralysis of bilateral lower limbs". As per the gazette notification for the calculation of disability, he has fixed flexion deformity of both knee joints. On his stability component examination, he is having difficulty while standing on a single limb. All other components like Standing on both legs, walking on a plain surface, walking on a slope, Climbing Stairs, taking turns, squatting on the floor, Kneeling and Sitting Cross are normal. On the calculation of disability, his quantification of disability percentage is 23% (Twenty-three) locomotor disability and thus, he is not eligible for PwD Quota for Medical Education.

3. Submissions made in Rejoinder:

3.1 The Complainant in his rejoinder dated 14.08.2023 reiterated his Complainant and submitted inter-alia that he can walk without support for some minutes for a long walk he definitely needs support. He also expressed that the Medical Board did not act with fairness with candidates from other states.

4. Observation

4.1 Section 58 (3) of the RPwD Act, 2016 states that ***"the certificate of disability issued under this section shall be valid across the country"***. Further, Rule 19 of the RPwD Rules, 2017 provides that ***"A person to whom the certificate issued under rule 18 shall be entitled to apply for facilities, concessions and benefits admissible for persons with disabilities under schemes of the Government and of non-Governmental organizations funded by the Government"***.

5. Hearing:

Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **14.11.2023**. The following were present:

Complainant

(i) Shri Saksham Mishra

Respondent

(i) Dr. Swapnil Sonone : Associate Professor, AIIMS Nagpur

(ii) Dr. Manish Shrigiriwar : Chairman and Medical Superintendent of Disability Board AIIMS Nagpur

6. Observations and Recommendations:

6.1 At the outset, the guardian of the Complainant submitted that he had filed a Writ Petition before the Hon'ble High Court of Madhya

Pradesh, which has been pleased to issue interim order in the matter and he has got provisional admission also. The Respondent also confirmed that the subject matter before the Hon'ble High Court is the same which is pending before this Court. The Court observed that it may not be proper to continue with the matter in this Court. During the hearing, the Court informed to the Complainant that the matter in this Court shall be disposed on this ground, to which the Complainant has agreed to.

6.2 Accordingly, the matter is disposed of.

Signed by Rajesh Aggarwal

Date: 16-11-2023 20:35:48

Reason: Approved

(Rajesh Aggarwal)

**Chief Commissioner for
Persons with Disabilities**



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Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 13966/1012/2023

In the matter of—

Shri S. Sandana Mani,
 R/o 159, Sengol Nagar, 5th Street,
 Old Vilangudi, Madurai-625018 (TN)
 Email: mavin5296@gmail.com
 Contact No.9488286712

... Complainant

Versus

The Regional Director (Tamil Nadu)
 Employees State Insurance Corporation,
 Panchdeep Bhavan,
 143, Sterling Road, Nungambakkam,
 Chennai - 600034
 Email: rd-tamilnadu@esic.nic.in
 Contact Phone: 28306300 (100 Lines)

... Respondent

Affected Person: Shri S. Melvin, a person with 88% Intellectual Disability / Cerebral Palsy

1. Gist of Complaint:

1.1 Shri S. Sandana Mani filed a Complaint dated 24.02.2023 regarding reconsideration of the cancelled candidature of his son, Shri S. Melvin, a person with 88% Cerebral Palsy for the post of MTS in ESI and issued the appointment order.

1.2 The Complainant submitted that Shri S. Melvin [Roll No. 2693002666 and Regn. No. 119555765] was selected for the post of MTS in ESI under the disability category and was called for document verification on 18.07.2022. After the document verification, he was told that his appointment was on hold for the final clarification/approval from ESIC Headquarters, Delhi. ESIC Regional Centre, Chennai vide letter dated 01.08.2022 cancelled his candidature stating that Shri Melvin had chosen the wrong category while applying.

1.3 The Complainant further submitted that if it was so, his candidature should have been rejected at the time of filling up the application form along with which the documents had been uploaded. The Complainant sought the know as to how the candidature can be cancelled when his son has cleared his exam and got selected. Shri Melvin had applied under Multiple Disability and he had submitted the Medical Certificate for the same.

2. Submissions made by the Respondent:

2.1 The Dy. Director (Admin), ESIC Regional Office, Chennai filed a reply dated 16.05.2023 and submitted that Shri S. Melvin had applied under disability quota mentioning his disability as Cerebral Palsy (CP), a Mental Illness which is evidently clear as per his online application. In his Disability Certificate and UDID, his disability is mentioned as Intellectual Disability. The Complainant in his Complaint has stated that his son had applied and got selected under Multiple Disability (PwD-E category) whereas as per the Disability Certificate, Shri S. Melvin is a case of Intellectual Disability and the diagnosis in his case is Intellectual Disability / Cerebral Palsy. In his UDID his disability is mentioned as 'Intellectual Disability'. Hence, the candidate does not fall in the category of disability earmarked for PwD candidates in the recruitment notification.

3. Submissions made in Rejoinder:

3.1 The Complainant filed his Rejoinder dated 21.07.2023 and submitted that he was unaware that MR and MI are two distinct illnesses until he came across this issue. However, as his son has a medical certificate stating that he had Cerebral Palsy and Intellectual disability he had applied under the Multiple Disability (CP/MI) category for that exam.

4. Hearing: A personal hearing in the matter was scheduled on 14th November 2023. However, in response to the Notice of Hearing of this Court dated 03.11.2023, the Complainant filed his request for withdrawal of his Complaint vide letter dated 07 November 2023 informing that his son had qualified for the Combined Civil Services Examination - 4 of the Tamil Nadu Public Service Commission and has joined a state government service.

5. Observations & Recommendations:

5.1 In view of the request of the Complainant to withdraw his Complaint, further intervention of this Court is not felt appropriate. Accordingly, the case is disposed of with the approval of the Chief Commissioner for Persons with Disabilities.

Signed by
Praveen Prakash Ambashta
Date: 13-11-2023 10:43:18

(Praveen Prakash Ambashta)
Dy. Chief Commissioner
for Persons with Disabilities