



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE 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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Case No: 13808/1023/2022

In the matter of—

Dr. Ranjit Singh Gujjar

...Complainant

Versus

The Principle Scientist and Head (Officiating),
 Division of Crop Improvement,
 ICAR-Indian Institute of Sugarcane Research (IISR),
 Raibareli Road, P.O. Dilkusha, Lucknow
 Uttar Pradesh – 226002

... Respondent

1. Gist of the Case:

1.1 Dr. Ranjit Singh Gujjar, a person with 40% Locomotor Disability filed a complaint dated 28.02.2023 regarding harassment to him by his HoD, Dr. Jyotsnendra Singh [Dr. J. Singh]. The Complainant submitted that he joined the Indian Council of Agricultural Research (ICAR) as a "Scientist" on 28th April 2011. Since then, he has been serving the Council by researching Plant Biotechnology. He was promoted to the grade of Senior Scientist (7th Pay Matrix Level 12) on 28th April 2021. He published eleven research papers in reputed scientific journals of International Standards. Currently, he is posted at ICAR-IISR, Lucknow since 2016.

1.2 The Complainant further submitted that he is a person with locomotor disability caused by polio in his left leg. The disability is more than 40 Percent. The Complainant has been facing discrimination/mental harassment by Dr. J. Singh, Head of Department (HoD) in various service-related issues such as declining the application of "student trainee" for getting training under him. Student trainees are essential for a scientist in

many ways like working hands-on in research activities, and promotion of a scientist. A student trainee was allotted to him by the PME Cell of the Institute. Subsequently, the application was forwarded to Dr. J. Singh, the HoD for his approval but he rejected/returned the application with the comment that "Dr. Gujjar's lab is still not operative. Under such a situation, how the student be deputed". Dr. J. Singh returned the application without bringing the matter to his knowledge. The Complainant further submitted that there are plenty of scientists in ICAR without lab facilities/developing labs, but still, they impart training to the students in some collaborative laboratories and perform great in research. He also has a collaborative laboratory with Dr. Sangeeta Srivastava, Principle Scientist, Division of Crop Improvement, ICAR-IISR, Lucknow but, the HoD neither consulted him nor was he willing to seek his views before rejecting the application for student trainee.

1.3 The Complainant further submitted that he is the Principal Investigator (PI) of two institutional projects. He was provided with skilled support directly through institutional sanction (approved by the Director, IISR, Lucknow) for 5 months w.e.f. 01.10.2022 to 28.02.2023 for the technical support of research work in institutional projects (B3.24 and B3.25). For the continuation of the skilled support, he requested HoD (Dr. J. Singh) to include the skilled support in divisional sanction, but, his application/indent for providing a helping hand/technical/skilled support has been turned down by him, who is also the Chairman of the Committee for approving technical/skilled support. The Complainant does not have any working hand to assist in the research work of the projects. Being a Divyangjan, he is unable to perform some of the research activities requiring physical assistance. The Complainant requested this Court to intervene in this matter so that technical/skilled support is provided for assistance in research projects and appropriate action should be taken against the person.

2. Submissions made by the Respondent:

2.1 In response, the Principal Scientist & Head (Off). ICAR, Indian Institute of Sugarcane Research, New Delhi, filed a reply dated 05.04.2023 and submitted that the Complainant was allotted a "Student Trainee" by the PME Cell of the Institute. From the comments of PME Cell, ICAR-IISR, Lucknow PME Cell, and ICAR-IISR, Lucknow has not allotted the said student trainee to the Complainant. Rather, PME Cell just sought the opinion of the HoD to allot the trainee student to any scientist.

2.2 The Respondent further submitted that the Director, ICAR, IISR, Lucknow is the final authority on whose approval the student trainee was allotted to Dr. Sangeeta Srivastava, Principle Scientist, Division of Crop Improvement. The HoD, Contrary to the claim of the Complainant is in no way the decision-making authority in this matter. The

Complainant claimed that his consent/views were not taken. However, it is to be noted that the HoD has a role to lead a group of scientists and is not required to seek consent/opinion of the concerned scientist in every official matter and as such, all official matters are finally approved by the Director of the institute. The Respondent submitted that he gave only his opinion/comments on the application of said student trainee as sought by PME Cell and that his comments were based on the fact that the independent laboratory of the Complainant was not functional. The question of rejecting/declining the application of a student trainee to work under the complainant does not arise.

2.3 The Respondent also submitted that the Complainant had two institute projects since the year 2020, which he was managing from the existing divisional resources. Later, with the approval of the Director, ICAR-IISR, Lucknow, he was provided one skilled hand separately and not from the divisional pooled resources from October 2022 to February 2023. The Complainant in his complaint falsely wrote that his application was turned down by him being the Chairman of the Committee for approving technical/skilled support. The Director, ICAR-IISR, Lucknow is the Chairman of the Committee meant for such purpose, and the Respondent is not the Chairman of the Committee. The Complainant had accepted in his grievance that he had a collaborative laboratory with Dr. Sangeeta Srivastava, Principal Scientist, Division of Crop Improvement. Since his laboratory was non-functional, it was decided to share the facilities and manpower of Dr. Sangeeta Srivastava's laboratory till his lab became operational.

2.4 The Respondent further stated that every matter of the Complainant was dealt with keeping in mind purely in the larger interest of the institute, and was in no way related to him being a Divyangjan. The work environment in his division has always been positive and provides equal opportunity to all without any prejudice.

3. Submissions made in the Rejoinder:

3.1 The Complainant filed his rejoinder vide email dated 06.04.2023 and submitted that the Institute (ICAR-IISR) has five (5) divisions (divided on the basis of area of expertise). All the divisions consist of a group of scientists who work under the supervision of the respective heads of each division (HoDs). The Hon'ble Director looks after the activities of the institute as a whole and customarily takes inputs from HoDs of each division. Respective HoDs are liable for invigilating the activities and providing facilities to each scientist which are further approved by the Director. Usually, the Director acts on the recommendations of HoDs. The comments of Dr. J. Singh, indicate that he is not responsible for any of the incidents that happened to him because the Director was the ultimate authority to approve his recommendations/inputs. This is a

completely baseless response of Dr. J. Singh as he already mentioned that the Director acts on the basis of inputs received from respective HoDs.

3.2 Dr. J. Singh was trying to justify that the student trainee was not allotted to the Complainant by the PME Cell. However, the name of the Complainant was mentioned thrice on the application of the student trainee - once by the student trainee, second by the PME Cell, and third by Dr. J. Singh himself. Dr. J. Singh accepted that HoD does not require the consent/opinion of the concerned scientist in every matter.

3.3 The Complainant submitted that one of the divisional laboratory spaces (completely unfurnished without any instrument) was allocated to him by the previous HoD for refurbishing the laboratory and subsequently performing the research work related to his projects' non-procurement of research consumables (chemicals and glassware) to perform the research and make the laboratory operational/functional. He indented for the refurbishment of the laboratory in terms of working benches, stools, etc. and the lab refurbishment work was accomplished in January 2022. Following the infrastructural completion of the laboratory, there was an urgent need for some chemicals and glassware. By that time, Dr. J Singh had joined as HoD (Jan 2022). On 25 May 2022, he indented for chemicals and glassware mentioning the urgent need to perform the research work of institutional projects and make the laboratory functional. Such indents, related to consumables, are approved by Purchase Advisory Committee (PAC), headed/chaired by Dr. J. Singh from 5 April 2022 to date. Unfortunately, none of his research indents (for laboratory consumables) were processed. Finally, to continue the research experiment, the Complainant purchased some of the research-related consumables worth ₹96,799.00 from his salary. The HoD of any division is expected to facilitate the research work of a scientist in terms of providing helping hands (skilled/technical support/student trainees), consumables, equipment, etc. Contrary to this, Dr. J. Singh was continuously creating hindrances in his research work leading to mental harassment.

4. Hearing (I):

4.1 An online Hearing was conducted on 23.05.2023 through Video Conferencing. The following parties/representatives were present:

- (1) Complainant in Person
- (2) Dr. J. Singh, Principal Scientist & HoD for Respondent

5. Record of Proceeding:

5.1 The Complainant leveled allegations against the Respondent, who himself appeared during the online hearing. The Complainant raised doubts over the veracity of the claims made by the Respondent during the online hearing.

5.2 The Respondent was advised to file comments on the issue of the student trainee and lab assistant within 3 weeks.

6. Submissions made by the Complainant after ROP:

6.1 The Complainant vide email dated 02.06.2023 submitted that the Director, ICAR-IISR issued two Memos/warnings to him after he filed a complaint before this Court. The first memo dated 01.06.2023 stated that the direct representation to this Court without following proper channels was a gross violation of the CCS (Conduct) Rule, 1964, and sought an explanation as to why disciplinary action should not be taken against him. The second memo dated 01.06.2023 is regarding the non-raising of any suggestion despite being present in the Divisional Meeting held on 02.05.2023 for deciding on the establishment of Central Biotechnology Laboratory in the building of the Division of Plant Physiology and Biochemistry and to designate the newly developed laboratory (Lab of the Complainant) in the Division of Crop Improvement as Practical Hall for UG classes. He did not raise any suggestion during the meeting but raised a suggestion against the decision approved in the meeting vide email dated 02.05.2023. The act of the Complainant was viewed seriously as insubordination in the official work and a warning was issued against him. On 02.06.2023 he made a reply for both of the memos and justified his response. He is facing harassment at the workplace.

7. Submissions by the Respondent after ROP:

7.1 The Director, ICAR-IISR [Respondent] filed its compliance to RoP vide email dated 10.07.2023 and inter-alia submitted that due procedure is followed to allot student trainees for training under different scientists. The requests of trainees are considered upon forwarding to Heads of Divisions and recommendations of the PME Cell who is looking after the needs of the trainees and the available infrastructure/lab/equipment and accordingly trainees are being assigned to the individual scientists. Accordingly, a student trainee was allotted to Dr. Sangeeta Srivastava, Principal Scientist, and not to the Complainant.

7.2 It is not correct that Dr. J. Singh, the Chairman of the Committee, had declined the application of the Complainant for providing skilled support staff to carry out the research work, as this allotment of skilled manpower to various divisions/sections of the Institute is made by the Director of the Institute. Hence, the allegations made by the Complainant against Dr. J. Singh are not true and are based on his assumptions.

8. Hearing (II):

8.1 A 2nd hearing was held in this case on 19.07.2024. The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/Representatives	Mode of Presence
From Complainant:		
1.	Dr. Ranjit Singh Gujjar, Complainant in person	Online
From Respondent:		
1.	Shri Manish Kumar, Administrative Officer, ICAR-IISR	Online

8.2 **Record of Proceedings:** At the outset of the hearing, the Court asked the Respondent to confirm whether they issued any Show Cause Notice (SCN) to the Complainant after his grievance was taken up by this Court and if yes, whether through such notice the Complainant was asked to explain the reasons for approaching this Court.

8.3 The representative of the Respondent admitted that two memos were issued to the Complainant after notice, in this case, was issued to them, where one of them sought explanation from the Complainant for approaching the Chief Commissioner for Persons with Disabilities (CCPD) without following proper channel.

8.4 It was observed that the Complainant has a statutory right as per the RPwD Act, 2016, and the RPwD Rules, 2017 to approach this Court. The said SCN issued to the Complainant for filing his Complaint in this Court, also amounted to questioning the very authority of this Court for entertaining the Complaint. The Court found that at the very least, the officials who were part of the decision-making to issue the SCN were unaware of the statutory provisions about the rights of persons with disabilities and the obligation of establishments to provide reasonable accommodations to them. Such anti-divyang attitude needs to be addressed on priority and the main grievance of the Complainant can be heard on merit in the subsequent hearing.

8.5 The respondent was advised to share a copy of the noting sheets showing the names of the officials of the Respondent institute who were part of the decision-making process for the issue of the SCN to the Complainant. All such officers should be attached to the Chandra Bhushan Singh Memorial Speech and Hearing Institute, 221, Amar Nagar, Raebareli UP 229001 (Mobile No. 9307542578), a prominent NGO co-located with the Respondent's institute, which works for autistic, intellectually disabled

and hearing impaired children, where they will work with the employees and volunteers and serve the students and the visitors of the institution for 3 days. The Respondent was also asked to share copies of the order of deployment and an Action Taken Report within 15 days of the record of proceedings. Another hearing in physical mode shall be conducted to hear the parties on the merit of the case in which the Director of the Respondent Institute shall be personally present in the court.

9. Compliance of RoP (heard on 19.07.2024):

No compliance was received from the Respondent.

10. Hearing (III):

10.1 The 3rd hearing in the matter was held on **20.09.2024**. Following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/Representatives	Mode of Presence
From Complainant:		
1.	Dr. Ranjit Singh Gujjar, Complainant in person	Online
From Respondent:		
1.	Shri Manish Kumar, Administrative Officer, ICAR-IISR	Online
2.	Dr. J. Singh (Retd. In Sep. 2023)	Online
3.	Shri Dinesh Singh, AAO	Online
4.	Shri Abhishek Srivastava, Chief Administrative Officer	Online

10.2 **Record of Proceedings** - At the outset, the respondent was asked about the status of the case and why they had not submitted any response to the Record of Proceedings (RoP) dated 08.08.2024 within the stipulated time. Shri Manish Kumar, Administrative Officer from the Respondent said that they had challenged the said RoP in the High Court and waiting for the direction of the Hon'ble High Court. To which the representative of the Respondent was asked whether any stay was granted by the Hon'ble High Court. The representative confirmed that no stay was granted.

10.3 At this stage, the representative of the Respondent was asked as to why the Director of the Respondent Institute was not present in the hearing as desired by this Court during the last hearing. Shri Manish Kumar, Administrative Officer submitted that

the Director was not in the country and he was appearing on behalf of the Director. The Court sought to know who was the next officer below the Director to which the representative replied that the Chief Administrative Officer is the next level officer to the Director.

10.4 The Court adjourned the hearing for a short time and the matter was again taken up at 01.00 p.m. in which Shri Abhishek Srivastava, Chief Administrative Officer [CAO] appeared and informed the Court that the Director had returned from his foreign tour but is busy attending his pending work and, therefore, he was appearing in the matter instead.

10.5. The CAO was asked as to why the show-cause notice was issued to the Complainant on the ground that he approached this Court for resolution of his grievance, which is the statutory right of a divyang person provided u/s 75 (1) (b) of the Rights of Persons with Disabilities Act, 2016 [in short "the Act"] read with Rule 38 (1) of the Rights of Persons with Disabilities Rules, 2017 [in short "the Rules"].

10.6. It was observed that the Respondent by not furnishing a reply to the RoP dated 08.08.2024 without seeking any extension of time and/or obtaining a stay order from the High Court has committed a punishable offence in terms of section 93 of the Act. The Court underscored that the original issue raised by the Complainant was the non-allocation of a "student trainee" to him which was affecting his research activities while the other scientists whether or not they had lab facilities were allocated such student trainees. Once the matter was taken up by this Court, the increasing hostility between the two parties became quite apparent.

10.7. It was felt that the Head of the Establishment had not been properly briefed about the instant case and the legal framework. For example, Section 23 of the Act read with Rule 10 of the Rules mandates every government establishment to appoint a Grievance Redressal Officer who is required to maintain a Complaint Register and shall enquire into any complaint received by him within 2 weeks. In the present case despite clearly indicating the legal position vide Notice dated 03.03.2023, there appears to be no action on behalf of the Respondent in this regard. Rather, it became evident that the relationship between the Complainant, an employee of the institute, and the Respondent worsened after the institution of the case before the CCPD. The idea behind advising the Director to remain present in the hearing was not to proceed with the case in an adversarial way but to sensitize the head of the institute about the needs of persons with disabilities and the legal framework of the Act, and rules and instructions issued in pursuance thereof.

10.8. It is dissatisfactory that the representatives of the Respondent were trying to mislead this Court on the reasons for the non-appearance of the Director before the Court during the hearing. As confirmed by the CAO, the Director was present in the office at the time of the hearing but despite allowing a short adjournment, he could not join the virtual hearing. The Court also expressed its concerns for the non-furnishing of any reply to the RoP by the Respondents, to the extent that they did not deem it necessary to inform this court about the Writ Petition filed by them before the High Court. The above acts of commissions and commissions on the part of the Respondent are clear violations of the RPwD Act, 2016.

10.9. It was, therefore, decided to give another opportunity to the Director of the Respondent Institute along with the CAO **on 09.10.2024 at 10.30 a.m for a Hearing in Hybrid mode.**

10.10 Vide email dated 01.10.2024 Advocate Gagan Mathur forwarded a copy of an unnumbered Writ Petition (before the admission stage) filed before the Hon'ble High Court of Delhi on behalf of the ICAR against the Complainant in this case and the Dy. CCPD, where the ICAR has sought the intervention of the Court against the order of this court asking - 1) the Director of the institute to appear in person before the Court in a physical hearing, 2) copies of the note sheet where the issue of Show Cause Notice to the Complainant was decided in the files of the Respondent, and 3) to deploy the responsible officers to do sewa at the Chandra Bhushan Singh Memorial Speech and Hearing Institute, 221, Amar Nagar, Raebareli (UP) 229001.

11. Hearing (IV):

11.1 A 4th hearing was conducted on **09.10.2024** online through video conferencing. The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/Representatives	Mode of appearance
From Complainant:		
1.	Dr. Ranjit Singh Gujjar, Complainant	Online
From Respondent:		
1.	Shri Manish Kumar, Administrative Officer,	Online
2.	Shri Abhishek Srivastava Chief Administrative Officer	Online
3.	Dr. Rasappa Viswanathan Director	Online

11.2 During the hearing the Complainant submitted that his grievances have not been redressed so far and added that no procurement of consumables for research purposes was made despite having the necessary approval.

11.3 The representative from the Respondent stated that as submitted in the last hearing, a writ petition was been filed before the Hon'ble High Court of Delhi, which has been pleased to grant a stay order against the RoP dated 08.08.2024 of this Court and as such they had nothing to submit before this Court. The Respondent, however, did not submit a copy of the said stay order till the day of the hearing.

12. The Complainant vide his email dated 25.10.2024 submitted that after the stay order was issued by the Hon'ble Delhi High Court, the institute has stopped all his indents (requisitions). The institute has stopped responding to his applications. Therefore, all his research work has completely been halted. He also cited the alleged harassment by shifting him to another building having accessibility challenges.

13. Observations & Recommendations:

13.1 This Court is, of the view that it will not be appropriate for this Court to continue with the proceedings in the light of the fact that the matter has now become subjudiced before the Hon'ble High Court of Delhi. It has also been observed that the Respondent has, in their Writ Petition before the Hon'ble High Court of Delhi filed against this court's RoP dated 08.08.2024 seeking- 1) relevant noting sheets from their records, 2) the presence of the Director of the Institute for a hearing, and 3) recommending deputation of concerned officers to an NGO for a sewa, made the complainant in this case as Respondent No. 1.

13.2 This Court is therefore, inclined to advise the Complainant that he may raise his pending grievances before the Hon'ble High Court and seek appropriate redressal or wait for the decision of the Hon'ble Court after which he can approach this court afresh for issues which are not raised and/or adjudicated by the High Court.

13.3 This case is disposed of accordingly.

Digitally signed by
Rajesh Aggarwal
Date: 21-11-2024 08:02:13

(Rajesh Aggarwal)
Chief Commissioner for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
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 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 13692/1021/2023

In the matter of—

Shri U. Karthick
 No.-53,11 Avenue, DAE Township,
 Kalpakkam-603102, UDC, Accounts (Works),
 General Services Organisation,
 Kalpakkam, Tamil Nadu – 603102 **...Complainant**

Versus

The Secretary
 Department of Atomic Energy,
 Anushakti Bhavan, CSM Marg,
 Mumbai – 400001
 Email – chairman@dae.gov.in **...Respondent No. 1**

Department of Personnel & Training
 Ministry of Personnel, P G and Pensions,
 North Block, New Delhi – 110001
 Tele No – 011-230922338 **...Respondent No. 2**

1. Gist of the Complaint:

1.1 Shri U. Karthick, a person with 75% Locomotor Disability filed a complaint dated 27.12.2022 regarding the violation of provisions of reservation for Persons with Benchmark Disabilities in the promotional examination in Assistant Examination-2022.

1.2 The Complainant is working as UDC in the General Services Organisation.

He attempted the Assistant Examination 2022 and secured 42 marks in Paper I, 64 in Paper II (exemption in the year 2021), 58 in Paper III, and 62 in Paper IV (exemption in the year 2022). The total marks secured by him were 226 and he was short of only 3 marks in Paper-I. The cut-off in aggregate marks fixed for the General candidates was 200 whereas he scored 226 marks in total. The cut-off for PwBD candidates was the same as that of a General candidate and no relaxation of marks was allowed for the PwBD. The Complainant was therefore kept in the panel of General candidates. As per the DOPT OM, a separate panel has to be formed for the PwBDs.

1.3 The Complainant further submitted that he made a representation dated 07.11.2022 to consider him for the post of Assistant through the examination conducted in the year 2022 based on the DOPT's OM dated 17.05.2022, but the Department of Atomic Energy did not consider it. DoPT vide its O.M. dated 27.09.2022 issued a clarification to their O.M. dated 17.05.2022 wherein it was clearly mentioned that the reserved vacancies will be filled separately from amongst the eligible candidates with benchmark disabilities, who are lower in merit than the last unreserved candidates in the general merit list, but otherwise suitable for appointment, if necessary by relaxed standards. Based on the DoPT O.M. dated 27.09.2022 he again submitted a representation to consider him for the post of Assistant -2022 but the same was also not accepted.

2. Submissions made by the Respondent:

2.1 The Under Secretary (Admin), Department of Atomic Energy filed their reply dated 24.02.2023 and inter alia submitted that the Complainant is working as Upper Division Clerk at General Services Organization, Kalpakkam. He appeared in the Departmental Assistant Examination held in July 2022 and the result of the said examination was published on 02.11.2022. The Complainant secured the following marks:

Paper	Marks Secured	Result
Paper I	42	Fails
Paper II	64	Pass (Exemption in the year 2021)
Paper III	58	Pass
Paper IV	62	Pass
Total Marks	226	Fails

2.2 The Respondent further submitted that it was clearly mentioned at point 7 of the Circular dated 20.04.2022 vide which applications were invited from the eligible candidates. The candidates who secure a minimum of 45% marks in each paper and 50% marks in the aggregate will be declared passed in the written examination. However, SC/ST candidates who secure 35% marks in each paper and 40% in aggregate will be declared passed. General Candidates who secure 60% marks or more in any paper will be eligible for exemption from that paper if they so desire (55% marks or more for exemption in case of SC/ST candidates).

2.3 Since the Complainant falls under the General Category, he was required to score a minimum of 45 marks in each paper. However, he secured 42 marks in the paper- I and failed to clear the said examination due to a shortage of 3 marks in the paper- I.

2.4 The Respondent further submitted that the Circular for the said exam was issued on 20.04.2022 before the issue of DoPT OM dated 17.05.2022, therefore, the applicability of the said OM for the Assistant examination itself does not arise. Moreover, the policy to give relaxation to PwBD candidates in departmental exams is under consideration, which after its finalization, will be implemented in the future taking into consideration the requirements specific to the needs of the Department. The Respondent further submitted that para 8.1 of the DoPT OM dated 17.05.2022 states that relaxed consideration can be given only if a sufficient number of PwBD candidates are not available. As 05 candidates belonging to PwBD qualified without any relaxation, a sufficient number of PwBD candidates passed the said exam. Thus, the claim of the Complainant to extend the benefit of the selection of PwBD candidates on a relaxed standard stands immaterial.

3. Submissions made in Rejoinder:

3.1 The Complainant filed his rejoinder dated 03.03.2023 and submitted that as per DoPT OM dated 27/09/2022, PwBD category candidates selected without relaxed standards, along with other unreserved candidates, will not be adjusted against the reserved share of vacancies. The reserved share of vacancies will be filled up separately from amongst the eligible candidates with benchmark disabilities who are lower in merit than the last unreserved candidate, in the general merit list, but otherwise found suitable for appointment, If necessary, by relaxed standards. Consequently, the Respondent's argument for denying promotion is flawed.

4. Hearing: An online hearing was conducted through video conferencing on 14.11.2023. The following parties/representatives were present:

1. Shri U. Karthick - Complainant
2. Dr. E.Ravindran, Director, DAE - For Respondent No. 1
3. Sh. Sandeep Saxena, Dy. Secretary, DoPT - For Respondent No. 2
4. Sh. Debabrata Das, Under Secretary, DoPT - For Respondent No. 2

5. Record of Proceedings:

5.1 This Court observed that Respondent No. 1 relied upon the fact that the notification of the impugned examination was issued on 20.04.2022, i.e. before the issue of the DoPT instructions dated 17.05.2022 and that the Complainant, who appeared as a general candidate, did not qualify on the cut-off fixed for the vacancies in the UR category. Other relevant facts available on the record are that the paper-wise cut-off for a general candidate was 45%, whereas the same for

SC/ST candidates was 35%. There were no relaxations for any other category as there was no reservation in promotion for categories other than the SC and ST categories, including for the PwBD category as there was no reservation for them in promotion as of the date of the notification. The Candidate scored 42% marks on paper -1 which was 3% less than the cut-off.

5.2 The Court further observed that only the notification was issued prior to the issue of the DoPT instruction dated 17.05.2022. The conduct of the examination and the issue of the result were after the issue of the OM. The Respondent, however, could not take the necessary action to implement the reservation. The Court sought from Respondent No. 1 as to what action was taken for the implementation of the OM, in the last one and a half years. The Respondent submitted that after the issue of the impugned notification, they have been following the said instructions in all subsequent promotions.

5.3 The Court then asked whether any notification for the departmental promotion examination was issued after 17.05.2022, and if yes whether any person with disability was selected therein. The Court also asked the number of PwBDs who were selected on their merit as UR, those who were selected against reserved vacancies; and also the details of the candidates who were selected in those examinations.

5.4 The Respondent submitted that in the APO examination, two PwBDs were selected out of a total of approximately 25 candidates. The Court then asked whether the Complainant was also selected, to which the Respondent submitted in negative. The Court wanted to know whether the Complainant did not appear or was rejected.

5.5 The Respondent submitted that the Complainant appeared in the examination but could not qualify the same. The Court asked whether he did not qualify as a general candidate or as a PwBD and for which year. The Respondent submitted that he appeared as a general candidate and the year of the examination was 2022. The Court expressed its displeasure that the Respondent was going back again to 2022 when the query was about examinations after the issue of the DoPT OM.

5.6 The representative of the Complainant reiterated his earlier submission as encapsulated in para 1 above. He also submitted that the Respondent has not provided quota for the PwBD even in the promotion proceedings carried out after the issue of the DoPT OM. He also submitted that through the RTI application, he has come to know that the APAR grading submitted before the DPC was different than the actual ones. For example, his grade for the year 2021 was "Outstanding" whereas the one provided to the DPC was "Very Good". The Complainant was not informed about this "downgrading", which was patently illegal. Also, there was no panel for the PwBD.

5.7 The Deputy Secretary from the DoPT, in response to the concerns of the Court about widespread violation of the instructions of the department and the statute, submitted that the DoPT has issued instructions and is reiterating the same from time to time. In addition, the department is also conducting training and

workshops by themselves and also through central training establishments such as the ISTM. He also submitted that the Court can share the details of the departments against whom it has been receiving cases of violation, to enable them to invite the officials of such organizations to the workshops being conducted by them.

5.8 At this stage the Complainant submitted another input that the department in the name of providing relaxations to the PwBD candidates, has provided a completely different question paper based on MCQ for blind candidates which was of a different difficulty level. Not only there is no such instruction to go for two different question papers for the same examination, but this has also put the candidate with other disability at a disadvantageous position.

5.9 The Court recommended that the Respondent shall depute an officer well versed with the facts of the case to visit the office of the CCPD on or before 20.11.2023 along with all records relating to the grievances of the Complainant as brought out above, particularly with the certified copies of the APAR of the Complainant and the relevant extract of dossiers sent to the DPC. The Complainant should also share the information received by him through his RTI applications to this office by that time.

6. Submissions made by Respondent after ROP:

6.1 The following officers visited the O/o the CCPD on 20.11.2023-

- (i) Shri S. A. Meshram, Chief Administrative Officer, GSO, Kalpakkam
- (ii) Shri G. Naveen Kumar, Dy. Legal Advisor, DAE, Mumbai
- (iii) Shri B. Prabakaran, SO, Centralised Cadre Section, DAE, Mumbai

6.2 The above officers met Shri Praveen Prakash Ambashta, Dy. Chief Commissioner along with documents as per the direction of this Court. The team handed over a certified photocopy of the APAR of the Complainant and submitted that as per the APAR of 2020-21, the numerical grading given to him is 7.14 out of 10 which is considered "Very Good" whereas 8, 9 & 10 are "Outstanding". It was erroneously communicated to the Complainant as "Outstanding" whereas the same should have been "Very Good". Later on, before the DPC was convened, the GSO (Admin) clarified on 07.08.2023 that the grading 7.14 corresponds to a "Very Good" grading and after that, the final result was announced.

6.3 Post the issue of DoPT OM dated 17.05.2022, the Respondent has issued the notifications for departmental examinations in seven different grades and provided reservation as well as relaxation wherever applicable. The Complainant appeared for a written examination for the post of Assistant Personnel Officer and Assistant. The result of the Assistant Personnel Officer has been finalised wherein the Complainant could not qualify even after the grant of relaxation. The relaxations given to the PwBDs were uniform across their vertical categories such as SC, ST & General PwBDs.

6.4 The representative was asked whether any reservation rosters have been

prepared for PwBDs to which the Respondent replied that the year 2022-2023 was the first recruitment year after the issue of DOPT OM dated 17.05.2022. A roster shall be prepared on completion of the recruitment formalities.

7. Hearing: An online hearing through Video Conferencing was conducted on 13.02.2024. The following parties/representatives were present during the hearing:

1. Shri Nithin on behalf of the Complainant
- (2) Shri Ashok Daberal, Dy. Secretary, DAE- Respondent No. 1
- (3) Shri Sandeep Saxena, Dy. Secretary, DoPT- Respondent No.2
- (4) Shri S.A Meshram, CAO, GSO – Respondent

8. Record of Proceedings:

8.1 The representative of the Complainant reiterated his earlier submissions. He submitted that the department in the name of providing relaxations to the PwBD candidates, has provided a completely different question paper based on MCQ for blind candidates which was of a different difficult level than the one for persons with locomotor disabilities, a subjective question paper. He also informed that his grading was wrongly communicated as very good instead of Outstanding for the year 2020-2021.

8.2 Respondent No.2 submitted that they have already issued an OM dated 28.12.2023 regarding reservation in promotion to Persons with Benchmark Disabilities (PwBDs) and also mailed to all the ministries the next day for proper implementation. The Respondent further submitted that they have allowed the Ministry/Departments to consider the cases of PwD candidates, who had earlier appeared for the departmental examination based on their performance in the same and to take a decision to conduct a separate examination for the remaining candidates.

8.3 The Chief Commissioner directed the Respondent to complete the process of granting promotion to all the employees who are eligible as per DOPT's OM dated 28.12.2023 and update the progress within 15 days from the date of proceedings.

9. Submissions made by Respondent after ROP:

9.1 The Respondent vide email dated 22.02.2024 submitted a reply to the Review Departmental Promotion Committee which met on 14.02.2024 to consider the empanelment of candidates with disabilities on relaxed standards for the post of Assistant (Level-7 in Pay Matrix) in accordance with the DoPT OM dated 28.12.2023. Based on the Select List prepared by the DPC, the Complainant has been placed at Sl. No. 7 in a panel of 10 officers and he has been recommended for promotion with retrospective effect from 30.12.2022.

10. Hearing:

10.1 An online hearing through Video Conferencing was conducted on

20.09.2024. The following parties/representatives were present during the hearing:

1. Shri Nithin on behalf of the Complainant
 - (2) Shri S. A. Meshram, Chief Administrative Officer, GSO, Kalpakkam
 - (3) Shri G. Naveen Kumar, Dy. Legal Advisor, DAE, Respondent No. 1

4. Shri Sandeep Saxena, Dy. Secretary, D/oP&T, Respondent No. 2

10.2 The representative of Respondent No. 2, the Department of Personnel and Training (DoP&T) clarified that their role in this case was limited to the issue of instructions and policy for reservations in employment in central government establishments in accordance with the constitutional and statutory mandates. Issues pertaining to the implementation of these instructions remain with the concerned establishments, which in this case is the Department of Atomic Energy (DAE). Offering to collaborate as and when needed by this Court, he requested for deletion of the name of the DoPT from the list of parties. This Court while agreeing that no grievance of the Complainant is pending against Respondent No. 2, it requested the representative to stay on during the hearing to assist the Court.

10.3 On the issue of relaxation in the cut-off marks, Respondent No. 2 confirmed that the same can be resorted to if sufficient candidates with disabilities are not available to fill the vacancies reserved for them. He drew the attention of the Court to para 11 of the DoPT OM dated 15.01.2018 relevant for reservation in DR and para 8 of the corresponding provisions in its OM dated 17.05.2022 pertaining to reservations in promotion.

10.4 The Chief Commissioner asked the parties to briefly state the current factual position of the case. The representative of the GSO, Kalapakkam said that the promotion to the post of Assistant has been given to the Complainant, but he is now asking for promotion to the post of Assistant Personnel Officer (APO).

10.5 Shri Nitin, the authorized representative of the Complainant submitted that he has two prayers from the Court which have remained unresolved. As per the DoP&T's O.M. dated 28.12.2023, the financial arrears for the period between the 30.06.2016 and 16.05.2022 shall not be admissible for the candidates who have been promoted on notional basis. In the instant case, the result of the limited departmental examination, conducted for promotion to the post of Assistant, was published in November 2022. Thus, the Complainant is eligible for the financial arrear for the said period. His second prayer is with respect to promotion to the post of Assistant Personnel Officer for which the exam was held in 2021. The Complainant secured 181 marks out of 400 marks and is eligible under the PwBD category. The interview for the said post was conducted on 09.05.2021. Based on the O.M. dated 28.12.2023 and the result also published on 17.05.2023, 04 candidates were selected for the said post of which 02 were already in service as APO, at the HQ at Mumbai.

10.6 The Complainant submitted that DoP&T's O.M. dated 17.05.2022 was duly endorsed by the DAE on 27.11.2022. He further referred to para 4.2 of the DoP&T's O.M. No. 36035/02/2017-Estt (Res) dated 15.01.2018 wherein it was

clearly mentioned that a PwBD category candidate selected without relaxed standards will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible Benchmark Candidates who are lower in merit than the last unreserved candidate under the general category merit list. So as per this clarification, the department is bound to provide reservations with relaxed standards and the Complainant be promoted to the post of APO.

10.7 The Complainant further submitted that though vacancies are available he is being denied promotion only due to the filing of a complaint in this Court.

10.8 The Complainant finally submitted that the Department used two completely different question papers for the same examination, an objective type for candidates with visual and hearing disabilities and a descriptive type paper for candidates with other categories of disabilities. There is no instruction or guideline supporting such a discriminatory system within the sub-categories of disabilities.

10.9 The representative of the Department of Atomic Energy (DAE) submitted that the notice for the post of Assistant was issued well before the issue of the O.M. dated 17.05.2022. A clarification was sought from the DoPT about the applicability of the OM in such cases. Once we receive accordingly, we will implement the same.

10.10 He further submitted that 02 candidates in the PwD category had passed the examination and they were also promoted on the basis of their seniority in the normal course. As per the OM dated 28.12.2023, they were to be considered from an earlier date as they had already qualified the APO exam. No interview was conducted for them and only the date of effect of promotion was preponed from the date for holding the post. An interview was conducted for other candidates including the complainant, in which 04 more candidates qualified on a benchmark of 100 marks, but the complainant did not as he got 94 marks.

10.11 He also submitted that the benchmark for the general category was 110 marks. The benchmarks were decided by the DG considering the requirement of the post.

10.12 The representative of the DoP&T submitted that they do not have any reference from DAE pending with them and sought the date on which the same was sent to the DoPT or to send the request for clarification again through email, which can be processed on a priority basis.

11. Observations and Recommendations:

11.1 The Chief Commissioner observed that with one vacancy still unfilled, a minor relaxation in marks could address the issue. Instead of a strict adherence to a 100-mark cut-off, a compassionate approach without compromising standards would be more aligned with the objective of the Act and various instructions of the DoPT, thus avoiding unnecessary rigidity and ensuring morale among employees. The issue assumes further significance in light of the fact that unlike the case of

the SC/ST/OBC where reservation never lapses unless dereserved following a due process, reservation for PwBD lapses after 4 recruitment years.

11.2 The representative of Respondent No. 2, the DoP&T also advised that the criteria for relaxation must be justifiable in case of a judicial review. Departments must provide sufficient reasons for fixed criteria or any relaxation limits, as unjustified rigidity could invite adverse judgments from higher courts.

11.3 With regard to the different types of examination papers, the Court observed that the issue has been covered in the guidelines issued by the Department of Empowerment of Persons with Disabilities for conducting written examinations for persons with benchmark disabilities vide O.M. No. 34-02/2015-DD.III dated 29.08.2018 wherein it has been provided that alternative objective questions should be provided instead of descriptive questions for Persons with Hearing Impairment and that for candidates with visual impairment also alternatives should be provided in lieu of questions requiring visual inputs. The instructions do not support having a completely different set of papers for different categories of candidates.

11.4 The Court recommended to the Respondents to redress the grievance of the Complainant by way of a Speaking Order, a copy of which should be marked to this Court. In case, Respondent No. 1 feels that the relief can not be given to the Complainant, they should file a written statement within 7 days furnishing reasons for the same.

12. Additional submission of the Respondent (after hearing on 20.09.2024) :

12.1 The Under Secretary (Cadre), DAE filed the written submissions in the matter on 27.09.2024. He *inter alia* submitted that in order to implement DoP&T's O.M. No. 36012/1/2020-Estt (Res.II) dated 28.12.2023 regarding reservation in promotion to PwBDs w.e.f. 30.06.2016 for the post of Assistant Personnel Officer (APO), the Department has made all efforts to ensure that the rights of the PwBDs are protected in their Department. As per para 5 (i) of the DoP&T's O.M. dated 28.12.2023 employees with disabilities will be considered for grant of benefit of reservation in promotion upto the lowest rung of Group A on notional basis w.e.f. 30.06.2016 subject to their fulfilment of the eligibility conditions as laid down in DoP&T's O.M. dated 17.05.2022. Further, this benefit may be extended after holding Review DPCs per the extant instructions issued by DoP&T on the subject.

12.2 He further submitted that the Department started the process in February 2024 for conducting the Review DPC for candidates with disabilities. It was found that the Department had conducted the following 04 Centralised Departmental Qualifying Examination for the post of APO on or after 30.06.2016:

(i)	Centralised APO exam 2018	11-14 June 2018
(ii)	Centralised APO exam 2021	13-16 February 2021
(iii)	Centralised APO exam 2022	13-16 September 2022
(iv)	Centralised APO exam 2023	12-15 September 2023

12.3 It was submitted that all units of DAE were requested to send details of candidates with disabilities who had appeared in the Centralised Written Examination for the post of APO on or after 30.06.2016. The Respondent stressed that before the issue of DoP&T's O.M. dated 28.12.2023, they had already implemented the reservation in promotion to candidates with disabilities in the APO examination for the years 2022 and 2023 based on relaxed standards as per DAE's O.M. dated 07.06.2023. Since the Department had already implemented the reservation in promotion for the post of APO for the examination years 2022 and 2023, the candidates with disabilities who had appeared in the Centralized Written Examination for the post of APO in the years 2018 and 2021 only were re-assessed based on the relaxed standards as to which they had passed in the written examination to be considered for giving notional promotion by conducting Review DPC.

12.4 After scrutiny of the particulars of the candidates with disabilities the following 05 candidates qualified the written examination based on the relaxed standards:

Sl. No.	Name	Designation & Unit	Category	Year of Passing	Remarks
1.	Shri Abhilash S	APO, BARC, Mumbai	PwD (VH)	2018, 2021	Pass
2.	Smt. Sunita L. Sarang	APO, BARC, Mumbai	PwD (OH)	2018, 2021	Pass
3.	Smt. P Sujatha	Assistant, GSO, Kalpakkam	PwD (OH)	2018	Pass
4.	Shri Shankar V	Assistant, BARC, Mumbai	PwD (OH)	2021	Pass
5.	Shri U. Karthik	Assistant, GSO, Kalpakkam	PwD (OH)	2021	Pass

12.5 Subsequently, a Review DPC/Interview specially for the above candidates with disabilities for giving them notional promotion to the grade of APO with respect to the years 2018 and 2021 was conducted on 09.05.2024 by the duly constituted Department Promotion Committee. The result of the review DPC was published on 17.05.2024 and the 04 candidates were empanelled for giving them notional promotion w.e.f. inter-se-seniority of the date from which their junior got promoted as APO through respective Departmental Examination by creating a Supernumerary Post as per DoP&T's O.M. dated 28.12.2023.

12.6 The Complainant was declared 'UNFIT' in the Review DPC held on 09.05.2024 as he could not qualify as per the benchmark of 100 set by the DPC out of a total of 150 marks. The DPC enjoys full discretion to devise its own methods and procedures for objective assessment of the suitability of the candidates. The details of marks required to qualify and the actual marks of the complainant are as under :-

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Component	Maximum Marks	Marks obtained By the Complainant
Written weightage	75	33.94
APAR weightage	45	45.00
Interview Weightage	30	16.00
Total marks	150	94.94

12.7 As regards the observation of the Court that the department is rigid to not to give promotions to candidates with disabilities in the Department, it is submitted that the Department is very considerate in giving promotions to the candidates with Disabilities in the Department and this can be seen that the Complainant was promoted from UDC (Level 4) to the grade of Assistant (Level 7) notionally w.e.f. 30.12.2022 and actual from 02.05.2024. The opportunity of getting empanelled to the post of APO for the Complainant is not exhausted because once the candidate qualified in the written examination they are given the opportunity of appearing for the interview 06 times and they need not to appear or pass the written test again unless they want to improve their marks. Now, the Department is conducting the examination for promotion to the grade of APO almost every year and the Complainant has an opportunity to perform better and get empanelled.

13. Observations and recommendations :

13.1 Upon considering the facts of the case and the submission of the rival parties in this matter, this Court is of the opinion the grievance of the Complainant with regard to denial of promotion to the grade of Assistant has been redressed by the Respondent. The issue regarding different gradings in the APAR communicated to the Complainant under the RTI Act and to the DPC, has become immaterial as he got full weightage for the APAR.

13.2 The Respondent, however, has not furnished any justification as to why the enabling provisions from para 7 of the DoPT OM dated 17.05.2022 relating to the relaxation of standards and reiterated in OM dated 27.09.2022 could not have been used for relaxing the aggregate cut-off marks of 100 for disadvantaged categories such as the PwBD. The only reason preferred by the Respondent in this regard is that it was the decision of the DPC which enjoys full discretion to devise its own methods and procedures. Of course, the DPC enjoys that privilege. But what the Respondent has not understood here that the decision of the DPC is required to be accepted by the Cadre Controlling Authority, the Appointing Authority. The DPC does not decide, it recommends. It was for the Respondent to apply its mind to the recommendations of the DPC in the light of the prevailing statutory and executive directions. The fact that a vacancy remained unfilled in the process is also a significant fact which should have been considered by the Respondent.

13.3 In a recent judgment in W.P. (C) 484/2024 & W.P. (C) No. 494/2024, the Hon'ble Supreme Court examined the interpretation of and rationale given by the respondents in these writ petitions, namely the High Court of Judicature at Rajasthan & Anr. of not providing the cut-off marks to candidates with disabilities in the first two stages of the examination for Rajasthan Judicial Service, i.e. during

the preliminary and the Mains examinations and resorting to the same only in the final stage if adequate number of candidates do not become available. The Hon'ble Supreme Court while disagreeing with the Rajasthan admin and held as under:

"(i) The High Courts/ PSCs, while making recruitment to judicial service, ought to provide separate qualifying marks for persons with benchmark disabilities. in the Preliminary Examination. The qualifying marks should ordinarily be the same as for SC/ST candidates or can even be lower if so prescribed by the relevant Rules. If the Rules are silent, then the competent authority can lay down such qualifying marks;

(ii) After the Preliminary Examination is held, a separate cut-off should be prescribed for persons with benchmark disability to ensure that candidates equal to 10/15/20 times the number of posts reserved for PwBD candidates, are eligible to take the main exam. ...

....

(iii) The High Court/ PSC ought to lay down separate qualifying marks for the Mains Examination for PwBD candidates which can be the same as SC/ST candidates or can be even lower if so required by the relevant Rules. If the Rules are silent, then the competent authority can lay down such qualifying marks;

(iv) While declaring the results for the Mains Examination, a separate cut-off should be prescribed for PwBD candidates [who have the qualifying marks] who can appear for the interview so that sufficient persons belonging to PwBD category take the interview which is normally 3/5 times the number of vacancies for PwBD candidates. At this stage also the recruiting agency may be able to follow the bifurcation as provided in Section 34 (1) of the Act..."

13.4 The intent of the RPwD Act can be clearly seen in the above interpretation of the Hon'ble SC where the apex court has laid emphasis on ensuring that a sufficient number of candidates are shortlisted in each stage, i.e. 10/15/20 times the number of vacancies for the PwBD in the preliminary stage and 3/5 times the number of vacancies in the mains stage.

13.5 Respondent No. 1 appears to have failed to understand the objective of the RPwD Act, 2016 and the Rules and instructions on the issue of reservation for persons with benchmark disability framed thereunder.

13.6 Accordingly, this Court recommends a review of the select list for the post of APO and examining the candidature of the Complainant and any other candidate with disabilities in similar circumstances by relaxing the standards or the cut-off

marks.

13.7 In terms of Section 76 of the Act, the respondents are directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

13.8 Accordingly, the case is disposed of.

Digitally signed by
Rajesh Aggarwal
Date: 15-11-2024 12:26:41

(Rajesh Aggarwal)
Chief Commissioner for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE 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
 5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364
 5th Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364
 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 13946/1014/2023

In the matter of—

Dr. Mahendra Janardan Sable,
 Building No.A-Wing, Flat No.704,
 New Indraprabha Society,
 Near Shinde Petrol Pump,
 Mumbai Katraj Bypass Highway,
 Vikasnagar, Dehu Road,
 Kiwale, Pune 412101
 Email: mjsable6671@gmail.com

... Complainant

Versus

(1) The Director,
 Centre for Personnel Talent Management (CEPTAM)
 Defence R&D Organisation (DRDO),
 Ministry of Defence,
 Metcalfe House, Civil Lines,
 Delhi 110054
 Email: director.ceptam@gov.in

...Respondent No.1

(2) The Director General
 Human Resources (HR)
 DRDO Bhawan, DRDO HQrs
 Rajaji Marg, New Delhi-110 011
 Email: dghr.hqr@gov.in

... Respondent No.2

1. Gist of Complaint:

1.1 Dr. Mahendra Janardan Sable filed a complaint dated 08.02.2023 regarding an anomaly in the result declared by DRDO CEPTAM regarding

his son, Shri Hrushikesh Mahendra Sable, who has a 50% Intellectual Disability.

1.2 He submitted that Shri Hrushikesh Mahendra Sable applied for the post of STA-B advertised by the Respondent vide Advt. No. CEPTAM-10/DRTC in the month of September 2022. It was clearly mentioned in the advertisement that persons with intellectual disability, sub-category (d) of the PwBD category are eligible to apply. He cleared the computer-based tests (CBT) in both Tier-1 and Tier-2 stages. The final result of this examination is declared on 30.01.2023. The common cut-off for the last selected candidates was mentioned as 19.1860465 and Shri Hrushikesh Mahendra Sable scored 39.7435897 marks. Despite that, he was not selected for this post. An email regarding this was also sent to the Respondent to look into the matter.

2. Notice issued to the Respondents:

In exercise of the powers conferred u/s 75 & 77 of the Rights of Persons with Disabilities Act, 2016 [hereinafter in short "the Act"], a notice dated 28.03.2023 was issued to the Respondents for forwarding their comments on the affidavit on the complaint within the statutory time limit.

3. Submissions made by the Respondents:

3.1 The Respondent filed its reply dated 04.05.2023 and inter-alia submitted that a notification for the recruitment of 1075 vacancies of STA-B was published in the Employment News dated 03-09 September 2022. A total of 46 vacancies including 3 backlog vacancies were reserved for the PwD category as per Government Orders.

3.2 All the 10 vacancies reserved for PwBD [category (d)] to which the candidate belongs have been filled by offering appointment to suitable PwBD (d) who had secured more marks than the complainant's son Shri Hrushikesh Mahendra Sable and have obtained the qualifying marks prescribed therein. On the other hand, the candidate who appeared for Post Code 0113 (Library Science) and obtained the percentile of 19.1860465 in his discipline but obtained 45 marks out of 100 in the Tier-2 Test stands and passed the exam.

3.3 It was clearly mentioned in Section 4 of the advertisement notification that the selection process would consist of Tier-1 (Screening) and Tier-2 (Final Selection) and the provisional selection would be based on the order of merit obtained in Tier-2 examination depending upon the post/category/sub-category of the candidate. The minimum qualifying marks for Tier-2 was 40% for UR/OBC candidates and 35% for SC/ST candidates and the provisionally selected candidates in the ratio of 1:8 (No. of vacancies) would be called for Tier-II examination. It was also clearly mentioned that the provisional selection would be based on the order of merit obtained in the Tier-II examination

depending upon the post/category/sub-category of the candidate.

3.4 Shri Hrushikesh Mahendra Sable appeared for Tier-I for Post Code 0119 (Physics) and obtained a percentile of 77.1490199 (marks obtained 65/120). Thus, Shri Hrushikesh Mahendra Sable obtained the minimum qualifying marks in the Tier-I Exam and figured in a 1:8 ratio and hence called for the Tier-II exam. In the Tier-II exam, he obtained a percentile of 39.7435897 (marks obtained 35/100). Thus, Mr. Hrushikesh Mahendra Sable did not obtain the minimum qualifying marks, i.e. 40 marks, in the Tier-II examination and as such he was not selected for this post. The contention of the Complainant that his son was not selected, despite having higher marks, is, therefore, not correct.

4. Submissions made in Rejoinder:

4.1 The Complainant filed his rejoinder dated 02.06.2023 and reiterated his complaint. However, he added that the Respondent did not disclose the answer key to the candidates of Tier-1 and Tier-2 and in the absence of this information, it is impossible for anybody to guess the marks obtained. He was knowing the fact that the selection for the post of STA-B was based on minimum qualifying marks, but nowhere in the advertisement it was mentioned that it would not be on the basis of percentile. It is obvious that there is a difference between the Percentile and Percentage of marks, but unless the marks for each type of post are known, it is difficult and rather hypothetical to conclude that the 19 percentile has more absolute value than the 39 percentile.

4.2 The Complainant vide email dated 01.01.2024 further submitted that the posts of PwD category-(d) are common to all branches and hence the scores are normalized for bringing the scores of different branches to a common platform in order to decide the selection of candidates. As per the logic given by CEPTAM, the absolute marks are the basis for selection, then there was no need to normalize the scores. If the question paper of a particular branch was very easy, then all PwD category (d) candidates would get selected from that branch only. On the contrary, the branch for which the question paper was toughest, PwD category (d) students from this branch would have no chance for selection, despite good relative performance in his or her branch. This was the main reason behind normalization. He emphasized that his son, Shri Hrushikesh Mahendra Sable had a far higher normalized score than the last selected candidate and hence he must be selected.

5. Hearing:

5.1 A hearing was conducted on **21.10.2024 in hybrid mode** (Offline/Online through video conferencing) at the Office of the Secretary, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, Room No. 529, B-III Wing, Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi. The

following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/Representatives	Mode of Presence
From Complainant:		
1.	Dr. Mahendra Janardan Sable, Complainant	Online
From Respondents:		
1.	Shri Amit Aran, Scientist 'F' for Respondent No. 1	Physical
2.	Shri Rajesh Kumar, Technical Officer 'C' for Respondent No. 1	-do-
3.	Shri Mohinder Singh, Jt. Director, DGHR, DRDO HQrs for Respondent No. 2	-do-
4.	Smt. Neeta Khatumria, Dy. Director, DGHR HQrs for Respondent No. 2	-do-

5.2 During the hearing, the Complainant submitted that the posts advertised by the Respondent were common for twenty-three (23) disciplines, and because of that the raw score required for qualification was normalized. But the Respondent took the absolute value. For example, a person selected in a Library Stream scored 46 marks. However, the difficulty levels in Physics and Library Science can be different. Since the posts are common to all 23 streams, normalization was to be used. The person who was selected had a score of 19% whereas the score of the Complainant's son was 39.74%. So, the person having lower merit got selected.

5.3 The representative from the Respondent submitted that the Complainant's son who had appeared with Physics subject, scored 35 marks out of 100 whereas the selected candidate who had appeared with Library Science subject, scored 45 marks. The cadre of the post - 'Senior Technical Assistant' is one, but the personnel are required in different streams and, therefore, the vacancy was published in 23 subjects. The reservation for divyang persons is common in all subjects. The examination pattern of Tier-I is the same for all streams, but in Tier-II, a subject-wise exam was given. Since the difficulty level is not common in all subjects and there is every possibility that a mass of candidates may qualify in a particular subject, normalization is used to balance the difficulty level as per the formula in the form of percentile. Thereafter, the candidates who scored higher percentile were shortlisted. Since the Complainant's son belongs to General-PwBD, he must secure at least 40 percentile after the process of normalization.

5.4 The Court sought to know from the respondents if any relaxation in the cut-off marks was provided to any category of candidates. The rep of Respondent No. 1 informed that the minimum qualifying marks required for UR/OBC candidates was 40% and for the SC and ST candidates the same was 35% in both Tier I and Tier II examinations. The Court further asked the Respondents to confirm whether the Complainant would have been selected if he also had got the same relaxation as available to the SC and ST candidates. The rep of

Respondent No. 1 confirmed that the Complainant would have been selected at the relaxed standards of 35 %.

6. Observations & Recommendations:

6.1 After hearing the parties and perusing the records of the case, this court is of the view that after normalization, the score of the Complainant's son remained less than that of the selected candidate, resulting in his non-selection therefore, he could not be selected. Both the selected candidate and the Complainant's son belonged to the General-PwD category.

6.2 However, from the perusal of the recruitment notification, it was found that the **"PROVISIONAL SELECTION CRITERIA" / "SCREENING CRITERIA"** vide which the minimum qualifying marks for both Tier-I and Tier-II are fixed at 40% for the UR/OBC categories and 35% for the SC/ST categories are violative of para 11.2 of the DoPT OM dated 15.01.2018, which clearly states that same relaxed standard should be applied for all the candidates with Benchmark Disabilities whether they belong to Unreserved/SC/ST/OBC. Hon'ble Supreme Court in Civil Appeal No.3984 of 2007 Mahesh Gupta & Ors vs Yashwant Kumar Ahirwar & Ors held as under:

"A disabled is a disabled. The question of making any further reservation on the basis of caste, creed or religion ordinarily may not arise. They constitute a special class. The advertisement, however, failed to mention in regard to the reservation for handicapped persons at the outset, but, as noticed hereinbefore, the vacant posts were required to be filled up for two categories of candidates; one for Scheduled Castes and Scheduled Tribe candidates and other for handicapped candidates. Handicapped candidates have not been further classified as belonging to Scheduled Castes, Scheduled Tribes and general category candidates."

6.3 In another case W.P.(C) No. 484/2024 & W.P.(C) No. 494/2024, the Hon'ble Supreme Court in their Order dated 07/11/2024 reiterated the above ratio in the following words:

"(i) The High Courts/ PSCs, while making recruitment to judicial service, ought to provide separate qualifying marks for persons with benchmark disabilities² in the Preliminary Examination. The qualifying marks should ordinarily be the same as for SC/ST candidates or can even be lower if so prescribed by the relevant Rules. If the Rules are silent, then the competent authority can lay down such qualifying marks;

.....

.....

(iii) The High Court/ PSC ought to lay down separate qualifying marks for the Mains Examination for PwBD candidates which can be the same as SC/ST candidates or can be even lower if so required by the relevant Rules. If the Rules are silent, then the competent authority can lay down such qualifying marks.."

6.4 It is recommended that if any PwBD posts are left vacant due to this qualifying marks issue, and if any PwBD candidate becomes eligible at relaxed standards at par with the SC/ST candidates, the Respondent should consider their selection and appointment.

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

6.6 Accordingly, the case is disposed of.

Digitally signed by
Rajesh Aggarwal
Date: 13-11-2024 14:42:40

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE 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. 13948/1103/2023

In the matter of—

Shri Antareep Maity,
 R/o 76/5 Thakur Ramkrishna Lane,
 Howrah - 711104
 Email: antareepmaity1996@gmail.com ... **Complainant**

Versus

The Divisional Railway Manager/Howrah,
 DRM Building, Eastern Railway,
 Howrah Division,
 Howrah – 711101
 Email: drm@hwh.railnet.gov.in ... **Respondent**

1. Gist of Complaint:

1.1 Shri Antareep Maity, a person with 70% Visual Impairment filed a complaint dated 19.02.2023 against Divisional Railway Manager/Howrah regarding harassment to him in the matter of the issue of Railway Concessional Pass.

1.2 He alleged that the DRM Office/Howrah is neglecting his application for the issue of a Railway Concessional Pass saying that he is not eligible for issuing the concessional pass.

2. Reply filed by the Respondent:

2.1 Sr. Divisional Commercial Manager/Howrah filed a reply dated 15.04.2023 on behalf of the Respondent and submitted that as per Railway Board's Commercial Circular No. 04 of 2018 dated 12.01.2018 a person with visual

impairment with total absence of sight is eligible to get Railway Concession facilities.

2.2 In the instant case the Government Doctor has certified the disability of visual impairment as 70% which does not match with the stipulated criteria fixed for Railway Board for granting concession to the visually impaired person.

3. Submissions made in Rejoinder:

The Complainant filed his Rejoinder dated 08.05.2023 and could express only that he is a failed person having no job and no card due to his eyes.

4. Hearing (I):

4.1 A hearing was scheduled on 09.10.2024. However, due to administrative exigency, the hearing was conducted on **21.10.2024** through video conferencing at the Office of the Secretary, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, Room No. 529, B-III Wing, Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi. The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
From Complainant:		
1.	Mr. Antareep Maity	Online
From Respondent:		
1.	Mr. H.N. Gangopadhyay, Senior Divisional Commercial Manager Email: srdcm@hwh.railnet.gov.in	Online

4.2 During the hearing the Complainant reiterated his complaint that Indian Railway is not providing Railway Concession Pass/Railway Ticket to the persons with Low Vision. Being a one eyed person and 75% disability in another eye, he is facing difficulties in travelling.

4.3 The representative from the Respondent reiterated the reply filed by the Respondent dated 15.04.2023 that as per Railway Board's Commercial Circular No. 04 of 2018 dated 12.01.2018 a person with visual impairment with total absence of sight is eligible to get Railway Concession facilities.

5. Observations & Recommendations:

5.1 The issue is related to the non-issuance of the 'Railway Concession Pass'. This Court had the opportunity to peruse the Railway Board's Commercial Circular No.04 of 2018 dated 12.01.2018. The Circular expressly lays down that a person with visual impairment with a total absence of sight is eligible to get Railway Concession facilities. The Railway's policy on concessional fare also came before the Hon'ble High Court of Delhi in CWP No.2501/2019 & CM APPL. 11667/2019 National Platform for the Rights of the Disabled Vs the Ministry of Railway, where in its order dated 18.05.2023 it had held that the procedure adopted by the Railways is fair and transparent and they did not find any reason to interfere with the circular dated 19.03.2015 issued by the Railways.

5.2 Hence, no further intervention is warranted in this matter; and the case is accordingly disposed of.

Digitally signed by

Rajesh Aggarwal

Date: 13-11-2024 15:14:48

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice & Empowerment
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 5th Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364
 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 14134/1022/2023

In the matter of-

Shri Divyanshu Sehgal
 House No 68, Sector -5
 Springwood, Wave City, Ghaziabad,
 Uttar Pradesh - 201002
 Email - divyanshu.sehgal@gmail.com

... Complainant

Versus

The Chairman & Managing Director
 SJVN Limited,
 Shakti Sadan, Shanan,
 Shimla, Himachal Pradesh - 171006
 Email - sectd.cmd@sjvn.nic.in

... Respondent

1. Gist of the Complaint:

1.1 Shri Divyanshu Sehgal, a person with 40% visual impairment filed a complaint dated 22.05.2023 and submitted that he joined the service of SJVN Ltd as an Executive Trainee (Law) on 12.02.2019 and was initially posted at NJHPS, Jhakri, which is over 500 KM from the complainant's permanent residence. The Complainant was transferred from NJHPS, Jhakri Office to Corporate Head Quarters vide order dated 22.04.2019, and joined on 29.04.2019.

1.2 He further submitted that he is required to visit Delhi at CFS, Safdarjung

for his regular checkups. The Complainant approached the CMD and Senior Official of HR and explained his case and requested for his transfer/adjustment in the Liaison Office, Delhi. The Complainant by now has completed more than 4 years of services in the SJVN Ltd. and has been posted at CHQ, Shimla for four years. The Complainant's wife is employed in the POWERGRID and is posted in their Gurugram Office. Hence, he relied upon the GoI policy of keeping the husband and wife posted at the same station.

1.3 He also submitted that unlike other CPSEs such as the NTPC, etc. the Equal Opportunity Policy of the SJVN does not make any provision for Special Casual Leave for employees with disabilities.

2. Submissions made by the Respondent:

2.1 Manager Civil, SJVN Ltd. filed a reply on affidavit dated 07.08.2023 and inter-alia submitted that as per the policy of SJVN, newly recruited trainees are sent to various offices of SJVN Ltd. for job orientation to enable them to familiarize themselves with the working conditions and the nature of job before being considered for regularization in the organization.

2.2 The Respondent further submitted that on completion of 1 year on the job training, the Complainant was regularized w.e.f. 12.02.2020 vide order dated 29.05.2020 and was posted at CHQ, Law Section, Shimla, and has been posted there ever since.

2.3 He also submitted that the legal department of the organisation is situated at Shimla. There are three (3) Law Officer (Assistant Manager) posts at Shimla and the Complainant is one of them. Due to the heavy volume of legal work handled by the Law Department at the CHQ, it requires an adequate workforce to handle the work. Further, there is no sanctioned post of Law Discipline at the Delhi Office of SJVN Ltd. Only one Law Officer is temporarily positioned there to provide logistic support in relation to a few old legal matters/disputes pending in courts at Delhi in relation to NJHPS (Nathpa Jhakri Hydro Power Station) project in 1988. It was further submitted that in most of the new contracts entered into by SJVN Ltd., the jurisdiction of Courts is Shimla and not Delhi, for which reason the legal matters and issues are subject to the jurisdiction of Courts at Shimla. Furthermore, the old matters pending in Delhi Courts are also on the decline. As such, the posting of one

officer at Delhi is temporary and the deployed workforce will be removed from Delhi as soon as the old cases related to the disputes of NJPHS are resolved.

3. Submissions made in Rejoinder:

3.1 The Complainant filed his rejoinder on 09.09.2023 and reiterated his complaint.

4. Advice to the Respondent to Review Its Decision By Sharing the Legal Framework on Transfer/Posting of Employees with Disabilities: This Court vide its letter dated 18.01.2024 shared the legal framework on the issue of transfer and posting of employees with disabilities which included the relevant provision of the constitution, the RPwD Act, 2016, the RPwD Rules, 2017, instructions issued by the nodal ministries and the case laws on the subject.

5. Additional Submission by the Complainant: The Complainant vide his email dated 06.04.2024 submitted that in compliance of the Legal Framework Letter of this Court, he was transferred by the Respondent from Shimla to Delhi vide Office Order No. 001611/24 dated 03.04.2024. He submitted that this grievance has been redressed and as such requested to drop the proceedings.

6. Observations and Recommendations

6.1 Upon considering the submissions of the parties, particularly the email dated 06.04.2024 of the Complainant, this court has concluded that no further intervention is warranted in the matter as the grievance of the Complainant has been redressed by the Respondent. As such the case is disposed of with the approval of the Chief Commissioner for Persons with Disabilities.

**Digitally signed by
Praveen Prakash Ambashta
Date: 13-11-2024 21:45:34**

(Praveen Prakash Ambashta)
Dy. Chief Commissioner



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
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 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 14260/1023/2023

In the matter of —

Dr. Kurmendra
 Assistant Professor,
 Department of ECE,
 Rajiv Gandhi University,
 Rono Hills, Doimukh,
 Arunachal Pradesh-791112
 Mob-8415912663
 Email- kurmendra@rgu.ac.in

... Complainant

Versus

The Registrar
 Rajiv Gandhi University,
 Rono Hills, Doimukh,
 Arunachal Pradesh-791112
 Email – registrar@rgu.ac.in

... Respondent

1. Gist of the Complaint:

1.1 Dr. Kurmendra, a person with 40% locomotor disability filed a complaint on 26.06.2023 regarding harassment at the workplace. The Complainant submitted that he has been working as an Assistant Professor at Rajiv Gandhi University, Arunachal Pradesh since 22.03.2016. He is being harassed and threatened by the authorities at the workplace by issuing show-cause notices to him on flimsy grounds.

1.2 The Complainant further stated that he submitted a complaint to the

authorities regarding the irregularities/violation of UGC Notification of the recruitment process for the post of Associate Professor (UR). He also communicated the evidence related to the irregularities to the VC and Registrar through letter and email. Instead of taking any action against the selected candidate Mr. Maibam Sanju Meetei, three memos/Show Cause Notices were issued to the Complainant. The Complainant also alleged that he was forced to withdraw his complaint and was assured that no action would be taken against him.

1.3 The Complainant further submitted that on 24.04.2023 another Show Cause Notice was issued to him seeking his explanation for not following the procedure in sending a personal complaint and thereby breaching the University Code of Conduct/CCS (Conduct) Rules. He submitted a letter on 04.05.2023 to the Registrar for an update on the recruitment issue and also to know the exact provisions of the CCS (Conduct) Rules or any other rules applicable to him, which he was alleged to have violated. But this letter was not forwarded by the Dean, who cited the grounds of his lack of '*locus standi*' in the matter of recruitment at the university.

1.4 The Complainant further submitted that on 28.04.2023 and 11.05.2023 two Show Cause Notices were issued to him asking the methods used by him to access confidential information from Rajiv Gandhi University. He was asked to submit an affidavit on judicial stamp paper regarding the authenticity of the alibi and the evidence used to make the allegation.

1.5 The Complainant submitted some specific instances to show the harassment caused to him by the authorities, which are reproduced below:

(i) He applied for a 'Teaching Experience Certificate' on 05.10.2021 but the Vice Chancellor did not approve it despite the submission of a 'Statement of Purpose'.

(ii) He was not given Ph.D. increments from the date of registration in Ph.D. in 2021-22 which incurred a loss of approx. ₹4,00,000, while the same was given to Non-PwD teachers.

(iii) He was allotted a temporary residential quarter instead of a permanent residential during the last 5 years.

(iv) He was not provided with an Office room on the ground floor despite multiple requests. His name is marked as not eligible for promotion despite fulfilling the criteria for promotion.

(v) Issues were created to deny him financial assistance to attend international conferences which he had sought as per the university norms.

(vi) Malafide intention to stop his promotion from Level 10 to Level 11.

1.6 The Complainant sought the following reliefs:

(i) Withdrawal of Show Cause Notices and Memos issued to him.

(ii) Inquiry by external committee in the present recruitment for the post of Associate Professor (UR).

(iii) Punishment under Section 92 of the RPwD Act, 2016.

2. Notice issued to the Respondent:

In exercise of the powers conferred u/s 75 & 77 of the Rights of Persons with Disabilities Act, 2016 [in short "the Act"], a notice dated 11.07.2023 was issued to the Respondent for forwarding to this Court their comments on the complaint on affidavit within the statutory time limit.

3. Reply filed by the Respondent:

3.1 The Registrar, RGU vide email dated 11.09.2023 filed his reply and submitted that after receiving the complaint, the authorities had entrusted the same to a Scrutiny Committee. The Committee scrutinized the application of Dr. Maibam Sanju Meetei on 27.04.2023 in light of two sets of complaints received from the Complainant and another faculty member, namely Prof. Mahinder. The Committee had unanimously found that Dr. Maibam Sanju Meetei fulfilled the minimum requirement for the post of Associate Professor under Direct Recruitment and recommended no change in the earlier screening report. As such the Committee recommended initiating strong disciplinary/legal action against the complainants.

3.2 The Respondent further submitted that as per the norms of office procedure any official works and complaints need to be submitted through proper channels

and higher authorities cannot be approached directly. The Complainant did not follow the office procedure and the CCS (Conduct) Rules. Further, the Complainant was not able to show how he obtained the official secret documents to substantiate his complaint. As such the authorities had issued show cause notices to the Complainant.

3.3 He further submitted that the authorities had issued NOCs to the Complainant on several occasions. However, the University was unable to issue NOC to the Complainant on two occasions that were during the visit of the NAAC team to RGU. Applications for the same level post are not forwarded by the University except for the post of a Professor that too who has experience for a minimum period of 5 years in the post of professor in the service of the University.

3.4 With regard to the grant of increments, the Respondent submitted that since the University had already extended two non-compounded increments for having an M. Tech degree, clarification was sought from UGC regarding the grant of benefit of advance increment for possessing a Ph. D. degree. No response has been received from the UGC to date. Despite that, the University extended the Ph. D. increment on 02.01.2023 from the date of award and not from the date of registration. The matter will be reviewed as and when clarification is received from UGC.

3.5 With regard to the allotment of official quarters, the Respondent submitted that an out-of-turn residential quarter was allotted to the Complainant. However, he surrendered the said quarter. About, the non-allotment of the faculty room, the matter fell under the jurisdiction of the HoD of the concerned department and is not within the jurisdiction of the Vice-Chancellor. The Complainant had not approached RGU authorities regarding this matter.

3.6 With regard to the allegation of not being promoted from Level-10 to Level-11, the Respondent said that the Complainant was promoted from Assistant Professor (Level-10) to Level-11 with effect from 22.03.2021.

3.7 On the issue of grant of financial assistance, the Respondent submitted that the concerned committee vetted and recommended the name of the Complainant for financial assistance of ₹50,000/- to enable him to attend an international Conference at the University of Malaysia on 24.08.2019. Further on 22.05.2020, the University sanctioned an amount of ₹50,000/- being the TA/DA registration fees incurred to attend the international seminars.

3.8 The Respondent further submitted that the Complainant made various allegations against the Respondent without showing any evidence. Hence, the complaint raised by the Complainant was concocted having no iota of truth and is liable to be dismissed.

4. Submissions made in Rejoinder:

4.1 The Complainant filed his Rejoinder vide email dated 18.09.2023 reiterating his complaint. He further submitted that the Scrutiny Committee consisted of the same persons who were the members of the previous scrutiny committee and thus repeated the illegality while scrutinizing the applications of the candidates in question. The Scrutiny Committee ignored the documentary evidence submitted by the Complainant while re-scrutinizing the application.

5. Hearing (I):

5.1 A hearing was conducted on **15.04.2024** in hybrid mode (Online/Offline). The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/ Representatives	For Complainant / Respondent	Mode of Attendance
1.	Dr. Kurmendra	Complainant	Online
2.	Advocate Tamar Gadi	Respondent	Online
3.	Dr. N.T. Rikam, Registrar	Respondent	Online

5.2 **Proceedings of the Hearing:** The Complainant submitted that he wrote a representation on 27.03.2023 to the Appointing Authority against irregularities in the recruitment of the Associate Professor on the basis of an anonymous email received by him and many other faculty members on 12.03.2023. Instead, the Appointing Authority issued a show cause notice to him on 18.04.2023 followed by more than nine (9) letters to him including multiple show cause notices, thereby causing immense stress and harassment to the Complainant. In the said notices, the Complainant was alleged of not following the proper channel as per the CCS (Conduct) Rules and the office procedure, which were not even part of the Ordinance of the RGU. In another show cause notice, he was alleged for using secret/confidential information from the minutes of the Scrutiny Committee and was asked to explain the method through which he was able to access the confidential information from the RGU. The Respondent did not cite any specific law, rules, or

information that were allegedly violated by him. The Complainant also submitted that the Appointing Authority forwarded his representation dated 27/03/2023 to the same Scrutiny Committee having the same members against whose proceedings/recommendations, the representation was filed, thus, violating the principles of natural justice.

5.3 On a query from the Court as to how he got a copy of the Scrutiny Committee report, which was confidential, the complainant replied that he did not obtain any secret information or the report of the scrutiny committee. The publications of any candidate are available online which anybody can access.

5.4 The Respondent questioned the maintainability of this case which hinged merely on the issue of show cause notices by them to one of their employees seeking an explanation for some irregularity or violation even if that employee happens to be a person with a disability. It was submitted that the issue of show cause notice was actually in furtherance of the principles of natural justice.

5.5 The Complainant was asked whether he had replied to all the show cause notices to which he answered in affirmative. The Court asked the respondent whether any other faculty member filed a complaint about the recruitment process, and if yes, whether show cause notices were issued to such other faculty members also. The respondent replied that there was no complaint from any quarters about the recruitment process. The respondent also stated that the second Scrutiny Committee did not have the same composition.

5.6 The Complainant raised the issues of NOCs and Experience Certificates. The respondent submitted that the university had issued 5-6 NOCs to the Complainant. As regards the Experience Certificate, it was issued once, however, they issued multiple NOCs, and the Experience Certificate is an inherent part of the NOC. The Respondent further submitted that as per the government's rules, 04 NOCs can be given in a year. Since they had issued 5-6 NOCs to the Complainant, other faculty members also sought similar dispensation citing the principle of equality. The internal ordinance was, therefore, modified just a week before to the extent that the NOCs could be given up to five times a year.

5.7 The Complainant then submitted that he was given the benefit of increment from the date of award of Ph.D. whereas the others were given the benefit of the same from the date of their registration of Ph.D. The Respondent replied that the increments were granted to the complainant from the date of award of Ph.D. Some

other faculty members were given the benefit of an advance increment from the date of registration due to some confusion in the newly established Department of Mass Communication. In 2021, the UGC's clarification was sought in this regard where the clarification was received on 29.11.2021 specifying to grant increments from the date of award of the Ph.D. to everyone. This has been implemented with effect from the year 2018 without any discrimination.

5.8 After hearing both the parties the Court desired some further information from both the parties in writing. The queries of the Court from the Complainant and the Respondent were as under:

A. Queries from the Complainant:

(i) In your complaint, you mentioned that you were not given a promotion from level 10 to level 11 whereas the respondent has submitted that you were promoted to level 11 w.e.f. 22/03/2021. What is your explanation?

(ii) In your complaint, you mentioned that you were not provided with the financial assistance for not attending International Conferences whereas the respondent has replied that you were given financial assistance to the tune of Rs.50,000/- twice on 24/08/2019 and 22/05/2020. What is your explanation?

(iii) You mentioned that you were allotted a permanent residential quarter for the last five years whereas the respondent has replied that you were given of turn allotment of quarters which you surrendered. What are the facts regarding this issue?

B. Queries from the Respondent:

(i) Specify the documents or information used by the complainant in his representation that was confidential and, therefore, could not have been accessed by the complainant in an authorized manner.

(ii) Details of any investigation/inquiry proceeding to find out how such confidential information was leaked and also of the action taken in this regard.

(iii) What are the rules regarding the grant of additional increment on registration/award of Ph.D?

(iv) The details of other cases of grant of advance increment which were referred to the UGC for clarification. What are the dates on which these clarifications were sought and whether any other faculty member got an

advance increment from the date of registration for Ph.D. thereafter?

(v) What action has the University taken for recovery of the excess amount paid to faculty members who were granted advance increments from the date of their registration for Ph.D.?

(vi) The Respondent to confirm in writing that the second committee which reviewed the selection process against which the complainant filed his representation dated 27/03/2023 had different members than the original committee.

5.9 The Record of Proceedings of this hearing was issued on 10.05.2024.

6. Submissions after issue of R.o.P. dated 10.05.2024:

From Complainant:

6.1 The Complainant vide email dated 13.05.2024 filed the response and submitted that:

i. He in his complaint nowhere mentioned that he was not given a promotion from Level 10 to Level 11 rather he submitted that the promotion should have been given to him from 22.03.2020.

ii. He nowhere in his Complaint mentioned that he was not provided with financial assistance rather he had been harassed before giving the financial assistance.

iii. Also he did not say that he was not allotted any accommodation. He had written, "non-allocation of proper accommodation in the campus since last 7 years 3 months as on 21.06.2023". Since he was allotted a temporary accommodation, he surrendered the same in July 2023 and requested for allotment of a permanent residence.

From Respondent:

6.2 The Respondent vide their email dated 24.05.2024 submitted the response as:

i. The entire recruitment process consists of several stages of verification of the documents as submitted by the applicant and at each

stage minutes of the meetings of the committees formed for screening are documented. The Complainant in his complaint referred to various academic papers in his application that were submitted by the applicant for the post of Associate Professor. The Complainant without having access to the Minutes of the Screening Committee could not have validly ascertained the credentials of the applicants. The minutes of the Screening Committee are confidential and not open to the public at large.

ii. The Complainant was asked to reveal the source through which he had obtained the information regarding recruitment of the post of Associate Professor to which no concrete reply was received from the Complainant. The Complainant stated that the information was received through an anonymous email which could not be ascertained.

iii. The UGC Regulations (on minimum qualification for appointment of Teachers and other Academic Staff in Universities and Colleges and measures for maintenance of standards in Higher Education) 2018 and UGC Regulation, 2010 are the relevant regulations to be followed in cases of granting increments for award of Ph.D.

iv. A series of letters were written to the UGC to seek clarification regarding the grant of Ph.D. increments. As per the record, the first representation was on 27.07.2021, and thereafter no one in the University was given increments from the date of registration. The fresh instructions about the grant of increment from the date of award of Ph.D. was made effective from 2018.

v. Since no response was received from the UGC on the matter, and the University had yet to take a call on the recovery of payments made to the employees, a committee was constituted to enquire and assess the issues for further course of action. The Committee was notified to look into the issues related to Ph.D. increments and the outcome of the Committee is awaited.

vi. The members of both the First Scrutiny Committee and the Second Scrutiny Committee were the same except that the Head, the Department of ECE was not a party to the First Screening Committee Meeting.

7. Hearing (II):

7.1 A 2nd hearing was conducted on **25.06.2024** in hybrid mode (Offline/Online through video conferencing). The following parties/ representatives were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
From Complainant:		
1.	Dr. Kurmendra, Complainant	Online
From Respondent:		
1.	Dr. N.T. Rikam, Registrar	Online
2.	Advocate Tamar Gady, Legal Counsel	Online
3.	Ms. Oriental Taggu, Assistant Registrar	Online

7.2 The Respondent submitted that the main issue was about recruitment which was reviewed by the Scrutiny Committee twice which did not find anything wrong. Hence, the case was settled. On the remaining issues, also there was nothing outstanding.

7.3 During the hearing the Complainant submitted that actually nothing had been done by the Respondent. He further submitted that there is a difference between a 'No Objection Certificate' and an 'Experience Certificate'. He further submitted that multiple letters written by him to the Respondent university, for an Experience Certificate required for the purpose of applying for jobs elsewhere, had remained unactioned. As a result, on 6th June 2024, he made a representation to the PS to the Vice Chancellor. However, instead of resolving his grievance by expediting the issue of the Certificate, he was served with another Show Cause Notice for approaching the office of the Vice-chancellor.

7.4 The Respondent was asked to confirm whether a Show Cause Notice was issued to the Complainant for writing to the PS to the Vice Chancellor after waiting for almost 100 days. The Court also wanted to know whether the University generally takes more than 3 months to issue such certificates in every case. The Respondent replied that they had already issued the Experience Certificate. The

Court asked the Respondent to produce a copy of the certificate before the Court. The Complainant shared on the screen a copy of the Experience Certificate issued by the Respondent; and also read out the last sentence from the certificate, that - *"The Experience Certificate must not be used along with employment application in substitution of NOC"*. He said that the certificate was not in the format and that the Respondent University had tried to scuttle his avenues by making the above statement.

7.5 The Court observed that the said statement in the Experience Certificate was unnecessary and apparently unfair. The Court asked if the Respondent University usually makes such remarks in every Experience Certificate to be issued to other faculty. The representative of the Respondent did not reply. However, the Complainant submitted that he is singled out by the Respondent for such treatment.

7.6 The Court expressed its dissatisfaction over the manners in which the issues of the Complainant were dealt with which prima-facie indicates a biased attitude of at least some officers of the University towards a person with disability. As such, in the exercise of its powers under Section 77 of the Act, directed to send a team consisting of the Dy. CCPD and three eminent persons of the divyang community to the Respondent University to conduct an overall assessment of the implementation of the RPwD Act, 2016 with specific attention to sections 3, 20 to 23, 28 to 34, 38, 39, 41, 42, 44-48 and 91 to 93 read with rules made thereunder and the relevant instructions of the Central government on the subject. The Committee shall also look into the allegation of discrimination against persons with disabilities in the Respondent University.

7.7 The Court directed the Respondent to review their decision of issuing the show cause notice to the Complainant and issue the Experience Certificate as per the standard format if not done already.

7.8 The Record of Proceedings of this hearing was issued on 02.08.2024.

8. Submissions from the Respondent:

8.1 On 25.06.2024, the Respondent filed a written statement which inter-alia stated that the hearing conducted on 25.06.2024 was not done fairly and properly. The matter already in place was not at all taken up by, and only a flimsy issue relating to the Show Cause Notice and latest experience certificate issued to the

Complainant was taken up which were not included in the earlier listed matter. The CCPD was not ready to listen to the reasons for the issue of the Show Cause Notice.

8.2 The Respondent prayed that the University authority must be given a fair chance to present the case before this Court.

9. Hearing (III):

9 . 1 A 3rd hearing was conducted on **20.09.2024** online through video conferencing). The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
From Complainant:		
1.	Dr. Kurmendra, Complainant	Online
From Respondent:		
1.	Dr. N.T. Rikam, Registrar	Online
2.	Advocate Tamargady, Legal Counsel	Online
3.	Ms. Oriental Taggu, Assistant Registrar	Online

9.2 **Proceedings of the Hearing:** The Complainant submitted that no experience certificate has been issued by the Respondent so far. On 24th July 2024, the Complainant again requested the Respondent to issue the NoC but the same was not issued. Even after the order of this Court, the Respondent issued a NOC stating therein that the Complainant had filed cases at several courts and, therefore, in the event of his selection, he would be relieved from the University subject to the outcome or disposal of the ongoing cases. The Respondent is using such language in the Experience Certificate with the malafide intention to harm the Complainant's opportunity for career growth.

9.3 The Registrar of the Respondent University submitted that so far the Complainant had applied for NOC 16 times out of which, 10 NOCs were issued to him. In compliance with the directions issued by this Court in the last hearing, a rectified Experience Certificate was issued to the Complainant as per the format developed by UGC. As regards the denial of Ph.D. increment, the Complainant approached the Guwahati High Court which dismissed his plea directing that the issue be decided as per the UGC norms. Accordingly, the Ph.D. increments were released w.e.f. the date of award of the degree.

9.4 The Assistant Registrar submitted that as directed by this Court in the last hearing the Complainant was issued the Experience Certificate after rectification on 3rd July 2024. Thereafter, another Experience Certificate was issued to him on 8th August 2024 as per the UGC format. The Complainant wanted an experience certificate in a particular format required by him. As regards, the request of the Complainant for promotion, the University is governed by the UGC regulations but the Complainant was claiming the same as per the AICTE regulation. The Complainant had approached before the Court, where the case was dismissed.

He was promoted to the grade covering the Pay Level-11 in 2021. The next promotion would be due in 2026.

9.5 The Complainant submitted that in reply to an RTI application, the UGC clearly said that there is no standard format for issuing an Experience Certificate and as such no format has been sent by the UGC to any of the central universities. Regarding the dismissal of the case of Ph.D. increment by the Hon'ble High Court of Guwahati, the Complainant submitted that he never approached any court except this Court on the issue of his Ph.D. increments. The Complainant had to approach the Hon'ble Guwahati High Court when the University refused to nominate him for a two-week industrial training.

9.6 After hearing the parties, the Court concluded that no further hearing was required in the matter. The parties were directed to submit their brief written statements including the documents to support their respective oral statements during the hearing such as a copy of the Order of the Hon'ble High Court of Guwahati, the UGC format for Experience Certificate, etc.

10. Submission after the 3rd Hearing conducted on 20.09.2024:

From Complainant:

10.1 Vide email dated 11.10.2024, the Complainant requested this Court to issue a Speaking Order in this case as a final hearing had been conducted in this case on 20.09.2024.

From Respondent:

10.2 The Respondent filed its response vide letter dated 26.09.2024 and

furnished a copy of each of the judgments passed in (i) WP(C)/59/2024 dated 08.02.2024; and (ii) WP(C)/64/2024 dated 20.06.2024 respectively filed by the Complainant in the Hon'ble High Court, Itanagar Permanent Bench.

10.2 Case No. WP(C)/59/2024: The Complainant had submitted (during the hearing) that the writ petition was later withdrawn with the liberty to file afresh. The writ filed was the same as the instant case.

10.3 Case No. WP(C)/64/2024: In this petition, the Complainant had claimed that he was eligible to get promotion to Assistant Professor in Selection Grade Level-12 on 22.03.2024 as per the All India Council for Technical Education (AICTE), 2019 provided he was required to undergo two weeks industrial training. The Respondent University being a central university and governed by the UGC Regulations, an Assistant Professor who has completed five years of service in senior Scale/Level-11 amongst others is only eligible for promotion to the post of Assistant Professor Selection Grade/Level-12, as per which the Petitioner/Complainant is eligible on 21.03.2026 only. Therefore, the Court dismissed the petition as being devoid of merit.

11. Observations & Recommendations:

11.1 After hearing both parties and perusing the documents submitted by them, this Court is inclined to conclude that the relief sought by the Complainant for a direction from this Court to set up an inquiry into the recruitment for the post of Associate Professor (UR) by an external committee is not maintainable in this Court, as he failed to show how he is aggrieved by this recruitment. Rule 38 of the RPwD Rules, 2017 which lays down the procedure to file a complaint before this Court stipulates that only an aggrieved person or an agent of an aggrieved person can file a complaint. As such, this Court cannot interfere in that regard.

11.2 On the other issue of harassment by issuing multiple show cause notices and memos, this Court observes that the instant matter, If anything, has revealed a clear lack of communication between the two parties being in the nature of the employee and the employer resulting in conflict and hostility. While maintaining absolute integrity is a prerequisite of any public service and often the requirement of the rules, it cannot be achieved if both parties are not willing to walk the talk. It is said that the management of integrity in any organisation depends on the integrity of the management.

11.3 This Court has found that the Respondent could not establish that the Experience Certificate was issued to the Complainant as per the format prescribed by the UGC. No documentary evidence was furnished in this regard. The Respondent stated during the hearing that it was not possible for them to issue the certificate in the format desired by the Complainant. However, they did not respond to the allegation that the certificate issued by them was designed to scuttle the chances of selection of the Complainant elsewhere.

11.4 Further, the litigations mentioned in the certificates were filed by the Complainant and not by the University. No rules or policy was quoted by the University to show what could have possibly prevented them from relieving him in the event of his selection. The insistence of the Respondent on making such stipulations or conditions in the Experience Certificates issued to the Complainant reveals a hostile attitude of the Respondent towards a person with disabilities which is in clear violation of sections 3 and 20 (1) of the RPwD Act, 2016. It is also a matter of fact that despite requisition by this Court, the Respondent did not show that such stipulations/conditions were routine and were issued to other employees also.

11.5 This Court has also observed, rather painfully, serious misrepresentation and suppression of facts by both parties. For example, during the hearing on 20.09.2024, the Respondent stated that the Complainant approached the Hon'ble Gauhati High Court on the issue of denial of advance increment for the Ph.D. which dismissed his plea. However, the Order of the Hon'ble High Court in WP(C) No. 59/2024 shows that the matter was withdrawn and not dismissed. Further, in their reply dated 11.09.2023, the respondent had said that a complaint regarding the alleged irregularities in the recruitment of the Associate Professor was also received from another faculty member, namely Prof. Mahinder. However, during the hearing on 15.04.2024, the Respondent categorically stated that there was no complaint from any quarters about the same. It is clear that the Respondent was very casual in his submission before this Court. Such an act is a punishable offence under sections 77 and 93 of the Act. It is also a fact that the Complainant also failed to inform this Court about his writ petition till he was asked for it. Similarly, the Complainant submitted during the hearing on 20.09.2024 that he never approached any Court except this Court on the issue of his Ph.D. increment hiding the fact that he filed two writ petitions in the Itanagar Bench of the Gauhati High Court. In WP (C) 64 of 2024, he did raise an issue that he had also raised before this Court but failed to inform this Court. His original complaint was also misleading as while raising the issue of promotion from level 10 to level 11, the

financial assistance, and the allotment of accommodation, he did not reveal the full facts relating to these issues. This Court is empowered to initiate action on such omissions on behalf of both parties. However, it has decided to not go beyond placing its disappointment on the records.

11.6 In so far as the matter of promotion from Level 11 to 12 in March 2024 on the basis of AICTE regulation is concerned, the same has already been decided by the Hon'ble High Court of Gauhati in WP (C) 64/2024 and, therefore, is not open for this Court to consider.

11.7 It is in the interest of the Respondent establishment to ensure proper integration of the Complainant with the establishment by shunning any hostility and resolving issues of multiple show cause notices, experience, and no objection certificates with an open mind. This Court recommends that a proper experience certificate in a format that does not prejudice his career opportunities be issued to the Complainant within 15 days of the issue of this Order. The Complainant is also advised to learn from these proceedings and try to exhaust the available remedies within the University before resorting to litigation.

11.8 The Court also directs compliance with its direction given during the hearing on 25.06.2024 and as contained in para 7.6 above by 30th November 2024.

11.9 In terms of Section 76 of the Act, the Respondent is further advised to submit the Compliance Report of this Order within 3 months from the date of his Order.

11.10 Accordingly, the case is disposed of.

Digitally signed by
Rajesh Aggarwal
Date: 05-11-2024 13:16:23
(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE 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

5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364
 5th Floor, N.I.S.D. Bhawan, G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: (011) 20892364
 Email: ccpd@nic.in; Website: www.ccdisabilities.nic.in

Case No. 14402/1011/2023

In the matter of —

Shri Prashant Pandey,
 Flat No. 33,
 Indian Airlines (Cargo) CGHS,
 Sector-11, Dwarka,
 New Delhi 110075

...Complainant

Versus

The Chairman,
 Staff Selection Commission,
 Block No.12, CGO Complex,
 Lodhi Road,
 New Delhi 110003
 Email: chairmanssc@gmail.com

... Respondent No.1

The JS & CAO,
 Defence Office Complex,
 Ministry of Defence,
 'A' Block, Africa Avenue,
 New Delhi – 110023
 Email: js.cao-dod@nic.in

...Respondent No.2

The Secretary,
 Ministry of External Affairs,
 PSP Division,
 Patiala House Annexe,
 Tilak Marg, New Delhi 110001
 Email: psfs@mea.gov.in

... Respondent No.3

1. Gist of the Complaint:

1.1 Shri Prashant Pandey, a person with 50% Autism Spectrum Disorder (ASD) filed a complaint dated 06.08.2023 regarding not providing reservation to the other category of persons with disabilities for the post of Stenographer (Grade-C)

Examination 2023 published by the Staff Selection Commission (SSC).

1.2 The Complainant submitted that in the year 2022, 03 posts of Stenographer (Grade-C) were reserved for Persons with Disabilities [Divyang] (Others) i.e. 02 posts in the Ministry of Defence; and 01 Post in the Ministry of External Affairs. However, no Candidate was selected in the year 2022 against those 03 vacancies. So all the 03 posts were kept vacant. In the notification of the year 2023, not even a single post was reserved for the Divyang (Other) category.

1.3 The Complainant prayed that SSC may be asked to reserve posts of Stenographer (Grade-C) for the Divyang (Other) category.

2. Notice issued to the Respondents:

In exercise of the powers conferred u/s 75 & 77 of the Rights of Persons with Disabilities Act, 2016 [hereinafter referred to as "the Act"], the matter was taken up and a notice dated 21.08.2023 was issued to the afore-mentioned respondents to forward their respective comments in the matter to this Court within the stipulated time.

3. Reply filed by the Respondents:

3.1 The Respondent No.3 filed its reply dated 30.08.2023 and submitted that in SSC Stenographer Grade-C & D Examination 2022, a total of 60 vacancies were indented to SSC for Grade-C. Among these 60 vacancies, 03 were horizontally reserved for the Persons with Benchmark Category [PwBD] category, comprising one each for Hearing Impaired (HI), Locomotor Divyang (LD); and Others category. Subsequent to the final result declaration on 14.07.2023, one (01) vacancy earmarked for the Others Divyang category remained unfilled which would be treated as a reserved backlog vacancy for the subsequent recruitment year.

3.2 The tentative vacancies for SSC Stenographer Grade-C & D Examination 2023 were indented to SSC **on 27.03.2023**, before the final result declaration of SSC Stenographer Grade-C & D Examination 2022, i.e. **on 14.07.2023**. Therefore, at the time of indenting the vacancies to SSC for the year 2023, it was not possible to anticipate the unfilled vacancies earmarked for the Benchmark Divyang category in the 2022 exam. Hence, any unfilled reserved vacancy could not be included in the tentative vacancies indented for the 2023 examination.

3.3 Once the joining process of the selected candidates through the SSC Stenographer Grade-C & D Examination 2022 is completed, the exact number of

vacancies for SSC Stenographer Grade-C & D Examination 2023 including the backlog vacancies, if any, reserved for Benchmark Divyang Persons would be communicated to SSC.

3.4 The SSC [Respondent No.1] filed its reply dated 20.09.2023 and inter-alia submitted that as per the identified posts notified by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD] on 04.01.2021, the 'Functional Requirement' and the "Suitable Category of Benchmark Disability" for the post of Stenographer Grade-C are as under:-

Name of the Post	Functional Requirement	Suitable Category for Benchmark Disability
Stenographer Grade-C	S, ST, W, BN, RW, SE, H, C	(a) B, LV; (b) D, HH; (c) OA, OL, BL, OAL, CP, LC, Dw, AAV, SD (Spinal Deformity) & SI (Spinal Injury) without neurological/Limb dysfunction; (d) ASD, SLD, MI; and (e) MD involving (a) to (d) above

3.5 Respondent No.1 submitted that identification of posts for suitable categories of Persons with Benchmark Disabilities is under the exclusive domain of indenting user Ministries/Departments and SSC has no role in carrying out such identification and has to abide by the instructions with respect to the applicability and identification of posts for suitable category of benchmark disability.

3.6 In so far as 03 vacant posts are concerned, SSC tried to fill all the vacancies as reported by the Indenting Department. However, due to the non-availability of suitable candidates, the 03 vacancies were left unfilled.

3.7 Further, horizontal reservation cuts across vertical reservation (in what is called interlocking reservations), and persons selected against the horizontal vacancies have to be placed in the appropriate category viz. SC/ST/OBC/Unreserved depending upon the category to which they belong. However, it is not specified as to which vertical category vacancies are to be kept unfilled in case of non-availability of suitable candidates with benchmark disability; hence it was not feasible to keep such vacancies unfilled. Therefore, the horizontal vacancies left unfilled due to the non-availability of suitable candidates had been filled with the vertical category vacancies in the final result of the Stenographer Grade-C & D Examination 2022.

3.8. The Ministry of Defence [Respondent No.3] filed its reply dated 09.10.2023 and submitted that the vacancies of the Stenographer Examination 2023 were initiated on 23.03.2023 prior to the declaration of results of the Stenographer C & D Examination 2022. Hence, the unfilled PwBD vacancies will be carried forward in the next upcoming cycle i.e. Stenographer Grade C & D Examination 2024.

4. Rejoinder filed by the Complainant:

4.1 The Complainant in his rejoinder dated 25.11.2023 submitted that the Notification of Stenographer-2023 was published on 02.08.2023. In the Notification of Stenographer Grade-C & D Examination 2022 three (03) posts were reserved for PwD (d) category candidates in Grade-C. But no candidate was found suitable. So not a single candidate was finally selected in 2022 and the three (03) posts were kept vacant for the candidates of this category. In the notification of 2023, no post in Grade C was reserved for the sub-category (d) of the PwBD.

4.2 The instant case was filed so that the department could publish the backlog vacancy after the completion of the joining process. The MEA has already replied that they would consider it and add the backlog vacancy after the joining process is over. On 24.11.2023, the SSC published the CBT result of 2023 and they did not select any candidate from sub-category (d) of the PwBD. It means they would not take the skill test of any candidate from this category. In case at the time of document verification, if some posts are identified by the department then what would they do? The Complainant requested that SSC be directed to declare the list of selected persons from the sub-category (d) of the PwBD.

5. Hearing:

5.1 A hearing was conducted on **21.10.2024** in hybrid mode (Offline/Online through video conferencing) at the Office of the Secretary, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, Room No. 524, B-III Wing, Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi. The following parties/representatives were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
From Complainant:		
1.	Mr. D.C. Pandey, Father of the Complainant Mr. Prashant Pandey	Online

From Respondent No.1:		
1.	None appeared	---
From Respondent No.2:		
1.	Mr. Aaron Pamei, Director (HR), Ministry of Defence	Online
From Respondent No.3:		
1.	Ms. Risha Oberai, Under Secretary, Ministry of External Affairs	Online

5 . 2 **Proceedings of the hearing:** During the hearing, the Complainant expressed his concern that the Autism Spectrum Disability (ASD) was not included for getting the benefit of reservation in the ibid recruitment process.

5.3 The representatives of the Respondent No.3 reiterated the reply already filed on record and submitted that in this particular case, the issues were raised with regard to the vacancies relating to the year 2023. The tentative vacancies for SSC Stenographer Grade-C & D Examination 2023 [SSC-2023] were indented to SSC on **27.03.2023**, before the examination which was conducted in November 2022, and the final result declaration of the SSC Stenographer Grade-C & D Examination 2022, i.e. on **14.07.2023**. Since the exam of SSC-2022 had itself ended in November 2022 and the final results were also declared in July 2023, the MEA was not in a position to anticipate the unfilled vacancies earmarked for the Benchmark Divyang category in the SSE-2022 exam. Hence, any unfilled reserved vacancy could not be included in the tentative vacancies indented for the SSE 2023 examination.

5.4 Once the joining process of the selected candidates through the SSC Stenographer Grade-C & D Examination 2022 is completed, the exact number of vacancies for SSC Stenographer Grade-C & D Examination 2023 including the backlog vacancies, if any, reserved for Benchmark Divyang Persons would be communicated to SSC.

5.5 In a reply to the question, the representative from MEA said that no vacancy reserved/earmarked for Persons with Benchmark Disabilities [PwBD] is deleted/removed/converted, but the reserved/earmarked unfilled vacancies is indented to be filled in the next recruitment. In this case, the unfilled vacancies reserved for PwBD were indented in the SSC-2024 Examination.

5.6 The reply of the representative from Respondent No.2 was identical as stated by the representative of Respondent No.3. The 02 unfilled vacancies reserved for PwBD were indented to SSC to be filled up in the SSC-2024 Examination.

6. Observations & Recommendations:

6.1 After hearing the parties, it was observed that the vacancies reserved/earmarked for PwBD might have been unfilled most probable due to not given relaxation in the cut-off marks. The cut-off marks should not be reduced drastically but it must be at par with the cut-off marks decided for ST/ST and other reserved categories candidates in line with the instructions of the DoPT contained in para 11.2 of their OM dated 15.01.2018 which stipulates that same relaxed standard should be applied for all the candidates with Benchmark Disabilities whether they belong to Unreserved/SC/ST/OBC.

6.2 Hon'ble Supreme Court in Civil Appeal No.3984 of 2007 Mahesh Gupta & Ors vs Yashwant Kumar Ahirwar & Ors held as under:

"A disabled is a disabled. The question of making any further reservation on the basis of caste, creed or religion ordinarily may not arise. They constitute a special class. The advertisement, however, failed to mention in regard to the reservation for handicapped persons at the outset, but, as noticed hereinbefore, the vacant posts were required to be filled up for two categories of candidates; one for Scheduled Castes and Scheduled Tribe candidates and other for handicapped candidates. Handicapped candidates have not been further classified as belonging to Scheduled Castes, Scheduled Tribes and general category candidates."

6.3 In another case W.P.(C) No. 484/2024 & W.P.(C) No. 494/2024, the Hon'ble Supreme Court in their Order dated 07/11/2024 reiterated the above ratio in the following words:

"(i) The High Courts/ PSCs, while making recruitment to judicial service, ought to provide separate qualifying marks for persons with benchmark disabilities² in the Preliminary Examination. The qualifying marks should ordinarily be the same as for SC/ST candidates or can even be lower if so prescribed by the relevant Rules. If the Rules are silent, then the competent authority can lay down such qualifying marks;

.....
"

(iii) The High Court/ PSC ought to lay down separate qualifying marks for the Mains Examination for PwBD candidates which can be the same as SC/ST candidates or can be even lower if so required by the relevant Rules. If the Rules are silent, then the competent authority can lay down such qualifying marks."

6.4 The SSC did not appear in the hearing. However, the decision to fix the cut-off marks does not rest only with the SSC, the employers have the discretion to set the cut-off levels when sufficient candidates are not available. The decision of the extent to which the standards can be relaxed can not be left to the recruiting agency alone, which in this case is the SSC. The employers should have a say in deciding the benchmark based on the job description of the post and reasonable training interventions that can bridge the gap, if any. Therefore, it is recommended that the Respondents should provide relaxation in the cut-off marks of PwBDs at par with SC/ST/OBC, if the functional requirements meet with the reduced cut-off.

6.5 So, the respondents are advised to ensure that in the examination for the year 2024, the cut-off marks are reduced for the PwBDs as recommended in the preceding paragraphs 6.1 and 6.4 above and the vacancies reserved for the PwBDs are filled up.

6.6 In terms of Section 76 of the Act, the respondents are directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

6.7 Accordingly the case is disposed of.

Digitally signed by
Rajesh Aggarwal
Date: 15-11-2024 12:28:38

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities