



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. 14191/1024/2023

In the matter of —

Shri V Srinivasan

... Complainant

Versus

(1) The Chairman,
Department of Atomic Energy,

... Respondent No.1

(2) The Director,
General Services Organization,
Chengalpet (Tamil Nadu)

... Respondent No.2

1. Gist of the Complaint:

1.1 Shri V. Srinivasan, a person with 40% locomotor disability filed a Complaint on 19.05.2022 regarding the denial of reservation in promotion for persons with disabilities and exemption from physical attendance at the workplace during the COVID-19 pandemic.

1.2 The Complainant submitted that he has been working in the General Services Organization, Kalpakkam as a Lower Division Clerk since 29.12.2017. On 20.03.2020 when he was in Puducherry (his hometown) to take care of his pregnant wife, the country-wide lockdown on account of the COVID-19 pandemic was announced and due to the non-availability of transport, he could not join the office till 14.07.2020. He submitted that he had informed the APO and his leave-sanctioning authority about his leaving the station and named another employee who also used to leave the station during the weekend. He was,

however, forced to apply for leave for regularisation of his period of absence. His annual increment was released only after he submitted the leave application.

1.3 The Complainant further submitted that being the only senior LDC since 2017, he should have been promoted against the vacancy created due to the promotion of Smt. R. Uma Devi, UDC, in January 2021. However, his promotion to the post of UDC was not considered in the year 2021 despite him fulfilling the eligibility criteria, namely - completion of regular service of two (02) years as LDC. The Complainant submitted a list of 13 vacancies that were created in the grade of UDC since he became eligible for the post in 2019 and stated that none of these vacant posts of UDC were filled despite several representations of the Complainant.

1.4 The Respondent No. 2 notified the Departmental Qualifying Examination for filling of one (01) post of Upper Division Clerk (UDC) on 17.02.2023. The Complainant passed the LDE examination on 23.03.2023, but the Department still denied him promotion to the grade of UDC. Instead, the respondent issued another advertisement on 21.04.2023 for recruitment to the post of UDC from employees retired from the Department.

1.5 The Complainant made the following prayers:

- (a) To credit back the Earned Leave which he was forced to apply.
- (b) To promote him to the post of UDC with retrospective effect.
- (c) To fix the accountability of officers for violation of the recruitment procedure and rules.

2. Reply filed by the Respondent:

2.1 Respondent No.2, vide letter dated 08.08.2023 filed a reply and submitted that the Complainant joined the organization as LDC on 29.12.2017 and his hometown 'Puducherry' was recorded approximately 80 km away from Kalpakkam.

A. On the issue of Crediting Back the sanctioned EL

2.2 The Respondent further submitted that DoPT as per the instruction, a duty roster was prepared according to which, the complainant was supposed to attend duty from 23.03.2020 to 27.03.2020 and work from home from 30.03.2020 to 03.04.2020. The Complainant did not return to duty on 23.03.2020, and when contacted over the phone it was understood that he had left headquarters without intimation. Respondent No. 2 further submitted that the Department of Atomic Energy [DAE/Respondent No.1] issued a circular on 15.04.2020 and exempted Divyangjan from physical presence for duty. Accordingly, the Complainant was not included in the roster up to August 2020. The Complainant remained absent from 23.03.2020 to 27.07.2020 without any application or intimation.

2.3 Though the Complainant had left his headquarters without intimation & prior permission of his Leave Sanctioning Authority, the Respondent No.2, taking into account the Circular dated 15.04.2020 converted the period from 23.04.2020 to 13.07.2020 (82 days) as period spent on work from home. The Complainant had returned back to the headquarters on 14.07.2020 but was advised for a home quarantine till 27.07.2020 as per the Standard Operating Procedure during the COVID-19 pandemic.

2.4 Due to leaving his headquarters without intimation or prior permission of the Leave Sanctioning Authority, the Complainant was orally directed to apply for leave to regularize his absence for the period prior to Work From Home. Since, the Complainant did not do so up to 28.10.2020, a letter dated 29.10.2020 was issued to him in this regard.

B. On the issue of promotion to the post of UDC

2.5 The Respondent submitted that the Complainant was offered an officiating promotion as UDC with effect from 07.12.2022 and no discrimination was held on being a person with disability. As and when a vacancy arose, he was considered for officiating appointment as UDC. The Complainant was considered for the LDE quota and he qualified for the examination. However, during the Departmental Promotion Committee meeting, it was decided to refer the case to DAE to clarify whether the Direct Recruitment post of UDC can be converted to a

Limited Departmental Examination post. The DAE clarified that the vacant post under Direct Recruitment cannot be converted to a Limited Departmental Examination post. Hence, he could not be promoted, but there was no violation of the principles of natural justice or any discrimination against him.

3. Submissions made in the Rejoinder:

3.1 In his rejoinder, the Complainant submitted that he had left the headquarters after permission from the APO and his Leave Sanctioning Authority. Also, the DoPT OM dated 28.07.2020 clarifies government servants who left the headquarters on the weekend before lockdown but could not return on 23.03.2020 shall be deemed to have joined on 20.03.2020.

4. Hearing (I):

4.1 The matter was initially heard on 05.01.2024 where this Court observed that the Respondent did not show the requisite compassion while dealing with the case of treatment of the period of absence of a person with disability who could not join his duties due to the COVID-19 lockdown. It was also observed that the determination of whether a vacancy needs to be filled by DR or promotion needs to be done before intimation of the recruitment process, and not after conducting the departmental examination. Such afterthought in the matter of recruitment is a cruel joke on the affected person.

5. Action Taken Report on the Recommendations of CCPD

5.1 Respondent No.2 vide emails dated 16.01.2024 informed that in line with the directions issued by this Court and on review of the previous decisions, the Competent Authority approved the regularization of the period from 23.03.2020 to 22.04.2020 as Work from Home.

5.2 Respondent No. 1 vide email dated 05.06.2024 submitted that the Complainant had made representations for considering him for promotion as UDC based on the third cadre review. As per the third cadre review, it was decided to upgrade a post of LDC to UDC as a one-time measure in respect of those employees who have completed 05

years on the post of LDC as on 04.02.2021. The Complainant was not considered for upgradation as he had not completed five years on 04.02.2021.

5.3 The Complainant qualified the LDE conducted on 10.03.2023 as a General candidate and was empanelled for the post of UDC. Based on this empanelment, he became eligible to appear in the Departmental Qualifying Examination for the post of Assistant and Assistant Accountant. He appeared in the said examination in November 2023. The result of the examination was awaited as on 04.06.2024.

5.4 With regard to the promotion of the Complainant to the post of UDC, the Respondent submitted that as per DoPT OM dated 17.05.2022, the quantum of reservation in promotion is applicable in the cadres in which the element of direct recruitment, if any, does not exceed 75%. Accordingly, as per the DAE's OM dated 28.03.2016, for the cadre of UDC, the element of direct recruitment is 80%. Hence, the case of the Complainant could not be considered against reservation on promotion for PwBD. The Respondent also submitted that the LDE was conducted for empaneling the Complainant to the post of UDC and at no point, the Respondent have assured promotion to the Complainant. However, efforts were made to adjust the existing vacancies and to get vacancies from other units, but it could not materialize. They submitted that the promotion of the Complainant to the post of UDC would be considered as and when the vacancy arises subject to other conditions.

6. Another hearing was conducted on **20.09.2024**, where the following parties/representatives were present during the hearing:

- (1) Shri Nithin Narayan, Representative of Complainant
- (2) Shri S.A. Meshram, Chief Administrative Officer, R-1
- (3) Ms. Manaja Nagraju, Assistant Director, Security and Resource Manager, R-1

7. Record of Proceedings:

7.1 The Respondent submitted that the Complainant joined the Department as LDC in 2017. He has officiated as UDC for almost 3 years, (700 days) during 2020-2023. In December 2023, he would

complete the requisite 6 years of his regular promotion as UDC, which is a Level 4 pay matrix post.

7.2 Further, based on his qualifying the LDE for UDC grade in March 2023, he became eligible to apply for the departmental examination for promotion to the post of Assistant Accountant which also he has cleared. The post of Assistant Accountant is a Level 7 pay matrix post whereas UDC is a Group 'C' Level 4 post. Considering the anticipated vacancy in the next year, a panel was created, so that as and when vacancies arise, the Complainant could be posted as Assistant Accountant.

7.3 The representative appearing on behalf of the Complainant submitted that the Complainant is happy that the officials have acknowledged the merits of the petitioner in clearing the Assistant Accountant Exam, which is just an extension of this case. The hearing held by this Court on 05.01.2024 was with regard to the promotion to the post of UDC and not about the Assistant Accountant. The Complainant further submitted that despite one vacancy for the post of UDC in the same unit and clear provisions in the DoP&T O.M. dated 28.12.2023, no promotion criteria were considered for him by the Respondents.

8. Observations and Recommendations:

8.1 The Complainant has approached this Court with the following prayers:

- (a) To credit back the Earned Leave which he was forced to apply;
- (b) To promote him to the post of UDC with retrospective effect.
- (c) To fix the accountability of officers for violation of the recruitment procedure and rules.

8.2 The respondents have resolved the first issue. On the issue of promotion to the post of UDC, this Court is inclined to conclude that the complainant's claim to promotion before completion of 6 years of qualifying service as mandated under the relevant recruitment rules, merely on the grounds of being the senior most or the only candidate in contention is not justified. The complainant has also cited the DoP&T

instruction dated 28.12.2023 on the issue of reservation in promotion for persons with disabilities with retrospective effect from 30.06.2016 in support of his case for promotion to the grade of UDC. The Court observed that the recruitment rule for the post of UDC provides for 80% vacancies to be filled by direct recruitment and 20% by promotion. The DoPT instructions dated 17.05.2022 on the subject provide at Para 2.1 that **Reservation in promotion shall be applicable in the cadres in which the element of direct recruitment, if any, does not exceed 75%**. It is, therefore, clear that reservation in promotion shall not apply in this case. As such this Court is not inclined to grant of any relief with regards to the second prayer.

8.3 The Court, however, is of the opinion that the respondent, by conducting a departmental examination before determining whether the vacancy belonged to the DR or promotion quota, has not dealt with this matter with the abundant caution that is necessary in HR matters. The Respondents are advised to consider the case of the complainant for promotion to the post of UDC as well as Assistant Accountant as and when due as per the prevailing rules and instructions in this regard and submit an Action Taken Report o this Court within 3 months in terms of Section 76 of the RPwD Act, 2016.

8.4 This Court is not convinced that this is a fit case warranting any recommendation from this Court on fixing the accountability of officers involved.

8.5 Accordingly, the case is disposed of.

Digitally signed by
Rajesh Aggarwal
Date: 13-12-2024
(Rajesh Aggarwal)
20:54:04
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

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Case No. 15056/1022/2023

In the matter of

Mr. Ravindra Kumar Barkhiya

Respondent:

The Chairman & Managing Director

Nuclear Power Corporation of India Limited (NPCIL)

1. Gist of Complaint

1.1 The Complainant, Mr. Ravindra Kumar Barkhiya, a Scientific Officer/D at Narora Atomic Power Station (NAPS), NPCIL, with 80% orthopedic disability due to Post-Polio Residual Paralysis (PPRP), alleged that his repeated transfer requests to locations near his home in Greater Noida were unjustly denied, disregarding his medical condition and the provisions of the Rights of Persons with Disabilities (RPWD) Act, 2016. He stated that his condition required proximity to healthcare facilities and family support for effective treatment, rehabilitation, and daily assistance. Despite submitting medical certificates and supporting documents confirming the necessity of his transfer, NPCIL continued to post him at NAPS Narora, which was unsuitable for his health. He also reported workplace discrimination, including unfair APAR grading and delayed promotions, violating the RPWD Act's provisions on non-discrimination and equal opportunities. The complainant provided supporting documents, including medical certificates, transfer requests, a disability certificate, correspondence, and photographs of his condition, to substantiate his claims. He seeks urgent intervention to transfer him to an NPCIL office in Greater Noida or Noida, redress

workplace discrimination, and ensure compliance with the RPWD Act and related government policies on the rights and accommodations for employees with disabilities.

2. Submissions made by the respondent:

2.1 The Respondent, Nuclear Power Corporation of India Limited (NPCIL), submitted their reply and stated that Mr. Barkhiya had been posted at Narora Atomic Power Station (NAPS) following his request dated 07/06/2016 for a posting near his home. The Respondent emphasized that the Complainant was provided with necessary accommodations, including a ground-floor residence, special transport facilities, ramps at key locations, and an accessible office environment. Additional support, such as human aid and access to office equipment tailored to his needs, was also extended to him. The Respondent denied allegations of workplace discrimination, asserting that Mr. Barkhiya's APAR grading and promotions were conducted objectively, based on performance and organizational requirements. The Respondent further stated that all persons with disabilities at NAPS were provided equal opportunities, and their services were optimally utilized.

2.2 Regarding the transfer requests, the Respondent maintained that postings to the requested locations (Noida or Delhi) were not feasible due to the nature of available roles, which required frequent travel and activities unsuitable given the complainant's mobility constraints. The Respondent stated that no roles matching the complainant's qualifications and limitations were available at the requested locations. The Respondent highlighted that the complainant was utilizing a non-panel hospital for treatment without NPCIL's referral, despite the availability of in-house healthcare facilities and tie-ups with specialty hospitals. It was also noted that his posting at NAPS was chosen over other options that could have provided proximity to such facilities. The Respondent reaffirmed their compliance with the RPWD Act, 2016, and NPCIL's Equal Opportunity Policy for Persons with Benchmark Disabilities. They stated that policies for posting and transfers were implemented in a manner that balanced employee needs with administrative constraints. The Respondent concluded by requesting the dismissal of the complaint, asserting that NPCIL had provided all reasonable accommodations and support for the complainant while

ensuring compliance with statutory obligations.

3. Submissions made in the Rejoinder

3.1 The Complainant, Mr. Ravindra Kumar Barkhiya, filed a rejoinder before the Hon'ble Chief Commissioner for Persons with Disabilities (CCPD), countering the respondent's reply and highlighting numerous instances of discrimination and violations of the Rights of Persons with Disabilities Act, 2016 (RPwD Act). He reiterated that despite his 80% orthopedic disability (Post Polio Residual Paralysis), his repeated transfer requests from Narora Atomic Power Station (NAPS) to Noida or Delhi NCR were unfairly denied, even though these locations offer better medical support and accessibility. He stated that the management's refusal to provide accessible infrastructure such as elevators, wheelchair-friendly ramps, western toilets in residential quarters, and accessible transport further exacerbates his daily struggles. The complainant pointed out that many employees have been transferred to desired locations for non-medical reasons, emphasizing that the denial of his transfer reflects systemic discrimination. The complainant also alleged that his APAR (Annual Performance Appraisal Report) scores were arbitrarily downgraded for reasons such as "low productivity," "poor punctuality," and "availing long leaves," despite his consistent efforts to perform duties beyond his physical capacity. He explained that his leaves were taken for essential medical treatments, with proper intimation and documentation, and highlighted that other employees who took long leaves faced no such consequences. He argued that this selective downgrading of APARs has delayed his promotion by two years and undermined his career growth. The complainant further brought attention to verbal harassment, discriminatory remarks by the management, and the lack of Divyang representation in important committees such as transfer and promotion committees. He emphasized that these practices violated his dignity and social respect, compounding the challenges faced by Divyang employees.

3.2 The Complainant urged this Court to direct the respondents to transfer him to Noida, review and rectify his past APARs, ensure strict compliance with the RPwD Act, 2016, and implement training and awareness programs for NPCIL/NAPS management on the rights of persons with disabilities. He also requested time-bound redressal of

grievances, equitable promotion policies with relaxation for Divyang employees, and regular practical training to enhance skills.

4. Communication of Legal Framework on the subject of Posting/ Transfer of Employees with Disabilities or Care-givers

4.1 In order to facilitate an in-house redressal of the grievance of the Complainant, it was decided to share with the Respondent the legal framework on the issue of Posting/ Transfer of Employees with Disabilities or Care-givers. Accordingly, a letter dated 07.10.2024 containing relevant provisions of the Constitution of India, the RPwD Act, the RPwD Rules, instructions from the central government, and important decisions of the high courts was sent to the Respondent with an advice to look into the matter afresh and forward an action taken report within 30 days. No response to this communication has been received from the establishment so far.

5. Observations:

5.1 The Complainant has raised the following two points before this Court:

- (a) Denial of posting near his home town; and
- (b) Subjective and discriminatory assessment in his APAR

5.2 This Court is not inclined to intervene on the second aspect of the Complaint, namely subjective and discriminatory assessment in his APAR for the reason that the same is regulated under a well-defined process of appeal to the departmental authorities as per the instructions on the subject. The Complainant did not state or cite any evidence to show that the available recourse has been exhausted by him. In any case, on such issues which are purely service matters and not arising out of his disability, this Court has no mandate or jurisdiction.

5.3 On the first issue, namely the transfer of the Complainant to a place near his home, this Court would like to conclude that the Respondent has violated the RPwD Act, by not responding to the advice of this Court to forward an action taken report as sought vide this Court's letter dated 07.10.2024. It is clarified that the non-furnishing of information sought under the RPwD Act is a punishable offence as per

Section 93 of the Act. On the merit of the case, the argument of the Respondent that the assignments at Delhi/NOIDA are not suitable for the Complainant due to his mobility restrictions is not valid, if the post has been declared as suitable for a person having the disability that the Complainant suffers from. Obviously, it can not be the argument of the Respondent that their office premises at Delhi and NOIDA are not accessible for persons with disabilities.

5.4 This Court would also like to reiterate its recommendation communicated vide letter dated 07.10.2024 to say that Right to access is not an ordinary right. It is essentially an instrument to enjoy further rights in all walks of life. Accessibility of the workplace is enshrined in Article 41 of the Indian Constitution. The Rights of Persons with Disabilities Act, Section 20 (5), recommends framing a policy on the posting and transfer of persons with disabilities. Accordingly, the Department of Personnel and Training, through various instructions, has made stipulations in this regard. The latest instruction on the subject can be seen in Paragraph H of their OM number, dated 2 February 2024. Further, Section 21 of the RPWD Act makes it mandatory for all establishments, whether government or private, to frame equal opportunity policies in the manner prescribed by the Central Government. The Central Government, through the RPWD Rules 2017, has prescribed the manner to prepare and publish the equal opportunity policy. Rule 8 makes it mandatory that provisions regarding preference in posting and transfer are included in the equal opportunity policy of all establishments.

5.5 It has been observed that the Equal Opportunity Policy issued by the Respondent in December 2018 is not in compliance with Section 21 of the RPwD Act, 2016 read with Rule 8 of the RPwD Rules, 2017. At the outset, the title of the EoP suggests that it is for persons with benchmark disabilities only and not all persons with disabilities as has been clearly mentioned in Rule 8. Secondly, the policy merely lists out the items to which the Respondent is committed, without providing details of what and how it proposes to do it to achieve the statutory objectives. This Court has prepared a detailed guideline/template for preparing the Equal Opportunity Policy, which is available on its website under the heading "Resources". The same can also be accessed by using the weblink -

<https://ccpd.nic.in/guidelines-template-of-equal-opportunity-policy-eop/>

5.6 The provisions mentioned in para 5.3 make it clear that the legislature intended to provide a supporting environment in terms of health, education, social and psychological support. Hence, these guidelines are binding on the government establishments, unless they can show that a positive redressal of grievance is not feasible in view of an administrative constraint to be spelled out clearly. In other words, these instructions embody provisions that enable the authorities to provide reasonable accommodation to an employee with disabilities or a care-giver. If the authority decides to not use this power, then it is inescapable to clarify what prevents it from doing so. An authority cannot hide behind the discretionary powers vested in it in the face of such clear statutory provisions and guidelines on the subject.

6. Recommendations:

6.1 In view of the above, this Court recommends that the request of the Complainant be considered in the light of the provisions of the RPwD Act, the rules and instructions issued in pursuance thereof, and the observation of this court as brought out in para 5 above. The Respondent is further recommended to review and revise their Equal Opportunity Policy to bring them in line with Section 21 of the RPwD Act, 2016 read with Rule 8 of the RPwD Rules, 2017. The Respondent may *mutatis mutandis* use the template EoP issued by this Court as mentioned in para 5.5 above.

6.2 The Respondent is advised to take early action and forward their ATR to this Court within three months from the date of this order.

6.3 With these observations and recommendations, this case stands disposed of.

Digitally signed by
Rajesh Aggarwal
Date: 30-12-2024
(Rajesh Aggarwal)
Chief Commissioner



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
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Case No. CCPD/15382/1014/2024

In the matter of:

Ms. Khushbu

... Complainant

Versus

The Secretary,
 Department of Personnel and Training
 Ministry of Personnel, Public Grievances

... Respondent

1. Gist of the Complaint:

1.1 Ms. Khushbu, D/O Sh. Subhash Chander, and a person with 51% Multiple Disabilities (Blindness 30% + Hearing Impairment 31%) [MD] filed a complaint dated 30.04.2024 regarding the denial of appointment for the post of ASO despite successfully qualifying the SSC CGL Exam 2022 under the PwBD quota under the subcategory of Multiple Disabilities. She submitted that all her batch mates got their joining letter on 08.07.2023 but she was told by Respondent that they needed to consult the Department of Empowerment of Persons with Disabilities [DEPwD] about her disability status. On 13.09.2023, DoPT sent a mail to her for medical re-examination of disability category.

1.2 Initially she was referred to the Dr. Ram Manohar Lohia Hospital, Delhi [RMLH], where after several visits, the assessment initially got delayed on the pretext that the machines were not working, and later it was informed that no audiologist was available in RMLH. After waiting for three months, on 05.12.2023, the DoPT directed her to appear for medical examination in the Lady Hardinge Medical Hospital (LHMC), Delhi. At the LHMC, she was treated very rudely and

finally, her medical examination was completed on 28.12.2023. But she did not get the appointment.

2. Notice Issued to the Respondent:

2.1 In the exercise of powers conferred u/s 75 & 77 of the Rights of Persons with Disabilities Act, 2016 [hereinafter in short "the Act"], notices were issued on 10.06.2024 and 13.08.2024 to the Secretary, DoPT to forward to this Court, their comments on the complaint.

3. Submission of the Respondent

3.1 The Respondent vide letter dated 21.08.2024 submitted that the complainant had qualified the SSC CGLE 2022, for which the results were declared on 13 May 2023. She was selected for the post of ASO in CSS under the Multiple Disability category. As per her disability certificate, she is suffering from VI-30% and HI-31%. Since the complainant belonged to the MD category, it was decided to seek clarification regarding the combined percentage from the DEPwD vide OM dated 11.07.2023. After receiving the same from the DEPwD vide OM dated 14.08.2023, it was decided to get the disability of the Complainant re-assessed along with two other candidates with disabilities, by a medical board at the RMLH. The RMLH, vide their letter dated 19.09.2023 informed that the assessment of hearing disability could not be done at their hospital due to the unavailability of an audiologist. Afterward, the complainant was referred to the LHMC vide letter dated 14.11.2023.

3.2 The LHMC conducted the assessment on 19.12.2023. Her re-assessed visual impairment had been found to be 30%, and her hearing impairment had been found to be 12% whereas the same was indicated as 31% in her disability certificate. Based on the disability percentage mentioned by LHMC in its medical report and the formula prescribed for assessing the overall disability in cases of multiple disabilities, as per Para 40.2 of the Assessment Guidelines dated 04.01.2018, the overall disability had come out to be 38%. As such, she did not meet the minimum benchmark disability as per the Rights of Persons with Disabilities Act, 2016. Accordingly, her candidature for the post of ASO in CSS has been cancelled with the approval of the Competent Authority and it was intimated to her via order dated 2nd May, 2024. The same had also been intimated to her by post and through email.

4. Rejoinder Filed by The Complainant:

4.1 The Complainant vide email dated 09.09.2024 submitted that the DEPWD issued its clarification regarding issues related to multiple disabilities vide its response dated 14 August 2023, wherein the specific query of the DOPT regarding the subject was "whether the individual with disabilities should be more than 40% respectively or the candidate with overall disability of not less than 40% would be covered under 40% disability". The DEPWD rightly clarified to DOPT that "as per Para 40 of the Assessment Guidelines dated 04.01.2018, in order to arrive at the total percentage of multiple disabilities, the combining formula has to be used. As per this formula, there is no requirement for individual disabilities to be more than 40%. The DEPwD gave a go-ahead to her case while it specifically advised contacting the medical board for another candidate. However, the DoPT sent a communication to her on 13th September 2023, directing her to appear for medical reassessment of her disability category within seven days at RMLH.

4.2 The disability certificate of the complainant issued by a competent authority notified under the Rights of Persons with Disabilities Act & Rules made thereunder clearly indicates that her disability is permanent and mentions that the reassessment of disability is not recommended. Her documents were also verified in 2021 SSC Chandigarh. The malafide intentions of the respondent became more apparent when the petitioner learned that the DoPT despite being aware that an audiologist is not available in RMLH, still sent the petitioner for a medical reassessment to that hospital to waste her crucial time. The petitioners had to appear for medical examination at RMLH, Delhi where she was made to visit in person many times as their machines were not working. Finally, after doing her whole medical fitness checkup, she was told that the audiologist was not available.

4.3 The Respondent wasted another 3 months of the petitioner in referring her case to the Lady Hardinge Hospital after receiving the communication from RML Hospital on 19.09.2023. The Complainant was without any job despite being selected while her batchmates were happily working. It was only after her continued follow-up that the respondent on 05th December 2023, after a long wait of 3 months, asked her to report at Lady Hardinge Medical College at 10 AM on 06 Dec 2023, i.e. the very next day. She was shocked at such last-minute notice, but somehow, she managed to visit the hospital the next day. At the hospital, her assessment was completed on 28th December 2023. During her visits to the hospital, she was treated very badly by the staff. She informed the DoPT immediately after the completion of her medical fitness test. But, again, the

Respondent sat quietly over her appointment for nearly four months. When she made calls, she was told that it was under process.

4.4 She further submitted that even after 11 months of getting selected, she did not receive her joining letter, and was instead made to undergo unnecessary medical examinations without bearing any result. During the pendency of the present litigation, i.e. on 13 May 2024, nearly a year after her passing the examination, she received the Order dated 02nd May 2024, regarding cancellation of her candidature on the grounds that her disability was found to be 38%, and that she was not a person with benchmark disability.

5. Hearing:

5.1 A hearing was conducted on **13.11.2024** 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	Ms. Khushbu, Complainant	Online
2	Advocate Subhash Vashisht, Counsel for the Complainant	Online
From Respondent:		
1	Mr Vadali Ram Babu, Dy. Secretary, DoPT	Online
2	Mr Raghavendran, Under Secretary, DoPT	Online
3	Ms Prachi Jain, Section Officer, DoPT	Online

6. Submission from Complainant:

6.1 The learned counsel for the complainant reiterated the arguments made in the written submissions earlier, which have been mentioned in paras 1 & 4 above. For the sake of brevity, the same is not being repeated here. In addition, he also submitted that -

- a) during the medical assessments at LHMC, the father of the Complainant had heated arguments with hospital staff, which raised concerns about potential bias in the certification process and the overall

fairness of the procedure;

b) there was no appellate mechanism available to address discrepancies in medical assessments;

c) that the cancellation of her candidature was both premature and final, leaving her unable to apply for any future exams or seek other employment opportunities;

d) the errors in her disability assessment were a result of discrepancies in the methodologies used by different medical boards;

e) both the Panipat PGI certificate and the LHMC certificate categorized her disability as permanent, and therefore the reassessment of her disability percentage was, therefore, unnecessary.

7. Submissions from the Respondent:

7.1 The representatives appearing on behalf of the Respondent also reiterated the same points submitted in their written reply dated 21.08.2024.

7.2 The Respondent denied the allegations of harassment, asserting that the verification and medical re-assessment process was purely procedural, and aimed at ensuring that candidates met the eligibility criteria as per the RPwD Act and related guidelines.

7.3 The Respondent acknowledged that the absence of an appellate medical board was a systemic issue that had not been addressed at the time of the complainant's case. However, they confirmed that steps were being taken to establish such a mechanism for future cases.

7.4 The Respondent relied on the medical report issued by the Medical Board of LHMC and based on the medical report the candidature of the Complainant was cancelled by the competent authority.

8. Observations and Recommendations:

8.1 After hearing both parties and considering the documents available on record, it is clear that the final reason for not allowing the Complainant to join her

service was the fact that her re-assessed disability is fixed at 38%, and as such she was not considered eligible for reservation under the PwBD quota in terms of Section 34 read with Section 2 (r) of the Act. The Respondent, however, did not clarify as to what prompted them to doubt the original disability certificate or whether as a matter of policy, all candidates with disabilities are being referred for re-assessment. Abundant caution is required in matters related to employment under the state to not only ensure the fairness of the process but also to make it apparent to all citizens. The Court also observes that there has been an inordinate delay in the processing of this case.

8.2 This Court recommends that the complainant must be given a fair opportunity to appeal against the assessment of her disability by the LHMC Medical Board, to an Appellate Medical Board set up by the Respondent. The Respondent is also recommended to review the process of recruitment with a view to ensuring strict checks on delays.

8.3 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.

8.4 The case is accordingly disposed of.

Digitally signed by
Rajesh Aggarwal
Date: 20-12-2024
15:56:25
(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. CCPD/15503/1023/2024

In the matter of

Shri Kapil Kumar

....Complainant

Versus

The Secretary,

Ministry of Railways

... Respondent (1)

The General Manager

Northern Railway,

... Respondent (2)

1. The present case arises from a petition filed by the complainant, Mr. Kapil Kumar, against the Railway Department for terminating his services on medical grounds. The complainant challenged the decision on the basis of arbitrariness and non-compliance with provisions applicable to persons with disabilities and compassionate ground appointments.

2. Gist of the Complaint:

2.1 Mr. Kapil Kumar, complainant, a person with 90% hearing impairment filed a complaint on 18-06-2024 regarding termination from the service. The Complainant submitted that he joined the Indian Railways on 18-09-2020 on compassionate grounds. On April 2022, both his kidneys had failed, and he underwent a kidney transplant on 11-11-2022. After the transplant, he had hearing loss in both his ears. As a result, he was declared unfit for the A2 & below medical category. Thereafter, he applied for a medical examination under the 'PwD quota' using his Disability Certificate. His medical examination was conducted on 03-04-2024, where the doctors declared him fit.

2.2 After 15 days, he received a letter from the Railway Office, New Delhi as per which he was again declared unfit, citing the reason "progressive disease." He is in dire need of his job in the Railways to support his family, having two children, his mother, and his wife.

3. Despite notice dated 09.07.2024 and a reminder dated 20.08.2024, no reply was received from the Respondent.

4. Hearing: The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on 29.11.2024. Members present in the hearing:

- (1) Mr. Kapil Kumar (**Complainant**)
- (2) Mr. Abhijeet Gupta DPO ADM - (**Respondent**)

5. Record of Proceedings:

Submissions made by the Complainant

5.1 The Complainant submitted that he was appointed on compassionate grounds on the 18th September 2020, following the death of his father, who was a railway employee. He underwent training for a period of three years for the position of Technician Grade III.

5.2 The complainant had a kidney transplant on 4th November 2022 which resulted in him developing a hearing impairment with a progressive medical condition. As a result, the Respondent declared him medically unfit for any positions, including under the Persons with Disabilities (PWD) quota.

5.3 The Complainant raised concerns regarding the lack of transparency in the medical board's findings, especially the conclusion of "progressive disease," and requested a reconsideration of his termination.

6. Submissions made by the Respondent:

6.1 The Respondent submitted that the complainant, Mr. Kapil Kumar, was appointed on compassionate grounds on 18th September 2020, following the death of his father. The appointment was for the position of Technician Grade III, subject to a mandatory three-year training period. The Respondent clarified that the Complainant was not a permanent employee but an apprentice. It was submitted that the three-year training program did not guarantee automatic absorption and that fitness evaluations were mandatory during this period.

6.2 It was stated that during the training period, the complainant underwent a kidney transplant on 4th November 2022. Following this, he developed hearing impairment, which was later classified by the medical board as a "progressive medical condition." Based on multiple medical evaluations, the complainant was declared unfit for the post of Technician Grade III and other positions in Group C and Group D, including those under the Persons with Disabilities (PWD) category.

6.3 The respondent clarified that the complainant's training period remained incomplete, with one year pending, and his unfitness for medical reasons prevented him from continuing in the role or completing the required training.

6.4 It was further submitted that to ensure the complainant's family livelihood was not adversely affected, the Railway Department offered a compassionate appointment to the complainant's spouse. The respondent emphasized that this offer would secure financial stability for the complainant's family and requested the court to consider the medical board's findings while upholding their decision to deem the complainant unfit.

6.5 The Railway Department urged the complainant to accept the compassionate appointment offer for his spouse as a practical and reasonable solution to the present circumstances.

7. Observations & Recommendations:

7.1 The Respondent's actions of determining the unfitness of the Complainant and subsequent termination were based on the medical board's findings which were confirmed by multiple medical evaluations. It was observed that the complainant's medical unfitness was determined not only for the current post but also for other posts in Group C and Group D, including those designated for PWD candidates.

7.2 The complainant's termination during the training period, coupled with the offer of compassionate appointment to his spouse, represents the department's stated resolution to address the family's financial difficulties.

7.3 This Court acknowledges that the offer made by the Respondent to provide the job to the wife of the Complainant on compassionate grounds as per the extant rules on the subject is a fair decision and a viable alternative to support the family's livelihood. The Complainant is therefore advised to consider the offer with an open mind and communicate his decision to the Respondent within a reasonable period. If the Complainant and his wife are willing to accept the offer, the Respondent shall confirm to this Court about the appointment of the spouse of the Complainant within 3 months.

7.4 This matter is disposed of accordingly.

Digitally signed by
Rajesh Aggarwal
Date: 25-12-2024

17:28:53

(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)

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Case No. 15655/1022/2024

In the matter of

Mr. Karamveer

Respondent:

The Chairman & Managing Director

Punjab National Bank

1. Gist of Complaint:

1.1 The Complainant, MR. Karamveer, son of Mange Ram, is a Chief Manager at Punjab National Bank (PNB) with 67.7% Locomotor Disability, alleges that his transfer to inaccessible locations disregards his medical condition and the precautions advised to him by his doctor, the complainant stated that he underwent three major leg surgeries, including avoiding stairs and walking with support. Despite submitting medical certificates and multiple representations highlighting his accessibility needs, mobility restrictions, and the risks posed by the demanding Branch Manager role, he was transferred to locations unsuitable for his health, including a semi-first-floor office without a lift. His requests for cancellation of the transfer and reassignment to a non-field position have been ignored, worsening his condition, as documented in a medical certificate dated 22nd July 2024. The complainant seeks urgent intervention to cancel the transfer, assign him to an accessible location like Circle Office or CCO Vadodara, review PNB's transfer policy for compliance

with the Rights of Persons with Disabilities Act, 2016, and investigate the negligence shown in addressing his medical needs. Supporting documents, including medical certificates and correspondence, have been provided to substantiate his grievance.

2. Submissions made by the respondent:

2.1 The Respondent, Punjab National Bank (PNB), submitted their reply in response to the complaint filed by Mr. Karamveer. The Respondent stated that Mr. Karamveer joined the Bank as a Management Trainee under the OBC (OH) category on 23rd December 2013 and was posted at Circle Office Hissar. Following his promotion to SMG Scale IV on 1st April 2022, he was transferred to Circle Office Vadodara on 31st May 2022. The Respondent acknowledged that Mr. Karamveer had undergone surgery on 2nd May 2024 and was advised by his doctor to take complete bed rest until 5th June 2024, followed by restricted mobility with a walker and orthopedic tibia brace until October 2024. Considering his medical condition, he was retained in Vadodara and posted at Branch Office RC Dutt Road as Branch Head-Chief Manager on 24th June 2024.

2.2 The Respondent noted that following his posting, the complainant raised concerns via an email dated 17th July 2024, stating that the premises of the Branch Office RC Dutt Road are located on the first floor with no lift access, making it inaccessible given his condition. The Zonal Office Ahmedabad reviewed his representation and found no other Scale IV branch vacant in Vadodara. Consequently, on 22nd August 2024, the complainant was transferred to Branch Office Ajwa Road, Vadodara, which is on the ground floor and accessible without stairs.

2.3 The Respondent asserted that the transfer order to Branch Office Ajwa Road addresses the complainant's health issues and accessibility needs. The Respondent submitted that the complainant's grievance has been resolved and requested the closure of the case.

3. Rejoinder submitted by the Complainant

3.1 The Complainant alleges that his transfer to Zonal Sastra

Ahmedabad and BO RC Dutt Road, Vadodara, violated the Rights of Persons with Disabilities Act, 2016, as persons with disabilities are exempt from rotational transfers. Despite being a Scale IV officer with 67.7% locomotor disability, he was transferred to physically demanding and inaccessible locations, disregarding his medical condition and available accommodations. He highlighted that two suitable posts were vacant at Circle Office Vadodara, within 1 km of his residence, but these were ignored in favor of less suitable placements, including a branch over 9.5 km away. His requests for reasonable accommodations, supported by medical certificates, were overlooked, causing deterioration in his health and mental well-being. The complainant argued that his transfer demeaned his professional status, replaced him with a non-disabled employee, and failed to allocate him the Chief Compliance Officer (CCO) role near his residence.

3.2 The Complainant contends that his transfer violated Sections 3 and 20 of the Rights of Persons with Disabilities Act, 2016, which mandate non-discrimination and reasonable accommodations for employees with disabilities. He further highlighted concerns about its impact on his Annual Performance Appraisal Report (APAR) and career progression. He requested immediate intervention to cancel his transfer and post him to a suitable location, such as the Circle Office or CCO Vadodara, near his residence, to ensure compliance with statutory provisions and prevent further harassment, discrimination, and health risks.

4. Observations

4.1 The matter before this Court involves the legal framework for posting/transfer of an employee with disabilities. The Right to access is not an ordinary right. It is essentially an instrument to enjoy further rights in all walks of life. Accessibility of the workplace is enshrined in Article 41 of the Indian Constitution. The RPwD Act, 2016 does make enabling provisions for framing a policy on the posting and transfer of persons with disabilities at **Section 20 (5)** which assumes a mandatory tone in **Section 21 read with Rule 8 (iii) (c) of the RPwD Rules, 2017**.

4.2 Accordingly, the Department of Personnel and Training, through various instructions, has also made stipulations in this regard. The legal framework on the issue of transfer/posting of a person with disabilities or a care-giver is summarised as under:

(I) Statutory Provisions and Guidelines

a) Article 41 of the Indian Constitution - The state shall make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement.

b) Section 20 (2) of RPwD Act, 2016 - Sub Section 2 of Section 20 states that every government establishment shall provide reasonable accommodation, appropriate barrier-free and conducive environment to divyang employees.

c) Section 20 (5) of RPwD Act, 2016 - Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

d) Section 21 of the RPwD Act:

"21. Equal opportunity policy.—(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government. (2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be."

e) Rule 8 of the RPwD Rules, 2017 prescribing the manner of preparing and notifying the Equal Opportunity Policy under Section 21 of the Act:

"8. Manner of publication of equal opportunity policy.

...

...

(3) The equal opportunity policy of a private

establishment having twenty or more employees and the Government establishments shall inter-alia, contain the following, namely:

....

....

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

...

...”

(II) Relevant instructions from the DoPT- In this regard the DOP&T, being the nodal ministry of the central government on personnel matters has issued the following instructions which have also been circulated by other cadre controlling authorities such as the DFS, the DPE, the Railway Board, etc.:-

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

(b) OM No. A-B 14017/41/90-Estt (RR) dated 10.05.1990 issued by the DoP&T provided that employees belonging to Groups C and D may be posted near their **native place**.

(c) O.M. No. 14017/16/2002-Estt (RR) dated 13.03.2002 issued by DoP&T extended the enabling provision of their OM dated 10.05.1990 to employees belonging to groups A and B as well.

(d) O.M. No. 36035/3/2013-Estt (Res) dated 31.03.2014 issued by the DoP&T laid down guidelines for providing certain facilities to divyang employees of government establishments, wherein para

'H' of the O.M. makes provisions for **exemption from the rotational transfer, preference and choice in place of posting** with respect to the transfer and posting of divyang employees.

(e) O.M. No. 42011/3/2014-Estt. (Res) dated 06.06.2014 issued by the DoP&T provided for exemption from routine/rotational transfer of government employees who are **caregivers** of Divyang children. Considering challenges that are faced by the caregiver of a divyang child, this O.M. provides that the caregiver of a divyang child may be.

(f) O.M. No. 42011/3/2014-Estt (RR) dated 08.10.2018 issued by the DoP&T extended the scope of the O.M. dated 06.06.2014 to cover a government employee who is the main caregiver of a dependent brother or sister with disabilities in addition to divyang daughter/son/ parents/spouse for being exempted from the exercise of routine transfer.

(g) OM No. 36035/3/2013 Estt. (Res) dated 02.02.2024 issued by the DoP&T reiterated the contents of OM dated 31.03.2014 besides incorporating at Para I of the OM provisions for exemption from rotational transfer, preference, and choice in place of posting with respect to the transfer and posting of **caregivers**.

4.3 As rightly laid down in DoP&T O.M. dated 31.03.2014, the objective behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which they can achieve the desired performance and where their services can be optimally utilized. A combined reading of all the guidelines further makes it clear that the government's approach to the issue of transfer is progressive and forward-looking.

4.4 The Intention of the RPwD Act, 2016 is reflected in above mentioned provisions of the Act, and the rules and instructions issued in pursuance thereof or aligned with the statute. These provisions make it clear that the legislature intended to provide a supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of caregiver of divyang dependent is framed to achieve the intentions and objectives of the Rights of Persons with Disabilities Act, 2016. Hence, these guidelines are binding on the government establishments, unless they can show that a positive redressal of grievance is not feasible in view of an administrative constraint to be spelled out clearly. In other words, these instructions embody provisions that enable the authorities to provide for reasonable accommodation to an employee with disabilities or a care-giver. If the authority decides to not use this power, then it is inescapable to clarify what prevents it from doing so. An authority cannot hide behind the discretionary powers vested in it in the face of

such clear statutory provisions and guidelines on the subject.

4.5 Accordingly, the case is disposed of with a strong recommendation that the Respondent considers the request of the Complainant in the light of the observations of this Court and the relevant instructions to provide reasonable accommodation to the complainant to work in a conducive environment and reassign the complainant to a suitable, accessible location in the proximity of the Complainant's residence. An action taken report be submitted to this Court within 3 months.

4 . 6 With these observations and recommendations this case stands disposed of accordingly with the approval of the Chief Commissioner for Persons with Disabilities.

**Digitally signed by
PRAVEEN PRAKASH AMBASHTA
Date: 26-12-2024 17:27:08**

(Praveen Prakash Ambashta)
Dy. Chief Commissioner