



सत्यमेव जयते

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. 15617/1021/2024

In the matter of —

Kishan Aravindbai Makhecha ... **Complainant**

Versus

The Managing Director
ICICI Bank Ltd., Mumbai ... **Respondent**

1. Gist of the Complaint:

1.1 Mr. Kishan Aravindbhai Makhecha, a person having 50% locomotor disability, filed his complaint on 29.07.2024 regarding the denial of reservation in promotion. He stated that, despite working as an officer at ICICI Bank since 2014, his promotion to the Manager position has not been granted even after multiple representations to the bank's management. He further claimed that this denial violates Section 21 of the Rights of Persons with Disabilities Act 2016, which ensures Equal Opportunities for Promotion.

2. Notice issued to the Respondent:

2.1 In the light of the provisions contained u/s 3, the matter was taken up with the Respondent and a notice was issued on 31.07.2024, followed by a reminder dated 20.09.2024, instructing them to submit their comments on the affidavit regarding the complaint within the prescribed statutory time frame.

3. Reply filed by the Respondent:

3.1 The Respondent, in its reply dated 07.10.2024, stated that the Complainant

has been assigned a suitable role and is reportedly comfortable with it. The Complainant holds the position of "Maker" in the Branch Operations team at the Junagadh Branch, a role that does not require interacting with customers outside the branch. The Respondent emphasized that there is no discrimination based on disability. Regarding promotion to the next grade, the Respondent explained that it is contingent upon the role and responsibilities an individual undertakes. At present, the Complainant is neither seeking higher responsibilities nor willing to relocate, a requirement for other employees as per organizational policies. The Complainant's case for promotion will be considered when he is ready to take on more responsibilities.

4. Rejoinder filed by the Complainant:

4.1 The Complainant filed his rejoinder dated 19.11.2024 and argued that the Bank's reply misrepresents the situation, as he never refused higher responsibilities. He also pointed out that he is currently working as an Assistant Manager, while his current role as a "Maker" corresponds to the Deputy Manager-1 Grade according to the Bank's own policy, which suggests that he is already performing higher responsibilities. He also stated that there has not been any increment in his salary.

5. Intervention of the Hon'ble High Court of Gujarat

5.1 The Complainant vide his email dated 20th February 2025 filed an Order dated 04.02.2025 of the Hon'ble Gujarat High Court in R/Special Civil Application No. 606 of 2025 whereby this Court was directed to decide the case and pass a reasoned order adjudicating all the contentions raised by the parties within a period of six weeks from the date of receipt of the Order after giving due hearing to the parties.

6. Hearing (I):

A hearing in hybrid mode (online/offline) was conducted on **10.03.2025**. The following parties/representatives were present during the hearing:

| Sl. No. | Name & Designation of the parties/representatives | For Complainant/ Respondent | Mode of Attendance |
|----------------|--|------------------------------------|---------------------------|
| 1. | Sh. Kishan Arvindabai Makhecha | Complainant | Online |
| 2. | Adv. Rahul Bajaj | For Complainant | Online |
| 3. | Mr. Asmit Aggarwal, Legal Manager, ICICI Bank | For Respondent | Online |
| 4. | Mr. Rohit Das, HR Manager, | For Respondent | Online |

| | | | |
|----|---------------------------------|----------------|--------|
| | ICICI Bank | | |
| 5. | Ms. Ritika Aggarwal, HR Manager | For Respondent | Online |

7. Record of Proceedings

7.1 The learned advocate appearing for the Complainant submitted that the Complainant had been employed as a senior officer at the Respondent's bank since April 1, 2018, and his post was later renamed Assistant Manager. His promotion was delayed under the claim that he was unwilling to relocate and did not want to take on higher responsibilities. Despite this, his colleagues with similar seniority were promoted. The Complainant, however, is already handling tasks typically assigned to higher-level officers, such as a Maker, which is usually reserved for officers at the DM-1 level and above, according to the bank's policy.

7.2 The Complainant's Counsel requested the Court's intervention to ask the Respondent for details on any training provided to improve his performance, as required under Rule 8 (3) (c). This was imperative as the Complainant is performing a higher-level role without being officially promoted or compensated accordingly.

7.3 Regarding the issue of relocation, the Counsel pointed out that the Complainant was previously transferred from Junagarh to Banaskantha, and the Court had recommended that the bank exempt him from rotational transfers as a form of reasonable accommodation. The bank's insistence that relocation is a prerequisite for promotion contradicts the principle of reasonable accommodation.

7.4 The Counsel further stated that the Respondent has not disputed the Complainant's performance, citing formal appreciation in 2019 and 2024. While the Complainant acknowledges that he does not have an inherent right to promotion in a private establishment, he does have a right to be free from discrimination based on disability in promotion matters.

7.5 Ms. Ritika Aggarwal, the HR Manager for the Respondent, confirmed that the Complainant receives a bonus each year based on the bank's requirements and his performance.

7.6 After hearing both parties, the Court sought the following information from the Respondent:

- (a) Whether there are any employees working as a Maker who are below the Dy. Manager level.

(b) Any written evidence or email trail supporting the claim that the Complainant was unwilling to relocate.

(c) The current postings and capacities of employees hired with the Complainant in 2014 and why the Complainant was denied similar treatment.

(d) Whether the bank has an Equal Opportunity Policy, and if so, a link or screenshot of the policy.

(e) Details of the Grievance Redressal Officer (GRO) for Persons with Disabilities, the number of PwD complaints received in the last three years, and the status of their resolution.

7.7 The Respondent was given time until 13.03.2025 to provide these details to the Court with a copy to the Complainant, who was asked to submit his rejoinder on or before 17.03.2025.

8. Action Taken received after ROP dated 10.03.2025

8.1 The Respondent, while challenging the jurisdiction of the Court in matters related to the promotion of Persons with Disabilities in a private establishment, cited judgments from the Hon'ble Delhi High Court to support their objection and provided a point-by-point response:

(a) The Respondent stated that there are 37 employees at the Assistant Manager–I level performing the role of Maker, and several employees, apart from the Complainant, are working as Makers below the Deputy Manager level.

(b) The Complainant had previously filed Case No. 12996/1022/2021, challenging a transfer from his hometown, Junagarh, to Nevada in Banaskantha. In the order dated 12.04.2022, the Court recommended that the Complainant be retained in Junagarh, indicating his unwillingness to relocate. The Respondent had complied with this order.

(c) The Respondent, one of the largest private banks in the country, hired the Complainant as a Sales Officer in 2014 alongside thousands of others. The Respondent emphasized that each individual's career progression depends on factors like performance, merit, and capacity for greater responsibility, and there has been no discrimination against the Complainant based on disability.

(d) & (e) The Respondent has a Diversity, Equity, and Inclusion Policy, committing to fostering a culture of diversity and inclusion, enabling employees to

work effectively and without bias.

8.2 However, the Respondent did not provide information regarding the existence of an Equal Opportunity Policy, or about the appointment of a Grievance Redressal Officer (GRO) for Persons with Disabilities as required under the RPwD Act.

9. Hearing (II):

An online hearing was conducted on 24.03.2024. The Complainant and his counsel joined online, however, the Respondent did not appear, and efforts to contact them remained nonresponsive. After waiting for 15 minutes, the Court decided to adjourn the hearing till 01.04.2025, afternoon. Parties were informed through the Record of Proceedings issued on 25.03.2025 that in case of their absence in the rescheduled hearing, the matter will be disposed of ex parte based on the submissions and material available on the records of the case.

10. Hearing (III):

A hearing in hybrid mode (online/offline) was conducted on **01.04.2025**. The following parties/representatives were present during the hearing:

| Sl. No. | Name of the parties/Representatives | For Complainant/ Respondent | Mode of Attendance |
|----------------|---|------------------------------------|---------------------------|
| 1. | Sh. Kishan Makhecha | Complainant | Online |
| 2. | Adv. Rahul Bajaj & Adv. Taha Bin Tasneem | For Complainant | Online |
| 3. | Adv. Ayaan Patel, M/S Singhi Co. ICICI Bank | For Respondent | Online |
| 4. | Sh. Asmit Aggarwal, Legal Manager, ICICI Bank | For Respondent | Online |

11. Record of Proceedings

11.1 The learned counsel reiterated the written submission of the Respondent on the queries raised by this Court during the hearing dated 10.03.2025, which has been covered at para 8 above. He submitted that the Complainant's present assignment as a Maker was decided as a special case to provide him with reasonable accommodation. The stipulation quoted by the Complainant to suggest that the position of Maker is available only to officers of the level of Dy. Manager is basically in the nature of a guideline. There are 37 assistant managers in the same role.

11.2 On the issue of any evidence to show that the Complainant is unwilling to

relocate, the learned Advocate submitted that in the year 2021, there was a proposal to transfer the Complainant from his hometown in Junagarh to another district. The Complainant was aggrieved and approached this Court. This Court recommended that the Complainant be posted near his native place. This Order was complied with, and the Complainant stands posted in Junagarh even today.

11.3 On the third query of this Court as to the status of other employees who were recruited in 2014, at the same time when the Complainant was recruited, the learned Advocate submitted that the Respondent bank is the largest private sector bank in the country. He also submitted that in the banking sector, there is a very high attrition rate. Each individual employee will have his/ her own career trajectory, and on a case-by-case basis, it may not be comparable. He further submitted that it would be almost impossible to collect such information within a short span of time.

11.4 On the issue of the EOP, the learned Adv said that they have a Diversity, Equity, and Inclusion Policy and a Human Rights Policy. On the issue of nomination of a Grievance Redressal Officer, the learned Adv pointed out that the provisions of Section 23 cover only government establishments. Nevertheless, there is a system in place for grievance redressal of employees. Employees are encouraged to first raise their grievances with their immediate superior or the HR team. If this informal mechanism does not work, the employee can raise their grievance in the digital platform named "iCare" or approach the Employee Relations Officers appointed across the country, who fulfill the role of the GRO. There is also a separate mechanism for cases related to sexual harassment at the workplace.

11.5 On the further query of the number of complaints received from any employee with disability in the past 3 years, the learned advocate submitted that there has been no complaint from any person with disability other than the present one during the said period.

11.6 The learned advocate further submitted that what has been sought in the present Complaint is promotion to the next grade. The Complainant has already been promoted twice in the bank. He joined in 2014 as a Junior Officer and was promoted to Senior Officer in April 2018. In April 2022, after his case against transfer outside Junagarh District was disposed of in his favour and complied with by the Respondent Bank, he was promoted as Assistant Manager. The learned Advocate, quoting from para 5.6 of their reply dated 13.03.2025, also submitted that the performance of the Complainant was not found satisfactory during 2023-24. The Complainant did not contact clients, which was part of his duty for

generating business, despite being advised to do so. He did not open a single savings or current account throughout the financial year. There have also been instances when the Complainant went off on unplanned leave, which disrupted the work of the concerned branch. To support his argument about the non-satisfactory performance by the Complainant, the learned Advocate cited an email dated 04.02.2025, whereby the observation of the Bank, of delay in processing the cheques, escalation of issues by the customers, etc., was communicated to the Complainant. The particular branch is not a very busy branch, still, requests received in the morning are not being closed even at the end of the day.

11.7 The learned Advocate then referred to the prayers made by the Complainant in his original complaint dated 31.07.2024, which was to grant his rightful promotion to the next higher grade of manager under the provisions of sections 20 and 21 of the RPwD Act, 2016. The learned advocate submitted that such a direction would not be under the mandate and jurisdiction of this Court as provided in Section 75 of the Act. To support his case, the learned advocate cited three orders of the Hon'ble Delhi High Court, namely – 1) Oriental Insurance Company Ltd. Vs CCPD (2022), Central Bank of India Vs. Shakuntala Devi (2023), 3) NPTI Vs the O/o the CCPD (2024), where the recommendation of this Court service matters was found to be untenable.

11.8 The learned Advocate for the Complainant in his response submitted that the ground of poor performance is clearly an afterthought as the email sent to the Complainant communicating to him the performance problem, was issued on the same day when the Hon'ble Gujarat High Court remitted this case back to this Court, i.e. on the 4th February 2025. He also submitted that there is no specificity or substantiation of the observations made in the said email. He further submitted that the same email was also sent to another official, named Asim Maheja, who is already working as the Dy. Manager. It is, therefore, not clear as to how the grounds mentioned in the mail can prejudice the promotional avenue of the Complainant when the same did not come in the way of the promotion of an able-bodied person.

11.9 The learned Advocate for the Complainant further submitted that it is a written policy of the Respondent Bank that an officer of the level of the Dy. Manager alone can work as "Maker". The Respondent is now stating that their own policy is being flouted in 37 cases across India. Such non-adherence to their own policy cannot be used to justify the denial of the promotion of the Complainant. He also submitted that the Respondent has not furnished any information or as sought by this Court an email trail, about the unwillingness of the

Complainant to relocate, except what is already known to this Court, which is a case decided by the CCPD in 2021 where the Complainant had sought transfer on account of medical treatment. The Respondent has not furnished any information on this from development between 2021 and now. On the issue of the career progression of other employees who joined with the Complainant or around the same time, the Respondent has withheld the data on the pretext that the data size is large. This data is crucial to determine whether there was any discrimination against an employee with disability. The learned Advocate citing Section 114 (g), of the Indian Evidence Act, which says that the Court may presume that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it, argued that the information was withheld with a view to preventing the correct picture from coming out. The learned Advocate further submitted that the Respondent has, instead of answering whether they have published the Equal Opportunity Policy, which is a mandatory requirement under Section 21 of the Act, tried to mislead the Court by referring to their Diversity, Equity, and Inclusion Policy and the Human Rights Policy. Neither of these two policies is in line with the EOP, which has a very specific objective. For example, the EoP under Section 21, read with Rule 8 of the RPwD Rules, is mandated to contain provisions regarding pre-promotion training, which is very relevant in the instant case. But, none of the policies referred to by the Respondent has any corresponding provisions. The learned Advocate shared his circumspection about the averment of the counsel of the Respondent that not a single grievance has been raised by a person with disability in the last three years. In an organization as large as the Respondent Bank, such a situation can only occur in two circumstances – one, the Respondent establishment has managed to put their house in order and everyone is working in complete harmony, or two- the system of grievance redressal is totally dysfunctional and nobody is aware of such a mechanism.

11.10 Finally, the learned advocate, while responding to the case laws cited by the Counsel for the Bank, submitted that the ratio in these case laws is centered on the issue as to whether this Court is competent to intervene in a service matter and issue binding orders. He also submitted that the third Judgement of the Single Bench of the Hon'ble Delhi High Court has been assailed before the Division Bench of the Court, in which notice has also been issued. Hence, it is not appropriate to quote that judgment here. He said that it was his case that the reason for the denial of his promotion was on account of the disability of the Complainant and as such, this court is as per its mandate of Section 75 (1) (a) to (d) is competent to inquire into the subject as the alleged violation here is of

Section 20 (3) and Section 21 read with Rule 8 (3) of the RPwD Rules, 2017. Moreover, this Court is currently hearing the matter under the mandate set for this Court by the Gujarat High Court, which remitted the case to this Court with a direction to decide the case and pass a reasoned order adjudicating all the contentions raised by the parties within a period of six weeks from the date of receipt of the Order after giving due hearing to the parties. Hence, the issue of jurisdiction of this Court cannot be raised by the Respondent.

11.11 He also submitted that the Counsel for Respondent has informed the Court that the Complainant was promoted from the post of Senior Manager to AM-1 in April 2022. However, neither any formal letter was issued nor any increment on this account was given to him. He questioned whether this could be termed a promotion.

11.12 He clarified that he is not seeking a direction from this Court to grant him a promotion, but his prayer is for a finding from this Court that the non-promotion of the Complainant is on account of his disability.

11.13 The learned Advocate for the Bank in his counterclaim submitted that the feedback shared with the Complainant on 4th February 2025 was not a sudden communication in afterthought as was suggested by the counsel of the Complainant. The Complainant's performance throughout the financial year was sub-par, and to that effect, there is enough proof, such as not opening a single current or savings account, not meeting with the clients, and proceeding on unplanned leave. He reiterated that the role of Maker assigned to the Complainant was only to afford him reasonable accommodation, and a reverse inference cannot be drawn that such assignment means that he was promoted to a higher post of Dy. Manager only on the basis of a guideline that makes a general provision that the role of Maker can be assigned to an officer of the level of Dy. Manager.

11.14 The learned Advocate challenged the revised prayer of the Complainant, saying that a finding attributing disability as the reason for promotion would amount to adjudication and, as such, would be a transgression from the mandate and jurisdiction of this Court given at Section 75 of the Court.

12. Observations and Recommendations:

12.1 After hearing both parties, the Court has the following issues for determination-

- (a) Whether this Court has the mandate or jurisdiction over service matters?

- (b) Whether the issue of alleged discrimination in service matters on account of disability is within the jurisdiction of this Court?
- (c) Whether this Court has the mandate to enquire into and come to a finding on a matter such as the one raised in this complaint?
- (d) Whether the alleged denial of promotion is prima facie linked with the disability of the Complainant?

12.2 The mandate of this Court is given in Section 75 of the RPwD Act, 2016, which is reproduced as under:

“75. Functions of Chief Commissioner.— (1) The Chief Commissioner shall—

(a) identify, suo motu or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act and recommend necessary corrective steps;

(b) inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(e) study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;

(f) undertake and promote research in the field of the rights of

persons with disabilities;

(g) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(h) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(i) monitor utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities; and

(j) perform such other functions as the Central Government may assign.

12.3 As such, the mandate to monitor implementation of the Act is unquestionably one of the listed mandates of the CCPD. Hon'ble Delhi High Court in a recent Judgment in LPA No. 980/2024 dated 02.04.2025, namely Mukesh Kumar Vs NPTI, held inter alia as under:

45. Therefore, generally and in normal circumstances, the service-related matters such as transfer, promotion, grant of pay scale or time bound pay scales, grant of accelerated promotion, determination of seniority, reservation in employment and disciplinary matters etc. are the preserve of the employer and, therefore, decisions in these respects of the employer are to be respected for permitting the employer to have requisite administrative and disciplinary control and supervision towards its employees.

46. Having observed as above, we may also note that in a situation where rights available to persons with disabilities under the 2016 Act or the Rules 2017 or under any other measure involving the service-related issues are found to have been infringed or violated, the provisions of the 2016 Act will have to be given effect to. For example, in a recruitment process, if provision reserving posts/vacancies in accordance of the provisions of the 2016 Act is not made, the same may amount to infringement of rights of persons with disabilities and accordingly, the interference in such a matter of the CCPD will be permissible, justified and well within the power of the CCPD. Even in the matter of transfer of an employee, if some measure has been put in place by the employer to ensure non-discrimination of employees with disability or certain preferential treatment has been provided for such

employees with disability and infringement of such a measure is found, the action of the employer may be amenable to an action by the Chief Commissioner under Section 75(1)(b) of the 2016 Act.

12.4 It is now to be decided whether, prima facie, the denial of promotion of the Complainant is linked with his disability and whether persons with disabilities have any protection under the RPwD Act, against such discrimination in service matters, whether within the government establishment or outside. The other issue as to whether or not the CCPD can enter into such disputes will then be automatically answered, as inquiring into a complaint of denial of rights or safeguards available to persons with disabilities is quite clearly a mandate of the CCPD.

12.5 The Respondent argued that the non-promotion of the Complainant is on account of his poor performance and not his disability. They have also made a compelling case for themselves by stating that the Complainant was not able to open a single savings or RD account in the whole year and that he did not meet a single client during the course of a full year. On the face of it, this appears to be a strong argument. However, this line of submission is contrary to their argument of assigning him the job of "Maker", which, according to them, was given to the Complainant as part of the reasonable accommodation to ensure that he doesn't have to go out of the branch. Secondly, there is only one email dated 04.02.2025 in support of the argument that the Complainant's performance was below par. Without going into the question of alleged malafide in sending this email on the same date when the Hon'ble High Court of Gujarat remitted this case to the CCPD, the Court has observed that the same feedback was also given to another person, who according to the Complainant is currently working in the higher post of the Deputy Manager, a fact not rebutted by the Respondent. Moreover, this mail was issued after the issue of discrimination in promotion was initially raised by the Complainant on 29.07.2024.

12.6 In their submission dated 07.12.2024, the Respondent cited two main reasons for his non-promotion, namely 1) not seeking higher responsibilities, and 2) unwilling to relocate. The onus for missing out on promotion was squarely put on the Complainant, who has vehemently contested both points. However, it is also relevant that the complainant failed to disclose to this Court that he had earlier legally contested his transfer from Junagarh to Banaskantha.

12.7 As there are 37 "Makers" who are also in the same grade as the Complainant, this point can not be the sole deciding factor for a Promotion. As

there are no complaints from other employees with disability working in the Bank, this Court does not see any systematic issue of discrimination against persons with disability.

12.8 In view of the above, this Court does not wish to interfere in the matter of Promotion. However, the Respondent should frame their Equal Opportunity Policy as per the RPWD Act, 2016 within the next 3 months. An action taken report in terms of Section 76 of the Act be filed within 3 months.

12.9 This Case is disposed of accordingly.

(Rajesh Aggarwal)
Chief Commissioner
For Persons with Disabilities