



## न्यायालय मुख्य आयुक्त दिव्यांगजन

**COURT OF THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन संशक्तिकरण 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

5<sup>th</sup> 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. 13960/1022/2023**

**In the matter of—**

Mr. Sandeep Rao

**...Complainant**

**Versus**

1.The Chairman, Ministry of Ports, Shipping and Waterways **... Respondent (1)**

2.The General Manager, New Mangalore Port Authority **...Respondent (2)**

### **1. GIST OF THE COMPLAINT:**

1.1 Shri Sandeep Rao, a person with 50% locomotor disability and currently serving as Deputy Officer (Accounts) at Bharat Heavy Electricals Limited (BHEL), Bangalore, has filed a complaint dated 15.02.2023 seeking relief under Sections 3(5), 20(5), 21, and 75 of the Rights of Persons with Disabilities Act, 2016. The crux of his grievance relates to the **non-consideration of his candidature for deputation to the post of Assistant Accounts Officer (AAO) at the New Mangalore Port Authority (NMPA) and the exclusion of candidates working in Public Sector Undertakings (PSUs) for the purpose of deputation to the post of AAOs.**

1.2 He asserts that the **advertisements for the AAO post (dated 18.05.2019 and 27.07.2022)** improperly limited eligibility to candidates from Major Ports only, while excluding otherwise qualified and eligible candidates from Central Government or PSU backgrounds like himself. He further states that **he has no BHEL branch in his native place (Mangalore), and the denial of deputation to his**

native place amounts to failure to provide **reasonable accommodation** as envisaged under the RPwD Act.

## 2. NOTICE ISSUED TO THE RESPONDENTS:

2.1 A notice dated 26.05.2023 was issued by this Court under Sections 75 and 77 of the RPwD Act, 2016 directing the Respondents to furnish their comments on the complaint and place on record supporting documents and justifications, if any.

## 3. REPLY FILED BY THE RESPONDENTS:

3.1 In response dated 14.06.2023, the New Mangalore Port Authority [Respondent No. 2] stated that at present in New Mangalore Port two posts of AAO in the scale of Rs.40,000-1,40,000 (Class II) are to be filled through direct recruitment. As per Respondent No. 1 Ministry's letter dated 19.11.2019, all the posts irrespective of the Appointing Authority which are to be filled up by direct Recruitment / Deputation from officials outside the Major Ports, shall be filled up only with the prior approval of Ministry of Shipping. Accordingly Respondent No. 2 had requested Respondent No. 1 Ministry vide letters No.3/4/2019/FADM.1 dated 16.12.2019 and 21.08.2020 to permit to fill up two vacant posts of AAO on deputation basis from PSUs/Central Government / State Government. Accordingly, re-advertisement for the post of Assistant Accounts Officer in NMPA was kept in abeyance.

3.2 The Respondent No. 2 did not deny the complainant's qualifications or analogical equivalence of his post at BHEL with the AAO post but maintained that they were administratively bound by the Respondent No. 1 Ministry's directives limiting the pool of eligible candidates to those serving in Major Ports only.

## 4. REJOINDER FILED BY THE COMPLAINANT:

4.1 In his rejoinder dated 21.06.2023, the Complainant emphasized that the **Recruitment Rules for the AAO post clearly provide for deputation from PSUs, Central or State Governments.** The Complainant contended that his **request falls within the scope of reasonable accommodation** and is **similar to the relief granted to another disabled employee, Shri Vishnu Nair**, by the same Court. He argued that **denial of such accommodation**, especially when no BHEL office exists in Mangalore, violates the RPwD Act and principles of inclusion and accessibility. It was his say that he has been posted away from his native place for a period of 11 years and has been undergoing significant hardships.

**5. HEARING:**

A hearing in hybrid mode (online/offline) was conducted on 26.05.2025. The following parties/representatives were present during the hearing:

S. No.	Name and designation of the party/representative	For Complainant/Respondent	Mode of attendance
1	Mr. Sandeep Rao – Complainant	Complainant	Online
2	Mr. Krishna Bapi Raju, Senior Deputy Secretary, NMPA	Respondent	Online

**6. RECORD OF PROCEEDINGS**

6.1 The Complainant submitted that his native place is Mangalore and his current office is 380 kms away from his home town. He submitted that his employer, BHEL, does not have any office in Mangalore. He stated that his grievance was to the Respondent No. 2 only allowing candidates serving in major ports being eligible for deputation as AAOs.

6.2 On being asked a specific query as to what vested right the Complainant has to claim deputation as AAO in Respondent No. 2, the Complainant made a vague reference to Oms issued by the Department of Personnel and Training. However, he conceded that the same do not allow for such posting as a matter of right and more so when the same is sought by way of deputation to an altogether different establishment.

6.3 The representative of Respondent No. 2 stated that they have 11 major ports all over the country. These ports were overloaded with employees. To remain competitive, they had to undertake cost cutting measures. In 2019, Respondent No. 1 ministry had instructed all 11 major ports to assess their manpower. Until a final decision is taken on the availability and deployment of the said manpower, Respondent No. 1 Ministry had clearly instructed that all posts to be filled up by direct recruitment or deputation can only be filled up with prior approval of the said ministry. He submitted that Respondent No. 2 is bound by the aforesaid mandate. He submitted that when the Complainant had applied for deputation in 2022, he had not completed the minimum required length of service and hence was found

ineligible.

6.4 He submitted that vide decision dated 28.10.2024, the Respondent No. 1 has permitted Respondent No. 2 to recruit persons on deputation from PSUs as well. It was his say that 2/3 more posts are likely to be advertised for the post of AAO, and the Complainant can be considered at that stage.

## 7. OBSERVATIONS/RECOMMENDATIONS:

7.1 At the outset, it bears noting that, as the Complainant himself acknowledged in the hearing, his claim is not grounded in a legal right but instead in sympathy. While the RPwD Act calls on all of us to create a more enabling and empathetic society for persons with disabilities, that does not mean that sympathy alone can furnish a valid legal basis for the grant of the reliefs sought. The employer is free to determine the rules and regulations that are to govern a particular recruitment process so long as the same are within the four corners of law. A person with a disability cannot compel an establishment to select him for a particular post if the same is contrary to the establishment's rules and policies and no legal violation of the said rule or policy is made out.

7.2 The parameters governing the scope of interference by this Court in an employment dispute were articulated by the Delhi High Court in the case of *Mukesh Kumar v. National Power Training Institute* and ors., LPA 980 of 2024, judgment dated 02.04.2025 in the following terms:

*"...So far as service related issues are concerned, we may observe that service is primarily a contract between the employee and the employer, terms of which are governed by some statutory rules made under Article 309 of the Constitution of India or some times by the terms spelt out in the appointment orders and in absence of any statutory rules governing the relationship between the employee and the employer, such relationship is governed by certain administrative orders/circulars/office memorandums etc."*

*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."*

7.3 Applying these parameters to the facts of the case at hand, the Complainant has failed to demonstrate any legal violation of his rights as a person with a disability that would warrant the interference of this Court.

7.4 It bears noting that, as submitted by the representative of Respondent No. 2 in the hearing dated 26.05.2025, the embargo on recruiting persons serving in major ports alone has been done away with by Respondent No. 1 vide order dated 28.10.2024. Therefore, this has opened up the possibility of the Complainant being considered in future when advertisements for the post of AAO are released by Respondent No. 2.

7.5 The Court would like to request Respondent No. 2 to bestow an empathetic and compassionate consideration to any application that may be submitted by the applicant in any future recruitment cycle for the post of AAO while being alive to the unique hardships faced by him as a person with a locomotor disability of 50%.

7.6 This Case is disposed of accordingly.

  
10/06/25  
(S. Govindraj)

**Commissioner for Persons with Disabilities**