



न्यायालय मुख्य आयुक्त दिव्यांगजन

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

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice & Empowerment

भारत सरकार/Government of India

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Case No: CCPD/14267/1021/2023

In the matter of:

Complainant:

Shri M Sukesh

Respondent(s):

- (1) The Secretary,
Ministry of Port Shipping and Waterways
- (2) The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works
Port Blair A&N Islands

1. Gist of the Complaint:

1.1 Shri M. Sukesh, a person with benchmark locomotor disability, joined the Andaman Lakshadweep Harbour Works (ALHW) on 22.03.1991 as Overseer (Mechanical) on an ad-hoc basis (later re-designated as Junior Engineer). He submitted a disability certificate issued by the Medical Board at G.B. Pant Hospital and was sanctioned double Transport Allowance as per applicable rules for disabled employees.

1.2 He raised concerns that ALHW has not promoted any PwBDs (Persons with Benchmark Disabilities) employees since its inception in 1965. In the recruitment year 2022, three vacancies arose in the Assistant Engineer (Mechanical) cadre due to superannuation. However, ALHW did not maintain reservation rosters for PwBDs as mandated by

DoPT OM dated 17.05.2022, claiming that 25 vacancies must exist in a particular recruitment year for the PwBD reservation roster to apply.

1.3 In his complaint dated 20.06.2023, Shri Sukesh has sought (a) promotion to the post of IOW (Mechanical) with retrospective effect from 01.03.1998 and (b) further promotion to the post of Assistant Engineer (Mechanical) with retrospective effect based on seniority and fitness, under the PwBD quota.

2. Notice to the Respondents:

2.1 A notice dated 06.02.2024 was issued to the above mentioned Respondents for comments on affidavit for alleged violations of sections 20 and 34 of the Act read with DOPT OM dated 17.05.2022 within the statutory time limit. This notice was followed by a reminder to the Respondents dated 02.07.2024.

3. Reply made by the Respondent:

3.1 The Administrative Office of ALHW, in its reply dated 09.08.2023, stated that Shri M. Sukesh was initially appointed as Overseer (Mech) on 22.03.1991 under the General Category and later promoted to Junior Engineer (Mech) on 20.10.1995. At the time of joining, he submitted a disability certificate indicating 30% disability, and later submitted another certificate dated 11.10.2007 reflecting 40% disability while on deputation to the Fire Service (HQ), Port Blair. Since then, he has availed all PwBD-related benefits, except reservation in promotion. The ALHW formally identified posts suitable for PwBDs in 2016 as per the DoPT guidelines.

3.2 The Respondent further submitted that the Complainant had filed OA No. 351/866/2018 before CAT, Kolkata Circuit Bench at Port Blair on 18.06.2018, which remained sub judice for some time. Meanwhile, a valid PwBD certificate dated 09.01.2020 was accepted by ALHW after prolonged correspondence. The Ministry, upon consultation with DoPT, referred to OM dated 17.05.2022 and clarified that for a cadre strength of 10 in AE (Mech), the 4% reservation under PwBD did not yield any reservation point for the recruitment year in question, and this was communicated to the complainant on 18.05.2023.

3.3 Subsequently, Shri Sukesh submitted a letter on 25.07.2023 stating his intent to withdraw the CAT case and filed a withdrawal

application dated 18.07.2023 through his Advocate. According to the CAT website and confirmation by the Senior Panel Counsel via letter dated 08.08.2023, the case has been disposed of and is pending final orders.

4. Rejoinder made by the Complainant:

4.1 The Complainant has filed their rejoinder dated 18.08.2024 reiterated his complaint and added that he has been transferred to an outer Island. Immunity of transfer assured by GOI to PwD employees and his medical conditions has not been considered by ALHW. The generic statement, such as, "transfer being made subject to administrative constraints and work exigencies." is insufficient to justify his recent transfer. This is especially relevant as ALHW has 14 other Junior Engineers Mechanical available for assignment at the new location.

5. Hearing:

5.1 A Hearing was conducted on **08.09.2025** in hybrid mode (Offline/Online through Video Conferencing). The following parties/representatives were present during the hearing:

Sl. No.	Name & Designation of Attendees	On Behalf of	Mode of Attendance
1.	Shri M. Sukesh	Complainant	Online
2.	Shri Rajiv Kumar Under Secretary Ministry Of Ports, Shipping &	Respondent No. 1	Online
3.	Shri A. Kuppuswamy, Administrative Officer, ALHW	Respondent No. 2	Online

6. Record of Proceedings:

6.1 The Complainant alleged that his promotions were unjustly delayed despite long service and repeated representations, contending that reservation for PwDs in promotions should be applied based on

vacancy and roster points (e.g., 1, 26, 51, and 76) as per DoPT orders. He claimed that eligible vacancies existed, but PwD roster points were not operated, resulting in the denial of due promotion despite his seniority and eligibility under the Recruitment Rules (RRs).

6.2 Referring to various DoPT OM from 1989 to 2005, which extended reservation benefits for PwDs to Groups B, C, and D, he stated that after 33 years of service, he should have been promoted to the post of Assistant. Engineer (Mech) much earlier. The Complainant also raised transfer hardship issues due to his disability, cancer, and heart ailments, alleging denial of exemption and reasonable accommodation under the RPwD Act.

6.3 The Respondents submitted that the Complainant joined in 1991 and that the post of Overseer was merged into Junior Engineer (Mechanical) in 1995. His disability was revised from 30% in 1988 to 40% in 2007. They cited DoPT orders (1989, 1997, 2005) to state that reservation in promotions was available only upto Group C posts until the issue of fresh instructions by the DoPT vide OM dated 17.05.2022 which was further clarified vide another OM dated 28.12.2023.

6.4 The Respondent further submitted that the next post for which the Complainant has been pursuing, is the post of Asstt. Engineer (Mechanical), which is a Group B, Gazetted post and hence was out of the purview of reservation till 17.05.2022. They also submitted that the DPC meetings were held on 19.12.2023 and 20.12.2023 wherein his case was also considered and he was promoted to the post of AE wef. 19.02.2024.

6.5 Regarding the transfer, the Respondents stated that the Complainant had been stationed at Port Blair since 2010 and was transferred temporarily to a nearby island (two hours by boat) for project work, with assurance of reversion after completion (expected by March 2026). They noted that he was also given additional charge at Port Blair. The CAT case earlier filed by him was withdrawn after he approached this forum.

7. Observations and Recommendations:

7.1 The Court observed that the Complainant has been promoted to the post of Asstt. Engineer after and according to the clarifications were issued by the DoPT in this regard. The Complainant has not been able to

prima facie establish any discrimination or denial of rights. However, this Court would like to understand-

- (a) Whether the Complainant's seniority could have been covered on his own merit before 19th February 2024, when he actually got his promotion; and
- (b) Whether the Complainant's seniority could have been covered under the reserved quota for PwBDs anytime between 30.06.2016 and 19th February 2024, as per the DoPT OM dated 28.12.2023.

7.2 The Court is also not inclined to interfere on the issue of his posting to another island within the Andaman & Nicobar Islands, which, according to the Respondent, is a temporary attachment with continued assignment at Port Blair. This Court would like to believe that the Respondent shall honour their commitment made during the hearing to end this attachment by March 2026.

7.3 As per Section 76 of the Act, the Respondents are advised to submit their comments and action taken report on the observations of this Court in para 7.1 and 7.2 above, within three months.

7.4 The Case is disposed of accordingly.

(S. Govindaraj)
Commissioner for Persons with Disabilities