



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. 14255/1021/2023

In the matter of-

Shri Selvem

...Complainant

Versus

The Medical Superintendent
 VMMC & Camp; Safdarjung Hospital

...Respondent

1. Gist of the Case:

1.1 Mr. Selvam M., a person with benchmark disability filed a complaint dated 22.06.2023 and stated that he is currently serving as a Physiotherapist Grade-I at the CGHS Medical Centre, Parliament House Annex, New Delhi, on deputation basis from VMMC & Safdarjung Hospital (where he originally joined as a Physiotherapist on 30th August 2006). According to Mr. Selvam, a vacancy for the post of Senior Physiotherapist arose on 1st April 2022, which fell under the reserved category for PwBD following the issuance of DoPT OM 17 May 2022. Despite meeting all eligibility criteria for promotion as on 01.01.2023, and having submitted multiple written representations dated 2nd September 2022, 3rd November 2022, and 29th May 2023, his candidature was not considered.

1.2 Instead, the hospital promoted the senior-most candidate from the general seniority list, who does not belong to any PwBD category, thereby violating Para 13 of the OM which outlines the procedure for considering eligible PwBD candidates, including extension of the zone of consideration and the possibility of inter-category exchange in the absence of suitable candidates from the notified disability category.

1.3 The Liaison Officer at Safdarjung Hospital confirmed that the post was

reserved for a candidate with visual impairment (VH), but no eligible VH candidate was available. Rather than extending the consideration to other eligible PwBD categories as mandated, the post was filled by a non-disabled individual on 23rd November 2022.

2. Notice issued to the Respondents:

2.1 A Notice dated 11.07.2023 under section 75 and 77 was sent to the above mentioned Respondent for forwarding to this court comments on affidavit for violation of section Section 20 and 34 of the Act read with DOPT OM dated 17.05.2022 within the statutory time limit.

3. Reply filed by the Respondents:

3.1 The Reply dated 09.08.2023 was filed by the Respondents through an affidavit in which Dr. Prem Kumar affirms that a vacancy for the post of Senior Physiotherapist arose on 01.04.2022 and was reserved for a Person with Benchmark Disability (PwBD) under the Visually Handicapped (VH) category. However, no suitable candidate under the VH category was found eligible at that time. In view of the urgent requirements of patient care and the impending retirement of a senior candidate from the feeder cadre, the post was filled on an ad hoc basis by the most senior available candidate.

3.2 He further states that a certificate from the Liaison Officer confirmed the post was indeed earmarked for VH candidates. Since no eligible VH candidate met the experience criteria, the reservation point was carried forward to the next available vacancy, in accordance with established procedure.

3.3 Subsequently, three additional vacancies for the same post arose on 01.01.2023, 11.04.2023, and an upcoming vacancy on 01.08.2023 due to retirements and creation of a new position at the Sports Injury Centre. A proposal to fill all three posts has already been forwarded to the Directorate General of Health Services (DGHS). It is further stated that Mr. Selvam M, is now eligible for the post and is being considered for the current recruitment process.

4. Rejoinder filed by the Complainant:

4.1 The Complainant filed a rejoinder dated 28.08.2023 and challenges the Respondent's claim that the PwBD (VH) reserved post of Senior Physiotherapist was filled due to the non-availability of a suitable VH candidate and exigency of work. Mr. Selvam contends that this action violates the DoPT Office Memorandum

dated 17.05.2022, which clearly states that in the absence of eligible PwBD candidates, the vacancy must be carried forward, not filled with a non-PwBD candidate. He argues that no permission was obtained from the competent authority for de-reserving the post, nor was any supporting documentation provided to establish the urgency.

4.2 He further objects to the promotion of Mrs. Shashi Luthra on the grounds of her being "at the verge of superannuation," stating that this is not a valid criterion under existing DoPT guidelines. He also points out that the Liaison Officer acted improperly by issuing a certificate recommending the promotion of a non-PwBD candidate without referring the matter to DoPT or CCPD, as required. Mr. Selvam highlights that although he was eligible, his name was not forwarded in the proposal to DGHS on 21.09.2022, despite a written request made on 02.09.2022. He views this omission as discriminatory and prejudiced against him as a PwBD candidate.

4.3 Lastly, he notes that the next vacancy was due to arise within 45 days, making the urgency argument unjustified. He concludes that the hospital acted hastily and disregarded reservation rules, thereby denying a rightful promotion opportunity to a PwBD candidate.

5 . Hearing (I): A hearing was conducted on 12.09.2025 during the hearing, the Complainant, a Physiotherapist at Safdarjung Hospital, alleged that a 2022 vacancy for Senior Physiotherapist reserved for PwBD was wrongly filled by a non-PwD candidate, adversely affecting his seniority. The representative of Respondent Dr. Mohit Gupta Professor in Forensic Science Medicine stated that no eligible VH candidate met the required experience criteria in 2022, so the reserved vacancy was carried forward and the senior-most general candidate was promoted. The Complainant was subsequently promoted against the next vacancy from 01.01.2023, though the Ministry/UPSC notified his promotion from 19.02.2025. The Hospital has recommended consideration of his promotion from 01.01.2023. The Court directed impleadment of the Ministry of Health & Family Welfare and UPSC.

6 . Hearing (II): A hearing was conducted on 01.07.2026 in hybrid mode and following parties were present:

Sl. No.	Name and Designation of the Party/Representative	Parties	Mode
1.	Sh. Selvem M	Complainant	Online

2.	R.P. Sati, Deputy Secretary, Ministry of Health & Family Welfare	Respondent No.2	Online
3.	Ms. Rupali Roy, Joint Director Dte. GHS	Respondent No.1	Online
4.	Sunil Kumar Agarwal, Deputy Secretary (PD), UPSC	Respondent No.3	Online

7. Proceedings during the hearing:

7.1 At the outset, the complainant, Shri Selvam M., submitted that there had been no substantial development since the previous hearing and that the Respondent No.1 had not submitted its recommendation/proposal to the Ministry despite the lapse of more than nine months. He further submitted that although his promotion was ultimately granted, it was made effective from 19.05.2025, whereas it ought to have been given effect from 01.01.2023.

7.2 The representative of the Respondent No.2 submitted that the Ministry had written to the concerned hospital on 25.02.2026 for time-bound processing of the matter. The hospital had constituted a committee, and the Ministry had sought its recommendation. It was also stated that Ministry approval was required before forwarding the proposal to UPSC for convening the DPC, and a reminder was issued to the hospital on 16.06.2026 for expeditious action.

7.3 Dr. Kapil Jagga, Senior Administrative Officer of the Respondent No.1 submitted that the promotion proposal had been processed and forwarded through the prescribed channel. The treatment of the PwD-reserved vacancy and its subsequent filling was also examined. It emerged that a vacancy earmarked for the visually impaired/PwD category in 2022 was not filled with a PwD candidate on the ground that no suitable/eligible candidate was available, and the post was subsequently filled by a general candidate, namely Ms. Shashibala.

7.4 The representative of Respondent No.3 stated that the proposal had been received subsequently. The hearing indicated that the proposal concerning the complainant's promotion reached the concerned authorities only in 2025, resulting in substantial delay in consideration of his case.

8. Observations and Recommendations:

8.1 The Court observes that although the Complainant was ultimately promoted as Senior Therapist w.e.f. 19.05.2025, his claim for consideration for promotion with effect from 01.01.2023 requires re-examination, particularly in view of the substantial administrative delay in processing his case.

8.2 It is well settled that an employee is entitled to fair and timely consideration for promotion in accordance with the applicable Recruitment Rules and reservation instructions, and that an administrative lapse should not operate to the prejudice of an otherwise eligible employee. At the same time, retrospective promotion is not automatic merely on account of the existence of a vacancy, and the Complainant's entitlement is required to be determined with reference to the applicable Recruitment Rules, eligibility, vacancy position, zone of consideration and the prescribed DPC/selection procedure.

8.3 The principles laid down by the Hon'ble Supreme Court in *P.N. Premachandran v. State of Kerala*, *C.O. Arumugam v. State of Tamil Nadu*, *Rajeev Kumar Gupta v. Union of India*, (2016) 13 SCC 153, and *Siddaraju v. State of Karnataka*, (2020) 19 SCC 572, underscore the requirement of fair consideration and effective implementation of reservation for Persons with Benchmark Disabilities.

8.4 The Court further observes that the 2022 vacancy earmarked for the visually impaired/PwBD category, which was subsequently stated to have been filled by a non-PwBD candidate on the ground of non-availability of a suitable candidate, also merits examination in the light of the provisions of the RPwD Act, 2016 and the applicable DoPT instructions governing reservation for PwBDs.

8.5 In this regard, Para 13.1 of DoPT O.M. No. 36035/2/2017-Estt.(Res.) dated 15.01.2018, relating to reservation for PwBDs in promotion by selection, provides that where an adequate number of PwBD candidates of the respective category are not available even within the extended zone of consideration, the reserved vacancy is to be carried forward to the subsequent year. In the subsequent year, where a suitable PwBD candidate of the originally earmarked category is not available, the vacancy is to be considered for inter-se exchange with another category of PwBD, in accordance with the prescribed procedure. The corresponding provision for promotion by non-selection is contained in Para 13.2 of the said O.M.

8.6 Accordingly, it is recommended that Respondent No.1 may re-examine the Complainant's claim for promotion with effect from 01.01.2023, specifically

determining his eligibility and zone of consideration on the relevant date, the availability and nature of vacancies, the applicable reservation roster and whether any administrative delay resulted in denial or postponement of his legitimate promotional opportunity.

8.7 It is further recommended that the Respondents may specifically review the treatment of the 2022 PwBD-reserved vacancy for the visually impaired category and examine whether, in the circumstances of the case, the vacancy was required to be carried forward and subsequently considered for inter-se exchange with another category of PwBD, before being filled by a non-PwD candidate, in terms of the applicable DoPT instructions. The Respondents may also examine the relevant reservation roster, vacancy position, DPC proceedings and the reasons recorded for treating the candidate as unavailable/unsuitable.

8.8 If, upon such re-examination, the Complainant is found to have been eligible and within the prescribed zone of consideration and entitled to promotion from an earlier date, it is recommended that appropriate notional fixation of seniority and consequential service benefits, as permissible under the applicable rules, may be extended to him.

8.9 It is also recommended that the Respondents may ensure that the Complainant does not suffer prejudice in his future promotional prospects on account of administrative delay attributable to the department or any erroneous treatment of the PwBD-reserved vacancy. The above exercise may preferably be completed and a reasoned and speaking order communicated to the Complainant within 90 days from the date of receipt of this Order.

9. Accordingly, the case is disposed of.

Digitally signed by
S Govindaraj
Date: 09-09-2026
17:29:15

(S. Govindaraj)
Commissioner for Persons with Disabilities