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**
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Case No: CCPD/16726/1015/26

In the Matter of

Complainant

Shri Aniket Shaurya

Versus

Respondent(s)

1. The Secretary, Union Public Service Commission
2. The Joint Secretary, Department of Empowerment of Persons with Disabilities
3. The Central Provident Fund Commissioner
4. The Secretary, Department of Personnel and Training

Record of Proceedings

1. Hearing

1.1. A preliminary hearing was conducted on 15.10.2026 in Diary No. DNO/26/CCPD/6877 wherein the following parties/representatives were present:

Sl. No.	Name of the Parties / Representatives	On Behalf of
1.	Shri Aniket Shaurya	Complainant
2.	Shri K. Thomas Maring, Under Secretary, Union Public Service Commission	Respondent 1
3.	Shri Shivam, Assistant Section Officer, Union Public Service Commission	Respondent 1

4.	Shri Ajay Kumar, Under Secretary, Department of Empowerment of Persons with Disabilities	Respondent 2
5.	Shri Parampal Singh, RPFC-1, Central Provident Fund Commissioner	Respondent 3
6.	Shri Yogesh Kumar, RPFC-1, Central Provident Fund Commissioner	Respondent 3

2. Record of Proceedings

2.1 During the proceedings, the representatives of the Union Public Service Commission (UPSC), Department of Personnel and Training (DoPT), Employees' Provident Fund Organisation (EPFO) and Department of Empowerment of Persons with Disabilities (DEPwD) made submissions regarding the eligibility of the Complainant, who has cerebral palsy, for recruitment to the post of Assistant Provident Fund Commissioner (APFC). The UPSC and DoPT submitted that recruitment is undertaken in accordance with the requisition and eligibility conditions prescribed by the user department and that the recruiting agency is required to follow the applicable identification of posts for persons with benchmark disabilities.

2.2 The Respondent No. 3, EPFO, submitted that the post of APFC had been considered comparable to the post of Under Secretary under the DEPwD notification dated 04.01.2021. Relying upon Note 5 thereof, EPFO contended that posts having identical nature and place of work may be treated as identified irrespective of differences in nomenclature or group. Since cerebral palsy was not included among the identified disabilities against the post of Under Secretary, the Complainant was not considered eligible for APFC. The representative of DEPwD clarified that the notification dated 04.01.2021 did not expressly declare the post of Under Secretary unsuitable for persons with cerebral palsy. The Court, therefore, sought clarification regarding the basis on which non-inclusion of a disability in the identification list had been treated as a determination of unsuitability.

2.3 The Complainant submitted that he has congenital cerebral palsy with spastic diplegia, primarily affecting his left hand and left leg. He questioned the differential treatment in the recruitment exercise, particularly since candidates with cerebral palsy had been permitted to participate in recruitment for the post of Enforcement Officer/Accounts Officer (EO/AO), whereas his candidature for APFC was not considered. He further submitted that the classification of APFC at Level

10 did not, by itself, establish the unsuitability of persons with cerebral palsy. He also relied upon his educational qualifications, including B.Tech and MBA, and sought consideration of his candidature on its individual merits.

2.4 On being asked to explain the functional requirements of APFC, the representative of EPFO stated that the post involves supervision of enforcement and recovery, accounts, administration, cash-related functions, legal matters and subordinate sections, besides conducting quasi-judicial proceedings. Upon consideration of the submissions, the Court observed that the issue required examination of the statutory identification framework, the applicability of Note 5 of the notification dated 04.01.2021, and the functional requirements of APFC. The Court also considered it necessary to ascertain whether the exclusion of cerebral palsy was supported by a competent identification exercise or an applicable exemption, rather than merely by the absence of the disability in the entry relied upon by EPFO.

3. Legal Framework

3.1 Equality and non-discrimination in employment

3.1.1 Section 3(3) of the Rights of Persons with Disabilities Act, 2016 (hereinafter, 'the Act') prohibits discrimination on the ground of disability unless the impugned act or omission is shown to be a proportionate means of achieving a legitimate aim. Section 2(h) expressly includes denial of reasonable accommodation within the meaning of discrimination.

3.1.2 Section 20(1) prohibits discrimination against persons with disabilities in matters relating to employment in Government establishments, while Section 20(2) requires such establishments to provide reasonable accommodation and an appropriate barrier-free and conducive environment. Accordingly, eligibility and suitability in recruitment must be examined in accordance with the statutory identification framework and the functional requirements of the post, without relying solely upon the nomenclature of a disability.

3.2 Identification of posts under Section 33

3.2.1 Section 33 of the Act casts a statutory obligation upon the appropriate Government to:

(a) identify posts in establishments which can be held by respective categories of persons with benchmark disabilities, for the purposes of reservation under Section 34;

(b) constitute an expert committee, with representation of persons with benchmark disabilities, for identification of such posts; and

(c) periodically review the identified posts at intervals not exceeding three years.

3.2.2 The identification exercise is required to be undertaken through the prescribed institutional mechanism and informed by the nature of the work, functional requirements, working conditions and developments in assistive technology. It cannot be substituted by an independent determination of suitability by the recruiting agency.

3.2.3 In this regard, the DEPwD notification dated 04.01.2021, issued under Section 33, expressly clarifies through Note 2 that the list of identified posts is indicative and not exhaustive, and that omission of a post does not amount to its exemption. Note 5 further provides that a post having identical nature and place of work with an already identified post shall also be construed as identified, notwithstanding a difference in nomenclature or group.

3.2.4 More importantly, the subsequent DEPwD Office Memorandum dated 08.11.2024, issued pursuant to the directions of the Hon'ble Delhi High Court in Kendriya Vidyalaya Sangathan v. Union of India, W.P.(C) Nos. 17460/2022 and 665/2023, reiterates the statutory requirements under Section 33 and prescribes a uniform mechanism for identification and review of posts in Central Government establishments.

3.2.5 Paragraph 2.1(vi)(a) of the said OM requires every post in a Central Government Ministry/Department, including posts in public sector enterprises and autonomous organisations, to be considered for suitability. It further stipulates that a post left out of the identification exercise shall be deemed open to all categories of disabilities eligible for reservation, unless exempted by a notification of DEPwD.

3.2.6 The OM also requires Ministries/Departments to constitute committees, headed by an officer of the rank of Additional Secretary/Joint Secretary, with representation from persons with benchmark disabilities, to examine the suitability of posts and recommend additions to the identification list. DEPwD is required to undertake the broader expert review and notify the identified posts. Existing categories or sub-categories cannot be reduced without DEPwD's approval.

3.2.7 Consequently, the identification framework must be examined in conjunction with the 2021 notification and the subsequent 2024 guidelines. Mere non-mention of a post or disability cannot, in itself, be treated as a statutory exemption or a

conclusive determination of unsuitability.

3.3 Reservation and statutory safeguards under Section 34

3.3.1 Section 34(1) mandates reservation of not less than four per cent of the total vacancies in the cadre strength in each group of posts in every Government establishment, distributed as follows:

(a) one per cent for persons with blindness and low vision;

(b) one per cent for persons who are deaf and hard of hearing;

(c) one per cent for persons with locomotor disability, including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy; and

(d) one per cent for persons with autism, intellectual disability, specific learning disability and mental illness, and persons with multiple disabilities, including deaf-blindness, from amongst the categories specified therein.

3.3.2 The express inclusion of cerebral palsy under Section 34(1)(c) establishes its statutory recognition within the locomotor disability category for reservation purposes. The identification exercise under Section 33 must, therefore, be undertaken consistently with the reservation framework and cannot arbitrarily exclude a recognised disability category.

3.3.3 Section 34(2) provides a statutory mechanism for vacancies that remain unfilled due to non-availability of a suitable person with benchmark disability or other sufficient reasons. Such vacancies are required to be carried forward to the subsequent recruitment year and, where they remain unfilled, may be interchanged among the specified categories in accordance with the provision. Only thereafter may the vacancy be filled by a person without disability.

3.3.4 The proviso to Section 34(2) further contemplates prior approval of the appropriate Government where the nature of vacancies is such that a particular category of persons with benchmark disabilities cannot be employed. The provision thus prescribes a regulated statutory mechanism and does not permit unilateral exclusion by a recruiting agency.

3.3.5 Further, the second proviso to Section 34(1) permits exemption of a Government establishment from the reservation provision only through a notification issued by the appropriate Government in consultation with the Chief Commissioner or State Commissioner, having regard to the nature of work. In

terms of the DEPwD OM dated 08.11.2024, DEPwD is the competent authority to consider and notify such exemption, which is subject to periodic review.

3.3.6 Accordingly, the provisions of Sections 33 and 34 must be read harmoniously: Section 33 provides the identification framework, while Section 34 secures the corresponding reservation and regulates the circumstances in which vacancies may remain unfilled or an establishment may be exempted. Neither provision supports an exclusion based merely on an administrative assumption unsupported by the applicable identification framework.

3.4 Functional suitability and reasonable accommodation

3.4.1 Note 8 of the DEPwD notification dated 04.01.2021 requires the concerned Ministries/Departments and establishments to examine the functional requirements of the post and the individual candidate's suitability before appointment. Note 1 also recognises the provision of appropriate aids and assistive devices, wherever required.

3.4.2 Sections 2(y), 3 and 20 of the Act require reasonable accommodation and non-discrimination in employment. Accordingly, an assessment of suitability must consider whether the essential functions of the post can be performed by the candidate, with reasonable accommodation wherever necessary.

4. Observations and Recommendations

4.1 In exercise of the functions under Section 75 of the Act, the matter is referred to the DEPwD for a reasoned clarification on the suitability of the post of Assistant Provident Fund Commissioner (APFC), particularly with reference to the notification dated 04.01.2021 and the OM dated 08.11.2024, on the following aspects:

(a) Whether the APFC post was duly considered under the identification exercise pursuant to Section 33 of the Act;

(b) The functional basis for treating APFC as comparable to the post of Under Secretary, including the nature of duties and working conditions of both posts; and

(c) Whether any statutory exemption or specific determination declaring the APFC post non-suitable for any disability category has been issued by the competent authority.

4.2 Accordingly, the DEPwD is specifically recommended to clarify whether the classification of the APFC post as non-suitable is founded upon an objective, disability-specific functional assessment or whether it results in a blanket exclusion

of persons belonging to one or more disability categories. In the event that such classification is found to constitute a blanket exclusion, without adequate functional or statutory justification, the DEPwD is recommended to take appropriate steps to reconsider the identification of the APFC post and examine its suitability for candidates belonging to all 21 specified disability categories, in accordance with Section 33 of the Act and the applicable guidelines. Any restriction, if considered necessary, must be supported by a reasoned assessment of the essential functions of the post and the specific functional limitations, if any, relevant to its performance.

4.3 The Respondent No. 2 shall furnish their detailed, reasoned responses to this Court within 30 days of receipt of these proceedings.

Digitally signed by
Vikas Trivedi
Date: 16-11-2026
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(Vikas Trivedi)
Dy. Chief Commissioner