



सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No.: 8769/1141/2017

Dated 31.07.2018

In the matter of:

Shri Sunil Kumar,
S/o Mahanrao Shinde,
R/o Udamnalli Village,
TQ – Humnabad, District – Bidar,
Karnataka – 585227

R-10718

.... Complainant

Versus

Bharat Sanchar Nigam Limited
[Through: The Chairman & Managing Director]
Opp Janpath Hotel,
Bhawan Harish Chand Mathur Lane,
Connaught Place, New Delhi, Delhi 110001

R-10719

.... Respondent

Date of hearing: 24.07.2018

Present:

1. Shri Piyush Chandel, Advocate for the respondent
2. None appeared for the complainant

ORDER

The above named complainant, a person with 45% locomotor disability filed a complaint under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the 'Act' regarding embarrassment, inconvenience, faulty service, unfair trade practice by the Telecom District Manager, Bidar, Karnataka (respondent);

2. The complainant submitted that the telephone No.08483-275517 installed in his residence by the respondent was dead since 14.06.2017 despite payment of all due charges. The network of his other landline WILL Phones was also not satisfactory. He felt embarrassment, inconvenience and harassed due to the alleged faulty service provided by the respondent. The complainant prayed for compensation of Rs.5,00,000/- from BSNL for the damages.

3. The matter was taken up with the respondent on 22.12.2017 for submission of their comments.

4. The respondent filed their reply dated 29.01.2018 and submitted that all pairs of the existing 50 pair underground cable have gone faulty in the span of 5 Kilometer from

Bheemalkheda to Udubnalli Village due to multiple joints including some joints under the CC road. Despite all possible effort, the fault locations were untraceable. It was not possible to restore the Landline telephone No.08483-275571. Karankanalli GSM BTS was available near Udubnalli Village. GSM fixed wireless phone could be provided to the customer. The Field Officer requested the customer to take GSM FWP connection in place of landline but he refused to take FWP connection.

5. The complainant in his rejoinders dated 03.04.2018 and 18.04.2018 submitted that he had not applied for FWP connection as there was no proper network in the area. So, telling of FWP by BSNL is not admissible. Further his parents are of old age, ill and heart patient so he cannot shift his resident on terrace which is unconstructed, saying of BSNL to shift residence on terrace is also wrong. Despite making payment of all the bills, the telephone was still not in service. He again requested to take action against BSNL as the functioning of BSNL telephone connection provided was not proper.

6. Upon considering the facts submitted above, the case was listed for personal hearing on 24.07.2018.

7. During the hearing on 24.07.2018 the Counsel for the respondent submitted that the complainant also approached before the District Consumer Disputes Redressal Forum, Bidar and filed same Complaint No.50/2017. The complaint's Counsel filed a memo and the matter was amicably settled. The Hon'ble Forum disposed of the complaint in terms of the memo.

8. Neither the complainant nor any one on behalf of the complainant appeared before the Court nor was any information with regard to his case received from him. The case is dismissed in terms of Rule 38(4) of the Rights of Persons with Disabilities Rules, 2017 accordingly.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



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

भारत सरकार/Government of India

Case No. 8128/1011/2017

Dated: 31.07.2018

In the matter of:-

Shri Satyendra Singh
Dy. Director (Academic)
Association for the Rights of Disabled Persons
Flat No. 268, Block – J, Phase – 2
Sector – 16, Rohini, New Delhi

Complainant

Versus

Allahabad University
Through the Registrar
Senate House Campus, University Road
Old Katra, Allahabad, Uttar Pradesh – 211002

Respondent

Date of Hearing: 24.07.2018

Present:

1. Complainant - absent
2. Respondent - absent

ORDER

The above named complainant Shri Satyendra Singh filed a complaint dated 13.05.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the Act regarding discrimination with persons with disabilities by Allahabad University, Allahabad in Associate Professor and Professor Posts.

2. The complainant in his complaint submitted that Allahabad University has advertised many Associate Professor & Professor posts. The University has given reservation to persons with disabilities but intentionally University given reservation for persons with disabilities where the said candidates are not available i.e. specially Science stream.

3. The matter was taken up with the respondent vide letter dated 24.10.2017 under Section 75 of the Rights of Persons with Disabilities Act, 2016 but despite reminder dated 29.06.2018 respondent has not submitted reply, therefore, hearing scheduled on 24.07.2018.

4. During the hearing, both the parties were absent. Even any intimation has not been received about their inability to attend the hearing despite the fact that the Notice of Hearing was sent on 29.06.2018 by Speed Post. The Court noted with serious concern, the utter disregard shown by the Respondent and Complainant by neither intimating their inability to attend the hearing nor caring to send their versions of the case.

5. Case is dismissed as per Rule 38 (4) of the Rights of Persons with Disabilities Rules, 2017.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

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

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

भारत सरकार/Government of India

केस सं. 8353/1023/2017

दिनांक: 20.07.2018

के मामले में :-

श्रीमती सावित्री आर्या
पत्नी श्री संजय कुमार
128/174, देवकी नगर
यशोदा नगर, कानपुर-208011

-वादी

बनाम

यूनाइटेड इंडिया इश्यरेंस कंपनी लिमिटेड
(द्वारा : अध्यक्ष-सह-प्रबन्ध निदेशक)
प्रधान कार्यालय
24, वाइट्स रोड, चैन्ने-600014

-प्रतिवादी

सुनवाई की तिथि: 19.04.2018

उपस्थित - श्रीमती सावित्री आर्या - वादी की तरफ से
श्री संजय कुमार आर्या - वादी की तरफ से
श्री एस. श्रीकान्त, प्रशासनिक अधिकारी(विधि) - प्रतिवादी की तरफ से
श्री एस.एन. श्रीवास्तवा, क्षेत्रीय प्रबन्धक - प्रतिवादी की तरफ से

23.05.2018

श्रीमती सावित्री आर्या - वादी की तरफ से
श्री संजय कुमार आर्या - वादी की तरफ से
श्री शशंक आर्या - वादी की तरफ से
श्री ज्ञान प्रकाश, प्रशासनिक अधिकारी(विधि) - प्रतिवादी की तरफ से

28.06.2018

श्री संजय आर्या - वादी की तरफ से
श्री प्रशांत आर्या - वादी की तरफ से
श्री एस.एन. श्रीवास्तवा, क्षेत्रीय प्रबन्धक - प्रतिवादी की तरफ से

आदेश

श्रीमती सावित्री आर्या पत्नी श्री संजय कुमार, 55 प्रतिशत अस्थि दिव्यांग ने उनके पति को साजिश के तहत षड्यंत्र कर अकारण निलंबित करने एवं वेतन कटौती करने से सम्बन्धित शिकायत दिनांक 21.06.2017 दिव्यांगजन अधिकार अधिनियम, 2016 के अंतर्गत इस न्यायालय में दायर की ।

2. मामले को अधिनियम की धारा 75 के अंतर्गत पत्र दिनांक 08.11.2017 द्वारा प्रतिवादी के साथ उठाया गया ।

3. प्रतिवादी के पत्र दिनांक 18.01.2018 तथा वादी के रिज्वाइन्डर दिनांक 23.02.2018 के जाचोंपरान्त निर्णय लिया गया कि मामले को सुनवाई हेतु रखा जाए और तदनुसार मामले में व्यक्तिगत सुनवाई दिनांक 19.04.2018 के लिए निर्धारित की गई ।

4. मामले को उपरोक्त तिथि 19.04.2018 को सुना गया ।

4. मामले को उपरोक्त तिथि 19.04.2018 को सुना गया ।

5. मामले में सुनवाई के दौरान श्री संजय कुमार वादी के पति ने शिकायत को दोहराते हुए उल्लेखित किया कि उन पर गबन का आरोप लगाकार उन्हें बिना किसी कारण के निलंबित कर दिया गया जबकि वह प्रतिवादी द्वारा लगाए गए सभी आरोपों को नकारते हैं।

6. प्रतिवादी की तरफ से उपस्थित प्रतिनिधियों ने वर्णित किया कि वादी पर रुपये क्रमशः लगभग 7,00,000/- एवं 12,00,000/- के गबन का आरोप है और सतर्कता कार्यवाही चल रही है, जल्द ही जाँच अधिकारी की नियुक्ति कर दी जाएगी ।

7. उपरोक्त के संदर्भ में वादी एवं प्रतिवादी को निर्देशित किया गया कि मामले में निम्नलिखित मुद्दों पर विस्तृत जवाब (क) भुगतान में अन्तर (ख) अभी तक संबंधित मामले में कितने अधिकारियों पर सतर्कता जाँच की गयी तथा (ग) किस मद में कितनी धनराशि का गबन किया गया है, सम्बन्धित दस्तावेजों सहित अगली सुनवाई से एक सप्ताह पूर्व इस न्यायालय को भेजें । मामले में अगली सुनवाई दिनांक 23/05/2018 के लिए स्थगित की गई ।

8. मामले को पुनः तय कार्यक्रमानुसार सुना गया ।

9. श्री संजय कुमार वादी ने अपने पत्र दिनांक 21.05.2018 में निम्न उल्लेखित किया कि:

- उन्हें रुपये 3,39,151/- के भुगतान प्राप्त नहीं हुए है जो कि साजिश के तहत द्वेष भावना से आरोप लगाये गये हैं।
- रुपये 12,00,000/- के भुगतान इंचार्ज व विधि विभाग के निर्देश पर कंपनी के पैनल अधिवक्ता व जाँच कर्ताओं को वैधानिक तरीके से उनके विभाग ने जैनिस से चेक द्वारा भुगतान किए हैं।
- भुगतान एवं बिलों का अनुमोदन व संस्तुति करने वाले अन्य अधिकारियों पर सतर्कता कार्यवाही नहीं की गई । चूंकि विजिलेंस अधिकारी एवं (बिल व वाउचर) सुपुर्दगीकर्ता अधिकारी ने केवल उन्हें फंसाने की नीयत से छिपा दिए और निष्पक्ष जांच नहीं की । उनमें निम्नलिखित नाम हो सकते हैं:

1. श्री सुबोध कुमार श्रीवास्तव, इंचार्ज
2. श्रीमती बीना, संयुक्त इंचार्ज
3. श्री रामशंकर, संयुक्त इंचार्ज
4. श्री एस0के0 साहा, संयुक्त इंचार्ज
5. श्री आर0एस0यादव,
6. श्री वी0पी0 सिंह, कैशियर
7. श्री छोटे लाल, पूर्व इंचार्ज

- विभिन्न मदों के अंतर्गत भुगतान पूरी तरह स्पष्ट नहीं हैं क्योंकि उन्हें मूल वाउचर व सपोर्टिंग पेपर माँगने पर भी नहीं दिए गये हैं। परन्तु ऑडिट व वैधानिक ऑडिट रिपोर्ट से दोनों ही आरोप के लेनेदेन की अवधि में किसी भी प्रकार की पाई गई अनियमितता की टिप्पणी दर्ज नहीं है।


10. प्रतिवादी की तरफ से उपस्थित प्रतिनिधि ने सुनवाई के दौरान पत्र क्रमांक HO:HRM:1483:2018 दिनांक 22.05.2018 प्रस्तुत किया, उक्त पत्र के साथ संलग्न अनुलग्नकों से ज्ञात होता है कि कम्पनी ने श्री रामा शंकर, सहायक प्रबन्धक, श्री राजेन्द्र सिंह यादव, प्रशासनिक अधिकारी, श्री पंकज मल्होत्रा, वरिष्ठ सहायक को भी ज्ञापन देकर जाँच सन्दर्भित अवगत किया है । उक्त पत्र के साथ वादी के वित्तीय वर्ष 2017-18 के वेतन के विवरण की प्रति संलग्न की है। उपस्थित प्रतिनिधि ने यह भी कहा कि जाँच अधिकारी की नियुक्ति कर दी गयी है ।

11. प्रतिवादी को निर्देश दिए गए कि मामले में अगली सुनवाई के दौरान वादी के निलम्बन से सम्बन्धित पूर्ण फाईल /सभी दस्तावेज प्रस्तुत किए जाए । अगली सुनवाई दिनांक 28/06/2018 के लिए स्थगित की गई ।

12. दिनांक 28/06/2018 को सुनवाई के दौरान वादी ने न्यायालय को अवगत किया कि उनके निलम्बन को हटा दिया गया परन्तु उन्हें दिव्यांग होते हुए भी तृतीय तल पर पदस्थापित किया गया है चूंकि उक्त भवन में लिफ्ट का प्रबन्ध नहीं होने से उन्हें अपने सीट पर पहुंचने में कठिनाईयों का सामना करना पड़ता है ।

13. प्रतिवादी की तरफ से उपस्थित प्रतिनिधि ने बताया कि जांच संदर्भित कमिटी का गठन हो चुका है और वादी को उनका पक्ष रखने का पूर्ण अवसर प्रदान किया जाएगा ।

14. उपरोक्त मामले को उक्त आदेश सहित बन्द किया जाता है कि मामले की जाँच हेतु गठित की गयी समिति मामले की शीघ्रताशीघ्र जाँच कर, कृत कार्यवाही से इस न्यायालय को 06 महीने के भीतर अवगत कराएं। प्रतिवादी यह भी सुनिश्चित करें कि दिव्यांग कर्मचारी को सेवा स्थल पर बाधारहित वातावरण प्रदान किया जाए ताकि वह अपने कौशल का अधिकाधिक प्रदर्शन कर सकें ।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 8342/1022/2017

R-10388

Dated : 30.07.2018

Dispatch No.

In the matter of :

Smt. Sou Sunanda Devidas Dange,
Plot No. 57, Sainath Nagar,
Bhamti,
Nagpur
Maharashtra – 440022
Email : <sunanda.dange@yahoo.com>

.....Complainant

Versus

Life Insurance Corporation of India,
(The Chairman & Managing Director),
1st Floor, Yogakeshema Central Office,
Jeevan Bima Marg,
Nariman Point,
Mumbai – 400 021

R-10381

.....Respondent

Date of Hearing : 11.06.2018

Present :

1. Smt. Sunanda Devidas Dange, the Complainant.
2. Ms. Vidhu Verma, Regional Manager (P&IR), West Zone, LIC of India, on behalf of Respondent.

ORDER

The above named complainant, a person with 40% visual impairment had filed a complaint dated 03.07.2017 under the Rights of Persons with Disabilities Act, 2016 regarding her transfer from Warora to Nagpur Branch;

2. The Complainant had submitted that she is serving in Life Insurance Corporation of India since 20.07.2009. Presently she is posted at Warora branch for the last three years as Higher Grade Assistant (Admn.). Her husband is a severe diabetic patient and suffering from gall ball disorder. Many a time, her husband fainted due to hypoglycaemic condition. He continuously needs care and medication. Her son is studying in 12th standard at Nagpur. She is finding difficult to travel from Nagpur to Warora.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 21.09.2017.

4. The Chief (Personnel), LIC vide his letter no. CO/PER/ER/WC-4(i)WZ dated 14.12.2017 has submitted that as per the Promotional Rules for promotion to all cadres in class III, the Zone of selection is the territorial limit of a Zone. The number of likely vacancies for different categories and likely places of vacancies are announced in Notification for promotion. Smt. Sunanda Dange had applied for Nagpur Division for promotion to the cadre of H.G.A.. In the application for promotion, it was specified that preference for postings are obtained to know the preference of the candidates. As per the notification for promotion in the year 2013-14, there were vacancies at Ballarpur, Bramhapur, Chandrapur, Gadhiroli, Sakoli, Tumsar, Warora under Nagpur Division. Smt. Sunanda Dange had given preference for posting at Umrer, Ramtek and Warora. Initially she was posted at Sakoli Branch, but after her request she was posted at Warora Branch vide Office Order dated 30.04.2014. The Respondent submitted that for treating the applications for transfers by equivalent standard, the practice followed by Nagpur Division is while considering the transfer applications as per the Transfer Seniority Roster, seniority in the cadre is followed. Since the transfers are affected strictly on seniority basis and no deviations are allowed, the case of Smt. Sunanda Dange could not be considered.

5. The Complainant vide her rejoinder dated 24.01.2018 has submitted that transfer of general class III employee from one centre to another centre to the effect that one who completes a period of three years of service in a particular cadre is eligible for transfer to the choice of his/her entre. She submitted that here case is different from the general candidate. She submitted that being a 40% visually impaired person in addition to being a SC candidate, the rule of LIC may be relaxed/exempted in comparison to general candidate since she has completed 3 ½ years of service at Warora Branch. Therefore, she further submitted that her transfer request to Nagpur Branch from Warora Branch may be considered by LIC on priority basis.

6. After considering Respondent's reply dated 14.12.2017 and Complainant's rejoinder dated 24.01.2018, a personal hearing in the matter was scheduled on 11.06.2018.

7. During the hearing the Complainant submitted that she has completed more than 3 years at Warora as Higher Grade Assistant (Admn.). Her husband's health is not good due to severe diabetic and gallbladder disorder problem. Her husband fainted number of time due to Hypoglycemic condition and he needs continuous care and medication. She is finding difficult to travel daily from Nagpur to Warora every day.

8. During the hearing the representative of Respondent submitted that initially the Complainant was posted at Sakoli Branch, but after her request, she was posted at Warora Branch during April 2014. The Respondent submitted that the practice followed by Nagpur Division is while considering the transfer applications as per the Transfer Seniority Roster, seniority in the cadre is followed. The transfers are affected strictly on seniority

basis. She submitted that rural branch is very short of employees. The Complainant has to wait for few more time. She may also give option for her transfer to any other branches of LIC.

9. The Court directed the Respondent to ensure that the Complainant is given posting near to her place of residence and that no rights, as provided under the Rights of Persons with Disabilities, Act, 2016, are infringed.

10. The case is disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

Ex 100

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

वाद संख्या 6934/1141/2016

दिनांक 27.07.2018

के मामले में -

स्व प्रेरणा से

बनाम

खेल विभाग

(द्वारा - खेल विभाग के सचिव),
युवा कार्यक्रम और खेल मंत्रालय,
शास्त्री भवन, नई दिल्ली-110001

R-10375

.... प्रतिवादी

सुनवाई की तिथि - 04.05.2018 और 14.06.2018

उपस्थित -

दिनांक - 04.05.2018

1- श्री मोहम्मद नौशाद आलम, सहायक अनुभाग अधिकारी प्रतिवादी पक्ष की ओर से

दिनांक - 04.06.2018

प्रतिवादी पक्ष की ओर से अनुपस्थित।

आदेश

कार्यालय, सचिव, दिव्यांगजन सशक्तिकरण विभाग द्वारा दैनिक जागरण समाचार पत्र में दिनांक 08.09.2016 को प्रकाशित कतरन जो "पैरालंपिक दल की किट की शिकायत दूर हुई: गोयल" के शीर्षक से है, मुख्य आयुक्त दिव्यांगजन को भेजी गई। समाचार-पत्र में राज्य ब्यूरो, नई दिल्ली द्वारा पैरालंपिक में हिस्सा लेने गए भारतीय खिलाड़ियों की किट को लेकर अंतराष्ट्रीय पैरालंपिक कमेटी के द्वारा उठाए गए कुछ शिकायतों को माननीय खेल मंत्री द्वारा निराकरण के बारे में था और कुछ पूर्व एथलीटों द्वारा रियों खेल का भारत में प्रसारण की मांग की गई थी क्योंकि इसका प्रसारण भारत में नहीं हो रहा था।

2. निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 के की धारा 59 के अन्तर्गत इस न्यायालय के पत्र दिनांक 16.01.2017 और स्मरण पत्र दिनांक 03.04.2017 के द्वारा उपरोक्त समाचार पत्र-कतरन की छायाप्रति प्रतिवादी को भेजते हुए उस पर टिप्पणी माँगी गई।

3. प्रतिवादी से प्राप्त पत्र दिनांक 17.05.2017 के उत्तर में प्रतिवादी को इस न्यायालय के पत्र दिनांक 11.08.2017 के द्वारा पुनः मामले से सम्बन्धित समस्त पत्रावलियाँ प्रेषित कर मामले की वस्तु स्थिति से अवगत कराने की सलाह दी गई। परन्तु अनुस्मारक दिनांक 10.11.2017 के उपरान्त भी

प्रतिवादी से उत्तर अप्राप्त रहने पर इस मामले में व्यक्तिगत सुनवाई दिनांक 04.05.2018 को सुनिश्चित की गई और प्रतिवादी को सलाह दी गई कि किसी सक्षम प्रतिनिधि (प्रतिवादी की ओर से समूह 'क' के स्तर से नीचे का अधिकारी नहीं) अथवा किसी अधिवक्ता, जो मामले की पूरी जानकारी रखता हो के द्वारा सभी सम्बन्धित दस्तावेजों के साथ सरोजिनी हाऊस, 6, भगवान दास मार्ग, नई दिल्ली स्थित इस न्यायालय में उपस्थित हों।

5. दिनांक 04.05.2018 को सुनवाई के दौरान प्रतिवादी पक्ष की ओर से सक्षम प्रतिनिधि अथवा समूह 'क' के स्तर का कोई अधिकारी उपस्थित नहीं हुए। प्रतिवादी की ओर से उपस्थित कर्मचारी को मामले की पूरी जानकारी नहीं थी। उपस्थित कर्मचारी द्वारा प्रस्तुत प्रतिवादी के उत्तर दिनांक 4 मई, 2018 में इस बात का कोई उल्लेख नहीं किया गया कि रियो ओलम्पिक 2016 का प्रसारण भारत में क्यों नहीं किया गया था।

6. दिनांक 04.05.2018 को सुनवाई के दौरान हुई कार्यवाही के अभिलेख दिनांक 25.05.2018 के द्वारा प्रतिवादी को स्पष्टतः अवगत कराया गया कि फाइल पर उपलब्ध पत्रावलियों से खेल विभाग का दिव्यांगजन के प्रति असंवेदनशील एवं उदासीन होना प्रतीत होता है। प्रतिवादी को यह सलाह दी गई इस मामले पर गम्भीरतापूर्वक विचार करते हुए उत्तर प्रस्तुत करें कि रियो ओलम्पिक 2016 का प्रसारण भारत में क्यों नहीं किया गया था और विभाग द्वारा भारत में प्रसारण के लिए क्या कार्यवाही की गई थी। अगली सुनवाई दिनांक 14.06.2018 को सुनिश्चित की गई।

7. दिनांक 14.06.2018 को सुनवाई के दौरान प्रतिवादी पक्ष की ओर से कोई भी उपस्थित नहीं हुए।

8. इस सम्बन्ध में प्रतिवादी को यह अवगत किया जाता है कि दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 93 के अन्तर्गत निम्नलिखित प्रावधान है :-

“93. जो कोई इस अधिनियम या इसके अधीन किए गए किसी आदेश या निर्देश के अधीन पुस्तिका, लेखा या अन्य दस्तावेज पेश करने में या कोई विवरणी, जानकारी या विशिष्टियाँ इस अधिनियम या इसके अधीन किए गए किसी आदेश या निर्देश के उपबंधों के अनुसरण में पेश करने या देने या किए गए किसी प्रश्न का उत्तर देने के लिए कर्तव्यबद्ध है, को पेश करने में असफल रहता है वह प्रत्येक अपराध की बाबत जुर्माने से दंडनीय होगा जो पच्चीस हजार रुपये तक का हो सकेगा और चालू असफलता या इंकार की दशा में अतिरिक्त जुर्माने से जो जुर्माने के दंड के अधिरोपण के मूल आदेश की तारीख के पश्चात् चालू असफलता या इंकार के लिए प्रत्येक दिन के लिए एक हजार रुपये तक हो सकेगा, दंडनीय होगा।”

9. उपरोक्त के आलोक में प्रतिवादी को सलाह दी जाती है कि अपने मंत्रालयों/सम्बन्धित विभागों के अधिकारियों/कर्मचारियों को दिव्यांगजन के सशक्तिकरण हेतु दिव्यांगजन अधिकार अधिनियम, 2016 में प्रदत्त उनके अधिकारों के प्रति संवेदनशील रहने के लिए समुचित निर्देश जारी की जाए।

(डॉ. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त, दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No. 8689/1012/2017

Dated: 19.07.2018

In the matter of:-

Ms. Sameeksha Tandon
D/o Manoj Tandon
HD 50, Sector I, Jankipuram
Lucknow – 226021

R-10/162

Complainant

Versus

Staff Selection Commission
(Through the Chairman)
Block No. 12, CGO, Complex, New Delhi

R-10/163

Respondent No. 01

Office of the Commissioner Central Excise & Service Tax
(Through the Commissioner)
Audit Commissionerate, Lucknow – 226001

R-10/164

Respondent No. 02

Date of Hearing: 12.07.2018

Present:

1. Ms. Sameeksha Tandon - Complainant
2. Shri L.P. Pandey, Assistant Commissioner, O/o CCE&ST and Shri A.K. Dadhich, Under Secretary, SSC on behalf of Respondent.

ORDER

The above named complainant Ms. Sameeksha Tandon filed a complaint dated 11.09.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the Act regarding height relaxation in Central Excise Deptt for the post of Inspector, Central Excise or arrangement of some alternate position through Staff Selection Commission.

2. The complainant in her complaint submitted that she had qualified SSC, CGL 2015 exam under GEN/OH category and allotted the position of Central Excise Inspector in Audit Commissionerate, Lucknow but during medical test it was found that her height is 150cm which is 2cm less than the required height for the post. She further submitted that she was working as a software developer in a private firm in Gurgaon at a very handsome salary and after coming to know that her joining in Audit Commissionerate is likely to come soon, she left former job. She further submitted that Recruitment Rule for selection of candidates at same post, there is provision of height relaxation by 2.5 cm for candidates in the categories like: Garhwali's, Assamese, Gorkhas and members of scheduled tribes mentioned at page no. 11 under the section "Educational and other qualifications required for direct for the "Female candidates". She further submitted that if such relaxations can be provided for these categories of candidates the why can't such benefits be given to her.

3. The matter was taken up with the respondent vide letter dated 19.01.2017 under Section 75 of the Rights of Persons with Disabilities Act, 2016.

4. In response, Joint Commissioner, Central Excise, Lucknow Zone vide letter dated 23.02.2018 has inter-alia submitted that duties of the executive officers require a high degree of physical fitness, mobility and reflexes and they often have to confront smugglers and other anti social elements and in many cases their lives remain in danger as they are chased by smugglers and also that the expert Committee constituted by the M/o SJ&E has identified one leg affected persons suitable for these posts. The Central Board of Excise and Customs has considered the matter and has decided to consider one leg affected person for recruitment/promotions to the post of Inspector (C.Ex), Inspector (P.O.) and Inspector (Examiner) against the 3% quota reserved for PH persons. He further submitted that the complainant Ms. Sameeksha Tandon was undergone physical standard test and during measurement her height was found short by 2 cm by the representative of Chief Medical Officer, Lucknow etc. He further submitted that as per Central Excise and Land Customs Department Inspector Recruitment Rules 2002, the height requirement of female candidate is 152 cm and the said provision of height is also prescribed in new Recruitment Rules 2016 of Inspector of Central Excise. The height criteria is mentioned in advertisement published by the SSC and candidate (being short height) should have not opted the post of Inspector of Central Excise while applying for Combined Graduate Level Examination 2015. There is always options of other posts in Combined Graduate Level Examination with no height criteria and the candidate should have opted such other posts while exercising her option.

5. Under Secretary (P&P-1), Staff Selection Commission vide letter dated 19.05.2018 has inter-alia submitted that Commission does not maintain any roster for providing reservation to the persons with disabilities. It is the responsibility of the concerned user Departments to maintain proper reservation roster and submit correct vacancies to the Commission. He further submitted that on the basis of Combined Graduate Level Examination, 2015, the candidate was selected to the post of Inspector (Central Excise) under Roll No. 3010063335. However, the candidate stated to have been rejected in Medical Test as she fell short of thenormal qualifying range of height measurement by the User Department. In this Connection, attention is invited to the Notice of Combined Graduate Level Examination, 2015 published in Employment News dated 02.05.2015, wherein the required physical standards for the post of Inspector (Central Excise/Examiner/Preventive Officer) had clearly been laid down in the para – 11 (A) of the Notice. The candidates were clearly cautioned vide Note on page 21 of the Notice of Examination to exercise due diligence while making post preferences. The text of this Note reads as under:

“Candidates are advised to make sure before opting for any category of posts that they fulfill the requirements for that category. The physical measurements (including vision test) for candidates will be conducted by the concerned Indenting Departments and only those candidates who fulfill the specified physical measurements will be eligible for the respective posts. No request from candidates for allotting to any other service/category of post will be entertained by the Commission if the nominated candidates fail to meet the physical requirements. Thus, the onus of fulfilling the eligibility criteria will exclusively be on the candidates opting for such posts.”

6. Complainant vide rejoinder dated 17.09.2017 has inter-alia submitted that the height of two centimeters is too minor to be the deciding factor in whether or not a person can catch thieves or not. She further submitted that she had successfully demonstrated her physical abilities in the walking test and in the cycling test, which are much more significant requirements.

7. After considering the respondent's replies and complainant's letter, it was decided to hold a personal hearing in the matter. Therefore, the case was listed on 12.07.2018.

8. During the hearing, representative of the respondents reiterated their written submissions and complainant also reiterated her written submissions. After hearing both the parties, it seems no violation of the Rights of Persons with Disabilities Act, 2016 therefore, case is disposed off.



(Dr. Kamlesh Kumar Pandey)

Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

केस नं: 6509 / 1014 / 2016

दिनांक 20.07.2018

श्री सुबोध कुमार
सुपुत्र - श्री नाथू नजक
आवास सं.2860, टाइप - 2
सेक्टर - 2, वाहन निर्माणी इस्टेट
जबलपुर (मध्य प्रदेश)

R-10/60

वादी

बनाम

आयुध निर्माणी बोर्ड
(द्वारा वरिष्ठ महाप्रबंधक)
वाहन निर्माणी, जबलपुर, मध्य प्रदेश - 482009

R-10/61

प्रतिवादी

सुनवाई की तिथि : 13.07.2018

उपस्थित :

- श्री सुबोध कुमार - वादी
- श्री जी.एम.मिश्रा, अध्यक्ष एवं श्री नित्येश शर्मा, सहा. कार्य प्रबंधक प्रतिवादी की ओर से

आदेश

उपरोक्त शिकायतकर्ता श्री सुबोध कुमार ने आयुध निर्माणी बोर्ड में नियुक्ति से संबंधित शिकायत - पत्र दिनांक 06.06.2016 निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण एवं पूर्ण भागीदारी) अधिनियम, 1995 के अन्तर्गत इस न्यायालय में प्रस्तुत किया।

2. शिकायतकर्ता का अपनी शिकायत में कहना है कि अप्रेंटिसशिप वर्ष 2004 में पास करने के बाद उन्हें वाहन निर्माणी, जबलपुर में ही वेल्डर सेमीस्किल्ड में विकलांग कोटे के तहत वर्ष 2011 में नियुक्ति मिली थी। वर्ष 2004-05 में वेल्डर की आवश्यकता होने पर अन्य ट्रोडों से अप्रेंटिसशिप पास लोगों को ट्रेड बदल कर वेल्डर ट्रेड में नियुक्ति दी गई लेकिन प्रार्थी को नहीं बुलाया गया। यदि वर्ष 2004 - 05 में ही प्रार्थी नियुक्ति हो जाती तो वह आज अत्यधिक आर्थिक हानि से बच जाता। प्रार्थी ने अनुरोध किया कि उन्हें 2004 - 05 में भर्ती के समानान्तर आर्थिक लाभ प्रदान करवाए।

3. मामला अधिनियम की धारा 59 के अन्तर्गत प्रतिवादी से दिनांक 27.03.2017 को उठाया गया।

4. जवाब में वरि. महाप्रबंधक, वाहन निर्माणी, जबलपुर पत्र दिनांक 12.01.2018 का कहना है कि श्री सुबोध कुमार ने नियुक्ति के समय जो विकलांगता प्रमाण पत्र प्रस्तुत किया था वह सत्यापन हेतु असैनिक शल्य चिकित्सक सह मुख्य चिकित्सा पदाधिकारी, वैशाली के कार्यालय को भेजा गया था। इस प्रमाण पत्र में उनकी विकलांगता 40

प्रतिशत बताई गई थी। जाँच करने पर असैनिक शल्य चिकित्सक सह मुख्य चिकित्सा पदाधिकारी, वैशाली ने अपने पत्र दिनांक 17.03.2017 के द्वारा बताया कि श्री सुबोध कुमार का विकलांगता का प्रतिशत संदेहात्मक प्रतीत होता है इसलिए उन्होंने श्री सुबोध कुमार को पुनः जाँच हेतु चिकित्सा परिषद के समक्ष उपस्थित होने निर्देशित किया। चिकित्सा परिषद ने अपने पत्र दिनांक 22.07.2017 के द्वारा बताया कि जाँचोपरान्त श्री सुबोध कुमार की विकलांगता 17 प्रतिशत स्थाई पाया गया है। अतः श्री सुबोध कुमार विकलांगता के आधार पर मिलने वाले किसी भी लाभ के लिए पात्र नहीं है।

5. प्रतिवादी के पत्र दिनांक 12.01.2018 एवं वादी के पत्र दिनांक 07.05.2018 के मद्देनज़र, दिनांक 13.07.2018 को सुनवाई रखी गई।

6. सुनवाई के दौरान, प्रतिवादी की ओर से उपस्थित प्रतिनिधि ने बताया कि श्री सुबोध कुमार ने समान मुद्दा माननीय केन्द्रीय प्रशासनिक ट्रिब्यूनल, जबलपुर में भी दर्ज किया हुआ है जिसका ओ.ए. नं: 1120/2017 है। वादी ने स्वीकार किया कि समान मुद्दा उन्होंने केन्द्रीय प्रशासनिक ट्रिब्यूनल, जबलपुर में दर्ज किया है।

7. दोनों पक्षों को सुनने के पश्चात् यह पाया गया कि उक्त समान मामला केन्द्रीय प्रशासनिक ट्रिब्यूनल, जबलपुर में विचाराधीन है इसलिए इस केस को खारिज किया जाता है।



(डॉ कमलेश कुमार पाण्डेय)
मुख्य आयुक्त (दिव्यांगजन)



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No. 7514/1011/2017

Dated: 20.07.2018

In the matter of:-

Dr. Nitesh Kumar Tripathi

H.No. B – 241, B Block

Sant Nagar Burari, Delhi – 110084

<niteshtripathi85@gmail.com>

Complainant

Versus

Composite Regional Centre (CRC)

Through the Director

Department of Empowerment of

Persons with Disabilities (Divyangjan)

Mohan Road, Near Mohan Road Police Chowki

Lucknow – 226017

Respondent

Date of Hearing: 12.07.2018

Present:

1. Complainant - absent
2. Ms. Pragati Pandey, (APCD) Officer Incharge CRC, LKO, Shri Roshan Lal Meena and Shri Lalit Narayan on behalf of Respondent.

ORDER

The above named complainant Dr. Nitesh Kumar Tripathi filed an e-mail dated 19.01.2017 under the Persons with Disabilities Act, 1995, hereinafter referred to as the Act regarding non implementation of provisions of Persons with Disabilities Act, 1995 by CRC, Lucknow.

2. The complainant in his complaint submitted that CRC, Lucknow has published an advertisement for various posts and the advertisement is not showing exact number of seats reserved for persons with disabilities. He has requested this court to direct the respondent to provide various facilities like full exemption from the payment of application fee, extra time during examination, travel expenses to attend interview along with an escort, disabled friendly environment during the interview and also to conduct the Special Recruitment Drive for filling up the backlog vacancies for persons with disabilities.

3. The matter was taken up with the respondent vide letter dated 24.03.2017 under Section 59 of the Persons with Disabilities Act, 1995.

4. In response, Officer in charge, Composite Regional Centre, Lucknow vide letter dated 11.05.2017 has submitted that the total sanctioned strength of CRC, Lucknow is 19 only, out of which 08 posts for grade A (including the post of Director), 09 posts for Grade B and 02 posts for Grade 'C'. The first cycle of recruitment has not been completed and only 12 persons have been recruited so far. One person with locomotor disability has already been recruited and has taken charge. The post of typist/clerk has also been earmarked for PwDs and this post could not be filled as the recruitment of post is under the purview of Court. They further clarified that due representation will be given to PwDs as per existing guidelines in future recruitment.

5. Complainant vide rejoinder dated 17.09.2017 has inter-alia submitted that after going through the reply of the respondent nothing has been answered as per the issues raised in his original complaint.

6. After considering the respondent's letter dated 11.05.2017 and complainant's e-mail dated 17.09.2017, it was decided to hold a personal hearing in the matter therefore, the case was listed for personal hearing on 12.07.2018.

7. During personal hearing complainant was absent and the representative of the respondent has reiterated her written submissions. After hearing and material available on record, response of the respondent found satisfactory.

8. In view of the above, case is closed accordingly.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No. 6158/1014/2016

Dated: 20.07.2018

In the matter of:-

Shri Prasad CA

Chennasseril Veedu

Arthunkai P.O., Cherthala

Alappuzha – 688530

Complainant

Versus

Railway Recruitment Cell

Through the Dy. Chief Personnel Officer/Recruitment

Southern Railway, No. 5, 3rd Floor, Dr. P.V.

Cherian Crescent Road, Egmore, Chennai – 600008

Respondent

Date of Hearing: 12.07.2018

Present:

1. Complainant - absent
2. Shri Jagdish Alagar, Chairman and Shri T.M. Ravi, Chief Staff & Welfare Inspector on behalf of Respondent.

ORDER

The above named complainant Shri Prasad C.A., a person with 60% locomotor disability filed complaints dated 29.03.2016 and 09.06.2016 under the Persons with Disabilities Act, 1995, hereinafter referred to as the Act regarding non recruitment to Group D posts by Railway Recruitment Cell, Southern Railway, Chennai.

2. The complainant in his complaint submitted that he had applied for Group 'D' posts under SC (PH) in Railway Recruitment Cell, Chennai and after qualifying written test, he was eligible for Group 'D' post but the railway recruitment cell did not call him for document verification. .

3. The matter was taken up with the respondent vide letter dated 21.04.2017 under Section 59 of the Persons with Disabilities Act, 1995.

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4. In response, Chairman, Southern Railway vide letter dated 11.05.2017 has submitted that an Employment Notice No. RRC/01/2012 was issued on 24.07.2012 inviting applications to fill up 2,461 vacancies. The breakup of the vacancies was as under:

UR	SC	ST	OBC	OH	VH	HH
1158	452	299	552	50	1	17

The vacancies were further increased to 5,376, the breakup of the increased number of vacancies shown as under:

UR	SC	ST	OBC	OH	VH	HH
2714	953	556	1153	115	3	43

On completion of written examination and physical efficiency test (PET), candidates were called for document verification in the ratio of 1:1. They further submitted that the Persons with Disabilities are exempted from PET. PwD candidates with the following break up alone could be called for document verification:

OH	VH	HH	Total
115	3	26	144

In other words, there was a short fall of 17 vacancies in the category of HH on account of non-qualification in the written examination (under relaxed standards for PwDs), when the candidates were called for Document Verification.

OH	VH	HH	Total
115	3	20	138

The final cut-off marks of all the categories are furnished as under:

UR	SC	ST	OBC	OH	VH	HH
67.874	57.788	49.394	65.330	58.767	74.006	28.915

As against the cut off marks of 58.767 for OH candidates, the marks secured by Shri Prasad C.A. who comes under OH was only 37.000 marks and this was the only reason that the complainant Shri Prasad, C.A. could not be subjected to further recruitment process.

5. Complainant vide rejoinder dated nil has inter-alia submitted that the response of the RRC is not satisfactory as RRC had issued eligibility certificate vide EN No. :RRC 01-/2012 to him.
6. After considering the respondent's letter dated 11.05.2017 and complainant's letter, it was decided to hold a personal hearing in the matter. Therefore, the case was listed on 12.07.2018.
7. During personal hearing complainant was absent and the representative of the respondent has reiterated his written submissions. After hearing and material available on record, response of the respondent found satisfactory.
8. In view of the above, case is closed accordingly.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No. 7204/1011/2016

Dated: 25.07.2018

In the matter of:-

Dr. Nitesh Kumar Tripathi

H.No. B – 241, B Block

Sant Nagar Burari, Delhi – 110084

<niteshtripathi85@gmail.com>

Complainant

Versus

Central University of Haryana

Through the Registrar

Village: Jant-Pali, Distt. Mahendergarh

Haryana – 123029

Respondent

Date of Hearing: 18.07.2018

Present:

1. Complainant - absent
2. Shri Amit, Assistant Registrar (Estt. Section) on behalf of Respondent.

ORDER

The above named complainant Dr. Nitesh Kumar Tripathi filed an e-mail dated 18.11.2016 under the Persons with Disabilities Act, 1995, hereinafter referred to as the Act regarding non implementation of provisions of Persons with Disabilities Act, 1995 by Central University of Haryana.

2. The complainant in his complaint submitted that Central University of Haryana has published an advertisement for post of Doctors and various other posts and the advertisement is not showing exact number of seats reserved for persons with disabilities. He has requested this court to direct the respondent to provide various faculties like full exemption from the payment of application fee, extra time during examination, travel expenses to attend interview along with an escort, disabled friendly environment during the interview and to also conduct the Special Recruitment Drive for filling up the backlog vacancies for persons with disabilities.

3. The matter was taken up with the respondent vide letter dated 15.12.2016 under Section 59 of the Persons with Disabilities Act, 1995.

4. In response, Dy. Registrar, Central University of Haryana vide letter dated 25.01.2017 has submitted that in the advertisement, all the posts have been marked for Un-Reserved category only and the University has already made provision for providing reservation for PwD in accommodation allotment. Presently the University has no residential accommodation for teaching and non-teaching staffs and they have already advertised for filling up PwD vacancies. They further submitted that his application will be considered without payment of any fee in Un-Reserved category subject to verification of all essential qualification/experience etc.

5. Complainant vide rejoinder dated 01.04.2017 has inter-alia submitted that after going through the reply of the respondent nothing has been answered as per the issues raised in his original complaint.

6. After considering the respondent's letter dated 25.01.2017 and complainant's e-mail dated 01.04.2017, it was decided to hold a personal hearing in the matter. Therefore, the case was listed on 18.07.2018.

7. During personal hearing, complainant was absent and the representative of the respondent has reiterated his written submission and informed that they had issued an interview letter dated 07.04.2017 to Dr. Nitesh Kumar Tripathi for attending interview on 13.04.2017 at the Transit Office of the University at Gurgaon but he did not attend the interview. After hearing and material available on record, the case is dismissed under Rule 38 (4) of the Rights of Persons with Disabilities Rules, 2016 as default.

8. In view of the above, case is closed accordingly.

(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No.: 6687/1141/2016

Dated 19.07.2018

In the matter of:

R-10150

The President,
Dr. B.R. Ambedkar Welfare Association for the
Disabled Bangalore,
[Through: The State Commissioner for Persons with
Disabilities, Govt. of Karnataka,
#55, 2nd Floor, "Abhaya Sankeerna",
Karnataka Slum Development Board Building,
Risaldar Street, Seshadripuram, Bengaluru-560020]

.... Complainant

Versus

Air India Limited
[Through: The Chairman & Managing Director],
113, Rakabganj Gurudwara Road,
New Delhi – 110001

R-10151

.... Respondent No.1

Directorate General of Civil Aviation
[Through: The Director General of Civil Aviation]
Opposite Safdarjung Airport,
New Delhi – 110003
Email – suresh.dgca@nic.in

R-10152

.... Respondent No.2

Date of hearing: 04.05.2018

Present:

1. Shri Amresh Choudhary, GM (Comml); Shri Rishikand Singh, Dy.GM (Comml);
Shri S. Gujral, AGM (Comml); and Shri M.R. Jagadish, Dy. Manager (WAR Comml),
for Air India Ltd., respondent No.1
2. None appeared for respondent No.2
3. None appeared for complainant.

O R D E R

The State Commissioner for Persons with Disabilities, Government of Karnataka vide their letter dated 20.07.2016 forwarded to this Court a representation dated 02.05.2016 of Dr. B.R. Ambedkar Welfare Association for the Disabled (R), Bangalore (complainant) regarding the provision of concessional rate to persons with severe disabilities in Airways Travel as is being provided to the persons with visual impairment in terms of Indian Airlines Circular No.CIM/17 dated 18.05.1965 and Indian Airlines

Page 1 of 4

Circular by Commercial Department (Northern Region) Circular No.10/1999 dated 04.02.1999.

2. Initially, the matter was taken up with the respondent No.2 vide this Court's letter dated 15.09.2016 under Section 59 of the Rights of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [PwD Act, 1995] for submission of their comments.

3. Respondent No.2 filed their reply dated 26.09.2016 and intimated that DGCA is not empowered to issue any guidelines in the matter of concessional rate of fare to passengers travelling by air as their Office is not empowered to do so under the provision of the Aircraft Act 1934 or the Rules made there under. As regards Indian Airline Circular No.CIM/17 dated 18.05.1965 and Circular No.10/1999 dated 04.02.1999, the same are in the commercial domain to Air India. Therefore, Air India would be in better position to comment in this regard.

4. Considering upon the reply of respondent No.2, the matter was taken up with the Air India Limited (respondent No.1) for submission of their comments, vide this Court's letter dated 06.01.2017 followed by reminders dated 08.03.2017, 04.08.2017 and 09.11.2017.

5. Since no reply was received from respondent No.1, it was decided to list the case for personal hearing on 04.05.2018 and in this regard the Notice of Hearing dated 13.04.2018 was sent to the parties for appearing before the Court.

6. During the hearing, on 04.05.2018 Shri Amresh Choudhary, GM (Comml), one of the representatives of respondent No.1 intimated the Court that concession in air fare is given only to the person with visual impairment and the persons with locomotor disabilities having disability 80% and above. It was also submitted by the representative that detailed reply in this regard would be submitted to the Court very soon.

7. The Court was adjourned.

8. In the meantime, respondent No.2 vide letter dated 10.05.2018 submitted that respondent No.1 had intimated that with effect from 16.09.2016, Air India offers a 50% concession in Economy Class on RBD "M" Basic fare as Locomotor Disability Concession for persons with physical disability of permanent nature affecting any of the limbs (upper/lower limbs) or the trunk affecting the mobility of the body/or the part caused by any reason thereby affecting the muscular skeletal system of the body including the nervous system. Conditions falling under this category include cases like paraplegia (paralysis of both lower limbs), Hemiplegic (Paralysis of one side of body), Cerebral Palsy

[Spastic person, severe cases of poliomyelitis, severe kyphosis (Hunchback)], Muscular dystrophies and amputees. The concession is only applicable to passengers suffering from locomotor disability to the extent of 80% or more and is applicable for all Indian residents and on Domestic Sectors only. For availing discount for passenger suffering from Locomotor Disabilities, valid documents needed are Certificate issued by a Chief District Medical Officer or a Board constituted by government hospital to the effect that the passenger is suffering from the locomotor disability to the extent of 80% and above.

9. It was also intimated that a writ petition No.326 of 1997 was filed by Shri Javed Abidi (the petitioner) in public interest, in the Hon'ble Supreme Court of India seeking various directions from the Union of India to implement the provisions of the Persons with Disabilities Act, 1995 and Indian Airlines was made respondent No.3 for extending the facilities for the disabled, inter-alia, the provision of – (a) aisle chairs; (b) ambu-lifts; and (c) air fare concessions. The Hon'ble Supreme Court of India vide its judgement dated 17.12.1998 directed Indian Airlines to provide 50% concession to the orthopedically handicapped persons with locomotor disability subject to such locomotor handicapped person furnishing necessary certificate from the Chief District Medical Officer to the effect that the person concerned is suffering from the disability to the extent of 80%. In compliance to the directions of Hon'ble Supreme Court of India, Indian Airlines issued Circular No.1077(R&T) dated 30.01.1999 for concession to persons with locomotor disability.

10. Thereafter, reply from respondent No.1 was also received vide their letter dated 17.05.2018 and it was submitted that with effect from 16.09.2016, Air India offered a 50% concession in Economy Class on RBD "M" only Basic fare as Locomotor Disability Concession. The said concession has been reviewed and Circular No.2925 B has been issued on 06.02.2018 superseding all earlier circulars. Air India now offers 50% concession in Economy Class on the Domestic network on the Basic Fare of selling RBD (Y, B, M, H, K, Q, V, W, G & L) as Locomotor Disability Concession for persons with physical disability of permanent nature affecting any of the limbs (upper/lower limbs) or the trunk affecting the mobility of the body/or the part caused by any reason thereby affecting the muscular skeletal system of the body including the nervous system. Conditions falling under this category includes cases like Paraplegia (paralysis of both lower limbs), Hemiplegic (Paralysis of one side of body), Cerebral Palsy (Spastic person), severe cases of Poliomyelitis, severe Kyphosis (Hunchback), Muscular Dystrophies and Amputees). The condition is only applicable to the passengers suffering from locomotor disability to the extent of 80% or more for all Indian residents and on Domestic Sectors only on production of the certificate issued by a Chief District Medical Officer or a Board constituted by Government Hospitals to the effect that the passenger is suffering from the

locomotor disability to the extent of 80% and above. Ticket can be issued from Air India City Ticketing Office, Airport Ticketing Office, Call Centres and Website www.airindia.in. The ticket must be purchased at least 07 days before departure. The concession is available through-out the year. Valid ID proof must be presented throughout the journey to avoid forfeiture of Basic fare.

11. In the light of the facts submitted above, this Court is of the view that in addition to the persons with visual impairment and locomotor disabilities, as mentioned in Para 10 above, the respondent should consider to extend the benefit of 50% concession on Base Fare in Economy class to the other persons with disabilities as specified in the Schedule of the Rights of Persons with Disabilities Act, 2016, having 80% or more disability.

12. The case is accordingly disposed of.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 8545/1023/2017

Dated : 20.07.2018

Dispatch No.

In the matter of :

Dr. S.G.R. Prakash,
Plot No.54,
Yadamma Nagar,
Green Field Colony,
Secunderabad - 500 015

.....Complainant

Versus

Ali Yavar Jung National Institute of Speech and Hearing Disabilities (AYJNISHD), ...Respondent 1
(Through the Director),
K.C. Marg,
Bandra Reclamation (W),
Mumbai - 400 050

Deptt. Of Empowerment of Persons with Disabilities,
(Through the Joint Secretary)
Ministry of Social Justice and Empowerment,
5th Floor, Block -I-II-III,
Paryavaran Bhawan, CGO Complex,
Lodhi Road,
New Delhi - 110003

...Respondent 2

Date of Hearing : 29.06.2018, 21.03.2018 and 07.02.2018

Present :

1. Ms. Shweta Yashasu, Learned Counsel for the Complainant.
2. Dr. Gouri Shanker Patil, AYJNISHD (D), Secunderabad., On behalf of Respondent 1.
3. Shri K.K. Jhell, Deputy Secretary, on behalf of Respondent 2.

ORDER

The above named complainant, a person with 50% locomotor disability had filed a complaint dated 27.07.2017 under the Rights of Persons with Disabilities Act, 2016 against not allowing him to resume his duties at SRC, NISHAD and denial of salary for more than six months.

2. Dr. S.G.R. Prakash submitted that he joined SRC, AYJNIIH as a Clinical Assistant in the year 1991. He was promoted to the post of Lecturer and then Reader. He served as a Director, CRC, Ahmedabad from August 2013 to October 2014 and became instrumental in establishing CRC. In the year from December 2013 to 27.10.2014, he was assigned the duty of Incharge Director of AYJNIIH, Mumbai. In April 2015, he was relieved as officiating Director and joined his original post at SRC, NIHH, Secunderabad. During services, he had brain stroke and had to

....2/-

undergo two major brain surgeries. The Doctor who was treating him gave a medical fitness certificate on 22.12.2016 for resuming his duties which he submitted to his office. Later he was asked by his establishment to submit a medical fitness on the required format which he did on 04.01.2017. The complainant was then asked to seek a second opinion from Civil Surgeon/Assistant Staff Surgeon which he complied and gave the report on 23.01.2017. In spite of submitting all the required documents as demanded by his office, he was not allowed to join duty at SRC, NISHD.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 22.11.2017.

4. The Respondent vide his letter no. Estt./SRC/5034 dated 21.12.2017 submitted that Dr. S.G.R. Prakash, Reader and Asst. Director is working in Southern Regional Centre of AYJNISHD and is under the treatment of Right Hemiplegia, Aphasia and Hypertension since 13.07.2015. The Complainant was on commuted leave followed by Extra Ordinary Leave from 13.07.2015 to date. As per CCS Rule 24(3) and Rule 19 of FRSR Part III, he was referred to Medical Board for second opinion of the Civil Surgeon/Medical Board of the Osmania Government Hospital for fitness certificate as he has failed to submit the fitness certificate in appropriate format. The Complainant appeared before the Medical Board of Osmania General Hospital, Hyderabad, The Civil Surgeon, Osmania General Hospital has sent the Complainant's medical certificate. The Medical Board has declared the Complainant as 'The candidate is suffering from Right Hemiplegia, Aphasia, hence he is unfit for his duties'. However, Dr. S.G.R. Prakash is a group 'A' Official and Joint Secretary being the appointing authority, his case has been referred for further directives. As per CCS (Leave) Rules medical fitness is essential for joining duties. Therefore, he was not allowed to join duty.

5. The Complainant vide his rejoinder dated 12.01.2018 had submitted that Director, AYJNISHD, Mumbai vide his letter no. Estt/SRC/2018/5428 dated 09.01.2018 had asked the Complainant to opt for the retirement whereas he was praying for permission to join duties.

6. After considering Respondent's reply dated 21.12.2017 and Complainant's rejoinder dated 12.01.2018, a personal hearing was scheduled on 07.02.2018 at 14:00 Hrs.

7. During the hearing the Learned Counsel for the Complainant submitted that during the service the Complainant had brain stroke and had to undergo two major brain surgeries. The Doctor who was treating him gave a medical fitness certificate for resuming his duties which he submitted to his office. Later on the advice of his establishment the Complainant submitted a

medical certificate on 04.01.2017. The complainant was then advised to seek a second opinion from Civil Surgeon/Assistant Staff Surgeon which he complied and gave the report on 23.01.2017. In spite of submitting all the required documents as demanded by his office, he was not allowed to join duty at SRC, NISHD.

8. The representative of Respondent no. 1 submitted that the Deputy Secretary, Deptt. of Empowerment of Persons with Disabilities, Ministry of Social Justice vide his letter dated 03.01.2018 has directed the Director, Ali Yavar Jung National Institute for Speech & Hearing Disabilities, Mumbai that the second medical proceedings of the Regional Medical Board, Osmania General Hospital, Hyderabad has been examined by them and it was decided that the Complainant is not in a position to carry out his office duties assigned to the post based on the recommendation made in the said second medical proceedings. He also requested the Director, AYJNISHD to obtain from the Complainant for invalid pension in terms of Rule 38(2) of CCS Pension Rules, 1972. The Director, AYJNISHD vide his letter no. Estt. SRC/2018/5428 dated 09.01.2018 has advised the Complainant to submit the application for Invalid Pension as he has been declared as 'UNFIT' By the Medical Board.

9. The Court took series view for not taking in account Section 20(4) of Rights of Persons with Disabilities Act, 2016, before directing the Respondent no.1 for obtaining invalid pension in terms of Rules 38(2) of CCS Pension Rules, by the Respondent No.2. The Court also viewed with serious concern about Respondent no.2 for not attending the hearing as they should have come and present during the hearing. This has been taken as utter disregard to the Court of Chief Commissioner for Persons with Disabilities as well as Rights of Persons with Disabilities Act, 2016.

10. The Court advised the Respondent no. 2 to inform the Court that why they followed Rule 38(2) of CCS Pension Rule 1972 without even considering the provision made under the Rights of Persons with Disabilities Act, 2016, vide Section 20(4). The Court asked the Respondent no. 1 why the case was not considered under the Rights of Persons with Disabilities Act, 2016, before forwarding the same to the Department of Empowerment of Persons with Disabilities.

11. The next hearing was scheduled on 21.03.2018 at 12:00 Hrs.

12. During the hearing, the Learned Counsel for the Complainant reiterated that though the Complainant submitted all the required documents as per the directives of Head Office, he was not allowed to resume his duties at SRC, NISHD. He submitted that the Complainant is not drawing his salary since the year 2016.

13. The representatives of Respondent no. 1 reiterated submissions made by them during the hearing on 13.02.2018.

14. The representative of Respondent no. 2 initially sought an apology from the Court for his inability to attend the personal hearing held on 07.02.2018. He submitted that AJNISHD's letter No. Estt/SRC/2018/5428 dated 09.01.2018 issued for retirement on medical ground to Dr. S.G.R. Prakash, Reader, RC Secunderabad, was withdrawn and a Committee had been constituted to examine his case in the light of Section 20(4) of the Rights of Persons with Disabilities, Act 2016. As per office record, the Complainant did not submit his Disability Certificate. However, after the medical examination of the Complainant at Osmania General Hospital, Hyderabad, the Complainant was found unfit for his duties. A Committee of the following members were constituted to examine the Complainant's case in the light of Section 20(4) Rights of Persons with Disabilities Act, 2016 and to recommend an alternate post, if any, for him keeping his capability viz- viz physical requirement and functional classification of such post where he can work.

- a) Dr. Varsha Gathoo, HOD Education
- b) Smt. Anjali Kant, HOD Speech and
- c) One external member, i.e Medical Doctor from Osmania General Hospital

The representative of Respondent no. 2 submitted that the said Committee has been asked to submit its report within 15 days of time.

15. The Court directed the Respondents to consider paying salary to the Complainant within a reasonable time. The Court gave Respondent no.2 six weeks time to sort out the problem and to submit its report to the Court for a final Order in the case.

16. The Respondent No. 1 vide his letter no. Estt/2018/216 dated 10/11.04.2018 has submitted that a Committee was formed as per Office Order No. Estt/2018/7063 dated 22.03.2018. The Committee comprising of the following persons met at NIEPID, Secunderabad on 04.04.2018 to examine the case of the Complainant in the light of Section 20(4) of Rights of Persons with Disabilities Act, 2016.

- 1. Dr. Varsha Gathoo, Reader and Head, Deptt. of Education.
- 2. Dr. G. Mary Anurupa, Assistant Professor in Pediatrics and Head of DMS, NIEPID
- 3. Dr. Anjali Kant, Reader and Head, Deptt. of Speech and Language Pathology and
- 4. Dr. Raju Arakh, Lecturer, Deptt. of Education.

The Committee concluded that the Complainant is unable to understand basic communication and is not able to independently speak and undertake reading and writing skills required for functional task for his current post of Reader and Assistant Director or any other technical and non-technical posts of AYJNISHD(D). The Disability Certificate issued by Government of Telangana states that the Complainant can perform work by reading and writing which was not observed by the Committee. The Respondent submitted that as per Section 20(4) of Rights of Persons with Disabilities Act, 2016 the Complainant is not suitable for the post he was holding, i.e. Reader and Assistant Director, nor can be shifted to some other post with same pay scale and service benefits as he is not found fit for the job and even the Medical Board has declared him 'unfit'. Therefore, it was decided to ask the Complainant to opt for a invalid pension in terms of Rule 38(2) of CCS Pension Rules 1972.

17. The Complainant vide his letter dated 27.03.2018 had requested the Court to consider his case as per the provision of Section 20(4) of Rights of Persons with Disabilities Act, 2016 and to pay him salary as per 7th Pay Commission and arrears w.e.f. 22.12.2016 since it is pending from one year and he is facing lot of financial hardship. The Complainant vide his letter dated 19.04.2018 has submitted that earlier when he was sought to be given Invalid Pension in terms of Rule 38(2) of CCS Pension Rules, 1972, the said letter was directed to be withdrawn with immediate effect and further directed to examine the case under provisions of Section 20(4) of the Rights of Persons with Disabilities Act, 2016. He submitted that the provision does not give any scope of premature retirement on the ground of acquiring disability by an employee and it was held that invalid pension to an employee of the Government Establishment who acquires disability is not permissible. The Complainant vide his another letter dated 23.05.2018 has submitted that contrary to the direction of this Court that a Medical Expert who had earlier dealt with his disability should be part of the Committee, but the Committee was constituted without nominating any Medical Expert except Dr. G. Mary Anurupa, who was an Assistant Professor in Pediatrics. He was again directed to apply for invalid pension. He submitted that though he had given his joining report as long back as on 22.12.2016, he has neither been allowed to join duty nor he has been paid salary for the past one and half years.

18. Considering the Respondent's reply dated 11.04.2018 and Complainant's letters dated 19.04.2018 and 23.05.2018, a personal hearing was scheduled on 29.06.2018.

19. The Learned Counsel for the Complainant has requested the Court to direct the Respondents to consider the Complainant's case as per the provision of Section 20(4) of Rights of Persons with Disabilities Act, 2016 and allow him to join duty and all salary be paid as per 7th Pay Commission with arrears w.e.f. 22.12.2016 since it is pending since more than one and half years.

20. The representative of Respondent No.1 reiterated the earlier submissions submitted vide reply dated 10/11.04.2018.

21. The representative of Respondent No.2. vide his written submission dated 28.06.2018 submitted that Hon'ble Court was apprised that appropriate directions have been issued for setting up of a Committee to find a suitable post for the Complainant in pursuance of Section 20(4) of Rights of Persons with Disabilities Act, 2016 vide letter dated 13.04.2018. The Committee constituted by the Institute for this purpose had submitted its report. In the report the Committee has mentioned the Complainant is unable to understand basic communication and is not able to independently speak and understand reading and writing skills required for functional task for his current post of Reader and Assistant Director or any other technical and non-technical posts in the Institute and thus recommended that Dr. Prakash may opt for invalid pension in terms of Rule 38(2) of CCS Pension Rules, 1972. He further submitted that keeping in view of Section 20(4) of Rights of Persons with Disabilities Act, 2016, it has been considered not to accept the recommendations of the Committee and the case stands referred to the Ministry of Finance, Deptt. of Expenditure for creation of a supernumerary post till such time a suitable post is found for him or till his superannuation whichever is earlier. The advice of the Ministry of Finance is awaited and further action will be taken accordingly. As regards, release of salaries are concerned, it has been informed by Director, AYJNIHH, Mumbai that the salary for the period leave due to Dr. S.G.R. Prakash has been released due to him for the period he was on medical leave. He has been declared 'UNFIT' by the Government Medical Board and was not allowed to join his duties because a Government servant on leave on medical ground will be permitted to return to duty only on production of medical certificate of fitness (Rule 19 & 24 (3)) of Central Civil Services (Leave) Rules, 1972). No salary since 22.12.2017 has been released as no leave is available in his credit.

22. After hearing both the Complainant and the Respondent, the Court felt that it was not at all necessary for the Respondent No.1 to set up a Committee to examine the case of the Complainant for taking action on the recommendation of the said Committee. The Court also felt that there

was also no need for the Respondent No.2 to refer the case of the Complainant for clarification regarding creation of a supernumerary post, to the Ministry of Finance, Dept. of Expenditure as it is clearly mentioned under Section 20(4) of the Rights of Persons with Disabilities Act, 2016 that no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service;

“ Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier”.

23. The Court observed that there is gross violation of Rights of Persons with Disabilities Act, 2016 by Respondent No. 1. The Court directed Respondent No. 1 and Respondent No.2 to facilitate the Complainant so that he can join duty within 30 days of issuance of this Order and pay all the outstanding dues to the Complainant till date and submit a compliance report to the Court within 45 days of issuance of this Order.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Exba

8426/1111/2017

Dated 18.07.2018

In the matter of:

Shri Chitrabhanu Chakraborty,
Assistant General Secretary,
National Institute for Locomotor Disabilities Staff
Association,
B.T. Road, Bon-Hooghly, Kolkata-700090
Email – niohstaffassociation@gmail.com

.... Complainant

Versus

The Director,
National Institute for Locomotor Disabilities (Divyangjan)
B T Road, Bonhooghly, Kolkata - 700 090,
E-mail: mail@nioh.in

.... Respondent

Date of hearing: 12.03.2018

Present:

1. Dr. Faresul Haque Mullick, Sr. Orthopaedics; and Dr. Shubhadeep Das, RMO-cum-Anaesthetist for the respondent
2. None for complainant

ORDER

The above named complainant filed a complaint through email dated 26.07.2018 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the 'Act', regarding death of Miss. Sneha Dolai, one year aged disabled child, D/o Shri Satyeswar Dolai, East Midnapore during operative procedure 'Varus Derotation osteotomy' (VDRO) for the treatment of Dysplasia in congenital Dislocation of Hip (DDH) at National Institute for Locomotor Disabilities (Divyangjan), Kolkata (NILD).

2. The complainant submitted that the child Miss Sneha Dolai died in NILD after lengthy and complicated surgical procedure & due the deficiency of necessary life support system and reluctant attitude of Director and other concerned staffs. The child was put on operative procedure 'Varus Derotation Osteotomy' (VDRO) for the treatment of Dysplasia in congenital Dislocation of Hip (DDH) ignoring the basic life support system/facilities necessary to manage such type of operation. The basic requirement to perform OT was not provided by the Director of the Institute in-spite of several demands of association/ junior DNB doctors. Therefore, the decision/permission by Director, being a doctor, to operate such type of cases in the Institute was blunder causing death of Miss Sneha Dolai. Due to

Page 1 of 4

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

faulty alignment the operative procedure lengthened from 01.00 pm to 07.30 pm and that anesthetist administered another dose of anesthesia which was another blunder in case of one year minor child. The patient was shifted to ward at around 08.00 pm and died at around 09.30 pm due to non availability of basic life saving equipment (Ambu Bag- Manual Resuscitator, Tracheal Suction Catheter, O2 cylinder, Switch board etc) the on-duty resident doctors in ward were helpless. The necessary Ambu Bag and Tracheal Suction Catheter and electric switch board were arranged by opening Operation Theatre room after collecting key from security desk as the OT key was not lying with sisters. It took unusual time in arranging the basic life saving equipment and ultimately small innocent child died due to negligence of Director and concerned doctors of NILD. The nursing sister who assisted in O.T was missing from ward. The complainant also alleged that the Director, NILD was never serious about such complaints, despite instruction given by the then Joint Secretary, Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment.

3. Under Section 75 of the Act, the matter was taken up with the respondent vide this Court's letter dated 11.09.2017 for submission of their comments.

4. The respondent filed their reply dated 21.09.2017 and submitted that the same complaint had been sent to the Joint Secretary & Chairperson, EC, NILD by the complainant vide letter dated 18.07.2017. On receipt of the said complaint, the Ministry constituted an Inquiry Committee headed by Dr. S.P. Das, Director, NIRTAR, Orissa. The Inquiry Committee conducted inquiry on 4th September, 2017 into the death case of Ms. Sneha Dolai thoroughly and submitted their report to the Ministry on 6th September, 2017 which concluded that there was no negligence in the treatment. Based on the said inquiry report the Ministry had closed the matter and intimated their Office vide letter dated 18.09.2017.

5. The complainant filed his rejoinder dated 10.11.2017 to the aforesaid reply filed by respondent and submitted that he was not satisfied with the reply dated 18.09.2017 of the Ministry which is the extract of the Inquiry Report of Director, NIRTAR. Though he was not provided the Inquiry Report but from the extract of the letter dated 18.09.2017, the Inquiry Report is self-contradictory. He expressed his doubts that there was no negligence in the treatment procedure as the operation theatre was not fully equipped with necessary instrument required to execute such pediatric surgery and the Inquiry Officer had recommended for the modernization of the operation theatre. The Director of NILD did not follow the instructions of the then Joint Secretary of the Ministry to modernize the operation theatre. An orthopaedic surgeon was permitted to perform surgical procedure for such a long duration that too without the presence of any pediatrician. The patient was not shifted to ICU immediately after surgery. The ICU of Institute was non-functional and patient was directly shifted to Ward. Inquiry Officer had also suggested developing ICU in

NILD. Suction machines in the OT and Ward were non-functional. The Inquiry Officer had recommended for replacing the suction machines in the Ward and OT. The documentation in surgical procedure in NILD was also found very poor by the Inquiry Officer. The complainant vide rejoinder/comment dated 26.12.2017 further submitted that the cause of death was not only the negligence of the doctors but non-compliance of instructions issued by the Ministry.

6. Upon considering the aforesaid facts submitted by the parties, the case was listed for personal hearing on 12.03.2018.

7. During the hearing on 12.03.2018, none appeared for the complainant. However, he had sent email on 09.03.2018 that due to financial crunch and inability to get confirm train ticket he could not attend the hearing. He requested that a thorough inquiry may be made by the medical expert of Ministry of Health and Family Welfare, Government of India.

8. The representative of the respondent filed a copy of the reply dated 05.03.2018 of the respondent to the rejoinder dated 10.11.2017 and 26.12.2017 of the complainant, and relied on the same. In the reply, the respondent submitted that the Inquiry Report submitted by Dr. S.P. Das, Director, NIRTAR is not self-contradictory. No negligence was done in the treatment of the child and the operation was conducted by a team of doctors consisting of Orthopaedic surgeon and two Anesthetists with confidence. The OT and ICU were functional. The team of doctors observed the post operated patient and after full satisfaction the patient was shifted to the ward.

9. After hearing, the respondent was advised to submit to this Court a copy of the Inquiry Report dated 4th September, 2017 filed by Dr. S.P. Das, Director, NIRTAR to the Ministry, by 15th April, 2018.

10. The respondent vide letter dated 10.04.2018 intimated that Dr. S.P. Das submitted his Inquiry Report to the Ministry on 06.09.2017 and the Ministry did not endorse the copy of the said Inquiry report to the respondent. Based on the Inquiry report the letter dated 18.09.2017 was issued by the Ministry to NILD.

11. This Court vide letter dated 30.05.2018 advised the Department of Empowerment of Persons with Disabilities (Divyangjan) [DEPWD] to furnish a copy of the Inquiry Report dated 4th September, 2017 submitted by Dr. S.P. Das.

12. DEPWD vided letter dated 05.06.2018 furnished a copy of the Inquiry Report dated 4th September, 2017. The Inquiry Officer reveals that the procedure adopted to deal with the patient of DDH right side was proper and no negligence was meted out either by the treating physician or by the supported staff at OT/Ward on that particular day, i.e.

11.07.2017. During the inspection on 4th September, 2017, the Inquiry Officer found that all the life saving medicines and facilities required for OT were readily available and the above said surgical procedure was undertaken under the underlying parameters. From the record available at the Ward, all necessary steps were taken by the physician and staff nurses to save the life of the child. The duration of the case 9DDH) generally takes around 6 to 8 hours. The instructions issued by the Ex. Joint Secretary of the Ministry were complied by the Director, NILD except the development for 2nd Operation Theatres. For better patient care and administration, the Inquiry Officer recommended the following steps:

- (i) Documentation procedure is very poor and needs to be improved.
- (ii) Operation should start sharp by 9:30 AM in the morning.
- (iii) Suction machine of operation theatre as well ward should be replaced by new ones.
- (iv) Separate Operation Theatre Note is not available and it should be in printed form.
- (v) Detailed anesthetist note form should be in printed form.
- (vi) All the investigation reports should be retained along with the case sheet.
- (vii) The present Operation Theatre needs modernization.
- (viii) Six-bedded ICU may be developed for proper post-operative care of the patient.
- (ix) Format of Death Certificate should be in printed form.

13. Keeping in view of the Inquiry Report received from the Department of Empowerment of Persons with Disabilities, no violation found on the part of respondent. However, respondent is advised to implement the recommendations made by the Inquiry Officer so that persons with disabilities shall not be deprived of their legitimate rights.

14. The case is accordingly disposed of.

(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 7005/1011/2017

Dated: 13.07.2018

In the matter of:-

Dr. Nitesh Kumar Tripathi

H.No. B – 241, B Block

Sant Nagar Burari, Delhi – 110084

<niteshtripathi85@gmail.com>

Complainant

Versus

Central Institute of Technology, Kokrajhar

Through the Registrar

Bodoland, Kokrajhar, Assam – 783370

Respondent

Date of Hearing: 03.07.2018

Present:

- Dr. Nitesh Kumar Tripathi - Complainant
- Ms. Madhumita Kothari, Advocate on behalf of Respondent.

ORDER

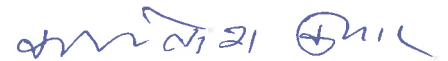
The above named complainant Dr. Nitesh Kumar Tripathi filed an e-mail dated 28.09.2016 under the Persons with Disabilities under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the Act regarding non implementation of provisions of Persons with Disabilities Act, 1995 by Central Institute of Technology, Kokrajhar.

2. The complainant in his complaint inter-alia submitted that Central Institute of Technology, Kokrajhar has published an advertisement for various posts and the advertisement is not showing exact number of seats reserved for persons with disabilities. He has requested this court to direct the respondent to provide various faculties like full exemption from the payment of application fee, extra time during examination, travel expenses to attend interview along with an escort, disabled friendly environment during the interview and to also conduct the Special Recruitment Drive for filling up the backlog vacancies for persons with disabilities.

3. The matter was taken up with the respondent vide letter dated 19.10.2017 under Section 59 of the Persons with Disabilities Act, 1995.

.....2.....

4. In response, PIO, CIT Kokrajhar vide letter dated 27.03.2017 has submitted that they have clearly mentioned in their advertisement "The Institute follows the reservation policy as per GOI norms". From the coming advertisement they will mention explicitly the reservation of PwD category and will consider the backlog vacancies as per Apex Court. He further submitted that they are ready to provide all types of assistance (according to norms) for persons with disabilities candidate based on the prior request/information.
5. Complainant vide rejoinder dated 24.12.2017 has inter-alia submitted that after going through the reply of the respondent nothing has been answered as per the issues raised in his original complaint. He has requested to schedule a personal hearing in this matter.
6. After considering the respondent's letter dated 27.03.2017 and complainant's e-mail dated 18.09.2017, it was decided to hold a personal hearing in the matter therefore, the case was listed on 03.07.2018.
7. During personal hearing representative of the respondent reiterated his written submissions and complainant is satisfied with action taken by the respondent.
8. In view of the above, case is closed accordingly.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No. 6888/1011/2016

Dated: 04.07.2018

In the matter of:-

Shri Charan Pratap Singh
R/o 4/340, Viram Khand-4
Post – Gomti Nagar, Lucknow
Uttar Pradesh – 226010

Complainant

Versus

Delhi Development Authority
(Through the Vice Chairman)
Vikas Sadan, INA, New Delhi

Respondent

Date of Hearing: 19.06.2018, 27.06.2018

Present on 27.06.2018:

1. Shri Charan Pratap Singh on behalf of Complainant
2. Shri Gaurav Wadhwa, Advocate on behalf of respondent.

ORDER

The above named complainant namely Shri Charan Pratap Singh filed a complaint dated nil before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities Act, 1995, hereinafter referred to as the 'Act' regarding non issuance of result for the post of Assistant Director (Ministerial) under Special Recruitment Drive by DDA.

2. The complainant in his complaint submitted that Delhi Development Authority had published an advertisement for the post of Assistant Director (Ministerial) online on 05.10.2015 under Special Recruitment Drive for PwDs. He further submitted that written test for the above post was held on 20.12.2015 and subsequently interview of successful candidates was held on 28.04.2016 but till date result is still awaited. He has requested to issue the necessary directions to VC, DDA to declare the results..

3. The matter was taken up with the respondent vide this Court's letter dated 15.09.2016 under Section 33 of the Persons with Disabilities Act, 1995.

...2...

4. In response, Director (Personnel)-I, DDA vide letter dated 24.11.2016 has inter-alia submitted that they have advertised various 25 posts under Special Recruitment Drive for PwDs and written examination was held on 20.12.2015 and the result of the examination was declared on 14.03.2016. Since adequate number of candidates were not available in certain categories on the basis of cut-off marks fixed by the DDA, accordingly standards were relaxed and on the basis of relaxed standards, only 17 candidates were declared successful for the categories of posts. They further submitted that the post of Assistant Director (Ministerial) is an interview post. As per approved criteria, for the post, four candidates were to be called for interview. On the basis of written examination, four candidates of OH category (against one post), two candidates of HH category (against one post) and two candidates of VH category (against two posts) were called for interview. No other candidate was found eligible. On the basis of marks obtained in written examination as well as in interview taken together, two candidates belonging to VH category and one candidate belonging to OH category were declared successful for appointment to the post of Assistant Director (Ministerial). No candidate belonging to HH category was found eligible for appointment to the post of Assistant Director (Ministerial). They further submitted that the offer of appointment in respect of the post of Programmer, Assistant Section Officer, Junior Engineer (Civil) and Assistant Director (Ministerial) have already been issued.

5. Complainant vide rejoinder dated 13.01.2018 has inter-alia submitted that when the total 265 general cadre post of Assistant Director is Ministerial in nature and the 10% of the general cadre post of Assistant Director (Ministerial) is carved out to form a separate specialization in personnel, HR, Industrial relation, Real Estate/Urban Management, Finance and Marketing in MBA or Equivalent degree have not specifically mentioned in the said RR, likewise Assistant Director (Planning) post, for which DDA specifically notified Recruitment Rules and Pay Scales, then why DDA has instead of applying relax standard of suitability has insisted on stringent criteria upon the disabled candidates and adamant to fill up the general cadre post of Assistant Director (Ministerial) with specialized Technical cadre post of Assistant Director with specialization in personnel, HR, Industrial relation, real Estate/Urban Management, Finance and Marketing in MBA or Equivalent degree instead of original prescribed qualification that is Graduation, through which majority or personnel serving at the level of general cadre post of Assistant Director (Ministerial) in DDA.

6. After perusal of the reply and complainant's rejoinder, it has been decided to hold a personal hearing on 19.06.2018.

7. On the date of hearing complainant reiterated his written submission and stated that he had applied under Special Recruitment Drive for the Persons with Disabilities of the DDA in 2015 for the post of Assistant Director (Ministerial) and qualified the written exam, Pre Medical, Pre document verification and interview under hearing disabled category. Later after interview DDA, had denied his candidature by mentioning that his qualification of Post Graduate Diploma in Material Management is not an eligible qualification. The advocate representing respondent also reiterated his earlier view that the complainant do not possess the requisite qualification which was found by the Selection Committee and accordingly Selection Committee could not recommended his candidature. The requirement for the post was MBA or equivalent with specialization in personnel, HR, Industrial Relation, Real Estate/Urban Management, Finance and Marketing.

8. After hearing both the parties, the case is dismissed without any direction to the respondent as complainant do not fulfill the eligibility criteria mentioned in the advertisement.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 7154/1023/2016

R-9921

Dated : 04 .07.2018

Dispatch No.

In the matter of :

Shri Alok Aggarwal,
46, Rohit Kunj,
Pitampura,
Delhi – 110 034

.....Complainant

Versus

Phonak India Pvt. Ltd,
(Through Managing Director)
503-506, 'B' Wing,
Kanakia Zillion,
LBS Marg,
Kurla (W),
Mumbai -400 070
Email<phonakindia.ho@phonak.com>

R-9922

.....Respondent

Date of Hearings : 31.05.2018, 19.05.2018, 05.04.2018, 22.02.2018 and 05.01.2018.

Present :

1. Shri Lalta Prasad, Advocate, Shri Prem Chand, Advocate, Shri Alok Aggarwal, Complainant along with his father, Shri B.L. Aggarwal.
2. Ms. Roopali Singh and Ms. Sayobani Basu Learned Counsels for the Respondent.

ORDER

The above named complainant, a person suffering from 100% hearing impairment had filed a complaint dated 15.11.2016 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as the Act, regarding termination of his employment.

2. The Complaint submitted that he had been making both ends meet with the help of a Moulding Machine since 1992 which he bought with the help of an NGO. Since 01.01.2012 he has been working in Phonak India Pvt. Ltd. In June 2013 a person who is 15 years younger to him and with less experience than him was appointed as Manager by the Company. On the advice of his establishment, the he taught the new Manager how to make different types of moulds etc. The Complainant submitted that as he was drawing more salary compared to the new Manager. The new employee appointed as Manager made complaints against him to the Managing Director in Mumbai office. In 2016 he was called to his Mumbai Office on the pretext of giving him training. During 2013 his Company had given him commendation letter with an increase in salary for exhibiting outstanding performance in office work. He was made to sign on different reports

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forcefully. When he joined Delhi office, he came to know that he was not given the yearly increase in his salary whereas the Manager who joined recently got double increase in his salary.

3. The matter was taken up with the respondent under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 vide letter dated 21.11.2016.

4. The Managing Director, Phonak India Pvt. Ltd vide his letter dated 28.12.2016 stated that their company employed the Complainant as an Assistant Manager–Service/Production on 02.01.2012. During his probation of six months, the Company identified certain shortcomings in the Complainant's performance and informed him about the same. The areas that required improvement were clearly identified and explained to the complainant in writing. Despite not performance of the complainant upto the expectations of the company, he was confirmed as Assistant Manager-Production on 23.08.2012. After his poor performance, the complainant was given the working of making hard moulds, which is the one of the simplest jobs they have. The products made by the employees on account of quality issues get rejected often. The Company had issued several warning letters to the Complainant to apprise him of this unsatisfactory performance and allowed him opportunities and assistance to improve his performance. Their Company arranged a training under the Performance Improvement Plan (PIP) in their Head quarters in Mumbai for one month starting from 02.03.2016, but the complainant refused saying that because of litigation process pertaining to his personal life. On Complainant's request, the training was rescheduled from 18.04.2016. Even after training, the Complainant did not show much improvement in performance. Regarding the appointment of Shri Gaurav Kumar, they submitted that he was employed by their Company in June 2012 before confirmation of the Complainant's employment in the organisation and not in June 2013 as claimed by the Complainant. The Complainant was then allotted simple jobs for observation of quality, efficiency and improvements regarding his working on 18.05.2016, but the Complainant failed on most of the Company's standard in terms of quality and efficiency. Their Company had considered many parameters before concluding on termination of the Complainant's employment and has provided sufficient opportunities to him.

5. The Complainant vide his rejoinder dated 08.09.2017 had submitted that Company was satisfied with his performance till 2015. Neither any misbehaviour or unsatisfactory performance was made against him or any warning was given by the Company during the calendar year from 2012 to till March 2016. He submitted that PIP is a training only for improvement in job and not a

job performance, i.e. it is only training for improvement of job performance and training is not a part of performance of job. Therefore, he submitted that on the basis of failure in the training for 'Performance Improvement Plan' his termination was illegal and on arbitrary manner because it is only a pretext for his termination from service. He further submitted that the action of his termination from service without any cause of action is against the Principal of natural justice and also contravention of Article 14 of the Constitution of India. He submitted that no communication was given to him regarding his poor performance. No warning had been issued to him nor given any complaint in writing. The Complainant had informed about the action of Shri Gaurav Kumar to higher authorities but they deliberately denied it and instead punished the complainant.

6. After considering Respondent's reply dated 28.12.2016 and Complainant's rejoinder dated 08.09.2017, a personal hearing was fixed on 05.01.2018.

7. During the hearing the Complainant submitted that he was appointed as an Assistant Manager in Phonak India Pvt. Ltd during 2012 and he worked for five years. He was a good worker. He got incentives and compensation during these years. In June 2013 a person who is 15 years younger to the complainant and with less experience was appointed as Manager by the company. On the advice of his establishment, the complainant taught the new Manager to make different types of moulds etc. The complainant further submitted that as he was drawing more salary compared to the new Manager, the other person started harassing the complainant both mentally and physically. The new person appointed as Manager made complaints against him to the Managing Director in Mumbai office. He was terminated from his services by the company without any cause of action. The complainant told the Court that his lawyer could not attend the hearing.

8. During the hearing the Learned Counsel for the Respondent was asked to provide a copy of Vakalatnama on behalf of Respondent. She submitted that the Respondent has not received the copy of the complainant's rejoinder and requested the Court to provide her a copy of the same. The Learned Counsel also requested this Court to give her another date of hearing to plead the case.

9. A copy of the complainant's rejoinder dated 08.09.2017 was handed over to the Learned Counsel for the Respondent after the hearing. The complainant was advised to submit to the Court a copy of his Disability Certificate certified by a medical board from an authorized medical authority.

10. The next hearing is scheduled on 22.02.2018 at 12:00 Hrs.

11. During the hearing the complainant reiterated the submissions made by him during the last hearing held on 05.01.2018.

12. The Learned Counsels for the Respondent submitted that the complainant was informed vide letter dated 25.06.2013 by the Respondent that his performance for the last few months had been poor as the complainant was not fulfilling the daily targets set for him by the company and his performance during the last few months was not up to the expected level. Hence, they have decided to put him under Performance Improvement Plan effective from 02.03.2016. The Respondent has pointed out to the complainant some issues on which he needs to be improved. Based upon the discussion with the management, the Respondent also need to have the complainant posted at Mumbai HO for first one month of PIP to redo his training from scratch. He was told that his PIP review would be done on monthly basis until the improvement are upto satisfaction.

13. After hearing both the Complainant and the Respondent, the Court directed the Respondent to submit all the documents pertaining to the case to enable this Court to arrive at a conclusion.

14. The next hearing was scheduled on 05.04.2018 at 3 p.m.

15. During the hearing the Learned Counsels for the Respondent submitted documents pertaining to the case. They submitted that the Respondent employed the Complainant as an Assistant Manager-Service/Production with effect from 02.01.2012. The Complainant was initially on probation for a period of six months. The Complainant completed his probation on 02.07.2012. The Company reviewed his performance and identified certain shortcomings in the Complainant's performance. The areas that required improvement were clearly identified and explained to him in writing. Despite not performing to the Company's expectations, the Company, confirmed the Complainant's employment in the capacity of Assistant Manager-Production on 23.08.2012. The Company informed the Complainant of his shortcomings in his performance vide emails dated 25.07.2012 and 23.08.2012. The Complainant failed to improve his performance despite being assisted by the Respondent with the areas of his work which desperately required improvement. The Complainant continued to perform unsatisfactorily. The Complainant was issued the termination letter on 07.11.2016 and was given a notice period for a month until 08.12.2016.

16. The Complainant requested the Court to provide him a copy of the documents submitted by the Learned Counsels of the Respondent during the hearing. A copy of the documents submitted by the Respondent was provided to the Learned Counsel of the Complainant.

17. The Learned Counsel of Complainant was advised by the Court to submit his rejoinder to the documents to this Court well before the next hearing.

18. The next hearing was fixed on 10.05.2018 at 11 a.m.

19. During the hearing the Learned Counsel for the Complainant was advised to submit the rejoinder to the documents, but he did not submit the said documents to the Court. The Complainant submitted that he was appointed by the Respondent purely on the basis of his previous experience.

20. The Legal Counsels for the Respondent reiterated that there were some short comings in the Complainant's performance. The Legal Counsel submitted that there were frequent quality issues with custom products, repeated circuit damages, non-adherence to standard work instructions of component placement, inability to perform given job allotted to the Complainant even though Training was provided to him on timely basis. The Complainant failed to improve his performance despite being assisted by the Respondent with the areas of his work which desperately required improvement. Therefore, the Complainant was given an extensive training on all topics starting from scratch under supervision of senior team members of the department. He was given training after four years of working on the same job. The Complainant was given 4-5 months to improve, but the Complainant continued to perform unsatisfactorily. The Complainant was issued the termination letter on 07.11.2016

21. The Respondent has been directed by the Court to submit the following information to this Court within 15 days from the date of issue of this Record of Proceedings. .

- 1) What was the Training and the basis of training?
- 2) Where it was given to the Complainant?
- 3) Whether the Institute was Rehabilitation Council of India (RCI) approved?
- 4) Curriculum of this training.
- 5) Any other detail with respect to this training.

22. The next hearing is scheduled on 31.05.2018 at 12 p.m.

23. During the hearing the Complainant reiterated the submissions made by him during earlier hearings held on 05.01.2018, 22.02.2018 and 05.04.2018.

24. The Learned Counsels for Respondent also reiterated the submissions made by them during the hearings held on 05.01.2018, 22.02.2018 and 05.04.2018.

25. After hearing both the Complainant and Respondent, the Court observed that there is no violation of any provisions of either Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 or the Rights of Persons with Disabilities Act, 2016.

26. The case is disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 7466/1023/2017

Dated : 11.07.2018

Dispatch No.

In the matter of :

Shri Chintaram,
A-21, Ishwar Colony,
Arjun Park,
Gali No.2,
Najafgarh,
New Delhi - 110043

.....Complainant

Versus

The Directorate General Health Services,
Room No. 446-A,
Nirman Bhawan,
Maulana Azad Road,
New Delhi - 110108

.....Respondent

Date of Hearing : 08.06.2018

Present :

1. Shri Chintaram along with his daughter Ms. Vandana.
2. Dr. Charan Singh, Director, Dt. General of Health Services, Rural Health Training Centre, New Delhi, on behalf of Respondent.

ORDER

The above named complainant, had filed a complaint dated 11.01.2017 under the Rights of Persons with Disabilities Act, 2016 regarding termination of his daughter Ms. Vandana, a person with 80% locomotor disability from ANM Training Course by Rural Health Training Centre, Najafgarh, New Delhi.

2. The Complainant has submitted that his daughter Ms. Vandana had been working with Rural Health Training Centre, Najafgarh, New Delhi. She was terminated from her ANM Training Course by her employer.

3. And whereas, the matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 01.12.2017.

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4. The Director, Dte. General of Health Services, Rural Health Training Centre vide his letter no. 3-13/2014-RTC/4841 dated 20.12.2017 had submitted that the provisional admission of the Complainant was cancelled as per Indian Nursing Council Resolution No. 1-5/2012-RES/INC dated 19.04.2012 where it is clearly mentioned that persons suffering from disability to the tune of 40%-50% only to be considered and the Complainant is physically disabled of lower limb and has 80% permanent disability and she is unable to move by her own. She needs help of atleast two persons to climb stairs.

5. The Complainant vide his rejoinder dated 25.04.2018 has submitted that she had been posted on contract basis. She was removed from service earlier. She is afraid that she will be removed from service at any time. She had requested this Court that considering her disability, her services should be regularized so that she can atleast lead a normal life.

6. After considering Respondent's reply dated 20.12.2017 and Complainant's rejoinder dated 25.04.2018, a personal hearing was scheduled on 08.06.2018.

7. During the hearing, the Complainant reiterated that he is a poor person and his daughter Ms. Vandana who is working in Rural Health Training Centre, Najafgarh, New Delhi may be given a permanent job. The Complainant submitted that her daughter is being paid less salary than her counterparts working with her.

8. During the hearing, the representatives of Respondent submitted that the Complainant may apply for permanent job against the advertisement of their establishment comes in future.

9. The Court directed the Respondent to consider giving a permanent job to Ms. Vandana on the basis of her disability. The Court advised the Complainant to apply for jobs in other government departments too.

The case is disposed off.

(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 8332/1022/2017

Dated : 13 .07.2018

Dispatch No.

In the matter of :

R-10001

.....Complainant

Shri Chirag Seth,
Kh. No. 440/18, First Floor,
Gali No. 5, Block-C,
Laxmi Vihar,
Burari,
Delhi – 110084
Email<chiragseth130696@gmail.com>

Versus

The Bank of India,
(Through the General Manager-HR),
Star House,
C-5, G-Block, Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051
Email<trap@bankofindia.co.in>

R-10002

.....Respondent

Date of Hearing : 11.06.2018

Present :

1. Shri Rajendra Kumar Mahaseth, Advocate and Shri Amit Kumar on behalf of Complainant.
2. Ms. C.S. Rajani, Sr. Manager (Law) and Shri H.K. Aggarwal, Chief Manager, on behalf of Respondent.

ORDER

The above named complainant, a person with 50% locomotor disability had filed a complaint dated 26.06.2017 under the Rights of Persons with Disabilities Act, 2016 against transfer of his father, who is the caregiver of his son, from Tilak Nagar to Rajkot.

2. The Complainant submitted that his father who is working as Chief Manager in Bank of India at Tilaknagar Branch, New Delhi had been relieved on transfer to Rajkot on 23.06.2017. He along with his father stay in Delhi and his mother is staying at his native place in Darbhanga, Bihar to look after his ailing grandmother. His father is not in a position to relocate to Rajkot as he is the only caregiver to the Complainant in Delhi. His father helps him as Scribe during the examinations. As his father is the only Caregiver, if he father is transferred, his further education and rehabilitation process will stand still.

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3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 09.01.2018.

4. As no reply was received from the Respondent, a personal hearing was scheduled on 11.06.2018.

5. During the hearing the representatives of the Complainant submitted that Shri Chirag Seth is the only son of his father and is suffering from locomotor disability . He suffered from epileptic attack and also met with a major road accident in the year 2015. Presently he appeared in 6th Semester Examination of B.A. (Pol. Sc-H) from Khalsa College of Delhi University. He will appear in Entrance Test for P.G. Admission in Delhi University during June 2018. He always take the help of a scribe during the examinations. Shri Chirag Seth needs continuous support from his father in his daily routine. They submitted that Shri Seth's mother resides at her native place in Darbhanga in Bihar to look after his bed ridden grand mother who is above 76 years old. He lives along with his father in Delhi for his education, specialized medical care and rehabilitation. On 23.06.2017 Shri Seth's father was relieved from Tilak Nagar Branch in Delhi to Rajkot vide Transfer Order dated 17.06.2017.

6. The representatives of Respondent Bank vide their written submissions dated 12.06.2018 submitted that the father of the Complainant Shri Rajendra Kuamr Mahaseth joined the Bank in the year 1982 as a Clerk and after having worked in various zones and after availing promotions number of times, he was transferred from Siliguri Zone to New Delhi Zone on 04.05.2009 as a Senior Manager and worked in Delhi till October 2012. On promotion as Chief Manager Shri Mahaseth was transferred to Ahmedabad Zone on 15.10.2012. Before completing his minimum tenure of three years in Ahmedabad, he was transferred back to Delhi on his request on 31.05.2014 on the basis of education of his son. On completion of three years in Delhi, Shri Mahaseth was transferred to Rajkot on 17.06.2017 on administrative grounds. Shri Mahaseth made representations to his Bank for cancellation of his transfer order to Rajkot on the basis of education of his son. The Respondent bank favourably considered the request of Shri Mahaseth and retained him in Delhi Zone till 31.03.2018 and he was conveyed to join Gandhi Nagar branch under New Delhi Zone. Shri Mahaseth was given retention in Delhi Zone till 31.05.2018. The representatives of Respondent submitted that as per CVC guidelines, the maximum period in which an officer can be allowed to be served in the same Zone / Centre, is five years.

7. After hearing both the representatives of the Complainant and Respondent, the Court referring to DoP&T O.M. No. 42011/3/2014-Estt.(Res) dated 06.06.2014 directed the Respondent Bank to retain Shri Rajendra Kumar Mahaseth in Delhi Zone for atleast two years as caregiver to his son and for continuation of his higher studies at Delhi University.

8. The case is disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 7172/1011/2016

Dated: 13.07.2018

In the matter of:-

Dr. Nitesh Kumar Tripathi

H.No. B – 241, B Block

Sant Nagar Burari, Delhi – 110084

<niteshtripathi85@gmail.com>

Complainant

Versus

Indian Institute of Technology Bombay

Through the Director

Powai, Mumbai – 400076

Respondent

Date of Hearing: 03.07.2018

Present:

- Dr. Nitesh Kumar Tripathi - Complainant
- Shri K.V. Reghuthaman, Dy. Registrar (Admin) & Shri M.P. Shinde, OSD (Admin) on behalf of Respondent.

ORDER

The above named complainant Dr. Nitesh Kumar Tripathi filed an e-mail dated 11.08.2016 under the Persons with Disabilities under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the Act regarding non implementation of provisions of Persons with Disabilities Act, 1995 by IIT, Mumbai.

2. The complainant in his complaint inter-alia submitted that Indian Institute of Technology, Bombay has published an advertisement for various posts and the advertisement is not showing exact number of seats reserved for persons with disabilities. He has requested this court to direct the respondent to provide various faculties like full exemption from the payment of application fee, extra time during examination, travel expenses to attend interview along with an escort, disabled friendly environment during the interview and to also conduct the Special Recruitment Drive for filling up the backlog vacancies for persons with disabilities.

3. The matter was taken up with the respondent vide letter dated 06.12.2016 under Section 59 of the Persons with Disabilities Act, 1995.

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4. In response, Registrar, Indian Institute of Technology Bombay vide letter dated 16.01.2017 has submitted that IIT Bombay has advertised two positions of Assistant Registrar for persons with disabilities vide Advertisement dated 04.11.2015 since strength of Non-Academic Officers (Group 'A') is 66. In addition, IIT, Bombay is committed to recruit more number of persons with disabilities candidates, if found suitable. Accordingly, Dr. Nitesh Tripathi was shortlisted and called for the post of Medical Officer (Scale-I). For recruitment to Group 'B' & 'C', they are carrying out a special drive. He further submitted that relaxation of 10 years in age to PwD candidates is always extended while filling permanent posts at IIT Bombay and to SC/ST/OBC candidate as per government rules and PwD candidates are exempted from the payment of application fee. In case of written test for recruitment at IIT Bombay, compensatory time not less than 20 minutes per hour to PwD candidates is extended in examinations. Separate roster for persons with disabilities candidates is being maintained.

5. Complainant vide rejoinder dated 01.04.2017 has inter-alia submitted that after going through the reply of the respondent nothing has been answered as per the issues raised in his original complaint. He has requested to schedule a personal hearing in this matter.

6. After considering the respondent's letter dated 16.01.2017 and complainant's e-mail dated 01.04.2017, it was decided to hold a personal hearing in the matter. Therefore, the case was listed on 03.07.2018.

7. During personal hearing representative of the respondent reiterated his written submissions and complainant is satisfied with action taken by the respondent.

8. In view of the above, case is closed accordingly.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 8405/1011/2017

Dated: 13.07.2018

In the matter of:-

Dr. Dhirajsingh Sumersingh Rajput

dhiraj.ayu@gmail.com

Complainant

Versus

National Institute of Ayurveda

(Through the Director)

Jorawar Singh Gate, Amer Road

Jaipur – 302002 (Rajasthan)

Respondent

Date of Hearing: 13.02.2018, 28.03.2018 & 02.07.2018

Present on 02.07.2018

1. Shri Koshy John, Advocate and Ms. Rupali, Advocate on behalf of complainant
2. Shri J.P. Sharma, Dy. Director, Shri Murari Lal, Matrois, Shri G.D. Gupta, Consultant, Shri A.K. Mathur, Consultant and Shri Anurag, Advocate on behalf of Respondent.

ORDER

The above complainant namely Dr. Dhirajsingh Sumersingh Rajput filed a complaint dated 14.07.2017 before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities Act, 1995, hereinafter referred to as the 'Act' regarding appointment to the post of Lecturer in National Institute of Ayurveda.

2. The complainant in his complaint submitted that a Lecturer (Ayurveda) post was reserved for handicapped at National Institute of Ayurveda and he appeared in exam as well as selected for interview. Still the post was not given to handicapped and filled with an OBC candidate. He further submitted that he was the only handicapped in all posts.

3. The matter was taken up with the respondent vide this Court's letter dated 09.11.2017 under Section 34 of the Rights of Persons with Disabilities Act, 2016.

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4. In response, Director, National Institute of Ayurveda vide letter dated 07.12.2017 has submitted that various posts of Professor, Associate Professor and Lecturer etc. were advertised by the Institute on All India Basis vide Notification No. 01/2017. As per the said Notification, one of the Post of Lecturer irrespective of subject was reserved for PH candidate. For short-listing of the candidates for Interview, a Screening Test was conducted on 23.04.2017 and as per criteria fixed, 05 candidates in the top in merit were to be called for Interview. Only one PH (Hearing Impairment) candidate Dr. Rajpoot applied for the post of Lecturer (Ras Shastra) who was found eligible for screening Test. He further submitted that Dr. Dheeraj Singh Sumar Singh Rajpoot also appeared in the screening Test for the post of Lecturer (Ras Shastra) on 23.04.2017 and obtained 13 rank in the same. As per criteria fixed, only 05 candidates were to be called for personal Interview for the said post but being physically handicapped person, he was also called for interview held on 05.06.2017, in spite of the fact that he did not stand in the 05 merit listed and shortlisted candidate for interview. The candidates who appeared for interview for the post of Lecturer (Ras Shastra) was interviewed by the duly constituted Selection Committee on 05.06.2017. After interviewing, the applicant was not found suitable by the Selection Committee and therefore, he was not recommended for appointment to the said post. The said post was filled up by non physically handicapped candidate, as recommended by the Selection Committee. He further mentioned that in view of the facts no injustice has been done to Dr. Rajput. In fact Dr. Rajput being handicapped was given opportunity for considering him for Selection by calling for interview in spite of his having low merit in the Screening Test, but the Selection Committee did not recommend him for appointment.

5. Complainant vide rejoinder dated 12.12.2017 has inter-alia submitted that as per criteria fixed, 05 candidates in the top merit list were to be called for Interview. In fact, there is no such criteria mentioned in advertisement nor on NIA official website. As per his knowledge such criteria is also not available on any Govt. Website. He further submitted that he is working as Lecturer and have 04 years 09 months teaching experience, his resume itself represent his achievements and abilities.

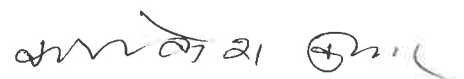
6. After perusal of the revel submission, it has been decided to hold a personal hearing on 13.02.2018. During the hearing representative of the respondent submitted written submissions and informed that they are providing reservation to persons with disabilities. On the other hand, complainant reiterated their written submission submitted vide e-mail dated 12.12.2017. After hearing both the parties, the case is adjourned to 28.03.2018. The matter was heard again on 28.03.2018 and respondent was directed to submit the following information before the next date of hearing:

- (i) Reservation roster should be maintained as per DOP&T's OM No. 36035/02/2017-Estt. (Res) dated 15.01.2018. Para 07 has prescribed the procedure for effecting reservation – maintenance of roster and submit the same.
- (ii) Copy of the norms for the selection for the post of Lecturer (Rasa Shastra).

7. Accordingly, Director, National Institute of Ayurveda vide letter dated 07.05.2018 has forwarded criteria adopted for selection of candidates and minutes of the meeting for selection of Lecturer (Rasa Shastra & Bhaishajya Kalpana) before this court, thereafter final hearing was scheduled on 02.07.2018.

8. During the personal hearing, Advocate of the complainant submitted that the Respondent Institute issued vacancy Notification No. 01/2016 dated 05.04.2016 whereby a vacancy for the post of Lecturer in the subject of Rasa Shastra was notified, amongst other positions. It was further stipulated that one post of Lecturer was reserved for PH candidates. No person with disability was appointed under this reserved vacancy as the recruitment under this Notification No. 01/2016 could not be completed due to certain unavoidable reasons. In the succeeding recruitment year i.e. 2017 the respondent Institute issued notification No. 01/2017 dated 16.01.2017 for the post of Lecturer in 'Rasa Shastra' among other positions. Since no recruitment of PH candidate was done as against the reserved vacancy notified in Notification No. 01/2016, Section 36 of the PwD Act, 1995 mandates that the reserved vacancy be carried forward to the succeeding recruitment year. Pursuant to the mandate of Section 36 of the PwD Act, 1995 and in accordance with the reservation roster, Notification No. 01/2017 notified that one vacancy of Lecturer was reserved for a physically handicapped candidate. Amongst the subjects advertised in the above notification, the post of Lecturer in the subject Rasa Shastra and Dravya Guna are identified posts under Section 32 of PwD Act, 1995 and as per Section 33 of the PwD Act, 1995. The representative of the respondent has informed that as per the Notification No. 16 – 15/2010-DD.III dated 29.07.2013 of Ministry of Social Justice and Empowerment, the post of Lecturer is not identified for persons with hearing impairment therefore, Dr. Sujeet Kumar Sagar, is offered the post of Lecturer (Dravya Guna) in PH (OL) category.

9. After hearing both the parties and material available on record, the response of the respondent is found satisfactory as the post of Lecturer is not identified for persons with hearing impairment as per the Notification No. 16 – 15/2010-DD.III dated 29.07.2013 of Ministry of Social Justice and Empowerment. The case is disposed of with the direction to respondent to calculate the backlog reserved vacancies as per DOP&T's instructions and maintain reservation roster for persons with disabilities according to the DOP&T's instructions. Respondent is also advised to be more sensitive towards persons with disabilities and their rights should not be infringed.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF 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 and Empowerment

भारत सरकार/Government of India

Case No: 5601/1014/2015

Dated: 04.07.2018

In the matter of:-

Shri Sayed Younus Salim M. Bijapure
H.No. 2767/16, Old Mission
Compound, Near DCC Bank
Belgaum, Karnataka

Complainant

Versus

South Western Railway
(Through the Chief Personnel Officer/Rectt.)
Railway Recruitment Cell, GM's Office Complex
2nd Floor, Club Road, Hubballi – 580023

Respondent

Date of Hearing: 25.09.2017 & 28.06.2018

Present on 28.06.2018

1. Complainant absent
2. Dr. Suresh, Railway Medical Officer and Shri Satish Bhati, Advocate on behalf of Respondent.

ORDER

The above named complainant namely Shri Sayed Younus Salim M Bijapure filed a complaint dated 09.12.2015 before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities Act, 1995, hereinafter referred to as the 'Act' regarding non selection to the post of Group 'D' (PH – OH Quota) in South Western Railways.

2. The complainant in his complaint submitted that he had applied for Group 'D' post (PH-OH quota) in South Western Railways. He qualified the written examination and during document verification including disability certificate, he was directed for medical examination at South Western Railway Hospital, Hubli from 6th May, 2015 to 15th May, 2015. After medical examination, he received a letter stating that he is medically unfit due to "MND (Motor Neuron Disease) which is in progressive condition, whereas it is clearly mentioned as non-progressive in his disability certificate. He further submitted that he is suffering from non-progressive form of Nerve Disease affecting his right upper limb only and remaining unchanged from childhood till now. He appealed and applied for a re-medical examination for selection to the said post to the RRC Office, Hubli. As he is 44 years old permanent physically disabled unemployed person and probably this is his last chance for an employment in Railways/Government.

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3. The matter was taken up with the respondent vide this Court's letter dated 29.02.2016 under Section 33 of the Persons with Disabilities Act, 1995.

4. In response, Dy. Chief Personnel Officer/Rectt., South Western Railway, Hubli vide letter dated 04.05.2016 had submitted that the appeal of Shri Sayed Younus Salim Bijapure against the possibility of error of judgement in the decision of medical examining authority and request for consideration of re-medical examination against PH quota has been forwarded to Chief Medical Director, South Western Railway, Hubli in terms para 522 of Indian Railway Medical Manual. Further, respondent vide letter dated 18.07.2017 had sought advice of CCPD on the result of medical examination. In the Medical Board Certificate, it had been mentioned that complainant was diagnosed as Right upper limb monomyelic motor neuron disease amounts to disability of 40%. This condition is benign variant of motor neuron disease. However, progression of illness cannot be predicted

5. After perusal of the reply, it has been decided to hold a personal hearing on 25.09.2017. The personal hearing in the matter was held as deciding of the fact that whether the disease, with which the complainant is suffering is of "progressive nature" or not, was at the centre of debate. Since on this very basis, the establishment of entitlement of the complainant by the respondent for said recruitment was to be decided upon as submitted by the respondent, citing their Rule IRMM 2000 {para511 (9) (d), 501(3) and 511(7)}. On scrutiny of the records submitted by the respondent in the form of Medical Board certificate issued by the Apex State Govt. Hospital namely, Karnataka Institute of Medical Sciences, Hubli vide their letter No. KIMSH/MB/28/2017-18 dated 14.07.2017, it is revealed that the medical opinion on the condition of the complainant is specifically expressed as "Progression of illness cannot be predicted". Taking cognizance of fact that the issue relating to "Progressive nature of illness" is not confirmed beyond doubt, even by the Apex Medical Authority of State, it cannot be presumed with certainty that the disease of the complainant will fall within the category of "Progressive Nature" and hence on the basis of this very medical opinion, the respondent should not out rightly reject the complainant's stake for the post as the benefit of doubt and element of uncertainty present should go in favour of the complainant. However, to reach a final decision in the matter, the respondent is advised to get the complainant re-examined medically by a Govt. Hospital at Mumbai by way of approaching them with a copy of this Record of Proceedings. A Medical Specialist/Doctor from respondent may be a part of such medical team undertaking such Medical re-examination of the complainant to ascertain the aspect of "Progressive Nature of the disease" with which the complainant is suffering and such report should be submitted to this Court within 60 days from the date of receipt of this Record of Proceedings. Based on the submission of such Medical re-examination report, a date of hearing shall be decided in the matter and the order shall be passed on that date.

6. After getting report from the respondent it has been observed Shri Sayed Younus Salim Bijapure has been examined by faculty of Medical and Neurology in Department of Medicine Lokmanya Tilak Municipal Medical College & General Hospital, Mumbai and also has been referred to Occupational therapy faculty for disability evaluation as well as for work simulation. As per the Medical Report the conclusions are: (i) Patient's disability is Right upper limb monomelic amyotrophy (Hirayama's Disease) (ii) This disease is of a non-progressive nature once it is established. (iii) Patient has rendered satisfactory work simulation (iv) Patient is found fit for job of Assistant, Helper/Peon under physical handicap quota (PHQ), In view of the above, the personal hearing was scheduled on 28.06.2018 to complete the proceeding.

7. During the personal hearing, complainant was absent and representative of the respondent has informed that they have received the Medical Report and accordingly, they will issue an appointment letter to the complainant. The case is disposed off with the direction to the respondent to issue an appointment letter in favour of complainant and submit compliance report within 45 days from the date of receipt of this order. Respondent is also advised to be more sensitive towards persons with disabilities and their rights should not be infringed.

(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities