



सत्यमेव जयते

**न्यायालय मुख्य आयुक्त विकलांगजन**  
**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES**  
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities  
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment  
भारत सरकार / Government of India

Case No. 5167/1041/2015

Dated: 16.11.2016

In the matter of:

Shri Mohit Mahajan,  
S/o Shri O.P. Mahajan, *DS11*  
B-55, Sector - 41,  
Noida-201301 (Uttar Pradesh)

..... Complainant

Versus

Patents, Designs & Trade Marks,  
Through the Controller General, *DS12*  
Boudhik Sampada Bhavan,  
Antop Hill, S.M. Road,  
Mumbai-400037.

..... Respondent No. 1

National Productivity Council, *DS13*  
Through : The Chairman,  
5-6, Institutional Area, Lodhi Road,  
New Delhi-110003.

.... Respondent No. 2

**Date of hearing: 19.09.2016 & 14.10.2016**

Present:

19.09.2016

1. Shri Mohit Mahajan, Complainant alongwith his Counsel.
2. Shri Pritam Singh, O.S., on behalf of the Respondent.

14.10.2016

1. Shri Mohit Mahajan, Complainant alongwith his Counsel Shri Rajan Mani.
2. S/Shri Sushil Satpute, DIPP and B.K. Singh, Patent Office, Mumbai, on behalf of the Respondent.

**O R D E R**

The above named complainant, a person with 100% visual impairment filed an email complaint dated 09.09.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act for providing facilities of scribe/writer, compensatory time, descriptive questions in place of mathematical questions and other facilities in the ensuing recruitment examination scheduled to be held on 20.09.2015 for the post of Examiner for Patents and Designs at the Office of Controller General of Patents, Designs & Trade Marks.

2. The complainant has submitted that the two written examinations that are to be conducted for the purpose of this recruitment are being carried out by the National Productivity Council (NPC). The entire process is online and the NPC has nowhere on their website mentioned about the provision for availability of Scribe and for the arrangement towards providing descriptive questions in place of mathematical questions for the visually candidates as per the Guidelines of the Ministry of Social

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Justice and Empowerment, Department of Disability Affairs (now Department of Empowerment of Persons with Disabilities). The preliminary test for the post in questions scheduled to be held on 10.09.2015. The same is essentially an elimination round and is meant only for evaluating the mathematical and non verbal aptitude which shall be to the gross jeopardy and injustice to the candidates with visual impairment like him. His application has been accepted and he downloaded the admit card from the NPC's website. As per him, no provision has been mentioned in the admit card for the preliminary written examination for 20.09.2015. He has prayed for the following:-

- (i) The competent authority in respect of this Examination namely the Controller General of Patents and Designs and the NPC may be instructed to make needful arrangements in accordance with statutory provisions, guidelines and the said conventions in respect of making the process of recruitment to the above post fully participatory for him as a candidate with visual impairment and towards protection of his rights as a person with disability under the Persons with Disabilities Act, 1995.
- (ii) Urgent steps towards ensuring that needful reservations and concessions available under law in respect of accessibility for appearing in the above written examination may be taken so as to make available for the complainant, an opportunity for equal and effective competition for this post, and
- (iii) In case suitable arrangements in respect of the above cannot be made owing to the paucity of time before the preliminary exam fixed for 20.09.2015, needful instructions may kindly be issued to the competent authorities towards postponement of the said Examination until the arrangements prescribed have been made for the persons with disabilities.

3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 14.09.2015 followed by reminders dated 21.10.2015 and 28.10.2015.

4. The complainant submitted his rejoinder vide email dated 24.09.2015 and letter dated 07.10.2015, where the guidelines for conducting written examination for persons with disabilities issued by the Office Memorandum No.16-110/2003-DD.III dated 2.02.2013 were not followed.

5. In the meantime, the complainant has filed 2<sup>nd</sup> rejoinder in the matter submitting that he received an e-mail dated 16.10.2015 from the NPC (Examination Conducted Body) that his candidature has been selected for appearing in the Main Examination to be held on 01.11.2015. Under para 17 of the Admit Card it is mentioned that "Special instructions for PH category candidates on their website but no such instructions can be found under any of the headings or links provided therein." As no response was obtained from NPC, he had made a representation directly to Director General, NPC vide his letter dated 23.10.2015. He further submitted that the contents of the representation and principal plea made therein are self explanatory.

6. The respondent vide letter No.CG/F/Recruitment-Examiner of Patents/2015/857 dated 13.11.2015 submitted the reply jointly of respondent No. 1 and 2 and submitted that in the Information Bulletin at paragraph No.3.6 which contains all the relevant provisions about the examination in respect of Visual Impairment and the Low Vision candidates would be considered in consonance with the Disability Guidelines. According to Appendix III Para B of the said guidelines, low vision means a person with impairment of vision of less than 6/18 to 6/60. The complainant himself admitted that he is 100% visual impairment. Therefore, thereby, respondent No.2 followed the Government guidelines. The respondents further submitted that the impairment of any of the candidates could not be assessed owing to online application process which was designed only to capture the information pertaining to the candidate on his declaration basis. The complainant either concealed the material fact or has wrongly filled the online application which would have made him ineligible to sit in the examination. Denying all the charges leveled by the complainant, the respondents have intimated that since the complainant has been given a chance to appear in the main examination with all facilities asked for, therefore, the allegation of the complainant is wrong that he was not provided descriptive question paper in place of mathematical paper.

7. The replies of the respondents were forwarded to the complainant vide this Court's letter dated 18.12.2015 for submission of his comments/rejoinder.

8. The complainant vide his rejoinder dated 03.12.2015 submitted that as per the list of successful candidates pursuant to the main examination held on 01.11.2015, the name of complainant does not appear in the list. He has requested an early hearing in the case. He inter-alia alleged/requested that (i) In the main examination conducted on 01.11.2015, the respondent did not provide alternative question in lieu of mathematical question paper. (ii) 1 of the vacancies in post be reserved for visual impairment. (iii) Reservation Roster be screened and proper reservation be ensured as per rule. The policy of 3% reservation be strictly followed. (iv) Relaxation in suitability be given according to DoP&T's Office Memorandum No. 36035/3/2004-Estt. (Res) dated 29.12.2005. (v) As per disability certificate of the complainant, his visual acuity is 6/36 which renders him a low vision person. Therefore, he be treated as a candidate with low vision and not a blind. (vi) One vacancy under the present recruitment process be left unfilled pending disposal of this case.

9. The respondents vide letter dated 24.06.2016 in reply to the rejoinder filed by the complainant, submitted that respondent has complied with all the Government of India guidelines in the process of recruitment to the posts of Examiners of Patents and Designs. The process of recruitment is over and training of the first batch of the successful candidates has already started. Hence, the question of putting in abeyance the selection process does not arise. In view of the facts and circumstances as stated above, it is respectfully submitted that complaint may be dismissed as there is no merit in the case.

10. Upon considering the replies dated 13.11.2015, 09.06.2016 and 24.06.2016 of the respondents and rejoinder/submission dated 03.12.2015 and dated 28.07.2016 of the complainant, a hearing was scheduled on 19.9.2016.

11. During the hearing on 19.09.2016, the Counsel of the complainant reiterated the written submissions of the complainant and submitted that advertisement for the post of Examiner of Patent & Design was issued by Government of India, Department of Industrial Policy in April, 2015. In the said Advertisement at page 12, it was communicated that applications were invited from the persons with disabilities of OH, VH and HH categories. It was further communicated that from the VH category, low vision persons could apply. The complainant being a person with low vision disability duly applied for the same. The counsel for the complainant drawn the attention of the Court to the O.M. dated 26.02.2013 issued by the Government of India, Ministry of Social Justice & Empowerment, Department of Disability Affairs (now Department of Empowerment of Persons with Disabilities). The said O.M. contains guidelines for conducting the written examination for persons with disabilities and in Guideline No.XV, it was required that for persons with visual impairment in the written examination, there should be alternative questions in lieu of questions requiring visual inputs. The complainant communicated these requirements to this Court by email dated 09.09.2015. Thereafter, by communication dated 14.09.2015, this Court communicated to the respondent vide Para IV of the said communication that the O.M. dated 26.02.2013 contains the guidelines for candidates with disabilities and that the respondent should provide the facilities as envisaged in the guidelines. Thereafter, the complainant was admitted in the Preliminary Examination held on 20.09.2015 and much to his shock and dismay that the said examination contained 60 visual mathematical questions which were in violation of the O.M. dated 26.02.2013 of the Ministry of Social Justice & Empowerment and also communication of this Court to the respondent. The complainant communicated this fact to this Court whereupon this Court was pleased to further communicate the respondent by letter dated 21.10.2015 and 28.10.2015. that in so far as the main examination scheduled for 01.11.2015, to consider the request of the complainant. The respondent permitted the complainant to sit in the main examination on 01.11.2015. However, again to the shock and dismay of the complainant, he found that the subject test in Electronics and Communication Engineering, the majority of the questions were of visual and mathematical in nature and therefore, in violation of the O.M. as well as the communication of this Court to the respondent. The complainant then further brought these facts to the notice of this Court by letters dated 03.12.2015 and submissions dated 23.12.2015. Subsequent to this, this Court was pleased to issue communication dated 12.02.2016 to the respondents. In reply to the said examination, the respondents communicated to this Court on 01.03.2016 as under:-

"Sir,

I am directed to refer to your letter No.5167/1041/2015/R1001 dated 12.02.2016 on the subject noted above and to say that it has been decided to keep one vacancy unfilled in the Physically Handicapped- Visually Handicapped category till a final decision on the complaint filed by one PH(VH) candidate Shri Mohit Mahajan.

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2. The comments on the complaint of Shri Mohit Mahajan are being obtained from the National Productivity Council and the office of the CGPDTM and same will be furnished to this Court shortly."

12. Subsequently, on 24.06.2016, the respondents have filed a reply to the submissions dated 23.12.2015 of the complaint and in the said submission they have stated that six candidates with low vision were appointed subsequent to the recruitment process for the post of Examiner, Patent & Designs and since none of these six candidates requested alternative questions in lieu of visual and mathematical questions, therefore, Shri Mohit Mahajan did not have any cause for complaint and his claim for alternative questions to the visual and mathematical question in the written test held on 20.09.2015 was without basis. The Counsel for the complainant reiterates that the respondents ought to have followed the guidelines of the Government of India, Ministry of Social Justice & Empowerment's O.M. dated 26.02.2013 and also the subsequent communication in this case from this Hon'ble Court and in not doing so, they have denied the complainant fair and equal opportunity to admit in the written examination and in the selection process. The Counsel for the complainant, therefore, reiterates the plea of the complainant that the respondent should undertake a special evaluation of the complainant for the post of Examiner, Patents & Design and such evaluation shall be a bonafide evaluation of the experience and qualifications of the complainant in the field of Patents without use of visual and mathematical questions. Counsel for the complainant also notes that by letter dated 01.03.2016 to keep one vacancy unfilled for the visual handicapped category till final decision in this case by this Court. Therefore, subsequent to the Special Evaluation, if he is found fit for the post of Examiner, Patents & Designs, he should be appointed to the said post against any unfilled vacancy.

13. The representative of the respondent submitted that para-wise reply on behalf of the respondents CGPD&TM and NPC has already been filed in this Court vide letter dated 13.07.2016. He further submitted that he has received instructions from the Head Office to appear in this Court on today itself. He is not aware the full facts of the case and cannot argue the case.


14. After hearing the parties and on perusal of the record placed on the file, the Court grants one more opportunity to the respondent to explain their version of the case and adjourns the hearing for 14.10.2016.

15. On 14.10.2016, the Counsel for the complainant reiterated the submissions made on the previous date of hearing i.e. 19.09.2016. Further, the Counsel submitted that the mere fact that other visually impaired candidates selected by the respondent did not ask for any alternative questions in lieu of visual and mathematical questions, does not take away from the right of the complainant to be allowed alternative questions as per the Government of India, Department of Disability Affairs (now Department of Empowerment of Persons with Disabilities) O.M. dated 26.02.2013. The complainant reiterates his prayer that since he did not receive a fair opportunity during the selection process,

conducted by the respondent that he received a special evaluation of his qualifications, knowledge and capability in the filled of Pattern and if not found unfit for the post of Pat tern Examiner, he should be appointed to the said post. The complainant further requests that a Special Committee be set up for conducting the special evaluation of the complainant and such a Committee have on it a Member with knowledge on the accommodation required for visually disabled per sons.

16. The representative of the respondents submitted that about 30 VH category candidates had appeared in the recruitment examination. The name of the complainant was at serial No.29. A merit list of 17 candidates belonging to VH category was prepared. Except the complainant, all other VH category had attempted the questions and they were awarded marks and on that basis they were selected on the ground of their ranks. After the Order of this Court, one post which has been kept vacant, on that post, may be offered to the candidate who is in the merit. All the candidates who are in merit, have got more marks than the complainant. This examination was conducted purely for the post of "Examiner for Patents and Designs", whose subjects are Electronics and Communication. These are technical subjects and this examination was conducted to check the technical capability of the candidates. No visual impaired candidate faced any difficulty in solving the questions except the complainant. Therefore, there is no need for any separate evaluation. In the last, he prayed before the Court to take a decision at the earliest so that one post which has been kept unfilled, may be filled up by issuing appointment letter to the visually impaired person who is next in the Merit List.

17. After hearing the parties and after perusal of the record on the file, this Court is in the view that complainant has not attempted even a single question of the concerned paper, however, there was a scope to attempt other questions with the help of scribe which was not requiring visual input. This shows that the complainant was not very serious about the examination and trying to take undue advantage of the Government O.M. dated 26.02.2013. It is further observed that total 30 visually impaired candidates appeared in the examination and none of them required the alternative question without having visual input, and 28 out of 30 score high than the complainant. Therefore, the relief sought by the complainant do not find any merit to consider and hence the case is disposed off.

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