



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.: 6655/1024/2016

Dated: 07.07.2017  
Dispatch No.....

In the matter of :

Shri D.K. Madan,  
A-232, Derawala Nagar,  
G.T. Karnal Road,  
Delhi – 110 009

.....Complainant

Versus

The National Buildings Construction Corporation Limited,  
(Through the Chairman),  
Corporate Office,  
NBCC Bhawan,  
Lodhi Road,  
New Delhi – 110 003

.....Respondent

Date of Hearing - 13.06.2017

Present :

Complainant - Shri D.K. Madan, Complainant along with Shri Vinod Zutshi and Shri R.G. Mehra  
Respondent - Shri Sanjeev Kumar, AGM (HRM) and Shri Brijesh Verma

**ORDER**

The above named complainant, a person with 80% locomotor disability, filed a complaint dated 30.09.2016 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, against non payment of transport allowance at double the normal rate, transfer, harassment and denial of promotion etc.

2. The complainant has submitted that he was working as Managing Fin with National Building Construction Corporation Ltd (NBCC). He was not paid Transport Allowance at double the normal rate by NBCC w.e.f. April 2009, i.e. the date from which IDA Scale was applicable on him. He took VRS because he was not able to cope up with the huge expenditure on his transport to office. His health deteriorated due to his posting in the basement. He used to spend huge part of his salary on transportation and on his medical expenses. He used his personal car with his driver to drive down to his office and back. He was transferred from HO Building to another office at Minto Road despite his request to the Director Finance not to post him to any place. The working condition at his work place was not good for an employee with disability. He was not

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)  
(Please quote the above file/case number in future correspondence)

given promotion inspite of calling him for interview four times.

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 13.02.2017.

4. The Respondent vide letter no. NBCC/HRM/2017/866 dated 06.03.2017 has stated that their establishment vide letter dated 08.05.2015 took the matter with Dept. of Public Enterprises (DPC) for seeking clarification on whether the Transport Allowance to the persons with disabilities can be kept outside the purview of 50% perks and DPE in this context clarified vide its O.M. No. (20)/2012-DPE (WC dated 29.06.2012) that no allowance/benefits/perks other than those mentioned in DPE's O.M dated 26.11.2008 is admissible outside the 50% ceilings. DPE through the said O.M. has reiterated that DPE guidelines in this context should be adhered to strictly. As regards transfer of the complainant, it is stated that the complainant during his entire service with NBCC was never posted outside Delhi taking into consideration of his physical condition. His native place is Delhi. Regarding easy accessibility and barrier free environment, it is stated in its reply that NBCC provides easy accessibility and barrier free environment to all its employees and the complainant had never made any complaint about the accessibility etc during his long tenure of service with NBCC. As regards promotion of the complainant is concerned, the provision of promotion policy of the company, principle of merit cum seniority is followed for promotion of next higher lever and promotions from Manager and above is based on interview process. The DPC takes into consideration various factors such as experience, marks of appraisal reports and more importantly the performance of employees etc. The complainant was called for the interview for promotion to the post of DGM (Finance) when he was eligible and a fair chance was given to the complainant to perform before the committee members. The marks secured by the complainant in the DPC was less in compared to the marks secured by other employees who were promoted on coming in the merit. A 100 point reservation roster registers for each Group 'A' & Group 'B' is filled by Direct recruitment. Group 'C' post is filled by direct recruitment as well as posts filled by promotion in NBCC.

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5. The complainant vide his rejoinder dated 29.03.2017 has submitted that DPE vide its O.M. dated 06.03.2014 has instructed all CPSE regarding grant of double transport allowance to disabled employees. The implementation of these guidelines rested with administrative ministries/departments concerned with CPSE. He stated that Order issued by CCPD dated 22.01.2012 regarding payment of double transport allowance has also been ignore by his employer. The complainant submitted that DPE vide its letter dated 25.11.2014 has stated that transport allowance to be referred in O.M. dated 15.11.2011, it is mentioned that DPE O.M. dated 05.09.2013 may also be considered and this clarification has been given to the complainant by DPE in their latest O.M. dated 25.01.2016. The complainant further referred to CCPD's instruction to NTPC for payment of Double Transport Allowance against Case No. 157/1023/11-12 dated 27.02.2012. During his tenure in HO he was transferred to different departments/projects where there was no barrier free environment because of the ongoing construction work. The complainant requested the management to post him in a more ventilated and access free environment, but there was blank refusal. Due to this the complainant took voluntary retirement. The complainant further submitted that he was not upgraded to the post of DGM (Fin) despite having a higher qualification and Good and V Good ACRs while his juniors were promoted. He submitted that some employees who had either a prowess or were close to the power centre were given promotion despite having fraud certificates established by none other than CVC.

6. Upon considering respondent's reply dated 06.03.2017 and complainant's rejoinder dated 29.03.2017, the matter was listed for hearing on 13.06.2017.

7. During the hearing the complainant reiterated his earlier submission made in his original complaint that he should be given Transport Allowance at double the normal rate since April 2009.

8. During the hearing the Respondent submitted that as regards Double Transport Allowance to the complainant NBCC vide its letter dated 08.05.2015 sought a clarification from the Department of Public Enterprises (DPE) whether the Transport Allowance to the persons

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with disabilities can be kept outside the purview of 50% perks and DPE in this context clarified vide its OM No. (20)/2012-DPE (WC dated 29.06.2012 that no allowance/benefits/perks other than those mentioned in DPE's O.M dated 26.11.2008 is admissible outside the 50% ceilings. DPE through the said O.M. has reiterated that DPE guidelines in this context should be adhered strictly. Regarding transfer, the respondent submitted that the complainant during his entire service with NBCC was never posted outside Delhi taking into consideration of his physical condition. His native place is Delhi. Regarding easy accessibility and barrier free environment, the Respondent submitted that NBCC provides easy accessibility and barrier free environment to all its employees and the complainant had never made any complaint about the accessibility etc during his long tenure of service with NBCC. As regards promotion of the complainant, the representative of Respondent submitted that as per the provision of promotion policy of the company, principle of merit cum seniority is followed for promotion of next higher lever and promotions from Manager and above is based on interview process. The Departmental Promotion Committed (DPC) constituted for assessing the potential of employee for promotion takes into consideration various factors such as experience, marks of appraisal reports and more importantly the performance of employees etc before the DPC members. The complainant was called for the interview for promotion to the post of DGM (Finance) when he was eligible and a fair chance was given to the employees to perform before the committee members. The marks secured by the complainant in the DPC were less in compared to the marks secured by other employees who were promoted on coming in the merit. Hence, the complainant could not find place in merit for promotion to the post of DGM (Finance). Regarding reservation in promotion for the complainant, the Respondent submitted that DoP&T vide its O.M. No. 36035/8/89-Estt.(SCT) dated 20.11.1989 has brought out that reservation will be provided in three categories of persons with disabilities namely, the visually handicapped, the hearing handicapped and Orthopedically handicapped in the following groups.

1. Within Group D
2. From Group D to Group C
3. Within Group C

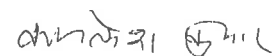
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There is no reservation for promotion for executives in Group A.

Regarding Reservation Rosters, a 100 point reservation roster registers for each Group 'A' & Group 'B' is filled by Direct recruitment. Group 'C' post is filled by direct recruitment as well as posts filled by promotion in NBCC. The Representatives of Respondent further submitted that Persons with Disabilities are not deprived of their legitimate rights in NBCC. They submitted that the complainant was relieved from the services of the company on 16.11.2015 on account of opting of Voluntary Retirement.

9. After hearing both the Complainant as well the Respondent the Court directed the Respondent to provide Transport Allowance at double the normal rate to the complainant effective from April 2009 after taking due permission from their Ministry within three months from the date of passing of this Order and to send the compliance report of the same to this Court.

10. The case is disposed off.



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