



सत्यमेव जयते

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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. 13073/1141/2022

Complainant:

Shri Ramashankar Singh,
R/o M.I.G. 122/2B, Habibganj,
Bhopal-462024 (MP)
Email: rsgmtech@gmail.com

139085

Respondent:

The Chairman & Managing Director,
Life Insurance Corporation of India,
1st Floor, Yogakshema Central Office,
Jeevan Bima Marg, Nariman Point,
Mumbai-400021
Email: chairman_sect@licindia.com; cz_claims@licindia.com

139086

Affected Person: The complainant, a person with 50% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 28.12.2021 against not extending the inbuilt disability benefits under LIC Policy No.971598422 by LIC of India.

1.2 The complainant had taken a LIC Policy No.971598422. He became more than 50% disabled with effect from 13.03.2018 after he met with the accident which occurred on 27.01.2018 after urination fell in toilet at his residence, Bhopal. He was admitted for treatment in Noble Multi-speciality Hospital, Bhopal. After consulting his LIC Agent, he had applied to the LIC authorities for providing him the disability benefit under the said LIC policy, but LIC denied the same.

2. Submissions made by the Respondent:

2.1 LIC filed their reply dated 04.03.2022 and confirmed that the complainant submitted the application for Disability benefit under the said policy in City Branch Office-3 (CBO-3), Bhopal on 03.10.2019. In the Claim Form 5279, in response to question No.II-1 – Nature of disability and parts of the body affected, the life assured has mentioned "HEMIPLEGIA", right side of the body (Motor Disability). The date of disability was reported as 27.01.2018.

In response to 'Question No.II-3 – Describe in brief the circumstances under which you were disabled', the life assured has mentioned that "at 11.30 p.m. on 27.01.2018, after urination fell in toilet and got brain haemorrhage at my residence at Bhopal" causing Hemiplegia disability. In response to Question No.II-4 – if the disability arose as a result of an accident state the name of the Police station to which the accident was reported, the life assured has responded as "No". In the Claim form 5280 furnished by Medical Superintendent of Noble Multi-speciality Hospital, Bhopal; the cause of disability is mentioned as ICA Stenosis. The Divisional Medical Referee (DMR), opined that the disability is not due to accident, therefore, disability benefit is not payable as per the policy conditions.

2.2 On the basis of discharge summary of Noble Multispeciality Hospital, Bhopal, DMR opinion and in the light of policy conditions, the disability benefit claim was disallowed by the Divisional Office of LIC of India on 29.02.2022. The Zonal Consumer Dispute Redressal Committee (ZCDRC) had also upheld THE DECISION OF Senior Divisional Manager (Sr.D.M.) on 28.01.2022.

3. Submissions made in Rejoinder:

In rejoinder dated 26.03.2022, the complainant reiterated his complaint.

4. The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **16.06.2022**. During online hearing both parties made rival submissions with respect to definition of the term 'accident'. Complainant submitted that he acquired disability because of the incidence which occurred when he fell on washroom floor and this incidence must be termed as an 'accident', whereas, the Respondent submitted that the incident of falling on washroom floor cannot be termed as 'accident'. During online hearing both the parties failed to produce any strong evidence/argument to support their definition of 'accident', and requested more time to produce some case laws and other evidence to support their contention. In the interest of natural justice, this Court grants another opportunity to both the parties to submit case laws or other evidence in support of their contention. Such submission must also be made in writing and emailed to this Court on or before 15 July 2022.

5. The matter was again listed for hearing on **10.01.2023** but due to administrative exigency, the hearing scheduled on **31.01.2023**, thereafter on **07.02.2023**.

Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **07.02.2023**. The following were present:

- Shri Ramashankar Singh - Complainant
- Adv. Vipin Pillai; Ms.P.S. Pratibha, Manager (Legal); Sri Ashish Kaul, Manager (claim) on behalf of respondent



Observation/Recommendations:

6. Complainant submits that he acquired disability on 13.03.2018. Before acquiring disability, he bought insurance policy from Respondent establishment. Insurance policy has inherent condition that in case the policy holder will acquire disability, he will be given insurance claim. Complainant applied for claim under the policy on the ground of acquiring disability. However, the same was denied.

7. Respondent submits that nature of Complainant's disability is Locomotor disability. Opinion in this matter was sought from Divisional Medical Manager, which opined that cause of disability is not 'accident'. Hence, disability claim was rejected.

8. Hearing was conducted and the main issue which emerged was whether 'falling in bathroom' will amount to 'accident'. Complainant claimed that it is accident whereas the Respondent claimed that it is not an 'accident'. Both parties sought time to make more submissions to prove their interpretation of term 'accident'. Thereafter the adjournment was granted and the Complaint was re-heard on 07.02.2023.

9. During hearing on 07.02.2023, Respondent informed this Court that as per documents available with the Respondent, there is no mentioning of accident as reason behind Complainant's acquiring disability. As per the records, the Complainant is being treated for some neuro condition.

10. Complainant insisted that he acquired neuro problems only after he fell on washroom floor and hence resultantly acquired disability. However, on record there is no document to prove that the Complainant fell on washroom floor.

11. This Court concludes that the present Complaint is not related to disability rights. The Complaint is essentially related to interpretation of commercial contract between the Complainant and Respondent. Even if it is assumed that the Complainant actually fell on washroom floor and hence acquired disability, it cannot be concluded that such 'falling on floor' can be interpreted as 'accident'. Complainant has also not presented any case law on the interpretation of term 'accident' despite of opportunity granted to him.

12. Hence this Court concludes that intervention in the present Complaint is not warranted.

13. Accordingly the case is disposed off.

Dated: 03.04.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



Case No.185029/2023/CCPD

Extra

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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

Diary No. 185029/2023/CCPD

Complainant:

Shri Bhaskar Mishra,
S/o Shri Sarvesh Mishra,
R/o Chak Abdul Karim Urf Pure Bhulal,
Babujanj,
Phoolpur -212402,
District – Prayagraj (UP)
Email: bhaskarmishra012@gmail.com

139020

Respondent:

The Chairman,
Staff Selection Commission,
CGO Complex, BlockNo.12,
Lodhi Road, New Delhi-110003
Email: chairmanssc@gmail.com; sscushqpp1@gmail.com

139021

Affected Person: The complainant, a person with 55% Mental Illness.

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 13.01.2023. He submitted that he was selected in SSC CGLE 2019 but at that time no posts were identified suitable for his category of disability. Hence, he was not allotted any post even after getting good marks; and that is why he had not appeared in SSC CGLE 2020 because in the Notification his category of disability was not included in CGLE 2020. After the result of Tier-1 SSC CGLE 2020, SSC issued Corrigendum in the month of August, 2022 and included all the disabilities in accordance with the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016].

1.2 The complainant further submitted that if the same disability is eligible in CGLE 2020, why the same cannot be included in CGLE 2019 as per RPwD Act, 2016. He requested that his category of disability may be included in SSC CGLE 2019.

2. Observations & Recommendations:

2.1 The complaint was examined by this Court. Similar matters have already been adjudicated by this Court in the Case No. 12788/1011/2021 (Sh. Amit Yadav Vs SSC) vide Order dated 09.12.202; in Case No.12891/1011/2021

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5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

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

S.P.Shah

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

(Shri Bishwadip Paul vs SSC); and in Case No.13351/1011/2022 (Shri Tijo M Thomas Vs SSC) wherein it was observed by this Court that the vacancies advertised before 04.01.2021 are not governed by MoSJE Notification dated 04.01.2021, hence, no intervention is warranted. The copies of the orders are enclosed.

2.2 In the instant case, the Notice of Examination of CGLE-2019 was published on 22.10.2019 i.e. before the issue of the Notification dated 04.01.2021 and hence, the Notification dated 04.01.2021 should not be made applicable to the Notice of CGLE-2019. In case No.13351/1011/2022, SSC also submitted that the candidate has also filed the case before the Hon'ble CAT, Ernakulam Bench, vide O.A. No.313/2022.

2.3 This Court is inclined to observe that the fault is not of the Respondent but of the establishments on behalf of which vacancies were issued by SSC. Before 04.01.2021, the list which was prevalent was issued in 2013. In that list, no post was identified suitable for Mental Disability category. In RPwD Act, 2016, provision was there to reserve vacancies for Mental Disability category, however till 04.01.2021 only few establishments identified posts suitable for mental disability category. Furthermore, it is also important to note that similar case is pending before Hon'ble Central Administrative Tribunal, Ernakulam. Since the issue is subjudice in another Court, this Court shall not intervene in the present Complaint.

2.4 Accordingly the complaint is disposed off.

Dated: 03.04.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

extra 6



Case No – 13106/1031/2022

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. 13106/1031/2022

Complainant:

Dr. Satendra Singh,
Doctor with Disabilities:
Agents of Change (DwDAoC) 129031
A5-303, Olive County, Sector-5,
Vasundhara, Ghaziabad, UP-201212
Email: dr.satendra@gmail.com

Respondent:

(1) Director General of Health Services,
Directorate General of Health Services (DGHS) 129032
446-A, Nirman Bhawan, New Delhi-110108
Email: dghs@nic.in

(2) Secretary,
National Medical Commission,
Pocket-14, Sector-8, Dwarka, Phase-1, 129033
New Delhi-110077; Email: secy-mci@nic.in

Affected Persons: Candidates with disabilities aspiring Medical Education.

Corrigendum

1. Complaint was received in the Court relating to relating to double examination of the candidates who have successfully qualified NEET exam. Hearing was conducted and this Court issued recommendation-order dated 10.01.2023, whereby this Court in Para 5.16 and 5.17 recommended to increase the number of facilitation centres and also recommended to form an 'expert committee'. Relevant paras of the Recommendation-Order are as below -:

5.16 *This Court recommends that facilitation centres should be increased from 16 to many more in number so that divyang candidates do not have to face un-necessary problems in evaluation. Furthermore, till centres cannot be increased, government medical colleges can be authorized to conduct such evaluations.*

5.17. *This Court also recommends that as far as issues relating to problems faced by candidates during second evaluation, as the one raised*

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5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

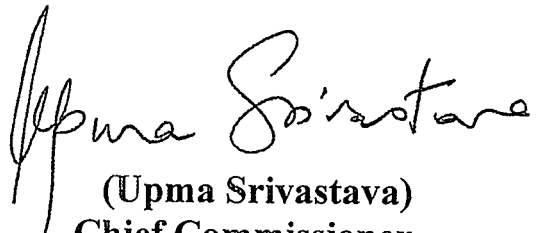
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(पया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

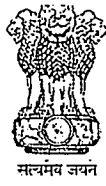
by the Complainant during online hearing, the Respondent shall form an expert committee which shall comprise of medical practitioners, to examine the various problems which arise and which are faced by the candidates during second time evaluation. The recommendations of this committee shall be shared with this Court.

2. Due to inadvertent clerical error a phrase which reads as - “such committee shall also include doctor who is Person with Disability” could not be included in the final recommendation order dated 10.01.2023. Hence, in Recommendation-Order dated 10.01.2023, Para 5.17 is replaced and shall be read as –

*5.17 This Court also recommends that as far as issues relating to problems faced by candidates during second evaluation, as the one raised by the Complainant during online hearing, the Respondent shall form an expert committee which shall comprise of medical practitioners, **such committee shall also include doctor(s) who is a Person with Disability**, to examine the various problems which arise and which are faced by the candidates during second time evaluation. The recommendations of this committee shall be shared with this Court.*

Dated: 05.04.2023


(Upma Srivastava)
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: 13528/1141/2022

Complainant: Ms. Padmaja Rai, Ph.D. Scholar,
Department of Biotechnology,
Motilal Nehru National Institute of Technology,
Allahabad, Prayagraj-211004
Uttar Pradesh.
Email: raipadmaja20@gmail.com

139281

Respondent: Dy. Director General,
UIDAI Regional Office, Lucknow,
3rd Floor, Uttar Pradesh Samaj Kalyan
Nirman Nigam Building, TC-46/ V, Vibhuti Khand
Gomti Nagar, Lucknow- 226 010
Email: ddgrolucknow@uidai.net.in;
Email ID : uidai.lucknow@uidai.net.in

139282

Affected person: **Shri Amit Rai, a person with 80% Cerebral Palsy**

GIST of the Complaint:

The complainant filed a complaint dated **10.09.2022** regarding enrollment of his brother Shri Amit Rai, a person with 80% Cerebral Palsy for Aadhaar Card.

1.2 She has submitted that his brother Shri Amit Kumar Rai, is not able to visit the Aadhaar Enrollment Office to get himself enrolled for Aadhaar. She had sent emails many times to help@uidai.gov.in and after that the case was registered on 03.09.2022 (sub case id 2022090102256301), but still no response has been received. She is not aware of status of her complaint or whether they are able to send any officer who comes to her house to investigate and to do the necessary work.

2. The matter was taken up with the Respondent vide letter dated **27.10.2022** under Section 75 of the RPwD Act, 2016.

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3. Submissions made by the Respondent :

3.1 The respondent vide letter dated **02.12.2022** has inter-alia submitted that request for home enrollment has been received from the complainant and her request has been registered as Case No. HEU-498. Their office has contacted on the mobile number provided by the complainant/resident on 19.10.2022 and informed her the documents required for Aadhaar Enrollment. Then on 16.11.2022, their office has also contacted the complainant and informed her that an Aadhaar Kit/Machine for home enrollment is being sent. On 18.11.2022, an Aadhaar kit alongwith operator was sent to the home of the complainant at Prayagraj and performed his enrollment on 18.11.2022. The respondent has prayed that the case may please be decided accordingly.

4. Submissions made by Complainant in Rejoinder :

4.1 The complainant filed rejoinder vide email dated **13.12.2022** and submitted that the enrollment process for his brother Shri Amit Rai was done on 18/11/2022 vide enrollment no. 0013/32003/0192 but she is still struggling for Aadhaar Card for his brother. She required the Aadhaar Card for medical treatment.

5. After considering the respondent's reply dated **02.12.2022** & complainant's rejoinder dated **13.12.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **23.02.2023** but due to administrative exigency, the scheduled hearing re-scheduled on **09.03.2023**.

Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **09.03.2023**. The following were present:

- None appeared on behalf of Complainant
- Shri Amit Singh, Dy. Director, Regional office, Lucknow on behalf of respondent

Observation/Recommendations:

6. Complaint is filed on behalf of brother of the Complainant. Complaint is related to enrolment of his brother Shri Amit Rai, a person with 80% Cerebral Palsy for Aadhaar Card.



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She has submitted that his brother Shri Amit Kumar Rai, is not able to visit the Aadhaar Enrolment Office to get himself enrolled for Aadhaar. She had sent emails many times to help@uidai.gov.in and after that the case was registered on 03.09.2022 (sub case id 2022090102256301), but still no response has been received. She is not aware of status of her complaint or whether they are able to send any officer who can come to her house to investigate and to do the necessary work.

7. Respondent submits that request for home enrolment has been received from the complainant and her request has been registered as Case No. HEU-498. Their office has contacted on the mobile number provided by the complainant/resident on 19.10.2022 and informed her the documents required for Aadhaar Enrolment. Then on 16.11.2022, their office has also contacted the complainant and informed her that an Aadhaar Kit/Machine for home enrolment is being sent. On 18.11.2022, an Aadhaar kit along with operator was sent to the home of the complainant at Prayagraj and performed his enrolment on 18.11.2022. The respondent has prayed that the case may please be decided accordingly.

8. During online hearing, Respondent informed this Court that Aadhaar Card of the Complainant has been generated on 18.12.2022 and has been issued. The same has also been uploaded on the portal and the Complainant can download the same from the portal as well.

9. Since the grievance of the Complainant has now been settled, hence intervention of this Court in the present Complaint is not warranted.

10. The case is disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.04.2023



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: 13467/1092/2022

Complainant: Shri Arun Goel,
Flat No. 2010, D.A. Ftats,
Gulabi Bagh, Delhi -110007
Contact No.: 9650696j89, Email:goeldimpy@gmail.com

Respondent: Under Secretary (AEI Section),
Department of Heavy Industry,
Ministry of Heavy Industries and public Enterprises,
Room No.428, Udyog Bhawan,
New Dethi-110001
Email: simmi.narnaulia@nic.in

Chairman,
Central Board of Indirect Taxes,
J684-843, North Block,
Central Secretariat, New Delhi-110001
Email: chairperson-cbec@nic.in

Complainant: 55% Locomotor disability

GIST of the Complaint:

Complainant Shri Arun Goel vide complaint dated 22.08.2022 has inter-alia submitted that the Ministry of Finance provided concessional rate of GST on vehicles for persons with disabilities vide notification dated 28.06.2017. He further, submitted that the Ministry of Heavy Industries and Public Enterprises had issued guidelines vide Office Order no. 12(42)/2015-AEI(12455) dated 1st May, 2018 and based on the revised guidelines, the Ministry of Finance provided for concessional rate Good and Services Tax on cars for persons with disabilities if the conditions laid down in the notification were fulfilled.

2. As per the complainant he complying with all the requirements of the notification and hence, he submitted an application to the Ministry of Heavy Industries and Public Enterprises for issuance of GST Concession Certificate under revised guidelines dated 01.05.2018. The application, along with requisite documents, was submitted on 1st July,

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2019, but his application was rejected by the Respondent No. 01 vide letter dated 26th July, 2019. The complainant had purchased a vehicle Maruti Ciaz Delta (Automatic Transmission) with registration no. DL9CAS1035 which was registered under the category of "invalid carriage". The complainant in compliance with the directions of Respondent No. 1 had removed the defects and re-submitted the application with requisite documents on 17.08.2019. The application was returned vide letter dated 24.10.2019 and asked the complainant to apply for GST Concession Certificate in accordance with the revised guidelines dated 24.10.2019.

3. In response to Respondent No. 1's letter dated 24.10.2019, the complainant clarified to the respondent that his application for GST Concession Certificate was dated 01.07.2019 and he purchased the vehicle on 19.07.2019 and hence, his application should be considered under the old guidelines. The complainant was informed by the Respondent no. 1 vide letter dated 25.06.2020 that his application was required to be filled and processed as per the new guidelines issued on 24.10.2019. The complainant has prayed for the following :-

- (i) to hold that the complainant is eligible for the grant of GST concessional certificate under the guidelines dated 1st May, 2018;
- (ii) to direct the Respondent No. 01 to issue a GST concessional certificate under the guidelines dated 1st May, 2018;
- (iii) to direct the Respondent No. 02 to immediately release the GST refund amount on issuance of GST concession certificate; and
- (iv) to pass any other order(s) this court may deem fit in interest of justice.

4. The matter was taken up with the Respondents vide letter dated **29.09.2022** under Section 75 of the RPwD Act, 2016.

5. In response, respondent No. 01 vide e-mail dated **24.11.2022** has filed the reply. The Respondent no. 1 has submitted that they denied that processing of his application was delayed with the intention to deny the GST Concession Certificate. His application was

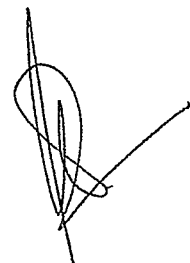


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returned due to certain shortcomings in his application and annexures thereto submitted by the complainant that the doctor's seal affixed on the medical certificate was illegible and hence the applicant was asked to rectify the shortcomings and resubmit his application. Petitioner re-submitted his application on 21.08.2019 and by that time a number of GST concession applications which were received from various applicants, were already returned to them as the GST guidelines were under revision by M/o Finance, in consultation with other stakeholder Ministries/Departments and revised guidelines were to be notified. Therefore, the applicants, who had applied for GST concession in the interregnum were further advised to resubmit their application as per revised guidelines. The petitioner's application was also returned on the same grounds/advise.

6. He further submitted that as per the revised guidelines dated 24th October 2019, an applicant is not allowed to purchase vehicle before obtaining GST certificate. Besides as per the revised guidelines, there were restrictions imposed on the length and engine capacity of the vehicle. In the instant case, the petitioner had failed to resubmit his rectified application on time entailing return of his application along with the advise to re-submit his application as per the revised guidelines. The complainant is agitating his claim as per the provision of earlier guidelines dated 01.05.2018 whereas the latter guidelines stand superseded by the revised guidelines issued on 24.10.2019, based on the Notification No. 14/2019-Central Tax Act (Rule) dated issued 30th September 2019 by the Department of Revenue, Ministry of Finance. As stated in the foregoing paras by the time his rectified application was received on 21.08.2019, the process of revising the guidelines dated 24.10.2019 had already started and for that matter all applications received during this period (including the complainant's) were returned to them with the advice to resubmit their applications as per the revised guidelines which were to be notified shortly, after the completion of revising process. Therefore, petitioner's contentions are denied.

7. After considering the respondent's reply dated **24.11.2022** & complainant's rejoinder dated **04.01.2023**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **02.02.2023** but due to administrative exigency, the scheduled hearing is re-scheduled on **09.02.2023**.



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Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **09.02.2023**. The following were present:

- Shri Arun Goel - Complainant with Shri D.K. Devesh, Advocate
- Shri M. Subramaniam, Under Secretary on behalf of respondent no. 1

Observation/Recommendations:

8. Complainant submits that Ministry of Heavy Industries and Public Enterprises had issued guidelines vide Office Order no. 12(42)/2015-AEI(12455) dated 01.05.2018 and based on the revised guidelines, the Ministry of Finance provided for concessional rate Good and Services Tax on cars for persons with disabilities if the conditions laid down in the notification were fulfilled.

9. Complainant claims that he submitted an application to the Ministry of Heavy Industries and Public Enterprises for issuance of GST Concession Certificate under revised guidelines dated 01.05.2018. The application, along with requisite documents, was submitted on 01.07.2019, but his application was rejected by the Respondent No. 01 vide letter dated 26.07.2019. The complainant had purchased a vehicle Maruit Ciaz Delta (Automatic Transmission) with registration no. DL9CAS1035 which was registered under the category of "invalid carriage". The complainant in compliance with the directions of Respondent No. 1 had removed the defects and re-submitted the application with requisite documents on 17.08.2019. The application was returned vide letter dated 24.10.2019 and asked the complainant to apply for GST Concession Certificate in accordance with the revised guidelines dated 24.10.2019.

10. Complainant further claims that in response to Respondent No. 1's letter dated 24.10.2019, the complainant clarified to the respondent that his application for GST Concession Certificate was dated 01.07.2019 and he purchased the vehicle on 19.07.2019 and hence, his application should be considered under the old guidelines. The complainant was informed by the Respondent no. 1 vide letter dated 25.06.2020 that his application was required to be filled and processed as per the new guidelines issued on 24.10.2019.



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11. Respondent has denied that processing of his application was delayed with the intention to deny the GST Concession Certificate. His application was returned due to certain shortcomings in his application and annexures thereto submitted by the complainant that the doctor's seal affixed on the medical certificate was illegible and hence the applicant was asked to rectify the shortcomings and resubmit his application. Petitioner re submitted his application on 21.08.2019 and by that time a number of GST concession applications which were received from various applicants, were already returned to them as the GST guidelines were under revision by M/o Finance, in consultation with other stakeholder Ministries/Departments and revised guidelines were to be notified. Therefore, the applicants, who had applied for GST concession in the interregnum were further advised to resubmit their application as per revised guidelines. The petitioner's application was also returned on the same grounds/advise.

12. Respondent further submits that the rectified application was received on 21.08.2019, the process of revising the guidelines dated 24.10.2019 had already started and for that matter all applications received during this period (including the complainant's) were returned to them with the advice to resubmit their applications as per the revised guidelines which were to be notified shortly, after the completion of revising process.

13. For the proper adjudication of this Complaint it is important to list out the important dates of events, which is as follows :-

- o Original guidelines issued on – 01.05.2018
- o Application filed by the Complainant to obtain concession certificate – 01.07.2019
- o Car purchased by the Complainant – 19.07.2019
- o Application rejected by the Respondent – 26.07.2019
- o Defect removed and application resubmitted – 17.08.2019
- o Corrected application received by the Respondent – 21.08.2019
- o Corrected Application returned by the Respondent – 24.10.2019
- o Revised guidelines issued – 24.10.2019

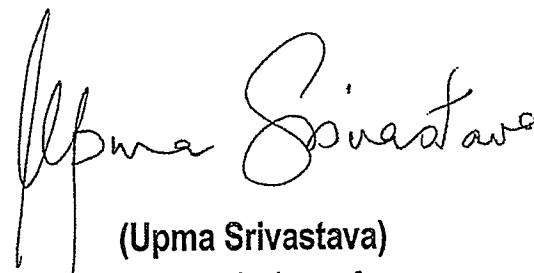


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14. The main issue is whether the application of the Complainant should be considered according to 2018 guidelines or 2019 guidelines. Complainant has not challenged 2019 guidelines as violative of Disability rights. From the dates above it is clear that the Complainant filed original application then purchased car and then filed corrected application well before new guidelines were issued. Furthermore, during online hearing, the Respondent informed this Court that no notification was issued relating to cut off date. Hence, this Court concludes and recommends that as per principles of natural justice, Complainant's application should be decided as per 2018 guidelines. The Respondent is recommended to decide the application within 3 months of receiving the copy of this Recommendation – Order.

15. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

16. The case is disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.04.2023



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: 13468/1022/2022

Complainant:

Shri Dilip Chauhan

Vice Principal

K.V. No. 2, INF Lines Jamnagar

Ahmadabad Region

Employee Code: 54223

Mobile No: 9974991952

Email: dilip.dchauhan@gmail.com

Respondent:

The Commissioner,

Kendriya Vidyalaya Sangathan,

18, Institutional Area,

Shaheed Jeet Singh Marg,

New Delhi-110016.

Contact No: 011-26521898

Email: ccpd@nic.in

Affected Person : The complainant, a person with 100% Visual Impairment

GIST OF COMPLAINT :

The complainant is a person with 100% Visual Impairment has filed a complaint dated 22.09.2022 regarding for transfer to one of the stations i.e. Ahmadabad MR Campus, Gandhinagar Sec. 30 and Baroda No. III (Makarpura AFS).

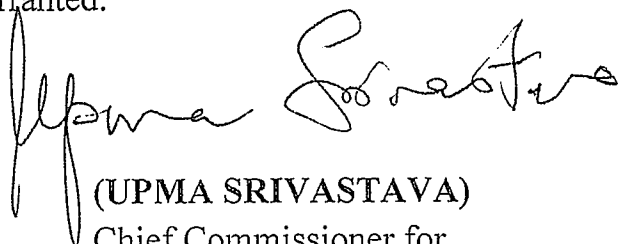
2. The complainant stated that he is a Visually Impaired Employee selected as a Vice Principal through Direct Recruitment in 2019. In his earlier application he had applied for transfer because inspite of having vacancy nearest to his home town, he was posted far away at his present station K.V.No.2 Jamnagar. Now in the era of Covid-19 due to emergency situation at his home with his parents, he is requested to consider his application due to following reasons:

- His father has been diagnosed of Mouth Cancer and he had been operated upon at Ahmadabad;
- His father is also a Heart Patient and the treatment of both the critical diseases is going on at Ahmadabad;

- His parents are living alone and they are desperate need of his emotional and financial support;
 - His mother required the support of his wife because his father is bedridden and surviving on liquid; and
 - This is high time for him to be with his parents and for that he has requested to CCPD Court to transfer him to one of the stations i.e. Ahmadabad MR Campus, Gandhinagar Sec. 30 and Baroda No. III (Makarpura AFS).
3. The matter was taken up with the Respondent vide letter dated 17.10.2022 under Section 75 of the RPwD Act, 2016.
4. In response, Assistant Commissioner (Estt-1) vide their letter no. dated 15.11.2022 stated that the case will be considered by the competent authority on merit after Gujarat election is over.
5. The complainant did not file the rejoinder against the letter issued by the Court of Chief Commissioner for Persons with Disabilities vide email letter dated 15.12.2022.
6. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **16.02.2023**. The following were present:
- i) Shri Dilip Chauhan : **Complainant**
 - ii) Shri Anurag Bhatnagar, Asst. Commissioner (KVS) : **Respondent**

Observations /Recommendations:

7. Complainant submits that he is employed on the post of Vice Principal in the Respondent establishment since 2019. He submits that he is posted in school situated in Jamnagar, despite of vacancies available in his hometown. He claims that he filed application for transfer to either of these three locations – Ahmadabad/Gandhinagar/Baroda however till the date of filing of Complaint he had not received any information.
8. Respondent submits that the Complainant has now been transferred to school situated in Baroda on his own request and considering his disability.
9. During online hearing, the Court was apprised that the Complainant was already transferred to place of his choice and he had also joined the office. Intervention of this Court in the present Complaint is not warranted.
10. This case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 10.04.2023



18

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: 13459/1022/2022

Complainant :

Shri Suman,
Helper
Email: suman9556@gmail.com
Mobile No: 9534659594

13459

Respondent :

The Divisional Railway Manager (P)
Sonpur Mandal
East Central Railway
Dist. Saran, Bihar-841101
Email: dmr@ecr.railnet.gov.in

13459

Respondent....1

The General Manager
General Manager Office, General Branch
1st Floor, NGO Main Building
Southern Railway
Park Town, Chennai-600003
Email: gm@sr.railnet.gov.in

13459

Respondent....2

Affected Person : The complainant, a person with 40% Locomotor Disability

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 07.09.2022 में कहना है कि वह 40 प्रतिशत लोकोमोटर दिव्यांगजन रेलवे कर्मचारी है जो कि चैन्नई जोन के अंतर्गत सेलम मंडल में बिजली विभाग में एसएसई/ई/एम/ईरोड के अधीन 01.12.2015 में असिस्टेंट ओपी (इलैक्टिकल हैल्पर) के पद पर कार्यरत हुआ था। प्रार्थी का आगे कहना है कि 04.03.2017 में अपने कार्यालय में स्थानांतरण हेतु आवेदन दिया था कि 16.08.2018 सेलम मंडल ने अग्रिम कार्रवाई करने अर्थात् स्वीकृति हेतु उनका आवेदन सोनपुर मंडल (ईसीआर) में भेज दिया गया परंतु 05 वर्ष 06 महीने से भी अधिक की अवधि बीत जाने के बाद भी अब तक उनका आवेदन सोनपुर मंडल में लंबित है। अर्थात् अब तक सेलम मंडल में एनओसी प्रमाण पत्र नहीं भेजा गया है। प्रार्थी का आगे कहना है कि उनकी माताजी अकेले रहती है तथा उनकी उम्र काफी अधिक हो गई है और बीमार रहती है। यदि प्रार्थी उनके साथ रहेंगे तो उनकी देखभाल ज्यादा अच्छे से हो पाएगी। अतः शिकायतकर्ता ने सीसीपीडी कोर्ट से विनम्र निवेदन किया है कि उनकी परिस्थिति को देखते हुए उचित कार्रवाई करते हुए उनका निजी अनुरोध पर स्थानांतरण गृह जिला में कराने की कृपा की जाए।

2. The matter was taken up with the Respondent vide letter no. dated 23.09.2022 under Section 75 of the RPwD Act, 2016.

3. प्रतिवादी ने अपने पत्र दिनांक 03.11.2022 के माध्यम से सूचित किया है कि प्रार्थी को अन्तर रेलवे निजी अनुरोध स्थानानांतरण का मामला इस मंडल को प्राप्त हुआ था जिस पर कृत कार्यवाही करते हुए इस मंडल के पत्रांक संख्या दिनांक 01.11.2022 के माध्यम से प्रार्थी को सोनपुर मंडल/पूर्व मध्य रेलवे में समायोजन हेतु अनापत्ति प्रमाण पत्र मंडल रेल प्रबंधक (कार्मिक)/सेलम मंडल/दक्षिण रेलवे को प्रेषित किया जा चुका है।

4. The complainant has filed his rejoinder by email dated 16.12.2022 and submitted that he received NOC from Sonpur division, regarding his Inter Railway Transfer. The complainant submitted that no information has been received from Salem Mandal. The complainant has requested to this Court to take an action as early as possible.

5. **Hearing:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 16.02.2023. The following were present:

- | | | | |
|------|--|---|-------------------------|
| i) | Shri Suman | : | Complainant |
| ii) | Shri Yogesh Kumar, ADRM
Sonpur Mandal, East Central Railway | : | Respondent No. 1 |
| iii) | Shri Sundar Soundra Pandian,
Sr. DPO Salem Division, Southern Railway | : | Respondent No. 2 |

Observations /Recommendations:

6. Complainant submits that he is employed on the post of Electrical Helper in the Respondent establishment. He submits that he is posted in Salem which falls under Chennai zone of the Respondent establishment since 2015. He claims that he filed application on 16.08.2017 for transfer to Sonpur division, however till the date of filing of Complaint he had not received any information. Complainant has not informed the name of his hometown.

7. Chennai Zone submits that the application dated 16.08.2017 was received and it was duly forwarded to Sonpur division on 01.08.2018. NOC has not yet been received from Sonpur division. Reply also received from Sonpur division that after receiving the notice of this Court, NOC has now been granted to the Complainant and Chennai zone has now been informed about the same by letter dated 01.11.2022.



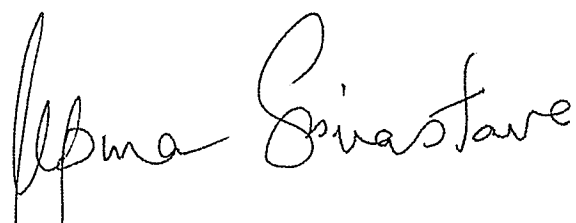
8. During online hearing, Respondent from Sonpur division submitted that they are ready to accept the Complainant. Vacancies exist in their office however Salem division is not relieving the Complainant.

9. During online hearing Respondent from Salem division informed the Court that the transfer application of the Complainant is under consideration. Transfer application shall be considered out of turn. It was also informed that the application was filed by the Complainant in 2016.

10. The fact that the application of the Complainant is pending with the Salem division since 2016 is evidence of absolute apathy of the Respondent. Respondent is bound to decide the transfer application of the Complainant as per O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T. This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

11. This Court recommends that the Complainant's transfer application shall be decided as per DoPT O.M. dated 10.05.1990. Respondent is further directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

12. This case is disposed off


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 10.04.2023



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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: 13501/1022/2022

Complainant :

Shri Dilip Kishan Rathod
Assistant PF Commissioner
Regional Office, Kandivali (East), Mumbai
R/at A-903, Bhairav Residency,
Beverly Park, Nr, Cinemax (PVR)
Mira Road East, 401107
Thane, Mumbai
Email: Dilip.rathod@epfindia.gov.in

139367

Respondents :

1. The Secretary
Ministry of Labour and Employment
Govt. of India
Shram Shakti, Bhavan, Rafi Marg,
New Delhi-110001
Email: sec@epfindia.gov.in

139368

2. The Central Board of Trustees,
Employee Provident Fund
Bhavishya Nidhi Bhavan,
14, Bhikaji Cama Place, New Delhi-110066
Email: cpfc@epfindia.gov.in

139369

3. The Central Provident Fund Commissioner
Bhavishya Nidhi Bhavan
14, Bhikaji Cama Place, New Delhi-110066
Email: cpfc@epfindia.gov.in

139370

4. The Addl. Central Provident Fund -HRM (HQ)
Bhavishya Nidhi Bhavan
14, Bhikaji Cama Place, new Delhi-110066
Email: cpfc@epfindia.gov.in

139371

Affected Person : The Complainant, a person with 80% Locomotor Disability

GIST OF COMPLAINT

The complainant, a person with 80% locomotor disability has filed a complaint dated 03.10.2022, working as Assistant Provident Fund Commissioner,

Regional Office, Kandivali (East), Maharashtra, requesting for his transfer back to Mumbai location, payment of subsistence allowance rightfully due and admissible to the applicant for the period from 18.04.2021 to 18.08.2022 and other prayers.

2. The complainant has over 80% locomotor disability due to amputation of his right leg above knee using prosthetic leg and cannot travel without escort & also suffering from severe heart related problems (Aangioplasty performed stent affixed). The complainant further submitted that his headquarters stand changed from Mumbai to RO, Ballary (Karnataka) vide office order dated 25.08.2021 which is over 850 Kms away from Mumbai and takes over 20 hours of journey time by road. The complainant in receipt of an office order dated 24.02.2022, accordingly, with due respect to the said directions and with great difficulties, he reported at RO Bellary on 18.04.2022. The complainant further stated that instead of considering his genuine request for transfer in the present Annual General Transfer (AGT) for change of Head Quarters on extreme medical exigencies as already explained in his various representations, he has been further transferred to RO. Chennai (North) vide office order no. dated 28.8.2022 within a short period of Four month in violation of not only the guidelines envisaged in the policy governing the Annual General Transfer but also against the backdrop of Government of India in instructions especially with respect to humane considerations as are applicable to Persons with Disability which also speaks volumes of unfair practice and bias against honest officers whose case is yet to be proved and awaiting justice. The complainant has requested to CCPD Court to give directive to the respondent for his transfer back to Mumbai location, payment of subsistence allowance rightfully due and admissible to the applicant for the period from 18.04.2021 to 18.08.2022 and other prayers.

3. The matter was taken up with the Respondent vide letter no. dated 26.10.2022 followed up reminder letter dated 13.12.2022. However, respondent did not file the comments under Section 75 of the RPwD Act, 2016.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **16.02.2023**. The following were present:



Complainant

i) Shri Dilip Kishan Rathod

Respondent

i) Shri Samir Kumar Das,

Under Secretary M/o Labour & Employment : **Respondent. 1**

ii) Shri Satya Vardhan Rathod,

Regional P.F. Commissioner – II : **Respondent. 2**

Observations /Recommendations:

5. Complainant submits that he is employed on the post of Assistant Provident Fund Commissioner in the Respondent establishment. He submits that he was posted in Mumbai office of the Respondent establishment. Later after some cases relating to fraudulent withdrawal of funds emerged which were tracked to his account, investigation against him was initiated and during the pendency of investigation he was transferred to Bellary by Order dated 18.08.2021. Thereafter when he applied for retention in Mumbai, he was again transferred to Chennai. He claims that because of the fact that his daughter is in class 12th and also because of his disability it is not possible for him to shift to his new place of posting. He has prayed before this Court for retention in Mumbai and also prayed for payment of subsistence allowance from 18.04.2021 to 18.082022.

6. Respondent submitted during online hearing that the Complainant was suspended on 18.08.2021. Then he was attached in Bellary office w.e.f. 25.08.2021 so that he does not interfere in the ongoing investigation against him. He joined Bellary office on 18.04.2022 and, hence, he was not given subsistence allowance. Thereafter, the Complainant was transferred to Chennai because in Bellary there was sensitive post and, hence, he could not be kept on sensitive post for longer period of time. Respondent further submitted that similar case has been filed against 5 other officers. Similar action has been initiated against them as well. Respondent further submitted that issue of suspension has not been resolved because Chargesheet has not been filed yet, however, department proceedings have been initiated against him.

7. During online hearing, Complainant submitted that he is divyangjan with Locomotor disability with lower limb effected. He uses prosthetic leg to walk and hence it is not possible for him to live alone in Chennai.




8. Considering the nature and percentage of disability of the Complainant it can be concluded that it must be difficult for the Complainant to live alone in Chennai. Other fact which goes in the favor of the Complainant is that the Complainant is posted away from Mumbai since last 18 months and Respondent has not even served chargesheet despite the fact that the alleged irregularities were reported 18 months back. On the other hand the submissions of the Respondent also hold weight. For impartial and fair investigation it is important that the Complainant is posted away from the branch where the alleged irregularities took place which resulted into suspension and disciplinary inquiry against the Complainant.

9. Hence, this Court recommends that the Respondent shall post the Complainant back to Mumbai to any branch other than the one where he was posted, where the alleged irregularities were committed or to any branch other than the one where he can have an opportunity to interfere with the ongoing investigation.

10. Respondent shall also file the implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.

11. This case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 10.04.2023



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

25

Case No: 13460/1022/2022

Complainant:

Smt. Archana
W/o Shri Dazy
Constable/Driver,
Sashtra Seema Bal
House No: A-6 Tower-3, Type-2
Kidwai Nagar East, New Delhi-110023
Mobile No: 8527989790

134365

Respondent:

The Director General,
Directorate General,
Sashastra Seema Bal
East Block-V, R. K. Puram
New Delhi-110066

134366

GIST OF COMPLAINT :

प्रार्थी का अपनी शिकायत दिनांक 07.09.2022 में कहना है कि उनकी पुत्री 66-70 प्रतिशत लोकोमोटर दिव्यांगजन है। उनके पति यूआईडी न. 13080916 आरक्षी/चालक डेजी जो कि सशस्त्र सीमा बल में वर्ष 19/10/2008 में 32वीं वाहिनी हावली आसाम में भर्ती हुए थे तथा 28/07/2014 से पुत्री के इलाज के लिए उनकी पोस्टिंग बल मुख्यालय, सशस्त्र सीमा बल, रामाकृष्ण पुरम, नई दिल्ली 110066 में हो गई थी। अब उनकी पोस्टिंग आदेश संख्या 5-3/2020/एसएसबी/पीईआरएस-3/2157-2268 के अनुसार 55वीं वाहिनी पिथोरागढ़ में कर दिया गया है। प्रार्थी का आगे कहना है कि उनकी पुत्री का इलाज अभी पूर्ण नहीं हुआ है इसलिए उनके पति अन्य किसी भी जगह पर स्थानांतरण जाने की स्थिति में नहीं है। उनका कहना है कि उनकी पुत्री थैलेसिमिया रोग से ग्रसित है जिसको 20 से 25 दिनों के अन्तराल में खून चढ़वाना पड़ता है। वर्ष 2014 से उनकी बेटी का इलाज अखिल भारतीय आयुर्विज्ञान संस्थान नई दिल्ली में चल रहा है। प्रार्थी का आगे कहना है कि उनकी पुत्री का एकमात्र इलाज बोन मैरो ही है, जोकि इन्द्रप्रस्थ अपोलो हास्पिटल सरिता विहार, नई दिल्ली में होना है। इस इलाज में रुपये 31,25,000/- का खर्चा होना है, जिसकी फाइल उनके पति के विभाग में अनुमति एवं इलाज खर्च के लिए अभी विचारधीन है। उनके परिवार को दिल्ली में रहकर केन्द्रीय स्वास्थ्य योजना (सी.जी.एच.एस) का जो लाभ मिल रहा है वह देश के किसी अन्य राज्य में उपलब्ध नहीं है। अतः प्रार्थी ने सीसीपीडी कोर्ट से विनम्र निवेदन किया है कि उनकी पुत्री की दिव्यांगता को देखते हुए उनके पति का स्थानांतरण स्थागित करा कर पुत्री के इलाज तक उनको दिल्ली में ही स्थायी पोस्टिंग दिलवाने की कृपा की जाए ताकि उनकी पुत्री का इलाज सही समय और सही ढंग से कराया जा सके।

5वीं मंजिल, एनआईएसडी भवन, प्लॉट न०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष- 011-20892364, 20892275

5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

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

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

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

2. The matter was taken up with the Respondent vide letter dated 16.09.2022 under Section 75 of the RPwD Act, 2016.

3. In response Commandant (Pers-III), Directorate General, Sashastra Seema Bal, Vide letter dated. 09.12.2022 submitted that UIN-13080916, CT (Dvr) Dazy, has been posted to FHQ SSB, New Delhi w.e.f. 16.07.2014. As per Transfer Policy Guidelines, circulated vide No. 1/48/SSB/TRFR/Pers-V/Org/2016(35)/830-79 dated 11.02.2020, the normal tenure of FHQ SSB Delhi is prescribed as 3 (three) years, extendable by +1+1 years. The Individual after completion of more than prescribed tenure at FHQ SSB, New Delhi was transferred to 55th BN Pithoragarh (UKD) vide FHQ Order ending No. 2157-2268 dated 22/03/2021. Considering the request of individual, his transfer order was deferred upto next Annual Transfer (upto 31.03.2022) vide FHQ Office Order ending No. 9495-99 dated 18.06.2021. Thereafter, again on the request of individual, his transfer was deferred up to 31.03.2023 vide order ending No. 19561-66 dated 22.09.2022. Individual has also been asked to submit three choices, where he can be transferred. The individual has been reminded to submit three choices vide ION ending No. 21344-45 dated 17.11.2022, where AIIMS are located, so that he can be posted there for continuing the treatment of his daughter.

4. The respondent reply sent to the complainant vide letter no. dated 10.01.2023. However, the complainant did not file the rejoinder against the reply.

5. **Hearing:** The case was listed for hearing for 14.02.2023 which was rescheduled to 02.03.2023. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **02.03.2023**. The following were present:

- | | | |
|--|---|--------------------|
| i) Smt. Archana | : | Complainant |
| ii) Shri Vishal, 2 nd In-Command, Pers III, SSB | : | Respondent |

Observations /Recommendations:

6. This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

7. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective

Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were -

- a) to fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b) To create barrier free environment for Persons with Disabilities,
- c) To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

8. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are

- d) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- e) non-discrimination;
- f) full and effective participation and inclusion in society;
- g) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- h) equality of opportunity;
- i) accessibility;
- j) equality between men and women;
- k) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

9. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

10. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

11. Issues related to transfer and posting to divyang employees may be divided into three categories -:

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependent.

12. STATUTORY PROVISIONS AND GUIDELINES

- a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.
- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.



- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.
- i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependent daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

13. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

14. Even in case of employee who serves as care giver of divyang dependent, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

15. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependent is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

16. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

17. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020

18. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

19. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

20. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

21. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

22. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

23. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, Hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No

2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

24. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfill the international commitments and give equal treatment to Persons with Divyangjan.

25. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

26. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

27. **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

28. O.Ms. dated 06.06.2014 and dated 08.10.2018 and Hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analyzed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system

which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer

29. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependent'.

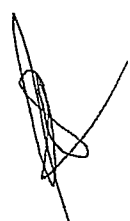
30. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities.—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

24. Social security.—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.



38. Special provisions for persons with disabilities with high support.—

(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

2(d) - “care-giver” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

31. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

32. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon’ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities (‘CCPD’ in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon’ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank’s contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon’ble court held that the employee must be retained in Jaipur branch even after promotion.

33. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respodnent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon’ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon’ble High Court rejected Respondent bank’s contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon’ble court

quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

PRESENT CASE

34. Complaint is filed on behalf of employee of Respondent establishment. Complainant submits that her husband is employed on the post of Driver (JD) in the Respondent establishment. She submits that he was posted in Delhi office of the Respondent establishment since 2014. Later he was transferred to Pithoragarh, Uttarakhand. She claims that their daughter is divyangjan with Thalassemia major disability. She submits that his transfer to new place will hamper the ongoing medical treatment of their daughter because treatment available in New Delhi is not available in Pithoragarh. Hence, she has requested for cancellation of her husband's transfer.


35. Respondent submits that as per transfer policy, normal time period prescribed for posting in Delhi office is 3 years extendable up to 2 years. Complainant is posted in Delhi office since 2014. Hence, he was transferred in 2021. Considering the employee's request, his transfer was deferred till 31.03.2023. He has also been asked to submit his choice of three locations where AIIMS is situated so that medical treatment of his daughter can be continued.

36. Thalassemia is a recognized disorder under Schedule of Rights of Persons with Disabilities Act, 2016. Person suffering with such disorder has to undergo blood transfusions on regular basis. Care taker of such patient forms a network of blood donors who help in blood transfusion of the person suffering with Thalassemia. In the present case the employee is care giver of 9 years old daughter suffering from Thalassemia. It is obvious that if he will be posted to new location, he may need to form new network of blood donors in new place of posting, which may hamper the rehabilitation process of the 9 years old divyangjan. Hence this Court concludes that the case of the Complainant must be decided as per O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T. This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

37. This Court recommends that the transfer of the employee (husband of the Complainant) shall be cancelled by the Respondent and he shall be retained in New Delhi.

38. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance within Section 78 of Rights of Persons with Disabilities Act, 2016.

39. Accordingly the case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 10.04.2023

58



नव्यमय 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: 13546/1022/2022

Complainant :

Shri Vishal Choudhary
PGT Sanskrit
264 C Dabur Colony
Main Road Taraori
Karnal, Haryana
Email: vishal80445@gmail.com

139363

Respondent :

The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.
Contact No: 011-26521898
Email: kvs.estt.1@gmail.com

139364

GIST OF COMPLAINT :

The complainant a person with 100% Visual Impairment has filed a complaint dated 13.09.2022 regarding transfer to the native place Karnal, Haryana.

2. The complainant has submitted that he was appointed in KVS Manipur since 31st August 2019. He had been facing many problems in the last 3 years. As per DoPT guidelines KVS is not giving modification transfer since last 3 years. Therefore, the complainant has requested to this Court to give directives to the respondent to transfer him hometown near to his native place Karnal, Haryana.

3. The matter was taken up with the Respondent vide letter dated 18.11.2022 under Section 75 of the RPwD Act, 2016 followed up reminder letter dated 13.12.2022 and 30.12.2022 but the respondent has not file the comments.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 21.02.2023. The following were present:

i) Shri Vishal Choudhary : Complainant

ii) Shri Deepak Kumar Dabral, Asst. Commissioner (KVS) : Respondent

Observations /Recommendations:

5. This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

6. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfill obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

- a) to fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b) To create barrier free environment for Persons with Disabilities,
- c) To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

7. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- b) non-discrimination;
- c) full and effective participation and inclusion in society;
- d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) equality of opportunity;
- f) accessibility;
- g) equality between men and women;



h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

8. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

9. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

10. Issues related to transfer and posting to divyang employees may be divided into three categories -:

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependent.

11. STATUTORY PROVISIONS AND GUIDELINES

a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.

d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependent daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

12. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.



13. Even in case of employee who serves as care giver of divyang dependent, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

14. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependent is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

15. ISSUE – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

16. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020

17. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

18. ISSUE – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

19. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

20. ISSUE – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

21. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by mala fides or is made in violation of transfer policy.

22. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

23. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

24. ISSUE – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

25. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a

model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

26. ISSUE – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

27. O.Ms. dated 06.06.2014 and dated 08.10.2018 and Hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

28. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependent'.

29. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities.—

(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

(2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

24. Social security.—

(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty five per cent. higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

38. Special provisions for persons with disabilities with high support.—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

2(d) **“care-giver”** means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

30. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

31. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD.

Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

32. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

PRESENT CASE

33. Complainant submits that he is employed in the Respondent establishment as Trained Graduate Teacher (TGT). He joined the Respondent establishment on 31 August 2019. He submits that he is posted in Akampat, Manipur. His hometown is Karnal, Haryana. He has prayed before this Court to direct the Respondent to transfer him to his hometown.


34. During online hearing, Respondent submitted that the Complainant applied for transfer in 2021, however, the same was rejected because he had not completed 3 years of service in 2021. Further it is submitted by the Respondent that the Complainant is asking for transfer in Karnal but vacancies are not available in Karnal.

35. Complainant is divyangjan with 100% Visual Impairment. Currently he is posted in Manipur. He is native of Haryana. It is certain that in addition to natural hardships the Complainant must be facing due to his disability, his problems must be getting augmented because of linguistic and cultural differences in Haryana and Manipur. To resolve such challenges, DoP&T issued guidelines, discussed in detail in preceding paragraphs, laying down that divyangjan must be posted in their hometown. Respondent has not provided any plausible reason as to why these guidelines should not be followed in the present Complaint. As far as issue of availability of vacancies is concerned, Complainant submitted that vacancies are available in Harsingpura, near Karnal and Complainant expressed his willingness to be transferred to Harsingpura. Complainant also expressed its satisfaction for posting in New Delhi.

36. This Court recommends that Respondent shall transfer the Complainant to Harsingpura or New Delhi and shall execute the DoP&T guidelines discussed in preceding paragraphs, in letter and spirit.

37. Respondent shall also file the implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.

38. This case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 10.04.2023



Case No.13426/1014/2022

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. 13426/1014/2022

Complainant:

Shri Guru Mehar,
S/o Shri Balwan Singh,
R/o House No.A-172, 1st Floor,
Lavana Hospital, Maidan Garhi Extension,
Hauz Khas, South Delhi, Delhi-110068;
Email: gurumeharkadian@gmail.com

139353

Respondent:

The Chairman,
Institute of Banking Personnel Selection,
90, IBPS House, 90 Feet DP Road,
Near Thakur Polytechnic, Western Express Highway,
Kandiwali (East), Mumbai-400001
Email: dgmlegal@ibps.in

139354

Affected Person: The complainant, a person with 86% Hearing Impairment

1. Gist of Complaint:

The complainant filed a complaint dated 08.08.2022 and submitted that on 01.08.2022 the respondent IBPS issued an advertisement for recruitment of more than 6000 PO Officers. The complainant is a person with hearing impairment with "certificate for physical limitation to write" under Appendix 'I' in the 'Guidelines for conducting written examination for Persons with Benchmark Disabilities' issued by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment vide Office Memorandum No.34-02/2015-DD-III dated 29.08.2018; and according to the Hon'ble Supreme Court Judgement in the matter of Vivek Kumar Vs UPSC. He had applied for the said post, but upon selecting the Hearing Impairment category, the scribe option does not open.

2. Submissions made by the Respondent:

2.1 The respondent vide email dated 04.11.2022 has attached a copy of their reply. Division Head (Administration) has submitted that the IBPS is an autonomous body which provides services to participating organizations/Banks

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and other Organizations in conducting test/selection process of personnel. The preliminary examination for CRP/PO/M/XII had already been conducted on 15th and 16th October, 2022. The complainant had appeared in the preliminary examination under ID and others (Multiple Disabilities) category with disabilities as OA and Hard of Hearing and had availed the services of scribe. However, the said fact is suppressed in the complaint.

2.2 As regards complainant's allegation that upon selecting the Hearing Impairment category, the scribe option does not open the respondent has submitted that IBPS had never come across any query or complaint with respect to such situation and therefore, the system did not allow for selecting limitation in writing along with Hearing Impaired option. The IBPS will examine the issue in consultation with the participating banks to rectify any error in the system towards the compliance of the policy guidelines. Considering the fact that the complainant has already applied and appeared for the said examination under "ID & Others (Multiple Disabilities)" with disabilities as OA and Hard of Hearing the grievances raised in the present complaint stands infructuous.

3. Submissions made in Rejoinder:

The complainant filed its rejoinder dated 25.11.2022 and submitted that the IBPS is duty bound to follow the law of the land and must adhere to Guidelines for conducting written examination for persons with benchmark disabilities dated 29.08.2018. He has referred to point No. IV of the consolidated guidelines for conducting written examination. Hence, the argument of IBPS that they have not come across any such case where person with hearing impairment has also suffered from physical limitation to write has no merit and is against Ministry of Social Justice OM No. F. No. 34-02/2015-DD-III dated 29.08.2018. Further, IBPS has not provided any helpline/query resolving email in any of its advertisement. IBPS only provides on its website automated grievance redressal system and for all query raised to its platform it comes up with automated computer generated reply that "please go through the advertisement published ". On its website one cannot locate any email ID of list of officers or telephone numbers. Hence, for person with benchmark disabilities, may be as **defined in Section 2(r) of the RPwD Act, 2016** or from any category be it a Hearing Impaired or Acid Attack Victim or Dwarfism or Thalassemia, the facility of scribe is to be provided to the individual, who so ever has physical limitation to write as well for any reason.

4. Hearing:

The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on 24.01.2023. The following persons were present during the hearing:



- (1) Ms. Shweta, sister of the complainant along with Shri Rahul, Advocate
- (2) Shri Manoj Biswal, Divisional Head Administration, IBPS, for Respondent

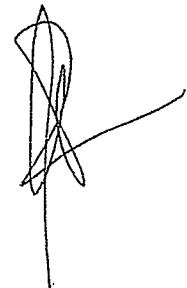
5. Observation/Recommendations:

5.1 The complainant filed a complaint dated 08.08.2022 and submitted that on 01.08.2022 the respondent IBPS issued an advertisement for recruitment of more than 6000 PO Officers. The complainant is a person with hearing impairment with "certificate for physical limitation to write". He had applied for the said post, but upon selecting the Hearing Impairment category, the scribe option did not open.

5.2 Respondent submitted that the IBPS is an autonomous body which provides services to participating organizations/Banks and other Organizations in conducting test/selection process of personnel. The preliminary examination for CRP/PO/M/XII had already been conducted on 15th and 16th October, 2022. The complainant had appeared in the preliminary examination and had availed the services of scribe.

5.3 As regards complainant's allegation that upon selecting the Hearing Impairment category, the scribe option does not open the respondent has submitted that IBPS had never come across any query or complaint with respect to such situation and therefore, the system did not allow for selecting limitation in writing along with Hearing Impaired option. The IBPS will examine the issue in consultation with the participating banks to rectify any error in the system towards the compliance of the policy guidelines. Considering the fact that the complainant has already applied and appeared for the said examination under "ID & Others (Multiple Disabilities)" with disabilities as OA and Hard of Hearing the grievances raised in the present complaint stands infructuous.

5.4 There are two issues which need contemplation of this Court. First issue is related to providing scribe facility during examination. Another issue is related to examination form. During examination the Complainant was provided with the facility of scribe. Hence this issue got resolved. Another issue which is relating to examination form can be decided as per the latest DEPwD guidelines which were issued after judgment of Supreme Court in Vikash Kumar v. Union Public Service Commission & Others; Civil Appeal No. 273 of 2021.




access to specific entitlements such as affirmative action as under Sections 32 and 34 of Chapter VI. In other words, the absence of benchmark disability could not be used to deny other forms of reasonable accommodation to persons with disabilities. Thereafter, Department of Empowerment of Persons with Disabilities issued guidelines vide O.M. No. F-No. 29-6/2019-DD-III, dated 10 August 2022. The O.M. provides for extending scribe facility to those persons who have less than 40% disability and have difficulty in writing, subject to certain terms and conditions. Para 3(i) of the O.M. lays down that the examination bodies shall modify their examination forms to incorporate specific needs of this category of persons.

5.6 This Court concludes that the Respondent establishment is bound by the guidelines issued by DEPwD delineated above. This Court recommends that the Respondent shall allow all applicants who have difficulty in writing to apply for scribe facility, subject to fulfilment of terms and conditions laid down in DEPwD O.M. dated 10 August 2022 and shall modify the examination form accordingly.

5.7 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

5.8 Accordingly the case is disposed off.

Dated: 10.04.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

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Case No.13342/1011/2022

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. 13342/1011/2022

Complainant:

Shri Jain Rahul Kumar,
R/o House No.128, Ward No.13,
Near Shaeed Chowk. Housing Colony,
Bhind (Madhya Pradesh),
Email: djrahul.in@gmail.com Mobile: 8982232789

139351

Through: Shri Saurabh Kumar, ToshiyasSachiv, Patna
Email: toshiyassaurabh@gmail.com

Respondent:

General Manager,
State Bank of India,
Central Recruitment and Promotion Department,
Corporate Centre, Atlanta Building,
3rd Floor, Nariman Point, Mumbai-400021 (MH);
Email: crpd@sbi.co.in

139352

Affected Person: Shri Jain Rahul Kumar, a person with 50% Low Vision

1. Gist of Complaint:

1.1 The complainant filed a complaint vide email dated 07.06.2022 regarding not short-listing Shri Jain Rahul Kumar, a person with 50% Low Vision for appointment to the post of Junior Associates (Customer Support & Sales) in SBI with reference to the Advt. No.CRPD/CR/2021-22/09 dated 27.04.2021 [Roll No.2621034710].

1.2 The complainant submitted that in Preliminary Examination Shri Rahul Kumar Jain secured 71.50 marks which are less than the cut off of VI candidates (80.75) but it is more than the cut off of unreserved category (cut off 66.25). Thereafter, Shri Rahul Jain got the chance to appear in the Main Examination and in the Main Examination he secured 88.25 marks which were less than the cut off of VI (98.25) but equal to unreserved category. Hence, he may be got appointment in SBI, but he was not shortlisted. The complainant has claimed for appointment of Shri Jain Rahul Kumar.

[Signature]

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2. Submissions made by the Respondent:

2.1 The respondent SBI filed a reply dated 05.08.2022 and submitted that Shri Jain Rahul Kumar had applied for the post of Junior Associates under General and PwD-VI category against 640 vacancies for the state of Maharashtra. Out of which 26 vacancies were reserved for PwDs, i.e. Locomoter Disability: 07; Visually Impaired: 07; Hearing Impaired: 07 and D&E categories: 05. The final results for recruitment of Junior Associates are processed by considering the own merit in the exam i.e. if a PwD candidate has not availed any relaxation in the examination, he/she is also considered for selection on own merit in General category/Parent category.

2.2 Since Shri Jain Rahul Kumar had availed relaxations in the examination, he had been considered under PwD-VI category. Further, 07 vacancies were reserved for VI category for the State of Maharashtra and 07 candidates with visual impairment have been selected for the state of Maharashtra. The cut off marks for VI category was 98.25 marks and Shri Jain Rahul Kumar had secured 88.25 marks, therefore, he could not be selected for the post of Junior Associates.

3. Submissions made in Rejoinder:

No rejoinder was received from the complainant to the reply filed by the respondent.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 16.02.2023. The following persons were present during the hearing:

- (1) Shri Rahul Kumar Jain, the complainant.
- (2) Shri Samden Tshering Lama, G.M. (RPNPM); Shri U.K. Patel, Chief Manager for Respondent

5. Observations & Recommendations:

5.1 Complaint is related to not short-listing Shri Jain Rahul Kumar, a person with 50% Low Vision for appointment to the post of Junior Associates (Customer Support & Sales) in SBI with reference to the Advt. No.CRPD/CR/2021-22/09 dated 27.04.2021 [Roll No.2621034710].

5.2 The complainant submitted that in Preliminary Examination Shri Rahul Kumar Jain secured 71.50 marks which are less than the cut off of VI candidates (80.75) but it is more than the cut off of unreserved category (cut off 66.25). Thereafter Shri Rahul Jain got the chance to appear in the Main Examination and in Main Examination he secured 88.25 marks which were less than the cut off of VI (98.25) but equal to unreserved category. Hence, he should have got appointment in SBI, but he was not shortlisted. The complainant has claimed for appointment of Shri Jain Rahul Kumar.



5.3 The respondent submitted that Shri Jain Rahul Kumar had applied for the post of Junior Associates under General and PwD-VI category against 640 vacancies for the state of Maharashtra. Out of which 26 vacancies were reserved for PwDs, i.e. Locomotor Disability: 07; Visually Impaired: 07; Hearing Impaired: 07 and D&E categories: 05. The final results for recruitment of Junior Associates are processed by considering the own merit in the exam i.e. if a PwD candidate has not availed any relaxation in the examination, he/she is also considered for selection on own merit in General category/Parent category.

5.4 Since Shri Jain Rahul Kumar had availed relaxations in the examination, he had been considered under PwD-VI category. Further, 07 vacancies were reserved for VI category for the State of Maharashtra and 07 candidates with visual impairment have been selected for the state of Maharashtra. The cut off marks for VI category was 98.25 marks and Shri Jain Rahul Kumar had secured 88.25 marks, therefore, he could not be selected for the post of Junior Associates.

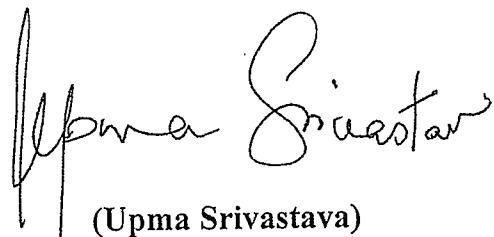
5.5 During online hearing, Respondent informed this Court that the final result of the impugned examination has been declared in November 2021. All the vacancies have been filled. This Court concludes that intervention at this stage shall result into injustice with divyangjan who have been selected already. However for future reference it is pertinent to bring to the Respondent's attention latest guidelines issued by DoP&T. By O.M. dated 27.09.2022 DoPT has clarified that any divyang candidate who is availing facility of scribe or compensatory time must be considered against unreserved posts if he is able to qualify exam on his own merits. If candidate has availed age relaxation then he cannot be considered against unreserved post even if he is able to qualify on his own merits.

5.6 This Court recommends that the Respondent shall make sure that DoPT guidelines on the issue of recruitment including the above mentioned O.M. are implemented in letter and spirit in future. Any further intervention in the present Complaint is not warranted.

5.7 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

5.8 Accordingly the case is disposed off.

Dated: 10.04.2023



(Upma Srivastava)
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.13242/1101/2022

Complainant:

Ms. Amena Kanchwala, *1239248*
 R/o 144/M. Khatiwala Tank,
 Indore-452014 (MP)
 Email: amenakanchwala@gmail.com; Mobile: 7869080577

Respondent:

- (1) The Director/Chief Executive Officer,
 Make My Trip (India) Private Limited,
 19th Floor, Tower A/B/C Epitome Building No.5,
 DLF Cyber City, DLF Phase-III,
 Gurugram-122002 (Haryana)
 Email: deep.kalra@makemytrip.com *1239349*
- (2) The Secretary,
 Ministry of Tourism,
 Transport Bhawan, 1, Sansad Marg, New Delhi-110001
 Email: sectour@nic.in *1239350*

Affected Person: The complainant, a person with 100% Visual Impairment (Blind)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 08.04.2022 against inaccessibility of Make My Trip (Respondent No.1) Website due to various barriers.

1.2 The complainant stated to have been working as an accessibility consultant in HCL Technologies and has been working for the empowerment of persons with disabilities in general and persons with blindness in particular. She submitted that the Respondent No.1 which is a Private Limited Company, incorporated under the Companies Act, 1956, offers online travel booking services such as airline, rail and bus tickets; domestic and international holiday packages; and hotel reservations and rail. She is unable to effectively access Make My Trip due to various accessibility barriers which inter-alia includes the following:

- a. On the sign-in screen, talkback is not reading the associated email Id with the corresponding user's name. Users can have 2 email IDs configured in their mobile with the same name. So, in this situation, it is difficult for the screen reader users to select the desired email ID to sign in.

[Signature]

- b. Roles are not defined for the controls on the home page. Screen reader users will be unable to know whether it is an interactive element or just normal text. This issue gets reproduced throughout the application.
- c. Headings are not defined throughout the application. Screen reader users will be unable to differentiate between different sections. For example, "Offers" should be defined in the heading.
- d. Label is not defined for the hamburger menu. Screen reader users will be unable to know its purpose as talkback is not announcing its name. This issue gets reproduced throughout the application for several buttons. This makes the application inaccessible for screen reader users.
- e. Calendar pickers are very inaccessible. Screen reader users are unable to select the desired date from the calendar picker while booking flights, buses etc. Because of this reason, screen reader users are unable to use "Make My Trip application" for booking.

1.3 The complainant further submitted that the Respondent No.1 violated Section 46 of the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] along with the Rule 15(1)(c) of the Rights of Persons with Disabilities Rules, 2017 (RPwD Rules, 2017). Section 46 of RPwD Act, 2016; Rule 15(1)(c); and Rule 15(2) of RPwD Rules, 2017 provide as under:

Section 46:

"46. The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules."

Rule 15:

"15. Rules for Accessibility -

(1) Every establishment shall comply with the following standards relating to physical environment, transport and information and communication technology, namely: -

(c) Information and Communication Technology-

(i) website standard as specified in the guidelines for Indian Government websites, as adopted by Department of Administrative Reforms and Public Grievances, Government of India;



- (ii) documents to be placed on websites shall be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf format:

Provided that the standard of accessibility in respect of other services and facilities shall be specified by the Central Government within a period of six months from the date of notification of these rules.

(2) The respective Ministries and Departments shall ensure compliance of the standards of accessibility specified under this rule through the concerned domain regulators or otherwise.”

1.4 The Respondent No.1 has not complied with the aforementioned provisions even after expiry of the time period 2.5 years for compliance and, accordingly, the complaint arose on 14.06.2019.

1.5 The Respondent No.1 did not take any action on the series of representations of the complainant addressed to Respondent No.1 to remedy these accessibility barriers.

1.6 The complainant prayed as under:

- (a) That the Respondent no. 1 be penalized for continued non-compliance of the Act and the Rules from June 15, 2019;
- (b) That the Respondent no. 1 be directed to conduct an accessibility audit of MakeMyTrip offered across all platforms viz. Mobile, Tablet and Web and submit the Accessibility Audit report along with statement of remedial actions taken within a period of 3 months;
- (c) That appropriate directions / orders of a peremptory nature be issued to Respondent no. 1, mandating time-bound compliance with the standards on accessibility as prescribed under the Rules;
- (d) That the present complaint may not be disposed off till the directions / orders issued by Chief Commissioner are not complied with by the Respondent No.1;
- (e) That appropriate directions/orders/ recommendations be issued to Respondent No. 2, requiring all service providers within its ambit to make their platforms accessible in a time-bound manner, as required by Section 46 of the RPwD Act, 2016 read together with Rule 15 of the Rules; and
- (f) Any other order / direction / recommendation which the Chief Commissioner finds proper to impose or issue to meet the ends of justice in the instant complaint.



2. Submissions made by the Respondent:


2.1 Respondent No.1 in their reply dated 26.06.2022 inter-alia submitted that they had taken note of the concerns raised by the complainant and had set working timelines to improve the existing features. There had been no willful violation of the RPwD Act, 2016 and the Respondent No.1 is not liable to be penalized for any alleged compliance. Further, the accessibility features currently live on application, are described at the following link:

https://drive.google.com/file/d/1FUo8GPCrxllhYHw_U-LyTir4iq6gEddD/view

The link includes identification of buttons by talk back feature. The respondent stated to have included features in their application to facilitate accessibility and continues to work on ensuring compliance with the statutory mandate.

2.2 Further, on receipt of the complaint, the respondent took immediate action to improve accessibility of their services. The respondent No.1 identified each of the aspects and set target timelines for the completion of the same particularly on accessibility aspects of login screens, my accounts page, flights landing and listing page, hotel landing and listing page, payment mode selection page with a timeline. The targets identified are as under:

- (a) For on boarding screens and login screens, for Android and iOS platforms, target date for completion of work has been identified as end-July 2022;
- (b) For side drawer and home page (drop off cards and X-cell cards), for Android and iOS platforms, target date for completion of work has been identified as end-August 2022;
- (c) For offer listing page and my account page, for Android and iOS platforms, target date for completion of work has been identified as end-September 2022;
- (d) For flights landing, listing page and flight details page for both domestic and international flights, for Android and iOS platforms, target date for completion of work has been identified as end-July 2022;
- (e) For flights review page for domestic and international flights, and flights add-on page for Android and iOS platforms, target date for completion of work has been identified as end-August 2022;
- (f) For flight filters, for Android and iOS platforms, target date for completion of work has been identified as end-September 2022;
- (g) For hotels landing page, hotels listing page, hotels filters, for Android and iOS platforms, target date for completion of work has been identified as end-July 2022;



- (h) For hotel details related information, room selection page, hotel review page for Android and iOS platforms, target date for completion of work has been identified as end-August 2022;
- (i) For hotel review page for Android and iOS platforms, target date for completion of work has been identified as end-September 2022;
- (j) For payment mode selection page, for Android and iOS platforms, target date for completion of work has been identified as end-July 2022;
- (k) For top payment mode identification related feature, target date for completion of work has been identified as end-July 2022;
- (l) For wallet payment mode related features, target date for completion of work has been identified as end-September 2022.

2.3 The respondent No.1 further submitted that use of third party libraries for development of application sometimes breaks the accessibility features offered by the respondent No.1. At times, the respondent No.1 has to rely on these third parties to release patches to fix these issues, and may have an impact on the timeline within which the feature can be put back up. There are also operational constraints as the functioning the application is subject to the ecosystem of iOS or Android. To facilitate personalized transactions, the Respondent No.1 also offers the option of reaching out to the offline agents, who can assist the customers on call for ticket booking, hotel reservations, or any other services offered by the Respondent.

2.4 No reply has been found received from the Respondent No.2 – Ministry of Tourism.

3. Submissions made in Rejoinder:

3.1 The complainant filed her rejoinder dated 06.07.2022 and submitted that in her complaint she had outlined the issues with the accessibility of the Make My Trip application for users who use the Talk Back screen reader. Respondent No.1, however, referred to the Voice Over screen reader. These two are very different screen readers - Talkback works on the Android platform, and Voiceover works on the iOS platform. Nowhere in the reply, Respondent No.1 referenced the current status of the accessibility of its app with Talk Back. It referred to Android only in the section containing the target timelines.

3.2 Respondent No.1 did address the issue of the inaccessibility of its app for Talk Back users which is in violation of Section 46 of the RPwD Act, read with Rule 15 of the RPwD Rules.

3.3 The complainant appreciated the Respondent No.1 for making a video (the link at para 2.1) of 8 minutes 40 seconds to showcase the accessibility of its app with Voice Over. However, the audio recording reinforces some of the complainant's concerns. Specifically, very often, Voice Over is heard saying simply 'button'. This is because a lot of buttons in the app are unlabelled. Further, the screen reader



interaction with the screen in the audio is very superficial. The Respondent No.1 did not say how the user was able to select dates, the travel destination, etc. All that was entered into the relevant fields before making the recordings. It is precisely while filling in those data points that accessibility issues arise.

3.4 The complainant further appreciated the specific timelines that Respondent No.1 committed to, as regards 12 action items. The complainant prayed that the timeline be taken on record by this Court and that the Respondent No.1 be held to account for complying with the same.

3.5 The Respondent No.1 application faces constraints due to the ecosystem of iOS and Android is misguided. Both iOS and Android provide good architecture for apps to operate smoothly while being accessible to users with disability. As stated, by the complainant both Google in relation to Android and Apple in relation to IOS have specified design guidelines which the developers of any mobile application are expected to follow to ensure accessibility for persons with disabilities.

3.6 Having offline agents is not a sufficient substitute for making the app and websites of Respondent No.1 accessible. This is because the app takes away independence and privacy of PwDs and is typically a more time-consuming process.

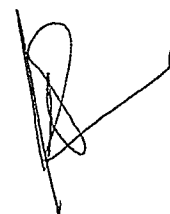
3.7 In the light of the reply filed by the Respondent No.1, the complainant prayed as under:-

- (1) Respondent No. 1 should be directed to submit an accessibility audit report that comprehensively documents the accessibility of its apps and websites for users with disabilities;
- (2) The timelines proposed by Respondent No.1 be taken on record and further hearings be held to ensure that this timeline is complied with;
- (3) Respondent No.1 be directed to proactively involve users with disabilities in implementing accessibility changes, as per the principle 'nothing about us, without us'; and
- (4) Mandate Respondent No.1 tests all its offerings for accessibility prior to their release, to obviate the need for any further litigation.

4. Hearing (1):

4.1 The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.08.2022**. The following persons were present during the hearing:

- (1) Ms. Amena Kanchwala, the complainant in person along with Shri Rahul Bajaj and Shri Amar Jain.
- (2) Advocate Priyam Cherian, Respondent number 1
- (3) Shri Niraj Sharan, Under Secretary, Respondent number 2



4.2 After hearing both the parties and taking into consideration the gravity and impact of the issue of accessibility raised in the present Complaint, this Court was inclined to note that more time must be given to the Respondent. Furthermore, during online hearing, this Court had suggested and Complainant's representatives, Mr. Rahul Bajaj and Mr. Amar Jain. as well as Respondent No. 1 agreed to conduct a personal meeting on 09.08.2022 to resolve the issue relating to accessibility of the app.

4.3. Furthermore, the representative of Respondent No. 2, M/o Tourism agreed to write a letter soon after receiving the copy of this Record of Proceeding, to Respondent No.1. directing the Respondent No.1 to adhere to accessibility guidelines of Ministry of Tourism. Respondent No.2 also agreed to attach copy of 'accessibility guidelines' issued by the Respondent No.2.

4.4 This Court granted 2 weeks time from the date of hearing, i.e. 02.08.2022 to the Respondent No.1 to conduct meeting and inform this Court about the timeline to make the app and the website accessible for Divyangjan. Next date of hearing was fixed for 18.08.2022.

5. Hearing (2):

5.1 During online hearing on 18.08.2022, the following persons were present during the hearing:

- (1) Ms. Amena Kanchwala, the complainant; Adv. Rahul Bajaj; Adv. Amar Jain for the complainant
- (2) Shri Sreesh, Assistant Manager (Legal) for Respondent No.1 – Make My Trip
- (3) Shri Kumar Gaurav, Assistant Director for Respondent No.2 - M/o Tourism

5.2 During online hearing, Respondent informed this Court that a meeting was conducted with the Complainant on 09.08.2022. Many issues were identified out of which 5 issues were decided to be dealt on priority. Respondent has decided to resolve the issues 'on priority' by November end.

5.3 The Complainant submitted that the timeline suggested by the Respondent is acceptable to the Complainant. However, Complainant requested this Court to conduct the hearing regularly so that continuous monitoring of the procedure to achieve accessibility of the app and website of the Respondent can be done.

5.4 At the very outset this Court expressed its pleasure with the fact that the Respondent was ready to resolve the issues which were becoming impediments in way of accessibility of its online service platforms. Considering the wider social aspect touched by this Complaint, next hearing was fixed in this case. This Court recommended that both the Complainant as well as the Respondent should conduct meeting at least once in September and once in October so that continuous exchange

of ideas and suggestions can be done and ultimate goal of accessibility of online platforms of Respondent establishment can be achieved as soon as possible.

6. Hearing (3):

6.1 The next hearing online through video conferencing was conducted on **13.12.2022**. The following persons were present during the hearing:-

- (1) Ms. Amena Kanchwala, the complainant along with Adv. Rahul Bajaj and Adv. Amar Jain for the complainant.
- (2) Advocate Priyam, for the Respondent No.1 – Make My Trip.
- (3) None for Respondent No.2 – M/o Tourism.

6.2 During online hearing Respondent No. 1 apprised this Court about the latest status of the steps taken to make the app accessible for divyangjan. Respondent No.1 informed this Court that multiple discussions were held with the Complainant. In the month of August the first discussion was held and priority agendas were identified. Some of the issues were related to 'Voice Over' and calendar. The issues were rectified and made videos and also shared with the Complainant on 6th October for feedback. Thereafter on 8th October, 7th November and 26th November feedback call was conducted with the Complainant and its advocates.

6.3 Respondent submitted that the issue of accessibility of app is dynamic issue and continuous changes in infrastructure are needed. Respondent requested this Court to dispose off this Complaint as soon as possible and assured that steps to make the app accessible shall be taken continuously.

6.4 Complainant informed this Court that meetings were conducted by the Respondent. Feedback was also given to the Respondent, however the Respondent did not inform if the suggestions made by the Complainant were incorporated or not. Complainant also proposed to conduct another meeting with the Respondent.

6.5 This Court recommended that the Respondent should conduct another meeting within 10 days, from the date of that Order, with the Complainant so that the feedback on the issues relating to accessibility of the app can be taken from the stakeholders. Thereafter, another hearing in this Complaint shall be conducted in the month of January.

7. Hearing (4):

7.1 The next hearing online through Video Conferencing was conducted on **07.02.2023**. The following persons were present during the hearing:-

- (1) Ms. Amena Kanchwala, the complainant along with Adv. Rahul Bajaj
- (2) Advocate Priyam Cherian; and Shri Sreesh, Dy. Commercial Manager for Respondent No.1
- (3) None for M/o Tourism, for Respondent No.2

8. Observations & Recommendations:

8.1 Complaint was filed against private company called 'Make My Trip private limited'. This company offers online services relating to travel booking, booking of



hotel packages and hotel reservation. Complainant submitted that this App is not accessible for divyangjan with 100% visual impairment. Complainant further submitted that she filed various representations with the Respondent No.1, however, the issue was not resolved.

8.2 Hearings were conducted on more than one occasion and both parties were recommended to conduct personal meetings so that the real issues can be identified and resolved.

8.3 This court expresses its pleasure with the fact that the Respondent vehemently followed the recommendations of this Court and conducted meetings and resolved the issues related to accessibility of its 'app'. During online hearing conducted on 07.02.2023 the Complainant informed this Court that all issues except the issue of 'captcha' have been resolved. Respondent agreed to resolve the issue and assured that if any further process will be required the same shall be done.

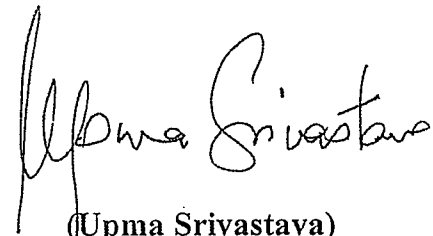
8.4 In today's world where technology dominates almost all space and fields, it is important to have Apps and Online Platforms accessible for all categories of divyangjan so that all divyangjan can enjoy all forms of livelihood equally at par with non-divyangjan. At the same time, it is also important to note that 'technology' and particularly 'Information & Technology' is ever developing field. New, software tools are developed on regular and short intervals. Hence, for Courts, it is not practical to keep the accessibility issues open for indefinite period of time.

8.5 In the present Complaint it is pertinent to note that the Respondent was able to make substantial changes and make its app accessible for divyangjan of all categories. Even the Complainant agreed to the same during hearing on 07.02.2023. Hence, this Court disposes off the present Complaint with recommendation that the Respondent shall remain vigil and inform about the issues related to accessibility of its app and other online platforms and shall keep incorporating the changes related to accessibility as and when needed.

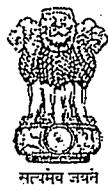
8.6 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

4. Accordingly the case is disposed off.

Dated: 10.04.2023



(Upma Srivastava)
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. 13549/1021/2022

Complainant:

Shri Mahesh Kumar Pandey
Post - South Jhagarakhand,
District – Manendragadh Chirmiri Bharatpur
Chhattisgarh - 497448
Email – mahesh_pandey1775@yahoo.co.in

139324

Respondents:

The General Manager (Personnel)
Coal India Limited
Coal Bhavan
Premises No 14 MAR Plot No. AF-III
Action Area 1-A, New Rajarhat
Kolkata – 700156
Email - gmrectt.cil@coalindia.in

139325

Sub: Complaint dated 01.11.2022 of Shri Mahesh Kumar Pandey, a person with 45% Locomotor Disability regarding Promotion

Please refer to the above-mentioned complaint.

2. The matter has been examined. It has been observed from the reply filed by M/s Coal India Limited that an internal notification No 7475 dated 16.10.2015 for filling up 1589 vacancies in 13 disciplines including Welfare/Personnel discipline for promotion/Selection of Non-Executive to Executive Cadre was issued. In the said Advertisement there was no provision of reservation for Candidates with Disability. A Written Test was conducted on 17.01.2016 and subsequently cancelled on 11.07.2017 mentioning that the written test will be re-conducted with the same set of candidates who were found eligible for the written test held on 17.01.2016. Accordingly, the said re-examination was conducted through Computer Based Test (CBT) on 31.07.2021 with the same set of candidates and are still on the rolls of the Company in compliance of order of Hon'ble High Court of Bombay, Nagpur Bench in WP No. 4315 of 2017. In compliance

of the order of Hon'ble High Court of Bombay, Nagpur Bench in WP 4315 of 2017, promotion/selection order of various disciplines including Welfare/Personnel discipline was issued on 21.02.2022.

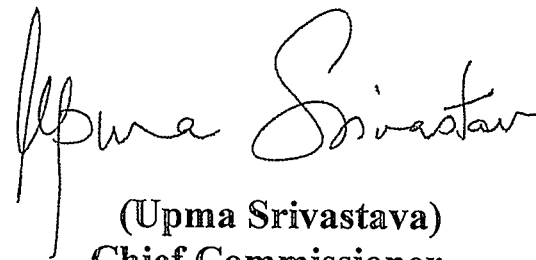
3. The Respondent further submitted that Candidates with Disabilities who appeared in the Computer Based Test were allowed to use the scribe of their own choice and compensatory 1 hour time was given as per D/o P&T's guidelines.

4. Shri Mahesh Kumar Pandey, Complainant appeared in the said reexamination and secured 129.57 marks (including interview marks). Shri Pandey could not be finally selected as his merit position was UR 235 and the vacancy in UR category was 88. DOP&T issued O.M. dated 17.05.2022 for giving reservation in promotion to Persons with Benchmark Disabilities in various categories including lowest rung of Group A posts which covers the promotion/selection from Non-Executive to Executive Cadre in CIL. Further, the complainant had approached Hon'ble High Court of Chhattisgarh in WP NO. 123 of 2013 and Hon'ble High Court had passed an order on 20.10.2021. The Respondent being aggrieved of the order had preferred an Appeal WA No. 54 of 2022 wherein the Division Bench of Hon'ble High Court had stayed the order dated 20.10.2021.

4. Since the issue is already pending before Hon'ble High Court of Chhattisgarh, intervention of this court is not warranted.

5. In view of the above, the case is disposed off.

Dated: 10.04.2023



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



ए.एस.ए.

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. 13398/1101/2022

Complainant:

Shri Saurabh Kumar,
(on behalf of Shri Surendra Kumar Yadav),
G-8, Nandan Tower Colony More,
Kankarbagh, Patna-800020 (Bihar),
Email: surendraky2050@gmail.com;
Email: toshiyassaurabh@gmail.com

139276

Respondent:

The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, Rafi Marg, New Delhi – 110011
Email: secyrb@rb.railnet.gov.in

139278

1

Affected Person: Shri Surendra Kumar Yadav, a person with 50%
Locomotor Disability

1. Gist of Complaint:

The complainant filed a complaint dated 16.07.2022 regarding non-appointment of Shri Surendra Kumar Yadav, a person with 50% Locomotor Disability in Group 'D' posts under Railway Recruitment Board Notification No.02/2018. Shri Surendra Kumar Yadav had secured 33.707 marks.

2. Submissions made by the Respondent:

2.1 Dy. Director Estt.(NG)II, Railway Board vide letter dated 12.09.2022 has forwarded the copy of this Court's notice to the Chairman, Railway Recruitment Cell, North Central Railway, Prayagraj (UP) requesting them to furnish the comments directly to O/o CCPD within 30 days from the date of issue of that notice with copy to complainant.

2.2 Despite final reminder dated 21.12.2022 no reply has been received either from the Railway Board or from RRC/NCR (Prayagraj).

3. Hearing:

The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 16.02.2023. The following persons were present during the hearing:

1

- (1) Shri Saurabh Kumar, complainant
- (2) Shri Sumit, Director, M/o Railways; and Shri Saraswati Chandra, Dy. Commercial Manager for the respondent

4. Observations & Recommendations:

4.1 Complainant has filed Complaint relating to non-appointment of Shri Surendra Kumar Yadav, a person with 50% Locomotor Disability in Group 'D' posts under Railway Recruitment Board Notification No.02/2018. Shri Surendra Kumar Yadav had secured 33.707 marks.

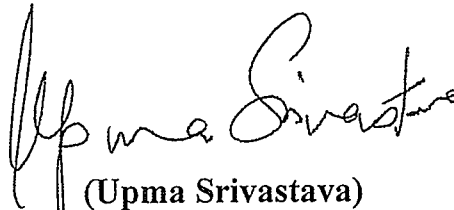
4.2 Respondent submitted that Complaint was forwarded to Railway Recruitment Cell, North Central Railways, Prayagraj for filing Reply directly before this Court. No further Reply has been received.

4.3 During online hearing, Complainant submitted that in past some officer of Respondent establishment made oral promise that joining shall be given.

4.4 This Court concludes that the present Complaint lacks merits. Complainant has not filed any supportive document to establish his case. Hence, intervention of this Court in the present Complaint is not warranted.

4.5 Accordingly the case is disposed off.

Dated: 10.04.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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. 13309/1011/2022

Dated: 10.04.2023

Complainant:

Shri Chuni Lal Suroliya,
S/o Shri Bhupender Kumar,
R/o Ward No.13, Gulal Ka Mohalla,
Khetri, Jhunjhunu, Rajasthan-333503;
Email ajaysuroliya99@gmail.com; Phone: 8441872467

239224

Respondent:

The Chief General Manager (In-Charge),
Human Resource Management Department,
Reserve Bank of India,
21st Floor, Central Office Building,
Shahid Bhagat Singh Road,
Mumbai-400001
Email: cgminchrmd@rbi.org.in

239275

Subject: Complaint of Shri Chuni Lal Suroliya, regarding not implementing the reservation policy by the Reserve Bank of India – Acceptance of Compliance Report received from the Bank on the Recommendations issued by this Court vide Order dated 14.11.2022 passed in this case

The complaint was filed against Reserve Bank of India, represented through the Chief General Manager, Human Resource Management Department. In the complaint, issue relating to non-implementation of guidelines issued by DEPwD dated 04.01.2021, was raised. It was alleged in the complaint that Reserve Bank of India did not follow the guidelines of DEPwD dated 04.01.2021 while notifying vacancies for various group B posts.

2. This Court inquired into the complaint as per section 75 of Rights of Persons with Disabilities Act, 2016 and Observations/Recommendations was passed by this Court on 14.11.2022, whereby Reserve Bank of India was recommended to conduct special recruitment drive for appointment of Divyangjan and reserve vacancies in accordance with the list of identified

posts issued by DEPwD dated 04.01.2021. Reserve Bank of India was further directed to file compliance report within 3 months from the date of the recommendation order.

3. Reserve Bank of India by letter dated 13.02.2023 filed its compliance report whereby it is informed that notification for recruitment of various posts in Group B in RBI for panel year 2023 will be issued within the next 3 months. Further, RBI has requested this Court to permit Reserve Bank of India to include the backlog vacancies for PwBD, which could not be filled in the recruitment drive conducted for the panel year 2022 in the ensuring recruitment drive for the panel year 2023. Further, Reserve Bank of India submitted that conducting of special recruitment drive for Divyangjan on this juncture when backlog vacancies for PwD candidates will be notified for the panel year 2023, will result in wastage of public money and also result in duplication of the recruitment process.

4. This Court accepts the compliance report filed by Reserve Bank of India. The objective of recommendation order of this Court, dated 14.11.2022 was to ensure that vacancies for Divyangjan are reserved in accordance with the Rights of Persons with Disabilities Act 2016 and guidelines issued by DEPwD dated 04.01.2021. This Court is satisfied with the fact that Reserve Bank of India has agreed to fill the backlog vacancies for the panel year 2022. Hence, this Court directs Reserve Bank of India to file copy of notification which will be issued for the recruitment of various in group Grade B in RBI for panel year 2023 and recruitment of various in Group B against the backlog vacancies for the panel year 2022, indicating clearly the backlog vacancies for panel year 2022 and vacancies reserved for panel year 2023.

Encl.: As above


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



Ex 109

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. 13399/1101/2022

Complainant:

Shri Saurabh Kumar,
Sachiv – Toshiyas
G-8, Nandan Tower Colony More,
Kankarbagh, Patna-800020 (Bihar),
Email: toshiyassaurabh@gmail.com

139272

Respondent:

The Secretary,
Ministry of Railways,
Rail Bhavan, Rafi Marg,
New Delhi-110011; Email: secyrb@rb.railnet.gov.in

139273

1. Gist of Complaint:

1.1 The complainant filed a complaint vide email dated 19.07.2022 regarding no arrangement of parking for persons with disabilities at Patna Railway Stations and other railway stations in India; and appointment of a security guard at the parking place for preventing theft of vehicles.

2. Submissions made by the Respondent:

The matter was taken up with the Secretary, Railway Board vide Notice dated 25.08.2022 followed by Reminders dated 12.09.2022 and 21.10.2022. However, no reply has been received from the respondent.

3. Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **14.02.2023** which was rescheduled to 02.03.2023. The following persons were present during the hearing:

- (1) Shri Saurabh Kumar, the complainant
- (2) Shri Sarasvati Chandra, Sr. DCM, Danapur Division/ECR, for the respondent

4. Observations & Recommendations:

4.1 The complainant filed a complaint vide email dated 19.07.2022 regarding no arrangement of parking for persons with disabilities at Patna Railway Station and other railway stations in India; and appointment of a security guard at the parking place for preventing theft of vehicles.

4.2 During online hearing, Respondent submitted that special parking space is designated for divyangjan. Earlier, the designated space was situated at some distance from the Railway Station, however, the parking space was expanded and now the space situated near the Railway Station has been designated as reserved for divyangjan.

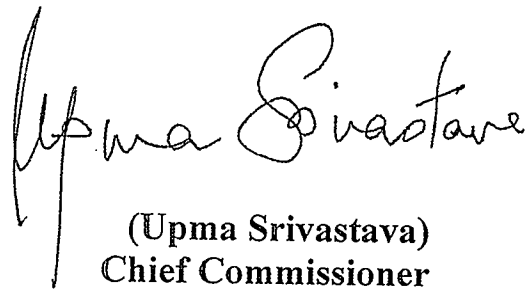
4.3 During online hearing Complainant submitted that problems associated with parking space have not been resolved completely.

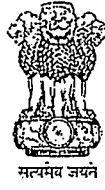
4.4 Since the issue raised by the Complainant is such that it can only be resolved by inspecting the actual parking space and since the Complainant is in best position to explain the issues faced in the existing parking space, hence this Court recommends that the supervisory team of Patna station shall conduct a meeting with the Complainant who shall convey his observations to the team. Furthermore, this Court recommends that the Respondent shall also conduct a general review of the infrastructure of the railway stations and ensure that parking space duly designated for divyangjan at various Railway stations across Danapur division.

4.5 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

4.6 Accordingly the case is disposed off.

Dated: 10.04.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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. 13457/1011/2022/1552229

Complainant:

Shri Ashutosh Shantaram Kawde,
House No. -6, Palm Villa,
Sumit Nagar Zingabai takli,
Godhani Road, Nagpur,
Maharashtra-440030; Mobile: 9561111128
Email: ashutoshsin20@gmail.com

13922

Respondent:

The Registrar,
University of Delhi,
Delhi - 110007
Email: registrar@du.ac.in

139221

Affected Person: The complainant, a person with 40% Visual Impairment

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 02.08.2022 regarding non-selection to the post of Assistant Professor (Commerce) in Hansraj College as per their Advt. No.HRC/Advt./Teaching/01/2022.

1.2 The complainant submitted that he had been shortlisted for interview but just one week before he received an email dated 27.07.2022 from the Principal of Hansraj College that his interview was on 04.08.2022 and his name was mentioned in OBC-NCL candidate list. The complainant expressed his confusion that he belonged and had applied in PwBD(VI) category as per the advertisement published.

1.3 The complainant prayed for taking necessary action.

2. Submissions made by the Respondent:

The complaint was taken up with the Registrar, University of Delhi vide Notice dated 15.09.2022 followed by Reminders dated 26.09.2022 and 20.10.2022. However, no response was received from the respondent.

3. Hearing:

The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **02.03.2023**. The following persons were present during the hearing:

- (1) Shri Ashutosh Shantaram Kawde, complainant
- (2) Shri Parv Garg, Advocate; and Shri Pawas Kulshreshtha, Advocate for University of Delhi

4. Observations & Recommendations:

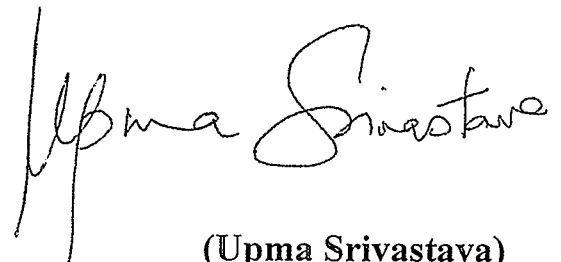
4.1 The Complaint is related to non-selection to the post of Assistant Professor (Commerce) in Hansraj College as per Advt.No.HRC/Advt./Teaching/01/2022. The complainant submitted that he had been shortlisted for interview but just one week before he received an email dated 27.07.2022 from the Principal of Hansraj College that his interview was on 04.08.2022 and his name was mentioned in OBC NCL candidate list. The complainant expressed his confusion that he belonged and had applied in PwBD(VI) category as per the advertisement published however he was not given opportunity to appear in interview under 'PwBD' category. The complainant prayed for taking necessary action.

4.2 During online hearing the Respondent submitted and the Complainant confirmed that he was granted opportunity to present in the interview under 'PwBD' category on 31 August 2022.

4.3 Since the main issue of the Complaint was allowing the Complainant to appear in interview under PwBD category and the Complainant was allowed to appear in interview under PwBD category hence, main cause of the grievance has now extinguished. Intervention of this Court in the present Complaint is not warranted.

4.4 Accordingly the case is disposed off.

Dated: 10.04.2023



(Upma Srivastava)
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: 13515/1022/2022

Complainant :

Shri Kamal Kishore
Scale-II Grade
Roll No: 36556
Indian Overseas Bank
Hoshiarpur Branch, Punjab

Respondent :

The General Manager (HR)
Indian Overseas Bank
Central Office, Anna Salai, Chennai - 600002.

GIST OF COMPLAINT :

The complainant is a person with 90% Visual Impairment has filed a complaint dated Nil, working as Scale-II, in the Indian Overseas Bank, Hoshiarpur Branch, Punjab, regarding for cancellation of his transfer order to Ahmedabad Region.

2. The complainant has been posted at Indian Overseas Bank, Madan Building, Phagwara Road, Hoshiarpur, Punjab from last 4 Year, which falls in Chandigarh Region of their Bank. He has lost 90% Vision power in 2017 and has been posted at Hoshiarpur Branch in 2018. This Year, Central Office, HR Department in Chennai has transferred him to Ahmadabad Region on ground of overstay in Chandigarh Region, which is 6-year threshold in a Region. The complainant has requested to revoke his order on the grounds of Bank Guidelines as well as Humanitarian Ground. The complainant has almost lost his Vision power which is around 90% and now he could not carry out his daily activity without the help of his spouse. He has been posted at his abode place, Distt. Hoshiarpur in Punjab, where he has Blood Relatives who also helps him in time of need and exigency. The complainant is depending on his spouse and relatives to commute from one place to another and to execute daily chores of Life. In Hoshairpur Branch, he has been doing best of his work and no manager has words against him in terms of his work performance. His kids are also not with him at his abode City. They have been out of state to pursue Higher Studies which makes him more dependent on his close and distant relatives.

3. The complainant is a Visually Impaired person with a family to support. He is the only bread winner in family. The complainant could not resign from his job due to the fact that his kids are pursuing higher studies and they need him now more than before. Apart from that, he is also on medication and regularly need to spend money on health expenditure. The complainant has requested to the Chief Commissioner to give direction to the respondent party for cancellation of his transfer order to Ahmedabad region.

4. The matter was taken up with the Respondent vide letter dated 07.11.2022 under Section 75 of the RPwD Act, 2016.

5. In response, General Manager HRMD, Indian Overseas Bank vide dated 30.11.2022 submitted that petitioner joined in the service of the Bank in the year 1991 as a Clerk/shroff. The petitioner was not recruited in the Bank in the Physically Handicapped category. The petitioner has worked in Baddowal Branch in Ludhiana Region from 01.06.1991 till 14.09.1996 and was transferred to Hoshiarpur Branch, Chandigarh Region where the petitioner worked from 15.09.1996 till 14.06.2011.

6. The respondent further submitted that petitioner was promoted to the post of Assistant Manager with effect from 15.06.2011 where the member worked in Hoshiarpur Branch, Chandigarh Region till 14.07.2011 and was transferred to Bhopal Region. The member worked in Shivpuri Branch, Bhopal Region from 15.07.2011 till 01.08.2014. Based on the member's request, he was transferred to Jalandhar Region where he was posted to Bathu Branch with effect from 02.08.2014 and the member continued there till 19.07.2015. The member subsequently worked in Kharar Branch, Chandigarh Region from 20.07.2015 till 29.01.2016 and Ropar Branch, Chandigarh region from 30.01.2016 till 15.07.2018. the member was working as Manager at Hoshiarpur Branch, Chandigarh region from 16.07.2018.

7. The respondent submitted that the petitioner was transferred to Ahmedabad Region vide HRMD order dated 08.07.2022 on overstay category from Chandigarh region, on the basis of the request submitted by the petitioner, his transfer order to Ahmedabad region has been cancelled vide order dated 14.09.2022.

8. The complainant did not file the rejoinder against the letter issued by the Court of Chief Commissioner for Persons with Disabilities vide email letter dated 15.12.2022.

9. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **02.03.2023**. The following were present:

- i) Shri Kamal Kishor : **Complainant**
- ii) Shri Suhail Azeem, AGM (Indian Overseas Bank) : **Respondent**

Observations /Recommendations:

10. Complainant submits that he is employed as Scale – II officer in the Respondent establishment. He submits that he was posted in Hoshiarpur, Punjab branch of the Respondent establishment, which falls under Chandigarh region. Later he was transferred to Ahmadabad region. The Respondent has given reason that the Complainant was posted in Chandigarh region

Observations /Recommendations:

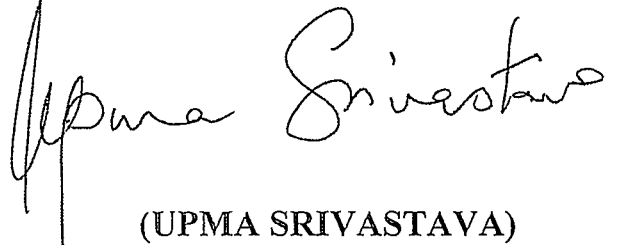
10. Complainant submits that he is employed as Scale – II officer in the Respondent establishment. He submits that he was posted in Hoshiarpur, Punjab branch of the Respondent establishment, which falls under Chandigarh region. Later he was transferred to Ahmadabad region. The Respondent has given reason that the Complainant was posted in Chandigarh region since last 6 years. He claims that he acquired disability in 2018. He claims that because of his disability, he cannot perform daily functions without help of his spouse. Following are some relevant dates of postings and transfers done in past -:

- Appointment – 1991
- Posted in Ludhiana Region – 1991 to 1996
- Hoshiarpur, Chandigarh Region – 1996 to 2011
- Shivpuri, Bhopal Region – 2011 to 2014
- Different Branches within Chandigarh Region – 2014 to 2018.
- Transferred to Ahmadabad Region – 2018

11. Respondent submits that by Order dated 14.09.2022 the Complainant's transfer to Ahmadabad region has been cancelled and he has been retained in Hoshiarpur branch.

12. During online hearing, Complainant confirmed that he has been transferred to place of his choice and his grievance has now been settled. Intervention of this Court in the present Complaint is not warranted.

13. This case is disposed off.



(UPMA SRIVASTAVA)

Chief Commissioner for
Persons with Disabilities

Dated: 11.04.2023

75



Case No.13431/1041/2022

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. 13431/1041/2022

Complainant:

Shri Saurabh Kumar,
Toshiyas Sachiv,
G-8, Nandan Tower Colony More,
Kankarbagh, Patna-800020 (Bihar)
Email: toshiyas_saurabh@gmail.com
Mobile: 9122959613, 9006865079

139345

Respondent:

(1) General Manager,
West Central Railway,
South Civil Lines, Jabalpur, Madhya Pradesh
Email: gm@wcr.railnet.gov.in;

139346

(2) Member Secretary,
Railway Recruitment Board, Bhopal
East Railway Colony,
(Near Bhopal Railway Station)
Bhopal – 462010;
Email: msrrbbpl@gmail.com Ph. No. 0755-2746660

139347

Affected Person: Shri Vinay Kumar, a person with 75% Visual Impairment

1. Gist of Complaint:

The complainant filed a complaint vide email dated 29.08.2022 regarding providing the facility of Scribe to Shri Vinay Kumar, a person with 75% Visual Impairment (Registration No.1250373426) in the written examination conducted by Railway Recruitment Board, Bhopal for recruitment of Group 'D' posts. The exam was scheduled to be conducted between 26.08.2022 to 08.09.2022.

[Signature]

1 | Page

2. Submissions made by the Respondent:

Member Secretary, Railway Recruitment Board filed a reply dated 20.09.2022 on behalf of the respondents and inter-alia submitted that Shri Vinay Kumar, Roll No.154194190000197, had appeared in the Examination Level-1 under CEN RRC-01/2019, conducted in two Shifts at the Deep Institute of Management & Technology at Varanasi. Shri Vinay Kumar had been provided the facility of Scribe. Shri Rakesh Yadav whose date of birth is 15.02.2002 had taken the exam as a Scribe. As the facility of scribe was provided to the complainant in time the complaint stands redressed.

3. Submissions made in Rejoinder:

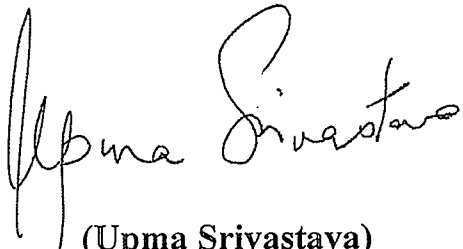
The said reply of the Respondents was sent to the complainant vide letter dated 03.10.2022 for submission of Rejoinder. But no rejoinder was received.

4. Observations & Recommendations:

The reply filed by the Respondent is satisfactory. No further intervention is warranted in this matter.

4. Accordingly the case is disposed off.

Dated: 11.04.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

CaseNo.13413/1024/2022

/830/2023

IN COURT OF
THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

Case No: 13413/1024/2022

Complainant: Shri Dipesh Ranjan Kar
C/o Late Santi Ranjan Kar
Village: Nabagram "C" Block
P.O. Barabahera, District – Hooghly
West Bengal – 712246
E-mail: <kardipeshranjan@gmail.com>
Mob: 7003972467

139581

Respondent: The Divisional Railway Manager
Eastern Railway
Howrah – 711101, West Bengal
Email: <drm@hwh.railnet.gov.in>

139582

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant Shri Dipesh Ranjan Kar vide complaint dated 02.08.2022 has submitted that his father Late Santi Ranjan Kar was worked as Assistant Guard in Eastern Railway, Howrah. He was retired on 30.04.1985 and he expired on 28.04.1995. He further submitted that he got disability certificate on 11.03.2008 with the declaration that he is unable to live livelihood independently and allows travel without assistance of an escort. For suffering from permanent disability, he was included as a dependent son in the Railway Medical Card and continued availing medical facilities. But all of a sudden from March 2022, medical treatment to him has been discontinued by concerned Railway Hospital as he is not included in PPO for family pension.

2. He further submitted that his mother during her life time had intimated to the Pension Sanctioning Authority through applications dated 31.10.2008 and 18.06.2012 for inclusion of her son's name as a dependent disabled son in the PPO but her appeals were not answered. After expiring of his mother on 18.12.2015, he went with his brother to concerned officer for inclusion of his name in PPO and grant of family pension through applications dated 16.04.2016 & 21.03.2018. His documents were sent to Chief Medical Superintendent, Orthopaedic Hospital, Howrah from Sr. DPO/ER/Howrah vide letter dated 13.08.2021 for examination to decide the eligibility of his family pension case. He was called over phone to appear for a Medical examination in Orthopaedic Hospital, Eastern Railway, Howrah.

3. He alleged that when he was 50 years, he was declared 50% permanent disabled with unable to live livelihood independently vide Disability Certificate dated 11.03.2008 whereas the Constituted Medical Board at Orthopaedic Railway Hospital/Howrah examined him on November 2021 when he was 64 years and agreed to his 50% permanent disability as an orthopedically physically challenged person who can't travel without an escort but opined that he is able to live livelihood independently and fit for office jobs with conclusion not to include him for family pension which was communicated to him on 06.12.2021.

/830/2023

12/08/2021, the appointing authority has done nothing regarding processing for sanction of family pension even ignoring the prayer of the complainant's mother dated 31.10.2008 reminder thereto dated 18.06.2012 and violate Rule 75 (6) (d) of Railway Services (Pension) Rules, 1993.

8.2 He further submitted that the purported report of Orthopaedic Hospital, Eastern Railway, Howrah where in no jurisdiction lies, the Divisional Personnel Officer, Eastern Railway, Howrah obtained an order dated 12.11.2021 indicating that the complainant is fit for office jobs wherein disability certificate issued from Walsh Hospital, Government of West Bengal, Serampore, Hoogly clearly indicates that the complainant cannot live his livelihood independently. He also submitted that he has also filed the earning certificate from Block Development Officer, Serampore, Hoogly which speak for itself that daily earning is Rs. 50/- which is impossible for survival.

9. Observation/Recommendations:

9.1 Complainant submits that his father was employee in the Respondent establishment, who retired on 30.04.1985 and died on 28.04.1995. Complainant claims that he acquired disability in 1980. By disability certificate dated 11.03.2008 he was declared as 'not able to earn livelihood' independently. While his mother was alive, she informed the Pension Sanctioning Authority about the Complainant's disability. His mother died in 2015. Thereafter, he applied by letter dated 16.04.2016 and 21.03.2018 for inclusion of his name in Pension Payment Order. His documents were sent to Chief Medical Superintendent, Orthopaedic Hospital, Howrah, who constituted medical board to examine the Complainant. The said medical board examined the Complainant and opined that the Complainant can earn his livelihood.

9.2 Complainant claims that the Disability Certificate dated 11.03.2008 declares the Complainant as 'unable to earn livelihood' therefore the opinion of Medical Board is wrong.

9.3 The case of Dipesh Ranjan Kar was referred to CMS/ORTHO/HWHVide DPO/HWH Letter No :- E/16/PEN/PH/31/2016 dated 13.08.2021 for deciding the eligibility for family pension of him and to convey the opinion in this regard in terms of RBE No:-157/2008 .In terms of RBE No:-157/2008a medical board was constituted by the Orthopaedic Hospital Howrah &CMS /ORTHO/HWH Vide his office letter No :-H/F.P/D.R.Kar dated12.11.2021 Opined that

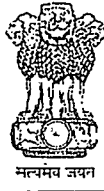
"The above mentioned patient has permanent disability of 50%,as per disability certificate issued by Walsh(S.D)Hospital, Serampore, Hooghly vide Certificate No:- WH/R/H/77,dated11.03.2008. He is an orthopedically Challenged person with paraparesis. He cannot travel without assistance of escort but can live his livelihood independently & physically handicapped for manual labour only but fit for office jobs. So, he should not be included for family pension"

9.4 Medical Board is not bound by the opinion expressed in the Disability Certificate. Medical Board is duty bound to conduct independent medical examination. Moreover, disability may also get mild over a period of time. Hence, this Court is satisfied with the Reply of the Respondent. Intervention of this Court in the present Complaint is not warranted.

Signed by Upma Srivastava

Date: 17-04-2023 16:31:01

(Upma
Srivastava)
Chief Commissioner
for Persons with
Disabilities



80

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

Dairy No. 166101/2023/CCPD

Complainant:

Shri Gajanan Upadhyay

10/42, HIG Colony

GIC Officer's Quarters

Bandra Reclamation

Bandra (West)

Mumbai - 400050

Mob No. 9869276287; 8169896692

Handwritten signature: Gajanan

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 11.10.2022 praying that (i) the Narsee Monjee Institute of Management Studies be ordered and directed to pay to him a sum of Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand only) with interest thereon at the rate of 24% per annum from 19.06.2015 till filing of this complaint and further interest at the rate of 24% per annum on Rs. 1,50,000/- till the actual payment and (ii) the Narsee Monjee Institute of Management Studies be directed to pay a sum of Rs. 75,000/- (Rs. Seventy-Five Thousand only) towards mentally harassment and agony caused to him.

1.2 The Complainant has submitted that his son Nikhil G Upadhyay got admission in B.Tech in Narsee Monjee Institute Management Studies after clearing the entrance test in the year 2015. He deposited the requisite fee of Rs. 1,60,000/- by Demand Draft in favour of Narsee Monjee Institute Management Studies. His son had too appeared in All India JEE (Entrance Test) and secured the admission with a Government College affiliated to Mumbai University. Therefore, he decided to withdraw the earlier admission. The complainant had applied for refund of fee and the University had refunded him Rs. 10,000/-.

2. Observations & Recommendations:

2.1. This Court has mandate to inquire into only those Complaints in which there seems some violation on the basis of disability. If there is violation of some right which does not have any connection with disability of the Complainant then in such cases O/o CCPD does not have mandate to inquire.

2.2. Furthermore, after perusal this Court is inclined to note that there is inordinate delay in filing the Complaint. The Complaint has been filed after expiry of 7 years from the arising of the cause of the Complaint. Hence, the present Complaint is disposed off without further intervention of this Court.

2.3. Accordingly, the case is disposed off.

Dated: 25.04.2023

Handwritten signature: Upma Srivastava

(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



81

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: 13482/1141/2022

Complainant: Dr. Naushad Ali
1646, Ground Floor,
Delhi Govt. Quarters
Gulabi Bagh, Delhi – 110007
E-mail: <naushadaliamu36@gmail.com>
Mobile: 9368001664

13482

Respondent: The Chairman
Paralympic Committee of India
STC Para Shooting,
Dr. Karni Singh Shooting Range
Tuglakabad, New Delhi
E-mail: <nautiyal@hotmail.com> <hopcidelhi@yahoo.com>
Mobile: 9560050909

13482

Complainant: 55% Locomotor disability

GIST of the Complaint:

Complainant Dr. Naushad Ali has submitted that he went to Dr. Karni Singh Shooting Range for medical classification for para shooting on 03.07.2022 and paid Rs.1000/- as fees for the medical examination for para shooting. He was examined there by Shri Pawan Rohilla, Physiotherapist on the same day and declared that he was not eligible for paralympic shooting, however, no document was provided. The complainant further submitted that being himself a doctor and having 55% locomotor disability it was very hard to accept that he could not play in para shooting. The complainant has requested that:

- (1) medical examination and classification for para shooting to be done again by PMR Specialist or an Orthopedic Specialist; and
- (2) There should be no fee for the medical examination for the paralympic category player.

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2. SUBMISSIONS OF THE RESPONDENT

2.1 In response, Secretary, Paralympic Committee of India letter dated **09.11.2022** has inter-alia submitted that The Physical assessment of Dr Naushad Ali was being done on 03.07.2022 by a well qualified professional who is meeting the all criteria as medical classifier by WSPS/IPC. Medical Classifier Dr. Pawan Kumar (PT) has classified Para Shooters for past 05 years and classified approximately more than 500 Para athletes and no Para shooters classified by Dr. Pawan Kumar (PT) have ever been rejected/ disqualified by the International Paralympic Committee (IPC). During the Physical assessment of Dr Naushad Ali for Para Shooting Sport which was being done on the basis of the rules of WSPS/IPC, the minimum loss point assessed was very less (less than 5) as compare to the minimum loss point required for eligibility for the Para Shooting (i.e. 20 Points). On the basis of the Physical assessment of Dr Naushad Ali for Para Shooting Sport done on 03.07.2022 found that he was not meeting the minimum eligibility criteria for Para Shooting Sport. Since Dr Naushad Ali is a medical professional, briefing of the rules was done to him even during the medical classification. Further we hope Dr Naushad Ali being the medical professional he himself or anyone can go through the medical classification rules which is publicly available on the website on above link.

3. SUBMISSIONS OF THE RESPONDENT

3.1 Complainant vide rejoinder dated **21.11.2022** has inter-alia submitted that evaluation done by Shri Pawan Kumar and Report made by him is not satisfactory as being a Medical Doctor and his disability evaluation he has gone through almost same process and he know he has loss of muscular strength in his right limb and range of movement loss at right hip and right knee which will make him eligible for para shooting.

4. The matter was taken up with the Respondent vide letter dated **09.11.2022** under Section 75 of the RPwD Act, 2016 and complainant's rejoinder dated **21.11.2022** Therefore, hearing scheduled on **10.01.2023** but due to administrative exigency, the hearing was re-scheduled to **31.01.2023**, thereafter to **07.02.2023** and finally to **09.02.2023**.



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Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **09.02.2023**. The following were present:

- Dr. Naushad Ali - Complainant
- Shri Naveen Kumar Chaudhary, Advocate on behalf of respondent

Observation/Recommendations:

5. Complainant submits that he went to Dr. Karni Singh Shooting Range for medical classification for para shooting on 03.07.2022 and paid Rs.1000/- as fees for the medical examination for para shooting. He was examined there by Shri Pawan Rohilla, Physiotherapist on the same day and declared that he was not eligible for paralympic shooting, however, no document was provided. The complainant further submitted that being himself a doctor and having 55% locomotor disability it was very hard to accept that he could not play in para shooting. The complainant has requested that (a) medical examination and classification for para shooting to be done again by PMR Specialist or an Orthopedic Specialist; and (b) There should be no fee for the medical examination for the paralympic category player.

6. Physical assessment of Dr Naushad Ali was being done on 03.07.2022 by a well qualified professional who is meeting all criteria as medical classifier by WSPS/IPC. Medical Classifier Dr. Pawan Kumar (PT) has classified Para Shooters for past 05 years and classified approximately more than 500 Para athletes and no Para shooters classified by Dr. Pawan Kumar (PT) have ever been rejected/disqualified by the International Paralympic Committee (IPC). During the Physical assessment of Dr Naushad Ali for Para Shooting Sport which was being done on the basis of the rules of WSPS/IPC, the minimum loss point assessed was very less (less than 5) as compared to the minimum loss point required for eligibility for the Para Shooting (i.e. 20 Points). On the basis of the physical assessment of Dr Naushad Ali for Para Shooting Sport done on 03.07.2022, it was found that he was not meeting the minimum eligibility criteria for Para Shooting Sport. Since Dr Naushad Ali is a medical professional, briefing of the rules was done to him even during the medical classification.



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7. During online hearing, the Respondent submitted that there is no other Complaint of similar nature. Complainant is not pointing out any violation of specific clause. Respondent further submitted that it even conducts special drive to encourage divyangjan to take up sports activities.

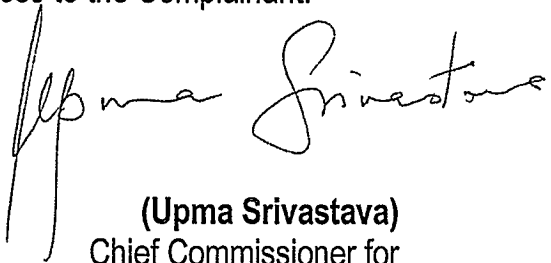
8. Complainant submitted during online hearing, the disability is in his right leg. However, the Respondent evaluated his muscle strength and gave him 5/5 points which is given to non-divyang candidates.

9. Respondent further submitted that the Complainant was evaluated as per 'World Shooting Para Sports – Classification Rules and Regulations, February 2019' (hereinafter mentioned as 'WSPS guidelines'). As per these guidelines muscle strength of the Complainant was adjudged as more than 75%. No significant problem was found. Respondent further explained that there is difference between 'WSPS guidelines' and disability rules. During online evaluation disability is not checked. Assessment of impairment which affects performance of athlete is conducted.

10. This Court concludes that there is no case of discrimination on the ground of disability. Complainant has not presented any evidence to bring in question the integrity of the Respondent or to doubt the process of medical examination.

11. This Court recommends that the Respondent shall conduct meeting whereby the Respondent shall explain the practical technicalities and nuances to the Complainant.

12. The case is disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 25.04.2023

Extra

857



Case No – 13681/1021/2023

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. 13681/1021/2023/182059

Complainant:

Shri Pradeep Kumar Srivastava,
Scale I Officer,
Punjab and Sind Bank,
Gumti No. 5 Branch,
Kanpur - 208012
Email - Bharatviklangsewar35@gmail.com

Respondent:

The Chief Managing Director,
Punjab & Sindh Bank, Bank House,
4th Floor, PSB Building,
T Sohanlal Marg, Rajendra Place,
Near Imly Restaurant,
New Delhi – 110008
Email – snehill@psb.co.in; gmhrd@psb.co.in

Affected Person: The complainant, a person with 100% Visual Disability

1. Gist of Complaint:

The complainant, filed a complaint dated 20.01.2023 regarding his promotion. He has submitted that he is working as a Scale I Officer in Branch Gumti No. 5, Kanpur. He alleged that presently and in past as and when he appeared in Online examination for promotion he was rejected on the ground of marks as compared to the marks of a general candidate. He further submitted that recently he appeared in the promotion examination held on 08.01.2023, but his candidature was rejected as compared to a general candidate whereas the bank has selected the candidates of SC category though they have different marks than the general category candidates, hence, he feels insulted and discriminated on account of disability.

2. Submissions made by the Respondent:

2.1 General Manager (HRD), Punjab and Sind Bank filed their reply dated 22.02.2023 and inter alia submitted that the complainant's contention is that despite being a PwD category there was no relaxation given in qualifying marks to him in Online exam as is being given to SC/ST employees. It must be noted that the promotion policy/rules of the Bank are in accordance with the guidelines laid by the Government of India issued from time to time and as such there is no guidelines to provide relaxation in cut off marks in promotional exams to PwD candidates.

2.2 He further submitted that as per Ministry of Finance's O.M. dated 06.12.2017 addressed to all Public Sector Banks it was advised that (i) Junior Management Scale I of PSBs/PFIs/PSICs will be treated as equivalent to Group A in the Government of India and (ii) Clerks and Peons in PSBs/PFIs/PSICs will be treated as equivalent to Group C in the Government of India. As per D/oP&T's O.M. dated 17.05.2022, there is reservation in promotion to Persons with Benchmark Disabilities from Group C to Group B and from Group B to Lowest Rung of Group A. The Complainant is already in JMG Scale I i.e., Group A post and there is no reservation in promotion for Candidates with Disabilities within Group A post i.e. from JMG Scale I to MMG Scale II and thereafter.

2.3 The complainant had appeared in the Online test held on 08.01.2023 for promotion from JMG Scale I to MMG Scale II and he was provided the assistance of scribe, as desired by him. However, the complainant could not qualify the online exam held on 08.01.2023.

2.4 The Respondent further submitted that the Complainant has not brought to the notice of the Hon'ble Court that he has already filed a CWP No. 2058 of 2023 before Hon'ble High Court of Allahabad inter-alia praying therein (i) issue a writ, order or direction in the nature of certiorari to quash the impugned result dated 19.01.2023 of Online written examination held on 08.01.2023 for promotion from JMGS-I to MMGS-2 General Cadre and Specialist Cadre (ii) issue a writ, order or direction in the nature of mandamus commanding and directing to the respondent authorities to make separate category for Persons with Benchmark Disabilities and consider the candidature of the petitioner in that category after fixing separate cut off marks and (iii) issue a writ, order or direction in the nature of mandamus commanding and directing to the respondent authorities to permit the petitioner to appear in Interview to be held in pursuance of the aforesaid result dated 19.01.2023. The said Writ Petition was listed on 17.02.2023 and the Hon'ble High Court has not passed any interim order in favour of the Complainant.

3. Submissions made in Rejoinder:

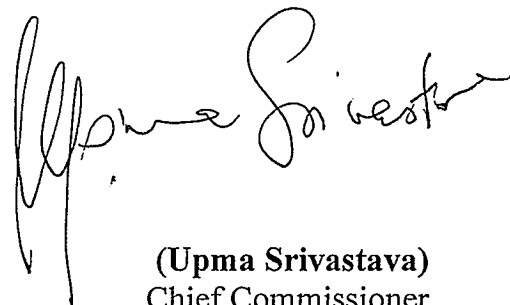
The Complainant vide email dated 07.03.2023 has filed its rejoinder dated 24.02.2023 has inter alia submitted that he has got 36 marks in the examination and failed but SC candidate has got 35 Marks and passed. He also reiterated his complaint and has not mention a word about the WP filed before the Hon'ble High Court of Allahabad.

4. Observations & Recommendations:

4.1 The reply filed by the Respondent found satisfactory. Since, the matter is pending before the Hon'ble High Court of Allahabad intervention of this court is not felt appropriate in the matter.

4.2 Accordingly, the case is disposed off.

Dated: 27.04.2023



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

Entry

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Case No – 13564/1021/2022

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. 13564/1021/2022/151407

Complainant:

Shri Nav Pankaj Jain
C-3/1, SBI Officers Colony
Jyoti Nagar, Jaipur – 302005
Email Id – nav.pankaj@gmail.com

139782

Respondent:

The Chairman
State Bank of India
Madame Cama Road
Nariman Point, Mumbai – 400021
Email – Chairman@sbi.co.in

139783

Affected Person: The complainant, a person with 60% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant, filed a complaint dated 27.07.2022 alleging that he is working as Chief Manager (Law) in Senior Management Grade Scale-IV (SMGS-IV) in the Law Department, and posted at Jaipur. As per Complainant he had completed the minimum 5 years of qualifying service in the present scale, and thus w.e.f. 01.04.2021 has become eligible for promotion to the next higher Scale i.e., SMGS-V (AGM).

1.2. He further submitted that in the promotion year 2021-22, he was in zone of selection of specialist cadre officers with 9 other Officers who were shortlisted from the list of eligible candidates for promotion to the post of Assistant General Manager (Law). He was the only one candidate with physical disability in the zone of selection for promotion to the said post which was not a simple task for person with disability to find place with physically abled that too when benefit of reservation has been denied. Due to Covid 19, interviews were not held and four officer out of 10 were promoted by Screening Committee and two others were promoted by the Appellate Authority without considering the Appeal of the complainant. Thus 06 out of 10 were promoted. The promotions were effective from 04.05.2021 and he was deprived of his right of reservation in promotion.

1.3 He also submitted that the same thing was repeated in the promotion year 2022-23. He was again finding place in the zone of selection with 10 other officers and he was the only one from the person with benchmark disability



category. He appeared for the interview on 21.04.2022. 04 were promoted with effect from 28.04.2022 and his appeal against the non-promotion was also rejected.

1.4 He submitted a representation dated 19.06.2022 to the Deputy Managing Director (HR) & Corporate Development Officer, State Bank of India, Corporate Center, Mumbai through email requesting therein for disposal of his earlier representation dated 02.07.2021 and for issuing directions for promotion of the complainant. His representation was rejected vide letter dated 11.04.2022 on unsubstantiated grounds by ignoring the Judgments of Hon'ble Supreme Court.

1.5 He has prayed that the Respondent be directed for giving the promotion to the Complainant to the post of Assistant General Manager (Law) (SMGS-V).

2. Submissions made by the Respondent:

2.1 The Chief General Manager, Human Resources, State Bank of India filed reply vide letter dated 27.12.2022 and inter alia submitted that as per the promotion policy of the Bank there was no disability quota for Officers with Disabilities for promotion to SMGS-V. The reservation in promotion shall be in accordance with the instructions as are issued by the appropriate Government from time to time. Therefore, it is amply clear that the reservation in promotion for Officers with Disabilities is to be in accordance with the instructions issued by the Government from time to time.

2.2 The Government had issued instructions dated 17.05.2022 regarding reservation in promotion to Employees with Disabilities wherein it has been advised that in case of promotion four percent of the total number of vacancies in the cadre strength within Group 'C' from Group 'C' to Group 'B' and from Group 'B' to the lowest rung of Group 'A' shall be reserved for Employees with Disabilities. Reservation in promotion shall be applicable in the cadres in which the element of direct recruitment, if any, does not exceed 75%.

2.3 There is no Group B in the Bank, reservation in promotion shall be applicable in promotion from Group C to lowest rung of Group A i.e., in Scale-I. The Complainant is already working as Chief Manager/SMGS-IV which is a Group A post. The instructions do not provide for any reservation within Group A posts and thus, the present complaint is liable to be rejected.

2.4 In para wise reply to complaint the Respondent has submitted that the Complainant was not deprived of his right of reservation in promotion. There is no disability quota for Employees with Disabilities in SMGS V. The Bank's promotion policy and the conditions there at do not violate any provisions of the Rights of Persons with Disabilities Act, 2016 and the Policy does not discriminate against any person with disability on the ground of their disability and rather treats them on equal footing with other employees.

3. Submissions made in Rejoinder:

3.1 The complainant in his rejoinder dated 17.01.2023 has reiterated his complaint.

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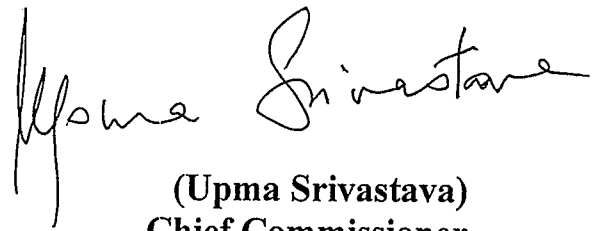
4. Observation/Recommendations:

4.1 Complainant got promoted to post of Chief Manager on 03.03.2016. The fact that Chief Manager is Group A post is non-contested. Complainant's grievance is related to promotion in 2021-22 and 2022-23 to the post of Assistant General Manager which is also Group A post. As per D/oP&T's O.M. dated 17.05.2022 reservation in promotion is available till lowest rung of Group A post.

4.2 Considering the D/oP&T's O.M. there is no prima facie violation of any guideline relating to disability. Complainant has made allegations that he was denied promotion in 2021-22 and 2022-23 because of disability, but these allegations are not supported by any evidence.

5. In view of the above, it is not a fit case for intervention of this court. The case is disposed off accordingly.

Dated: 27.04.2023



**(Upma Srivastava)
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

वाद संख्या 13563/1021/2022

परिवादी -

श्रीमती माया जीना,
यू०डी०सी० (सेवा निवृत्त),
आकाशवाणी केन्द्र,
नजदीक न्यू इंद्रा कॉलोनी, खत्याड़ी,
अल्मोड़ा, उत्तराखंड।
ईमेल - nsjeena1954@gmail.com
मोबाइल नंबर - 9458990409; 9411759222

R39778

प्रतिवादी -

(1) मुख्य कार्यकारी अधिकारी,
प्रसार भारती सचिवालय,
दूरदर्शन भवन,
टावर सी, कॉपरनिकस मार्ग,
नई दिल्ली - 110001
फ़ोन न० : 23118803/23118804/23118559
ईमेल : ceo@prasarbharati.gov.in

R39779

(2) महानिदेशक,
आकाशवाणी महानिदेशालय,
आकाशवाणी भवन, संसद मार्ग,
नई दिल्ली-110001
फ़ोन : 23421300/23421061
ईमेल : dgair@air.org.in

R39780

(3) उप महानिदेशक (अभि.)/केन्द्राध्यक्ष
आल इंडिया रेडियो,
आकाशवाणी भवन,
18, विधानसभा मार्ग,
लखनऊ -260012
ईमेल - aoairlko@gmail.com; lucknow@prasarbharati.gov.in
फ़ोन : 7525018820/0522-2237476

R39781

पीड़ित व्यक्ति - परिवादी, 62% अस्थि विकलांग।

1. परिवाद का सार—

1.1 परिवादी का कहना है कि दिनांक 31.08.1990 को दिव्यांग आरक्षण के अनुमन्य कोटे में LDC के पद पर उनकी नियुक्ति आकाशवाणी केंद्र अल्मोड़ा में हुयी थी और सीनियोरिटी कम फिटनेस पर सामान्य पदोन्नति दिनांक 26.12.2012 से UDC के पद पर हुयी।

1.2 उनके अनुसार आकाशवाणी, जोनल कार्यालय लखनऊ द्वारा दिव्यांग प्रमोशन रिजर्वेशन रोस्टर रजिस्टर में दूरदर्शन लखनऊ के ग्रुप "सी" में कार्यरत ग्रेड I एवं ग्रेड II ड्राइवरो को नहीं लिया गया है। आकाशवाणी, जोनल कार्यालय लखनऊ द्वारा दिव्यांग प्रार्थी को विधिक दिव्यांग आरक्षण के तहत 30.06.2022 तक किसी भी पद पर कोई पदोन्नति नहीं देकर अन्याय किया गया। आकाशवाणी, जोनल कार्यालय लखनऊ द्वारा प्रसार भारती के आर्डर न० Misc 1/51/2015-PPC (Vol. 2) dated 14.12.2016 के अनुसार रोस्टर में 1995 में साइकिल बिंदु को बंद कर दिनांक 01.01.1996 से पुनः रोस्टर में दिव्यांग आरक्षण गणना बिंदु संख्या 1, 33, 67 नियत नहीं किया गया। पिछले 3-4 वर्षों में मौखिक एवं लिखित अनेक प्रार्थना पत्रों के बाद आकाशवाणी, जोनल कार्यालय लखनऊ द्वारा 32 वर्षों के लम्बे समय बाद एक अलग से दिव्यांग आरक्षण रोस्टर रजिस्टर तैयार किया गया। तत्पश्चात दिव्यांग आरक्षण पदोन्नति रोस्टर रजिस्टर/Review DPC में manipulation कर आदेश दिनांक 05.07.2022 द्वारा यु०डी०सी० में पदोन्नति का आदेश रिसीव करा कर प्रार्थनी के साथ भेदभाव कर अन्याय किया गया है। उचित समय पर दिव्यांग आरक्षण रोस्टर रजिस्टर में उचित स्थान पर दिव्यांग प्रार्थनी को विधिक आरक्षण के तहत नियमानुसार नोशनल प्रमोशन नहीं दिया गया।

1.3 प्रार्थनी ने प्रार्थना की है कि: -

- LDC से UDC के पद पर पदोन्नति हेतु 05 वर्षों की qualifying (eligible) service पूर्ण होते ही DOPT के आदेश दिनांक 19.07.1989 के अनुसार दिव्यांग प्रार्थनी को विधिक आरक्षण परिणामी जेष्ठता के अनुरूप प्रथम नोशनल पदोन्नति UDC के पद पर एवं इसी तरह से अग्रेतर पदों पर पदोन्नति दिलाने का स्पष्ट आदेश जारी करने की कृपा करें;
- उपरोक्त तदनुसार वेतन निर्धारण कर अवशेष एरियर इत्यादि का ब्याज सहित भुगतान एक निश्चित समयबद्ध अवधि में कराने की कृपा करें ;
- दिव्यांग प्रार्थी के प्रार्थना पत्रों पर टालमटोल कर समय से नियमानुसार पदोन्नति सम्बंधित निराकरण न करने एवं अनावश्यक विलम्ब करने एवं PwD Act 1995 & RPwD Act 2016 में पदोन्नति सम्बंधित उपलब्ध नियमों का निरादर करने एवं DoPT के उक्त इंगित आदेशों कि आवमानना करने एवं उनकी योग्यता वर्ष 1998 में पूरी हो रही है उन्हें पदोन्नति न देकर श्री राजेंद्रन 2001 में विकलांगता के आधार पर सक्षम अधिकारी द्वारा प्रदत्त प्रमाण पत्र प्रस्तुत किया है और उन्हें पदोन्नति न देकर उनसे 6 वर्ष पूर्व यानि 2001 में ही श्री राजेंद्रन को पदोन्नति दे दी गयी यह भी श्री रस्तोगी द्वारा धाधली प्रतीत होता है।
- दिव्यांग प्रार्थनी को निरंतर मानसिक उत्पीडन, शोषण, निरादर, अपमानित करने के अभिप्राय के जुर्म के अपराध में Respondent No. 03 & initiate officer (श्री के० एस० रस्तोगी, (AO) को घोर कड़ी चेतावनी देते हुए पेनालिटी एवं अनुशासनिक कार्यवाही एवं उचित दण्ड सम्बंधित संयुक्त स्पष्ट आदेश जारी करने की कृपा करें ताकि भविष्य में इस प्रकार से न्यायलयों के आदेश के अनुपालन में कोई दूसरा व्यक्ति/अधिकारी अवहेलना न करें।

2. प्रतिवादी द्वारा प्रस्तुत उत्तर—

2.1 प्रतिवादी द्वारा दिनांक 29.12.2022 द्वारा बताया कि सुश्री माया जीना, आकाशवाणी अल्मोड़ा में यु०डी०सी० के पद पर कार्यरत थी एवं दिनांक 30.04.2018 को अल्मोड़ा से सेवानिवृत्त हो गयी। उनका कहना है कि शिकायतकर्ता ने शिकायत तैयार करने में अपने विवेक का उपयोग नहीं किया है बल्कि इसी तरह के एक अन्य मामले में श्री अशोक कुमार गुप्ता, लखनऊ द्वारा की गयी शिकायत दिनांक 17/19/-10-2022 (case no. 13491/1024/2022) की नक़ल की है या श्री अशोक कुमार गुप्ता के कहने पर शिकायत की है। उनका यह भी कहना है कि शिकायतकर्ता दिनांक 30.04.2018 को आकाशवाणी अल्मोड़ा से सेवानिवृत्त हुई थी

(उपमा श्रीवास्तव)
मुख्य आयुक्त
विद्यालयन

दिनांक: 27.04.2023

4.2 उपरोक्त के आजीक में प्रकरण का निस्तारण किया जाता है।

4.1 मामले की जांच की गई है। इस न्यायालय ने पूर्व में सिफारिश की थी कि सभी पदों के समूहों में पदोन्नति में आरक्षण बढ़ाया जाना चाहिए, लेकिन वर्तमान शिक्षापाल में एक प्रासंगिक तथ्य यह है कि शिक्षापालकर्ता 2018 में सेवानिवृत्त हो गयी और शिक्षापालकर्ता ने 2022 में शिक्षापाल दल की। शिक्षापाल दल करने में असमर्थ देखे हुए हैं। शिक्षापालकर्ता अपनी सेवा के दौरान इसे दायर कर सकती थी। वर्तमान शिक्षापाल विचार के बाद दायर प्रतीत होती है। अतः शिक्षापाल को अस्वीकार किया जाता है।

4. अवलोकन एवं अनुसंधान -

3.1 परिवर्ती की प्रत्यक्ष हेतु पत्र दिनांक 18.01.2023 को भेजा गया, जिसका जवाब अभी तक प्राप्त नहीं हुआ है।

3. परिवर्ती द्वारा प्रत्यक्ष -

2.4 परिवर्ती के साथ कर्णालय द्वारा कोई अन्य नहीं किया गया है। वरीयता के अनुसार पदों की उपलब्धता एवं उपयुक्तता के आधार पर अन्य कर्मचारियों की तरह इन्हें भी इनकी बारी आने पर पदोन्नति प्रदान की गयी है।

2.3 इस न्यायालय द्वारा केस संख्या 12541/1021/2021 दिनांक 15.03.2021 में पारित आदेश के अनुपालन में डी०पी०सी० कि संस्थितियों के आधार पर शिक्षापालकर्ता को दिनांक 06.06.2007 से यू०डी०सी० के पद पर पदोन्नति प्रदान कर दी गयी है। प्रतिवर्ती का कहना है कि कर्णालय द्वारा विद्यालयन के आरक्षण हेतु डी०पी०सी० की गयी है। यह विरुद्ध डी०पी०सी० उसी डी०पी०सी० कि की जा सकती है जो डी०पी०सी० पहले की जा चुकी है। नियमानुसार ही डी०पी०सी० की गयी है एवं नियमानुसार ही रीस्टर तैयार किया गया है।

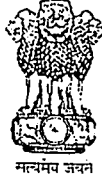
2.2 आकाशवाणी लखनऊ के मोटर इंटरव्यू और इंटरव्यू लखनऊ के इंटरव्यू को इसमें शामिल नहीं किया गया है। अतः अलग अलग है अतः इंटरव्यू लखनऊ के इंटरव्यू को इसमें शामिल नहीं किया गया है।

जबकि विद्यालयन की प्रमोशन में आरक्षण देने का फैसला आकाशवाणी महानिदेशालय नई दिल्ली द्वारा वर्ष 2021 में लिया गया।

वाद संख्या - 13563/1021/2022

Extog

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Case No – 13567/1021/2022

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. 13567/1021/2022/167647

Complainant:

Shri Pramod Kumar Sinha
S/o Sri Jagat Narayan Lal
Pato Ke Bagh (Diwan Mohalla)
Patna – 800008
Email – pramodk.sinha099@gmail.com

139776

Respondent:

The Chief General Manager
Human Resource Vertical
Small Industries Development Bank of India
Swavalamban Bhawan, C-11, G-Bandra Kurla Complex
Bandra (East), Mumbai - 400051

139777

Affected Person: The complainant, a person with 80% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant, filed a complaint dated 05.11.2022 alleging that the personal promotion has not been granted since 2015 to next higher grade as he has been stagnating since 2010 at lower levels of the organizational hierarchy. During working as a Manager at Patna Branch Office, he was also assigned the responsibility of PTBO-in-charge from January 2016 to May 2018 as well as Nominee Director on BSFC till October 2019. He had worked to the best of his capability being the only officer.

1.2 He further submitted that the Personal Promotion may be granted since 2015 to next higher grade as he has been stagnating since 2010 at lower levels of the organizational hierarchy.

2. Submissions made by the Respondent:

2.1 General Manager, HRD Vertical filed reply dated 12.01.2023 on behalf of Respondent and inter alia submitted that Shri Pramod Kumar Sinha, Complainant was already retired from the Bank's service on 31 October 2019. The complaint made by the Complainant seeking Personal Promotion from the year 2015 onwards is not only misconceived but also misleading.

2.2 He further submitted that one of the eligibility conditions for securing Personal Promotion was that the Officer concerned must be having Average Performance Appraisal Rating (APAR) of not less than 3.76 during the preceding two years, after having served for a minimum of 7 years in the respective grade.

2.3 Shri Pramod Kumar Sinha has completed 7 years in Grade B in 2015, and the summary of his APAR from FY 2014 to FY 2018 would be relevant for further clarity of the issue:

Sl. No.	Year	APAR	Average APAR of preceding 2 years
1	2014	3.75	Not relevant
2	2015	3.40	3.58
3	2016	3.50	3.45
4	2017	3.51	3.51
5	2018	3.45	3.48

2.4 Thus, it can be seen from the above table that the APAR ratings for the years 2015 onwards till Shri Sinha's retirement in 2018, were consistently less than the minimum requisite rating of 3.76 making him ineligible for Personal Promotion as per the Policy. The Complainant was also aware of the same.

2.5 As regards D/o P&T's O.M. dated 17.05.2022, he has submitted that the guidelines incorporated therein are not applicable in the instant case, as the said guidelines provide for reservations within Group C, from Group C to Group B within Group B and from Group B to the lowest rung of Group A posts whereas the Complainant was already in Group A. Besides above, the Complainant was already retired in 2019 i.e., much before the issuance of the O.M. referred above.

3. Submissions made in Rejoinder:

3.1 The respondent's reply was forwarded to the complainant vide this Court's letter dated 18.01.2023 for submission of rejoinder. However, no response has been received from the complainant.

4. Observation/Recommendations:

4.1 The Complainant is seeking Personal promotion since 2015 to the next higher grade as he was stagnated since 2010 at lower levels of the Organization hierarchy. The Respondent informed that the Complainant retired from the Service on 31.10.2019. Further his APAR rating was also less than the required rating i.e., 3.76. The D/oP&T's O.M. is dated 17.05.2022 whereas the Complainant was retired in 2019 i.e., much before the issuance of the said O.M. Moreover, as per the above referred O.M. reservation in promotion is available till lowest rung of Group A post. The complainant is already in a Group A post, hence not covered under the scheme of reservation and has not indicated that any promotion was denied to him only on the ground of disability. There appears to be no violation of any provision of the RPwD Act, 2016, RPwD Rules, 2017 and relevant Government's instructions in the matter and therefore, no intervention of this court is required.

4.2 The case is accordingly, disposed off.

Dated: 27.04.2023


 (Upma Srivastava)
 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: 13504/1022/2022

Complainant

Dr. Kamlesh Meena

Assistant Regional Director

IGNOU, Regional Center, Khanna, Ludhiana, Punjab

Indira Gandhi National Open University

Email: kamleshmeena@ignou.ac.in;

rajarwalkamlesh1978@gmail.com

Mobile No: 0992924556

Respondent

The Vice Chancellor

Indira Gandhi National Open University (IGNOU)

Maidan Garhi, New Delhi-110068

Email: vc@ignou.ac.in; npsingh@ignou.ac.in

1. GIST OF COMPLAINT

- 1.1. शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 29.09.2022 में कहना है वह 40% लोकोमोटर दिव्यांगजन है। शिकायतकर्ता का कहना है कि वह इग्नू क्षेत्रीय केंद्र खन्ना पंजाब में सहायक क्षेत्रीय निदेशक के रूप में दुनिया के सबसे बड़े खुले विश्वविद्यालय में कार्यरत है। शिकायतकर्ता पहले इग्नू क्षेत्रीय केंद्र जयपुर में तैनात था जो कि उनका मूल स्थान था लेकिन पिछले साल सितंबर 2021 में विश्वविद्यालय को इग्नू क्षेत्रीय केंद्र श्रीनगर कश्मीर के लिए कुछ समय के लिए उनकी सेवाओं की आवश्यकता चाहिए थी जब तक कि प्रतिनियुक्ति भर्ती प्रक्रिया पूरी नहीं होती और विश्वविद्यालय ने क्षेत्रीय निदेशक के रूप में शामिल होने का निर्देश दिया। विश्वविद्यालय द्वारा दिए गए स्थानांतरण आदेश के अनुसार शिकायतकर्ता 28 सितंबर 2021 से 30 मई 2022 तक प्रतिनियुक्ति व्यक्तियों के शामिल होने के बाद, विश्वविद्यालय से इग्नू क्षेत्रीय केंद्र जयपुर राजस्थान में स्थानांतरण वापसी के लिए अनुरोध किया क्योंकि शिकायतकर्ता पहले वहां तैनात था लेकिन विश्वविद्यालय ने शिकायतकर्ता को जयपुर के बजाय इग्नू क्षेत्रीय केंद्र खन्ना पंजाब में स्थानांतरित कर दिया। अतः शिकायतकर्ता ने सीसीपीडी कोर्ट से-विनम्र निवेदन किया है कि उनकी दिव्यांगता को देखते हुए उनका स्थानांतरण इग्नू क्षेत्रीय केंद्र खन्ना पंजाब से इग्नू क्षेत्रीय केंद्र जयपुर राजस्थान में कराने की कृपा की जाए।

2. The matter was taken up with the Respondent vide letter dated 26.10.2022, following reminder letter dated 09.12.2022, the respondent did not submit the comments under the section 75 of the RPwD Act 2016.

3. **Hearing:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **21.02.2023**. The following were present:

- i) **Dr. Kamlesh Meena** : **Complainant**
- ii) **Shri Priyesh Mohan Srivastava, Advocate** : **Respondent**

4. **Observations /Recommendations:**

4.1 Complainant submits that he is employed on the post of Assistant Regional Director in the Respondent establishment. He joined the Respondent establishment in 2012. He submits that he is posted in Khanna, Punjab office of the Respondent establishment. His hometown is Jaipur, Rajasthan. He claims that Khanna is not connected by train and there is no KVS school for his children’s education and hence wants to be transferred to his hometown Jaipur.

4.2 Respondent submits that the Complainant was appointed in 2012 and was posted in Guwahati. Thereafter he was transferred to Jaipur on 19 October 2012 on his own request. After 5 year, w.e.f. 08.05.2017, he was transferred to Khanna, Punjab. Soon after, on 01 November 2017 he applied for ‘study leave’ which was granted to him w.e.f. 01.11.2017.

4.3 Respondent further submitted that the Complainant was always posted at location of his choice. To substantiate the claim Respondent submitted that the Complainant was posted in Srinagar on his own request w.e.f. 03.04.2018. Thereafter the Complainant was posted to Jaipur w.e.f. 01.10.2018. Complainant was again transferred to Srinagar after obtaining his consent w.e.f. 24.09.2021. Complainant was transferred to Khanna, Punjab after completion of tenure in Srinagar w.e.f. 06.06.2022. Respondent further submits that the transfer to suitable location will be made whenever the vacancies will be available.

4.4 From the record it is certain that the Respondent has posted the Complainant in Jaipur on more than one occasion. Similarly, Complainant was also posted in Srinagar on his own request. Furthermore, Respondent is ready to post the Complainant at his choice of posting whenever vacancy will be available. However, it is also important to take into consideration the problems which the Complainant faces at his present location.

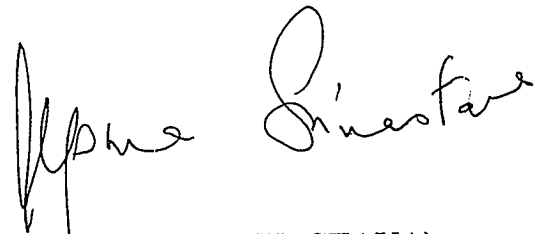
4.5 During online hearing this Court inquired from the Complainant about the difficulties, he faces at his current place of posting, i.e. Khanna, Punjab. He submitted that there is no Kendriya Vidyalaya School (‘KVS’) in Khanna, where he can send his kids for education and there is no transport facility available to travel to and from his hometown.

4.6 Rights of Persons with Disabilities Act, 2016, in Section 20 lays down that the government establishments shall provide reasonable accommodation, barrier free environment and conducive environment to employees with disabilities. Further, the same provision provides that the government establishments shall frame policies of transfer and postings of employees with disabilities.

4.7 Respondent establishment is duty bound to implement provisions of the Rights of Persons with Disabilities Act, 2016. Respondent is also bound by DoPT. O.M. No. 36035/3/2013, dated 31.03.2014 which lays down certain guidelines for providing facilities to employees with disabilities of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that employees with disabilities may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance and secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

4.8 This Court concludes that providing conducive environment for effective and optimum utilisation of capabilities of a Divyang employee is a statutory obligation of the employer under Section 3(2) of the RPwD Act, 2016. Hence, this Court recommends that the Respondent shall transfer the Complainant to any location where his grievances relating to 'availability of Kendriya Vidyalaya Sangthan' and availability of transport facility can be appropriately redressed.

4.9 This case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated:27.04.2023

Extra



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: 13458/1022/2022

Complainant:

Shri Rocky Singh
JQCA (LAB),
Indian Oil Corporation Ltd.,
Haldiya Refinery,
West Bengal, Kolkata
Email: ioclrockysingh@gmail.com

139771

Versus

Respondents :

The General Manager
Indian Oil Corporation Limited
Haldiya Refinery, West Bengal
Email: cgm_mah@bsnl.co.in;
gmhrmumbai16@gmail.com

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Respondent.....1

The General Manager (HR)
Indian Oil Corporation Limited
3079/3, Sadiq Nagar,
J.B. Tito Marg, New Delhi-110049
Email: chairman@indianoil.in;
vaidyasm@indianoil.in

139773

Respondent.....2

GIST OF COMPLAINT

1. शिकायतकर्ता का अपनी शिकायत दिनांक 07.09.2022 में कहना है कि वह 50% अस्थि बाधित दिव्यांगजन है। शिकायतकर्ता आगरा (उत्तर प्रदेश) का मूल निवासी है जो हल्दिया रिफाइनरी (पश्चिम बंगाल) में जेक्योसीए {JQCA (LAB)} के पद पर कार्यरत है।

1.1. शिकायतकर्ता का कहना है कि उनके पिताजी का एक एक्सीडेंट में रीढ़ की हड्डी में खराबी आ जाने के कारण उनका स्वास्थ्य खराब रहता है तथा एक पैर में पेरालाइसिस की शिकायत भी है, जिसकी वहज से उनके पिता पैतृक गांव आगरा में बैड रेस्ट पर है एवं यात्रा करने में पूर्णतया असमर्थ है। उनकी पत्नी सरकारी नौकरी पर जीरापुर, राजगढ (म.प्र.) में कार्यरत है। शिकायतकर्ता हल्दिया से आगरा आने जाने एवं उनकी देख रेख करने में असमर्थ है क्योंकि शिकायतकर्ता दिव्यांगजन है तथा उन्हें स्वयं सहायता की जरूरत पडती रहती है। अतः शिकायतकर्ता ने सीसीपीडी कोर्ट से विनम्र निवेदन किया है कि अगर उनका स्थानांतरण मथुरा रिफाइनरी हो जायेगा तो उन्हें अपने परिवार की देख रेख करने में आसानी हो जायेगी और वह साथ में रह सकेगा।

2. SUBMISSIONS MADE BY RESPONDENT :

2.1 In response General Manager I/c (HR) Haldia Refinery, filed reply vide email/letter no. dated 18/19.10.2022 on behalf of Respondent and has inter-alia submitted that the advertisement for requirement of experienced non-executive personnel was issued by Indian Oil Corporation Ltd, Haldia Refinery vide Advt. No. PH/R/01/2019. In response to the above advertisement the complainant had applied for the post of Junior Quality Control Analyst-IV as a PwBD candidate, being aware that the post was for Refinery at Haldia as per the advertisement. The complainant was selected to the post of Junior Quality Control Analyst-IV, Haldia Refinery under PwBD category. He was issued offer of appointment by Haldia Refinery vide letter no. dated 13.09.2019 and was advised to report for duty to Deputy General Manager (HR), Indian Oil Corporation Ltd., Haldia Refinery, Purba Medinipur, West Bengal on 19.09.2019. The complainant had joined the duty on 19.09.2019.

2.2 The respondent further submitted that the complainant in his complaint has requested for his transfer to Mathura Refinery to look after his father, who is unwell and resides in his paternal village at Agra, while his wife is working at Jirapur, Rajgarh, Madhya Pradesh. The complainant has conveyed that he is unable to travel from Haldia to Agra, as he is an person with disability. The respondent further submitted that as per records, the complainant has declared that his father and mother are wholly dependent on him and permanently residing with him under the same roof at Plot no. 67, Jibanananda Das Nagar, P.O. Haldia Port, Haldia.

2.3 He also submitted that the advertisement for the post of Junior Quality Control Analyst-IV against which the complainant had applied, stipulated that the position was for Haldia Refinery and not for any other Refinery. The complainant chose to apply against the post being aware of the same. Further, as per self declaration of Complainant his father is staying along with him at Haldia. Therefore, the request of the complainant for transfer from Haldia Refinery to Mathura Refinery does not merit consideration.

3. SUBMISSIONS MADE UNDER REJOINER :

3.1 The complainant filed the rejoinder vide email/letter dated 01.11.2022 and submitted inter-alia that everything was going fine and his parents were residing with him under the same roof till December, 2020 as per the dependent's policy requirement. He further submitted that his parents also have the responsibilities of his younger siblings at his native place and had to visit there also and during the journey from Haldia to Agra in December 2020, his father have got bad spinal cord medical condition which caused him unable to travel further. Doctors have advised him not to travel. The medical condition of his father occurred after 15 months of his joining. Due to such medical condition, his parents could not come back to Haldia to reside with him. He has requested the Management to transfer

him to Mathura Refinery or any other location surrounding Agra which is very near to his native place as per Equal Opportunity Policy for Disabled persons, so that he shall be able to serve his company in a better way in future too.

3.2 The complainant also stated that as per the IOCL's medical dependent policy, parents have to stay with the employee under the same roof with the flexibility of three months on out Station with the permission of competent authority in order to get medical reimbursement facility. Every year employee has to declare the medical dependent to get medical facilities and reimbursement of medical expenditures in case of out Station. Since his father could not return to Haldia and he needed continuous treatment, he was forced to spend money on his treatment but not able to reimbursed the same because of medical dependent policy. The complainant also requested to Haldia Refinery Management and Refinery Headquarter for special permission to get medical reimbursement, but neither reply received from them nor his transfer request was considered. The complainant once again requested to the CCPD Court to give direction to the respondent to transfer him to Mathura Refinery or any other location surrounding Agra which is very near to his native place.

4. **Hearing 1:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 24.01.2023. The following were present:

- i. Shri Rocky Singh, the Complainant in person
- ii. Shri Kailashpati, ED (HR), Indian Oil Corporation Ltd.

4.1 During online hearing the complainant submits that he was appointed on the post of 'Junior Quality Control Analyst' and joined in September 2019. He is currently posted in Haldia office of the respondent establishment. Complainant submits that he himself is divyang employee and his father is also divyangjan. His hometown is in Agra. His father also lives in Agra. He has requested this Court to direct the Respondent to transfer the Complainant to Mathura office of the Respondent establishment so that he can take care of his father. Complainant has further submitted that his wife is employed in Madhya Pradesh and resides there.

4.2 Respondent submits that the complainant was selected to the post of Junior Quality Control Analyst-IV, Haldia Refinery under PwBD category. The advertisement for the post of Junior Quality Control Analyst-IV against which the complainant had applied, stipulated that the position was for Haldia Refinery and not for any other Refinery. The complainant chose to apply against the post being aware of the same. Further, as per self-declaration of Complainant his father is staying along with him at Haldia. Therefore, the

request of the Complainant for transfer from Haldia Refinery to Mathura Refinery does not merit consideration.

4.3 During online hearing, Respondent reiterated its submission that the post against which the Complainant was appointed was specific to Haldia refinery. **This Court by virtue of Section 77 of Rights of Persons with Disabilities Act, 2016 directs the Respondent to file its submission on affidavit within 07 days of receiving the copy of this RoP.**

5. **Hearing 2:** The case was fixed for hearing for 21.03.2023 which was due to administrative exigency rescheduled to 11.04.2023. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 11.04.2023. The following were present:

- i. Shri Rocky Singh, the complainant in person
- ii. Shri G.K. Sahu; Shri D.K. Patnaik - Respondent

6. Observations /Recommendations:

6.1 Complainant submits that he was appointed on the post of Junior Quality Control Analyst and joined in September 2019. He is currently posted in Haldia office of the Respondent Establishment. The Complainant submits that he himself is divyang employee and his father is also divyangjan. His hometown is in Agra. His father also lives in Agra. He has requested this Court to direct the Respondent to transfer the Complaint to Mathura Office of the Respondent Establishment so that he can take care of his father. The Complainant has further submitted that his wife is employed in Madhya Pradesh and resides there.

6.2 The Respondent submits that the Complainant was selected to the post of Junior Quality Control Analyst-IV, Haldia Refinery under PwBD category. The advertisement was for the post of Junior Quality Control Analyst-IV against which the Complainant had applied, mentioned clearly that the position was for Haldia Refinery and not for any other Refinery. The Complainant chose to apply against the post being aware of the same. Further, as per self-declaration of Complainant his father is staying along with him at Haldia. Therefore, the request of the Complainant for transfer from Haldia Refinery to Mathura Refinery does not merit consideration.

6.3 The hearing was conducted on 24.01.2023. Respondent submitted that the vacancy was exclusively for Haldia. Thereafter the Respondent was directed by this Court to file its Reply on affidavit.

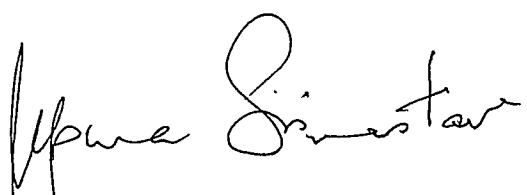
6.4 Respondent submitted on affidavit that the Respondent issued advertisement No. PH/R/01/2019 for appointment of Executive/Non-Professional Personal. The copy of the notification is also attached therewith. The same was perused and it is evident that the notification was issued by Haldia Refinery exclusively for appointment in Haldia Refinery. Total 3 posts of Junior Quality Control Analyst – IV were advertised under above advertisement. One post was reserved for divyangjan against which the Complainant was appointed.

6.5 This Court concludes that since the Complainant applied against the above advertisement well aware of the fact that the vacancies were notified exclusively for Haldia Refinery he cannot approach this Court seeking transfer on the ground of disability at this stage. This Court is well aware of the guidelines which provide that the employee with disabilities shall be posted near their hometown. These guidelines do not apply in the present Complaint because the Complainant was well aware of the fact, even before his appointment that the advertisement against which he is applying is issued exclusively for appointment at specific location. Having knowledge of this fact he chose to apply against the advertisement. Hence, at this stage he cannot invoke guidelines relating to transfers and posting of divyang employees.

6.6 Furthermore, during online hearing conducted on 11.04.2023 the Complainant informed this Court that his spouse is employed in State Bank of India and she is posted away from Haldia. This issue is not related to disability and the Complainant is at liberty to take appropriate measures relating to the transfer of his spouse.

6.7 Intervention of this Court in the present Complaint is not warranted.

6.8 The case is disposed off.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated:28.04.2023





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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: 13497/1023/2022

Complainant: Shri Shiv Prakash Dubey
Manager, Rajbhasha
IRCTC
E-mail: <shivirctc@gmail.com>

1349769

Respondent: Indian Railway Catering & Tourism Corporation Ltd
Through the General Manager
11th Floor, B – 148, Statesman House
Barakhamba Road, New Delhi – 110001
E-mail: info@irctc.co.in

1349770

GIST of the Complaint:

The complainant (Shri Shiv Prakash Dubey) a person with 45% locomotor disability, has filed a grievance dated 23.09.2022 regarding harassment by officer. The grievance is filed specifically against Shri Rajesh Kumar, Group General Manager. The complainant claims that he is being mentally tortured by Shri Rajesh Kumar. Further the complainant submits that when the complainant opposed the actions taken by Shri Rajesh Kumar, the complainant was threatened that he will be demoted and transferred.

2. The complainant after filing complaint sent another letter whereby, he informed that after receiving the copy of this Court's notice, he was transferred from Mumbai to Delhi with demotion of one post.

3. The matter was taken up with the Respondent vide letter dated 17.10.2022 under Section 75 of the RPwD Act, 2016.

4. In response, Addl. General Manager/HRD/IRCTC vide letter dated 13.01.2023 submitted that the complainant was transferred to Lucknow on his own request. Issue of additional increment was resolved after consultation with Ministry of Finance and arrears have been paid.

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5. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 09.02.2023. The following were present:

- Shri Shiv Prakash Dubey – Adv. Ekta Bharti alongwith Complainant
- Adv. Rajat Malhotra; Ms. Divya Jain, DGM (Legal), Sri Siddhartha Singh, AGM (HR) on behalf of respondent

Observation/Recommendations:

6. During online hearing, Complainant submitted that he is serving in the Respondent establishment for last 17 years. He claims that his salary for November 2021 and December 2021 has not been released. Hence, he had to face financial hardships.

7. Complainant further claimed that he was appointed in 2006 on the post of Chief Supervisor and was initially posted in Mumbai. Then he was transferred to Delhi in 2008. Thereafter he transferred to Lucknow in 2016. He submits that in 2021 he was posted on deputation in Rajbhasha Department on the post of 'Manager' and was posted in Delhi. His grievance is that only after 1 year and 3 months he was repatriated. Further the Complainant submits that he was transferred without considering the DoPT O.M. on the subject. He submits that within two months he was first transferred to Mumbai and then he was transferred to Lucknow. He claims that he was also demoted.

8. Respondent admitted during online hearing that the Complainant was repatriated to Catering service after expiry of 1 year and 3 months of deputation period. Reason to do the same was that the performance of the Complainant was not satisfactory. Furthermore, there were some complaints from his superior officers. Respondent further submitted that the Complainant was served memos and chargesheet and he has been penalized with minor penalty.

9. The main grievance of the Complainant is not against the Respondent establishment but against Group General Manager, Shri. Rajesh Kumar. Complainant's case is that the harassment was allegedly caused either directly by Shri Rajesh Kumar or at his behest. To support his allegations the Complainant submitted documents of which the copy of 'note-sheets', APAR is important for the adjudication of the case. Respondent has also submitted documents, of which copy of 'Memorandum' and 'Chargesheet' are important.



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10. From Complainant's and Shri. Rajesh Kumar's (hereinafter referred as 'GGM') notes dated 01.12.2021, 13.12.2021, 29.12.2021 and 03.01.2022 it is evident that both of them were in conflict with each other. These notes contain remarks made by the Complainant and GGM against each other in professional capacity and also remarks made by the Complainant against GGM in personal capacity. Furthermore, from the perusal of the APAR, it is evident that the Respondent noted Complainant's integrity as 'doubtful', without substantiating this with any additional document is attached which is necessary when 'doubtful' remark is made against an employee. Hence, important procedural defect on the part of the Respondent is evident. This Court cannot go into the details and merits of the allegations/comments made by the two persons in the note-sheet, however this Court cannot also turn blind eye to the fact that the relationship between the two officers was not normal and both were at loggerhead with each other.

11. Minor penalties were also imposed on the Complainant by virtue of Orders dated 29.07.2022 and 21.10.2022. Before imposing the penalty, memorandum was also served in both the cases. The whole process of imposing penalty is impaired because of inherent defect and procedural defect.

12. GGM, Shri Rajesh Kumar signed the memorandums as well as the orders imposing penalties. It was done by the GGM under the capacity of 'disciplinary authority' of the Complainant. However, the fact that serving of memorandums and imposing of penalty was done by the GGM at such time when the Complainant and the GGM were facing hostile relationship with each other, raise significant doubts on the impartiality of the whole process of imposing penalty on the Complainant.

13. The fact that the GGM presided over the whole process of imposing penalty as the Disciplinary Authority when he himself was in direct conflict with the Complainant, also violates the principles of Natural Justice.

14. The moot question which is to be decided by this Court is whether the Respondent establishment and particularly, Shri Rajesh Kumar, Group General Manager has discriminated against the Complainant. One of the principles of natural justice is that no

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person shall be a judge in his own cause or in a matter in which he has any bias, stake or interest. The said rule against bias has its origin from the maxim known as 'Debetesse Judex in Propria Causa', which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias.

15. Hon'ble Supreme Court in Mohd.Yunus Khan vs State of U.P.& Ors; S.L.P.(C) NO. 19318/2007, held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision. Similar judgments were also decided by the Hon'ble Supreme Court in A.U. Kureshi vs High Court of Gujarat & Anr., (2009) 11 SCC 84, and also in Ashok Kumar Yadav & Ors. vs State of Haryana & Ors., (1985) 4 SCC 417.

16. As noted by the Hon'ble Supreme Court, the real test is not that of actual bias, but that of likelihood of bias. Applying this test in the present complaint, this Court concludes that in the present case there are enough evidence to suggest that the hostile relationship between the Complainant and GGM, Shri Rajesh Kumar were such that reasonable apprehension of likelihood of bias cannot be ruled out.

17. Considering that there are procedural defects, such as in recording against the integrity column of the APAR and there is apparent violation of principles of natural justice and in the process of imposing penalty, this Court concludes that the Complainant may have been discriminated against by the Respondent.

18. Another issue raised by the Complainant is related to the manner in which he was transferred to Lucknow. Initially the Complainant was posted in New Delhi where he was sent on deputation. Thereafter, the Complainant was repatriated and was transferred to Lucknow. Complainant submits that his transfer to Mumbai was done with malafide

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intention. Respondent never asked the preference of the Complainant while transferring him to Lucknow nor the hardships which Complainant faced in Mumbai were taken into consideration. However, when he requested to transfer him to Lucknow the same was done with 'on request' remarks. Respondent submitted that the transfer to Lucknow was done after receiving the request of the Complainant hence the transfer is rightly considered as 'on request'.

19. This Court concludes that the Respondent has disregarded the guidelines laid down by DoPT in O.M. No. 36035/3/2013 dated 31.03.2014. In Para H of the O.M. it is specifically laid down that preference in place of posting should be given to the employee with disability. Further, it provides that practice of considering choice of posting in case of employee with disabilities may be continued. Respondent has not submitted any evidence on record to prove that the Complainant was given option to submit his choice of his place of posting when he was being posted out of New Delhi on being repatriated from his deputation. A transfer after considering the choice given by an employee cannot be construed to be a case of compassionate transfer, which entails denial of composite transfer grant, joining time besides loss of seniority, etc. The decision to treat this transfer as "Own Request" smacks of bias.

20. This Court recommends that the transfer of the Complainant from Mumbai to Lucknow shall not be treated as 'own request transfer'. This Court further recommends that the Complainant shall not be precluded from any promotion exercise till the completion of the inquiry recommended to be conducted by three members committee.

21. This Court further recommends that the Respondent shall constitute a three members committee of senior officials of the Respondent establishment to conduct an independent inquiry into the facts of the matter including on the following points:

- (a) Circumstances under which decisions to hold two back to back minor penalty proceedings on the same charge of negligence and indiscipline were taken.
- (b) Necessity of conducting the aforesaid proceedings under Shri Rajesh Kumar, Group General Manager, who had an apparent bias in the matter.



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(c) Whether Shri Rajesh Kumar had revealed his conflict with the charged officer, the complainant in this case before assuming the role and functions of Disciplinary Authority.

(d) Whether the aforesaid departmental proceedings amount to double jeopardy and hence denial of fundamental right of the complainant as enshrined in Article 20(2) of the Constitution.

22. An interim report on constitution of the aforesaid committee be filed before this Court within 10 days of receipt of this order and the committee shall submit its report and recommendation to this Court on or before 20 July, 2023.

23. The present Complaint is disposed off with liberty to the Complainant to approach this Court again in case he is not satisfied with the inquiry report of the Committee.

24. The case is disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 28.04.2023