



मन्यमेव जयते

Extra

①

Case No.13300/1011/2022

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. 13300/1011/2022

Complainant:

Shri Vijay Singh, S/o Shri Ram Moorat,
R/o House No.4B, Block-R-5, Street No.7,
Mohan Garden, Uttam Nagar, New Delhi-110059;
Email: 43vijay38@gmail.com; Mobile: 9560483092

1232440

Respondent:

The Chairman,
Staff Selection Commission,
CGO Complex, Block No.12,
Lodhi Road, New Delhi-110003
Email: chairmanssc@gmail.com; sscushqpp1@gmail.com

1232441

Affected Person: The complainant, a person with 42% Multiple Disability (28% PD + 20% VI)

1. Gist of Complaint:

The complainant filed a complaint dated 17.05.2022 against denial of appointment to the post of Income Tax Assistant, [Post Code: D-51, SSC CGLE 2019] on the ground of disability despite the post being identified for Multiple Disability. The complainant submitted that on 29.09.2021 at the time of document verification while he was filling up the Post Preferences, SSC Officer did not let him selected the post of Income Tax Assistant (Post Code D-51) and told that this post is not suitable for the persons with Dwarf and Low Vision. As per him after visiting the Income Tax Office at Nehru Stadium he came to know that the said post is identified suitable for his disability and there appears some mistake by SSC. He made a complaint in SSC Office but no reply has been received by him.

1.2 He further submitted that the result of the examination has been received and 05 vacancies of Income Tax Assistant (Code D-51) under Multiple Disability category are lying vacant. He had appeared in the Typing Test (Data Entry Skill Test) for this post and had passed. The complainant alleged that he had been deprived from being appointed to the post of Income Tax Assistant despite being suitable for the post.

2. Submissions made by the Respondent:

The respondent did not submit their comments, however, vide email dated 11.08.2022 forwarded a copy of their letter addressed to All Ministries/Departments/Subordinate Offices/Attached Offices, Government of India, regarding, Vacancy collection for various examinations to be conducted by SSC-

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providing benefit of reservation and other facilities for newly identified disabilities and categories under the Rights of Persons with Disabilities Act, 2016.

2.2 Under Secretary (PP-I), SSC vide letter dated 13.09.2022 has forwarded the copy of the reply in the matter. He has submitted that the Commission does not have any role in the maintenance of reservation roster for PwBD in a particular indenting department or in the recognition of a particular post suitable for a particular disability. The Commission vide letter dated 25.05.2018 had requested all the indenting user Departments to identify and inform the Commission about the suitability of post for newly identified categories of disabilities. Some of the Departments like DOP&T, M/o Railways, M/o External Affairs, AFHO, CGDA and CA&G etc have identified the posts suitable for newly identified categories of disabilities as per RPwD Act, 2016, details of which have been included in the Notification of CGLE 2020 dated 29.12.2020.

2.3 The Commission at the stage of Document verification of CGLE-2019 had decided that as per the provisions of the Notice of the Examination of CGLE-2019 suitability of posts under CGLE-2019 for various disabilities and categories under Right of Persons with Disabilities Act, 2016 would be determined from the information given by the User Departments for CGLE 2020 which are duly incorporated in Notice of Examination of CGLE 2020 and subsequent corrigendum issued for the said examination.

2.4 CBDT vide letter dated 25.08.2021 had confirmed the vacancies for the post of Income Tax Inspector and Tax Assistant through CGLE-2019 which are Group C posts in CBDT and mentioned the remarks regarding 'PwBD-Others'.


2.5 Subsequently, the Commission had issued a corrigendum dated 10.09.2021 for CGLE-2020 wherein Autism disability under PwBD - Others category has been considered suitable for the post of Income Tax Inspector and Tax Assistant. CBDT vide letter dated 27.09.2021 mentioned that the post of Income Tax Inspector and Tax Assistant are not suitable for 'Multiple Disabilities' under clause (d) and (e) of Section 34 (1) of RPwD ct, 2016.

3. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 03.01.2023. The following persons were present during the hearing:

- (1) Shri Vijay Singh, the complainant.
- 2) Shri Ram Sagar, Under Secretary for the Respondent.

4. **Observations & Recommendations:**

4.1 Complainant submitted that he applied in CGLE – 2019. He successfully passed the written examination. On 29.09.2021 at the time of document verification he wanted to give preference to the post of 'Income Tax Assistant'. However, the officers present their stopped him from the giving preference to this post giving reason that the post is not identified suitable for divyangjan with 'dwarfism' and 'Low Vision'. He further submits that results of the examination have been declared



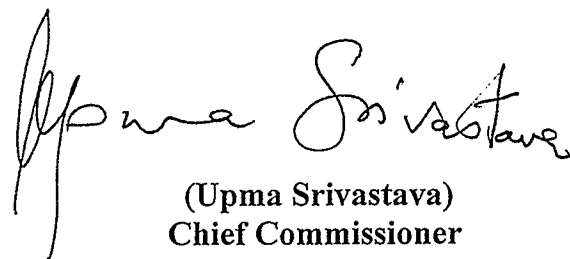
and 5 vacancies of the post of 'Income Tax Assistant' are lying vacant. He has prayed this Court to Order SSC to appoint him against the post of 'Income Tax Assistant'.

4.2 Respondent submitted that it issued letter to all the indenting organizations to implement the provisions of RPwD Act, 2016 and also implement the list of identified posts.

4.3 Advertisement was issued in 2019. List was issued in 2021. In 2019, list of identified jobs issued in 2013 was in existence and was in force. In 2013 list the post of Tax Assistant was not mentioned. Hence, in the impugned advertisement the Respondent did not identify the post as suitable for 'Low Vision' category. In 2021 list the post is identified suitable for Dwarfism as well as for 'Low Vision' category. However, this Court shall not interfere in the present Complaint because of two reasons. Firstly, on the date of issuance of impugned advertisement, list of identified posts dated 04.01.2021 was not in existence. Secondly, the present Complaint is related to 2019 advertisement and the result has also been declared hence any intervention in the present Complaint at this stage shall result into gross injustice with divyangjan already appointed.

4.4 Accordingly the case is disposed off.

Dated: 04.02.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

Extra

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Case No.13340/1032/2022

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. 13340/1032/2022

Complainant:

Shri Joby T.T
S/o Thomas T.R
Thalikulam House, Keri-Quarters No. III/7
Peechi. P.O., Thrissur, Kerala 680 653
Phone: 8606209199
Email: joby9199@gmail.com

Respondents:

(1) Chairman,
University Grants Commission,
Baharurshah Zafar Marg,
New Delhi-110002
Email: cm.ugc@nic.in

(2) Director General,
National Testing Agency,
C-20, IA/8, Sector 62,
IITK Outreach Centre,
Noida-201309 (UP);
Email: ugcnet@nta.ac.in

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

1. Gist of Complaint:

1.1 The above named complainant filed a complaint dated 24.06.2022 regarding not providing 5% reservation to students with benchmark disabilities in terms of section 32 of the Rights of Persons with Disabilities Act 2016 and it is against the recommendation of this Court given in case No. 12850/1031/2021 on 05.04.2022.

1.2 The complainant submitted that he is an applicant for the UGC Net 2022 examination in Sociology. As per the Notification National Testing Agency and University Grants Commission have breached the provisions under Section 32 of RPwD Act, 2016 by providing vertical reservation to persons with disabilities within the horizontal reservation for persons with disabilities. He further submitted that as per the RPwD Act, 2016, there is no

provision for sub classification/further classification of Persons with Disabilities for providing reservation on the basis of caste, creed or religion under Article 16 (4) and the reservation for persons with disabilities is under Article 16 (1) of the Indian Constitution.

1.3 The complainant also submitted that if the reservation to persons with disabilities is sub-divided or further classified according to vertical categories among persons with disabilities, the cut off marks for passing UGC-NET for persons with same disability in SC, ST, OBC, EWS and General will be different and varying with high difference in cut-off marks between the candidates with disability, which is not as per the provisions of RPwD Act, 2016, which is being done by NTA and UGC from December, 2019 onwards. As per him many candidates have lost their opportunity to pass UGC-Net from December, 2019 onwards by this illegal reservation pattern adopted by UGC and NTA.

2. Submissions made by the Respondents:

2.1 No reply has been received from either of the respondents despite issue of Notice(s) dated 13.07.2022 followed by Final Reminder dated 30.08.2022. However, UGC (Respondent No.1) endorsed to this Court a copy of their letter dated 16.09.2022 addressed to NTA (Respondent No.2). In the said letter it is mentioned that NTA had sought comments from NET Bureau of UGC against the Notice issued by this Court. UGC has furnished to this Court a copy of the comments provided to NTA vide letter dated 03.08.2022.

2.2 In the letter dated 03.08.2022, UGC has invited reference of Memorandum No.36035/16/91-Estt.(SCT) issued by DoPT on 18.02.1997 and has submitted that it is clearly spelt out in the Memorandum dated 18.02.1997 that the horizontal reservation for PwD category cuts across vertical reservation for categories like General, SC, ST, etc. Thus, NTA has followed the norms of the Government of India while applying horizontal reservation for the Persons with Disabilities among categories like General, SC, ST, OBC (NCL) & EWS for which vertical reservation has been applied in preparing the result of UGC-NET.

3. Submissions made in Rejoinder:

3.1 The complainant in his rejoinder dated 14.10.2022 has reiterated his complaint and refuted the contents of the letter dated 16.09.2022 issued by UGC to NTA. The complainant has submitted that this Court vide Order dated 05.04.2022 in Case No. 12850/1031/2021 has already recommended as under:-

“4.6 UGC NET Examination cannot be called recruitment process. In UGC NET Exam, vacancies are not calculated/reserved in accordance



with reservation rosters of establishments. Recruitment being a separate process, conducted by the establishment concerned is different from UGC NET Exam.

“4.7 Hence this Court concludes that the Respondent has erred in fixing quantum of reservation to 4% instead of 5%. Since the examination is now over and the result has also been declared, this Court refrains from interfering in the present Complaint.

“4.8. For UGC NET Exams which will be conducted in future, this Court recommends that the Respondent shall reserve 5% seats for PwBD candidates as per Section 32 of the Rights of Persons with Disabilities Act, 2016.

“4.9 Accordingly the case is disposed off.

“Dated: 05.04.2022

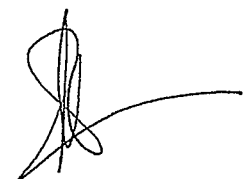
Sd/-
(Upma Srivastava)
Commissioner
for Persons with Disabilities”

4. Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **22.12.2022**. The following persons were present during the hearing:

- (1) Shri Joby T.T., complainant along with Shri Venu.
- (2) Shri Tejas P. Joshi, Joint Secretary, UGC, for the Respondent No.1.
- (3) Ms. Sanajeeta, Consultant; Ms. Madhu Gupta, Sr. Consultant for Respondent No.2.

5. Observations & Recommendations:

5.1 Complainant submitted that in the UGC NET notification the National Testing Agency and University Grants Commission breached the provisions under Sec. 32 of the RPWD Act, 2016 by providing vertical reservation to PWD within the Horizontal reservation for PWD. Thus they further classified the horizontal reservation to PWD Under the RPWD Act, 2016 there is no provision for sub classification/further classification of Persons with Disability for providing reservation on the basis of caste, creed or religion. Complainant further submitted that in the previous notification also the respondent had notified like that and in the result the horizontal reservation to PWD was



further classified on the basis of vertical reservation (General, SC, ST, OBC, EWS) with 20 categories of PWD.

5.2 Respondent in its submissions cited DoPT O.M. No.36035/16/91 Estt.(SCT) issued dated 18.02.1997 and submitted that it is clearly spelt out in the Memorandum dated 18.02.1997 that the horizontal reservation for PwD category cuts across vertical reservation for categories like General, SC, ST, etc. Thus, NTA followed the norms of the Government of India while applying horizontal reservation for the Persons with Disabilities among categories like General, SC, ST, OBC (NCL) & EWS for which vertical reservation has been applied in preparing the result of UGC-NET.

5.3 The main issue raised by the Complainant is related to 'compartmentalization' of divyangjan reservation. This Court concludes that the Complainant's submission is correct. Supreme Court in a judgment - Mahesh Gupta v Yashwant Kumar Ahirwal; Civil Appeal No. 3984 of 2007 has held that seats reserved for divyangjan cannot be further sub-divided on caste basis. Classification of divyangjan on the basis of caste, creed or religion may not ordinarily arise. Divyangjan constitute class in itself. In another judgment Union of India v M. Selvakumar & Ors. (2017) 3 SCC 504, Hon'ble Supreme Court held that Physically Handicapped Category is a Category in itself, a person who is physically handicapped be it Physically Handicapped of a General Category or OBC Category, suffering from similar disability has to be treated alike in extending the relaxation and concessions. Similar issue of bifurcation of vacancies reserved for divyangjan on the basis of caste was raised before Guwahati High Court. The Hon'ble High Court in Saidur Rahman v State of Assam; W.P. (C)/758/2019, held that State Government's decision to reserve vacancies only for those divyangjan who belonged to OBC/ST category was irregular and Court further directed to consider the petitioner, who was General category divyangjan, against unfilled vacancy which was reserved for OBC/ST divyangjan.

5.4 During online hearing, the Respondent submitted on record that the result of the impugned examination has already been declared. Even though the Respondent has committed error in bifurcating the vacancies/seats reserved for divyangjan, on the basis of caste, this Court is not inclined to interfere in the present Complaint because such interference shall cause grave injustice to already selected divyangjan and candidates of other marginalized sections of society.


5.5 For future reference this Court recommends that in all such future notifications the Respondent shall strictly reserve 5% of total vacancies and such reservation shall not be bifurcated on the basis of caste. Notification, office orders issued to this effect shall be sent to this Court for information.



5.6 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.

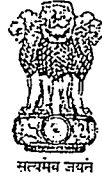
5.7 Accordingly the case is disposed off.

Dated: 06.02.2023


**(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities**

Extra

9



Case No.13425/1014/2022/150394

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. 13425/1014/2022/150394

Complainant:

Dr. Haradhan Maity,
R/o 84/B/10, Dum Dum Cossipore Road,
Aikatan Abasan, Kolkata-700074 (WB);
Email: hmaity.maths@gmail.com

R37445

Respondent:

(1) The Director/Registrar,
Indian Institute of Technology Kanpur,
Kalyanpur, Kanpur-208016, UP,
Emails: director@iitk.ac.in, karandi@iitk.ac.in, karandi@ee.iitb.ac.in

R37446

(2) The Dean,
Faculty Affairs,
Indian Institute of Technology Kanpur,
Kalyanpur, Kanpur-208016, UP.
Email id : dofa@iitk.ac.in, amalen@iitk.ac.in

R37447

(3) The Registrar,
Indian Institute of Technology Kanpur,
Kalyanpur, Kanpur-208016, UP,
Email id : registrar@iitk.ac.in

R37448

Affected Person: The complainant, a person with 60% Locomotor Disability (Right Upper Limb)

1. Gist of Complaint:

1.1 The complainant filed a complaint vide email dated 25.07.2022 against arbitrary, illegal, mala fide, biased, and whimsical recruitment process of Indian Institute of Technology Kanpur.

1.2 The complainant submitted that under the Special Recruitment Drive for Reserved Category (SC, ST, OBC, EWS, & PwD) at IIT Kanpur he had applied on 21.10.2021 for the post of Assistant Professor in Mathematics. IIT Kanpur assigned application number: DF-1/2021/17520. In connection with his application, he had given two talks well (both teaching and research) in the

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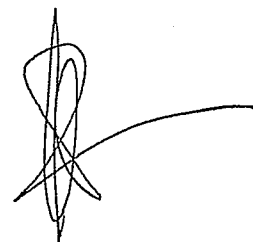
Department of Mathematics and Statistics, IIT Kanpur, in February 2022 (17th and 18th) via the online platform, Zoom. He also submitted that he has more adequate qualifications than the institute recruitment rules. The complainant alleged that even after almost five months have passed since he had given talks, IIT Kanpur authorities have not informed him about the status of his application despite several emails to IIT Kanpur. When he informed the Secretary, Department of Higher Education, Ministry of Education, then he received an ambiguous rejection reply from the IIT Kanpur, saying that "Unfortunately, your application did not make it to the final list of selected candidates.

1.3 The complainant prayed for following reliefs:-

- (1) to instruct the authority concerned of IIT Kanpur to consider his application and accommodate his appointment soon;
- (2) to investigate the matter & fact, and to take the necessary action for keeping and maintaining the reservation roster of Persons with Disabilities (PwDs);
- (3) the authority concerned of IIT Kanpur be directed to fill up the PwD vacant posts according to the roster.
- (4) take necessary steps to stop these illegal, malafide and arbitrary activities as IIT Kanpur is not hiring candidates with disabilities;
- (5) investigate the recruitment process in each stage of IIT Kanpur;
- (6) to make separate recruitment for the person with disability category and to nominate an external representative of person with disability in the selection process;
- (7) issue ad-interim order of injunction directing the IIT Kanpur to keep one post vacant for the applicant in the post of Assistant Professor under the Administrative Control of the Director, IIT, Kanpur, till the disposal of the complaint; and
- (8) impose costs upon IIT, Kanpur.

2. Submissions made by the Respondent:

2.1 IIT Kanpur filed its reply on affidavit dated 20.09.2022 and inter-alia submitted that there is no sanctioned strength separately for each faculty posts, i.e. Assistant Professors, Associate Professors and Professors. Each IIT was advised to recruit faculty and staff in a fixed proportion to the student's strength. In other words, they are allowed to recruit students, faculty and staff



proportionately in the ratio of 10:1:1.1. It is in this context that the IIT Kanpur is regularly issuing a rolling advertisement for filling up the post of faculty in various departments of the Institute.

2.2 It has been further submitted that as per the advertisement, the minimum qualification was stated as Ph.D. with first class or equivalent (in terms of grades) at the preceding degree in the appropriate branch, with a very good academic record throughout. The assertion of the complainant, that he has more adequate qualifications than the Institute recruitment rules, is not borne out of his academic records, as would be evident from his academic records in terms of the following:

(a) He has scored 56% marks in his Bachelor's Degree (B.Sc.) and thereby has obtained Second Division at Graduation level.

(b) He has done M.Sc. (two years program in Mathematics at IIT Kanpur) with the following performance:

(i) He had obtained CPI 6.1, whereas CPI of 6 is the minimum academic requirement for a M.Sc. 2 years student to graduate.

(ii) He was on academic probation (AP) in his first semester, having secured SPI less than 5.5 and CPI less than 6. His second semester was dropped. He was again on AP in the third semester. Therefore, he was most likely on termination at this point. In the fourth semester, he was on warning, still having CPI less than 6. In his sixth semester, he was again on AP. To clear a failed backlog and complete his program, he had to register for a summer semester at the end.

(iii) He failed in and had to repeat two compulsory subjects of the program, viz. Complex Analysis and Topology.

From the above, it is clear that his performance in M.Sc. degree was just an average in context of IIT Kanpur. He was, thus, not having a very good academic record throughout as mandate in the published advertisement for the applied post.

(c) Feedbacks on both his presentations (teaching and research) in the department were negative.

2.3 The respondent also submitted that besides the above, the publication record of the complainant was not satisfactory given that he has no publications after 2017. All his publications listed as "referred publications" in his application are with his Ph.D. supervisor. As regards, the two talks both in



teaching and research which were very well. However, the feedbacks on both his talks in the department were negative.

3. Submissions made in Rejoinder:

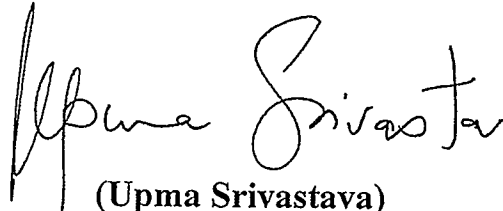
The complainant filed his rejoinder dated 23.11.2022 and inter-alia submitted that IIT Kanpur is trying to mislead and divert the attention of this Court from the original state of the affairs.

4. Observations & Recommendations:

4.1 Upon considering the reply filed by the Respondents, this Court concludes that complainant's right is limited to being considered against a post advertised. There is no right to be shortlisted or appointed against the post. There is no discrimination in short-listing of the applications by the respondent. The reply of the respondent is satisfactory, hence, intervention of this Court is not warranted in the matter.

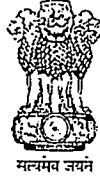
4.2 Accordingly, the case is disposed off.

Dated: 06.02.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

Extra

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13400/1040/2022

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. 13400/1040/2022

Complainant:

Shri Awadhesh Kumar Prajapati,
R/o D-4, Delhi Admin. Flats,
Model Town 1st, Delhi-110009
Email: awadhesh00@gmail.com

R37449

Respondent:

The Director,
National Institute for the Empowerment of
Persons with Visual Disabilities (Divyangjan)[NIEPVD]
116, Rajpur Road,
Dehradun – 248001 (Uttarakhand)
Email Id: director@nivh.org.in

R37450

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

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 22.07.2022 regarding discrimination with the age criteria amongst the visually impaired person in the training program of NIEPVD.

1.2 The complainant submitted that he wanted to enroll himself in the training program of NIEPVD, but to the age criteria which is 18 to 40 years his enrolment was denied as he is approx 50 years of age. The complainant further submitted that now-a-days the technology has made a drastic change and he is capable enough to understand the today's technology and gadgets to train himself. The complainant has requested to remove the age criteria so that he could get enrolled for the training at NIEPVD.

2. Submissions made by the Respondent:

2.1 NIEPVD filed its reply dated 22.09.2022 and inter-alia submitted that since its inception, there is a policy to provide vocational training to the adult persons with visual impairment in the age group of 18-40 years. Exemption is given to only visually impaired ex-servicemen and in-service candidates. Further, the report on the Govt. of India Institutions for the Blind at Dehradun from January 1950 to March, 1961 published by the Ministry of Education in 1961 also clearly specifies that persons with visual impairment between 18 and 40 years of age are provided vocational training at the Training Centre for the Adult Blind established in

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1950. Therefore, the allegation that discrimination in age is not accepted hence denied.

3. Submissions made in Rejoinder:

The reply of NIEPVD was forwarded to the complainant vide this Court's letter dated 14.10.2022 for filing rejoinder. However, no rejoinder has been received from the complainant.

4. Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **29.12.2022**. The following persons were present in the hearing:

- (1) Shri Awadhesh Kumar Prajapati, the complainant
- (2) Shri Manish Verma, Director Incharge, NIEPVD, for the respondent

5. Observation/Recommendations:

5.1 The complainant submitted that he wanted to enrol himself in the training program of NIEPVD, but because of the age criteria which is 18 to 40 years, his enrollment was denied as he is approx 50 years of age. The complainant further submitted that now-a-days the technology has made a drastic change and he is capable enough to understand the today's technology and gadgets to train himself. The complainant has requested to remove the age criteria so that he could get enrolled for the training at NIEPVD.

5.2 Respondent submitted that since its inception, there is a policy to provide vocational training to the adult persons with visual impairment in the age group of 18-40 years. Exemption is given to only visually impaired ex-servicemen and in-service candidates.

5.3 Further, the report on the Govt. of India Institutions for the Blind at Dehradun from January 1950 to March, 1961 published by the Ministry of Education in 1961 also clearly specifies that persons with visual impairment between 18 and 40 years of age are provided vocational training at the Training Center for the Adult Blind established in 1950. Therefore, the allegation that discrimination in age is denied by the Respondent.

5.4 During online hearing, Respondent informed this Court that this is the first case of this kind. In past no applicant of age more than 40 years applied in the course. Respondent further submitted that the Complainant was appropriately guided and offered another course in which there is no age restriction.

5.5 Considering the Complainant's keen interest to learn computer related skills, the Respondent suggested to make and offer the Complainant a special package in which more focus will be put on computer related skills.

5.6 This Court commends the positive and solution-oriented approach of the Respondent. This Court recommends that the Respondent shall form and offer special



package to the Complainant, as suggested during online hearing. Further intervention of this Court 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: 04.02.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



extra

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Case No.13350/1011/2022

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. 13350/1011/2022

Complainant:

Shri Shyamnandan Kumar,
R/o Type-IV Qtr., Income Tax Colony,
Udit Nagar, Rourkela, Dist-Sundergarh,
Odisha-769012;
Email: shyamsip2017@gmail.com; Mobile: 9348784442

Respondent:

The Chairperson,
National Institute of Open Schooling,
A-24-25, Industrial Area, Sector-62,
Noida, District-Gautambudh Nagar,
UP-201309; Email: cm@nios.ac.in

Affected Person: The complainant, a person with 45% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint vide email dated 24.06.2022 regarding not providing reservations to persons with disabilities in the direct recruitment for the post of Assistant Director (Admin) in the respondent organization, the National Institute of Open Schooling. Though the respondent has not provided reservation yet the applicant being a candidate with disability appeared in Interview along with other candidates with disabilities. The candidates with disability were deprived of their legitimate right of getting reservation in direct recruitment. The complainant submitted that he is awaiting the final result in normal (Gen/OBC) quota on account of no reservation provided for PH candidate by the NIOS.

1.2 The complainant prayed (i) to instruct the respondent to provide reservation to the candidates with disability against the vacancy of Assistant Director (Admin) and select the candidate as per reservation policy for handicapped from the eligible handicapped candidates Assistant Director (Admin) and (ii) to stay the final result of the post of Assistant Director (Admin) till the disposal of this proceedings before this Court.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 16.08.2022 and submitted that the complainant/applicant had appeared in the interview very well knowing the rules of recruitment of said post. Only when he was not selected, he filed the complaint

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before this Court, which is not maintainable in the light of the decided case law of the Hon'ble Supreme Court of India in Civil Appeal No.9092 of 2012 titled Ashok Kumar & Anr Vs State of Bihar and Ors :-

“when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable.”

2.2 The respondent further submitted that the sanctioned strength of the posts of Assistant Director (Admin) is 18. The post of Assistant Director (Admin) is Group 'A' post. Out of 18, only 4 posts fall under the Direct Recruitment quota. Apart from Assistant Director (Admin), there are 41 other posts in Group 'A' that fall under Direct Recruitment as per NIOS RRs. Thus, the total number of posts in Group 'A'; under the direct recruitment quota is 45. As per the formula of calculation laid down in DoPT OM, 4% of 45 results in 1.8. NIOS had already appointed one person who belongs to PwD to the post of Academic Officer (Mrs. Madhur Bhatia-UR/PH). Besides, Shri G.R. Sahoo is working as Assistant Director (Admin) who belongs to PH category PwBD (Ortho) which is Group 'A'. Therefore, no seat was reserved for PwBD candidates for the post of Assistant Director (Admin).

3. Submissions made in Rejoinder:

The complainant filed a rejoinder dated 05.09.2022 and submitted that the respondent's reply itself establishes the plea of the applicant that 01 seat was available for PwBD candidates under (DR) quota of AD (Admin) which they had wrongly claimed to have been filled by Shri G.R. Sahoo who was actually appointed in "Group 'B' DR quota of PwBD long ago. The complainant also submitted that according to respondent's submission 4% of 45 seats comes to 1.8 i.e. 02 seats were to be reserved for persons with disabilities in Group A direct recruitment quota.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 13.12.2022. The following persons were present during the hearing:

- (1) Shri Shyamnandan Kumar, the complainant
- (2) Shri Vikrant Vasudeva, Advocate for Respondent

5. Observation/Recommendations:

5.1 The complainant filed a complaint regarding not providing reservation to persons with disabilities in the direct recruitment for the post of Assistant Director

(Admin) in the respondent establishment. He submits that he appeared in interview along with other candidates with disabilities.

5.2 Complainant also submitted that the Respondent did not conduct Special Recruitment Drive for appointment of divyangjan.

5.3 The complainant prayed this Court to instruct the respondent to provide reservation to the candidates with disability against the vacancy of Assistant Director (Admin) and select the candidate as per reservation policy.

5.4 The respondent submitted that the complainant/applicant had appeared in the interview very well knowing the rules of recruitment of said post. Only when he was not selected, he filed the complaint before this Court, which is not maintainable in the light of the decided case law of the Hon'ble Supreme Court of India in Civil Appeal No.9092 of 2012 titled Ashok Kumar & Anr Vs State of Bihar and Ors :-

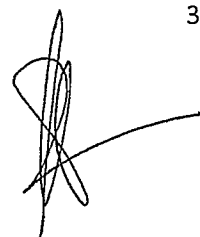
“when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable.”

5.5 The respondent further submitted that the sanctioned strength of the posts of Assistant Director (Admin) is 18. The post of Assistant Director (Admin) is Group 'A' post. Out of 18, only 4 posts fall under the Direct Recruitment quota. Apart from Assistant Director (Admin), there are 41 other posts in Group 'A' that fall under Direct Recruitment as per NIOS RRs. Thus, the total number of posts in Group 'A'; under the direct recruitment quota is 45. As per the formula of calculation laid down in DoPT OM, 4% of 45 results in 1.8.

5.6 Further, Respondent submitted that there are already 2 divyangjan employed on the post of Assistant Director (Admin), hence there was no need to reserve posts for divyangjan. Supreme Court judgment cited by the Respondent not applicable because it is not related to disability rights, it is judgment in general.

5.7 It is imperative to mention Section 34 of Rights of Persons with Disabilities Act, 2016

“Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:



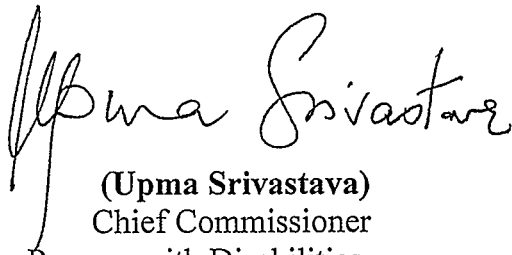
- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities.

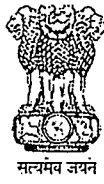
5.8 Respondent submitted that there were total 45 vacancies in Group A posts. As per 4% rule, envisaged in Section 34 of RPwD Act, 2016, 2 vacancies could be reserved but none was reserved because already 2 divyangjan are employed in the establishments. This submission is contrary to legal position. Respondent was bound to reserve 4% vacancies irrespective of total number of divyang employees already employed.

5.9 As far as the present Complaint is concerned, this Court shall not interfere in the present Complaint because it may cause injustice with other divyangjan. For future this Court recommends that in next recruitment cycle, Respondent shall reserve for divyangjan 2 vacancies in addition to vacancies which will be reserved in accordance with reservation roster as applicable in next recruitment cycle. The 2 vacancies which ought to have been reserved in the present recruitment cycle but not been reserved by the Respondent shall be considered as 'backlog vacancies'.

5.10 Accordingly the case is disposed off.

Dated: 06.02.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

Expt 9
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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: 13474/1024/2022

Complainant: Shri Vishal Kumar
51/19, New Vijay Nagar
Near Jhajjar Chungi, Rohtak, Haryana
E-mail: <vishalgoel009@gmail.com>
Mob: 9828545636

137455

Respondent: The Secretary
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi – 110002

137456

The Additional Secretary
Northern Regional College Bureau (NRCB)
Regional Office, 35, Feroz Shah Road
New Delhi – 110002

137457

Complainant: 100% visual impairment

GIST of the Complaint:

The complainant Shri Vishal Kumar, Assistant Professor in Government College for Women, Rohtak, Haryana vide complaint dated 30.07.2022 has submitted that there is a scheme under UGC provisions for providing financial assistance of 3000 rupees per month to visually challenged permanent college teachers for Payment of Reader Allowance/Purchase of Braille Books/Material, Purchase of recorded materials and Any other related/ required material/equipment for research, teaching and learning. He had applied to Northern Regional College Bureau (NRCB, Regional office of UGC) for this financial assistance in August 2020, but UGC didn't sanction the financial assistance saying that they have not invited fresh applications in this regard while UGC is extending this scheme year on year basis every time. There is no such rule itself mentioned in scheme as to invite applications by UGC for claiming the benefits of scheme. Also, UGC by its various orders/circulars continue this scheme up to 2023. On the other hand, other Regional Offices of UGC, apart from NRCB are sanctioning and providing the Financial Assistance to visually challenged permanent college teachers.

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2. He further submitted that in a RTI reply of NRCB, UGC said that no financial assistance has been provided to visually challenged permanent college teachers since 2016 but this reply of NRCB in response to RTI gives false information as many of the teachers working in the colleges of Delhi are getting financial assistance continuously. If the information provided by NRCB is considered as true, then it is serious because NRCB is depriving the visually challenged college teacher of Northern Region of the right to avail Financial Assistance which is provided by UGC. As per him UGC is discriminating among visually challenged teachers working in different regions.

3. The matter was taken up with the Respondent vide letter dated **06.10.2022** under Section 75 of the RPwD Act, 2016 followed by Reminders dated **27.10.2022 & 07.11.2022** but till date no response has been received.

Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **29.12.2022**. The following were present in the hearing :

- Shri Vishal Kumar – (Complainant)
- Shri Amit Kumar, (Under Secretary SCT), UGC Respondent -1
- Shri Umesh Kumar Sharma, Assistant, NCRB Respondent -2

Observation/Recommendations:

4. Complainant submits that he is employed as Assistant Professor in Government College for Women, Rohtak, Haryana. Complainant submits that there is a scheme of Respondent No. 1 as per which financial assistance of Rs. 3000 per month is given to Visually Impaired college teachers for purchasing Braille books, recorded materials etc. He applied for availing this scheme and sent his application to Respondent No. 2. His application was rejected saying that "fresh applications are not invited".

5. During online hearing, Respondent No. 1 informed this Court that schemes are implemented in accordance with the plans. The scheme which is being relied upon by the Complainant got discontinued in 2017 when the 12th plan (2012-2017) ended. After 2017 no new application was considered under the scheme. Complainant alleged that in other circles the scheme is still under force and applications are being considered under the scheme. Respondent No. 1 informed that he is not aware about the functioning in other circles.



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6. This Court concludes that since the scheme has been discontinued after 2017 hence there is no case of discrimination on the basis of disability. As far as Complainant's allegation relating to scheme being in force in other circles is concerned, this Court recommends that the Respondent No. 1 shall review the functioning and schemes in force in all the circles and shall form uniform policy for all the circles.

7. The case is disposed off.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.02.2023



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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: 13256/1023/2022

Complainant

Shri Mukesh Verma
51, Kaveri Vihar-II, Shamshabad Road
Agra - 282004
Email: sanjayghodke2011@gmail.com

Vs

Respondents:

The Director General
DG : AIR, Akashvani Bhawan
New Delhi - 110001
Email: dgair@air.org.in

GIST OF COMPLAINT

Complainant Shri Mukesh Verma, Programme Executive in Class-II at All India Radio, Agra (AIR Agra) vide complaint dated 11.05.2022 has submitted that he is at the verge of retirement, notwithstanding that Head of Programme Shri Neeraj Jain in the same post capacity is harassing, oppressing and discriminating him with various ways on the ground of disabilities and issuing unnecessary office memorandum, office order and office notes. He alleged that Shri Neeraj Jain deliberately put him on field/work with prejudiced attitude vide office order dated 11.08.2021, however, he covered programme of Independence Day on 15.08.2021 from 8.00 A.M. for outdoor broadcast and at night 07.30 PM on the same day. He further submitted that he is sitting in a room which is in very poor condition, its window has fallen down, its roof is in much cracked condition that may fall down at any time and he had shown the condition of room to Shri Neeraj Jain and also given him in writing on 01.07.2021 but his grievance has not been resolved so far. He has sought following relief:

- To Direct the respondent to allocate him programme at the station as he cannot be spared from programme work on the ground of disability.
- Withdrawn order dated 25.11.2021 to affix an unnecessary office order in his service book and personal file.
- Direct the respondent to transfer Shri Neeraj Jain from AIR, Agra at the earliest.
- An inquiry should be set up against Shri Neeraj Jain, Head of Programme for harassment and discriminatory behaviour against him and take disciplinary actions and penalties as provided under CCS Rules 1965.

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

(पूरा मविष्य में पत्राचार के लिए उपरोक्त फाइल/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 25.05.2022 under Section 75 of the RPwD Act, 2016 but despite reminder dated 28.06.2022, no response has been received from the respondent. The matter was heard on 14.09.2022 and 01.12.2022. Necessary record of proceedings has been issued.

3. **Hearing:** The case was finally heard via Video Conferencing by Chief Commissioner for persons with disabilities on dated 30.12.2022. The following were present in the hearing:

- i) Shri Mukesh Verma: **Complainant**
- ii) Shri Jitendra Arora, DDG(Admn.), office of DG, AIR: **Respondent**

Observation/Recommendations:

4. Complainant submits that he was employed in the Respondent establishment. He superannuated in June 2022. Grievances filed by him are related to his tenure in service. In the Complaint the Complainant has raised issues related to harassment by one Sri Neeraj Jain. Complainant has submitted that with view to harass him, Sri Neeraj Jain allocated field duties to the Complainant by Order dated 11.08.2021. Further it is alleged that he was assigned night duties also. Complainant has further alleged that he was allocated office which was not in right condition. Further Complainant claims that during Covid lockdown he was forced to attend physical meetings. Complainant also alleges that normally staff member is assigned to 'Programme Officer' for his assistance. However, no such staff member was assigned to him.

5. Hearing was conducted on 14.09.2022 and on 01.12.2022. Respondent was directed to conduct an inquiry and submit its Report. Respondent filed Reply dated 13.12.2022, whereby the Respondent has submitted that an inquiry was conducted and inquiry report dated 05.12.2022 was received from O/o Zonal Head (NZ). Copy of inquiry report along with reply has also been filed by the Respondent.

6. Inquiry report was perused by this Court. On the issue of allocation of field duties and night time duties, the Respondent submits that the same was done with intention to give 'Equal Opportunity' to the Complainant. Further the Respondent has submitted that the Complainant was always given appropriate sitting facility on the ground floor. The room which was allocated to the Complainant is now used by senior officers. On the issue of assigning officer for assistance of the Complainant, it is submitted by the Respondent that first the Complainant was assigned Music & Commercial Sections. Music composer and Guitar player were assigned to assist the Complainant. As far as Commercial section duties were concerned, Respondent submits that the Complainant was not assigned any assistance to help the Complainant.

7. Inquiry report was perused. Office Order dated 11.08.2021 was also perused. It is evident from the Order that the Complainant was assigned duty to cover Independence Day programme on 15.08.2021. Order directs the Complainant and other staff members to depart at 08.00 A.M. in the morning. The same Order further directs that the Complainant shall also cover another programme on the same day and Complainant was directed to remain in office at 07.30 P.M. in the evening.



8. It is evident from the Order that the Complainant was assigned night duty and field duty as well. This is in clear violation of rights of Divyangjan. Rights of Persons with Disabilities Act, 2016 provides that divyang employees must be provided 'conducive environment' in which they can perform their duties.

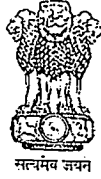
9. On other issues relating to assigning of staff for assistance or allocation of suitable room, this Court is not inclined to intervene because these issues have now become infructuous because of superannuation of the Complainant.

10. This Court recommends that the Respondent shall conduct sensitization of the staff of the Respondent establishment so that no such incidence happens again in future.

11. The case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: .06.02.2023



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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. 13530/1022/2022

Complainant:

Shri K.K Badal
S.D.E (BSNL) Gwalior
Madhya Pradesh
Mobile: 9425418625
Email: kaushalbadal@rediffmail.com

137711

Respondent:

(1) The Chief General Manager
O/o CGMT MP Circle BSNL Bhopal,
Sanchar Bhavan BSNL, MP Telecom Circle Office,
Bhopal- 462015, Madhya Pradesh,
Email: cgm_mp@bsnl.co.in
Mobile: 9431000086

137712

(2) The Director (HR),
Bharat Sanchar Nigam Limited (BSNL),
Corporate Office Personnel Branch,
4th Floor, Bharat Sanchar Bhawan
Janpath, New Delhi- 110001
Email: dirhrd@bsni.co.in
Contact: 011-23734070

137713

Subject: Complaint dated 07.10.2022, of Shri K.K Badal, a person with 45% locomotor disability working in BSNL as SDE, requesting for cancellation of his transfer order and retain his posting at Gwalior in Madhya Pradesh Telecom Circle- regarding

Shri K.K. Badal,, complainant, vide email dated 07.10.2022 has filed a complaint regarding cancellation of his transfer order from Gwalior to Sagar and to retain him at Gwalior.

2. The matter was taken up with the respondents vide letter dated 10.11.2022.
3. Dy. General Manager (Admn), M.P. Telecom Circle, Bhopal vide letter dated 07.12.2022 has informed that the transfer and posting order in respect of Shri K.K. Badal, SDE, O/o GM, BA Gwalior is cancelled.
4. Shri K.K. Badal, complainant vide email dated 19.12.2022 has informed that after issuance of this Court's notice his office has cancelled his transfer order and retained him at Gwalior. He has requested for closing the case.
5. As the complainant's complaint has been redressed, no further intervention is required in the matter.
6. The case is disposed off accordingly.

(Upma Srivastava)
Chief Commissioner

Dated: 07.02.2023

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

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



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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/ F. No: 13604/1022/2022

Dated: 07.02.2023

Dispatch No: R37714

To,

The Secretary
Department of Personal & Training (DOP&T)
Ministry of Personnel, P G and Pensions
Government of India
North Block, New Delhi - 110 001
Phone no. 011-23092338
Email id: secy_mop@nic.in

The Secretary
Department of Public Enterprises
Public Enterprises Bhawan
Lodi Road, CGO Complex,
Block No. 14, New Delhi-110003
Contact No: 24362646
Email: secy-dpe@nic.in

R37715

The Secretary
Department of Financial Services
Ministry of Finance
3rd Floor, Jeevan Deep Building
Sansad Marg, New Delhi-110001
Email: secy-fs@nic.in

R37716

Sub: Adhering to the provisions/guidelines relating to transfer of divyang employees - regarding

The office of the Chief Commissioner for Persons with Disabilities has been set up to promote and protect the rights of persons with disabilities (PwDs) as per the provisions of the Rights of Persons with Disabilities Act, 2016. This office, inter alia, receives grievances relating to violation of the rights of PwDs and addresses them after a proper hearing as a Civil Court. A lot of grievances are received in this office regarding not following the rules and guidelines relating to transfer of Divyang employees.. In this context, please find enclosed a copy of complaint dated 01.12.2022, of Shri C. Ramesh Babu, working as Chief Manager (F&A) in a Central Public Sector undertaking, Gurugram.

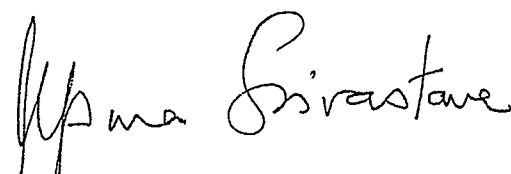
2. I would like to mention for ready reference, the relevant provisions and guidelines in respect of transfer of Divyang employees as under: -

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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)

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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 that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extends this rule for employees belonging to group A and B as well.
- f) 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.
- g) 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.
- h) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extends the scope of O.M. dated 06.06.2014 and 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.
3. I would request all Cadre Controlling Authorities to please issue suitable instructions to all organizations under their respective jurisdictions for strict compliance of the above provisions/guidelines under intimation to this office.



(Upma Srivastava)
Chief Commissioner for Persons with Disabilities



29

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: 13451/1022/2022

Complainant

Shri Bikash Kumar Jha
Manager, Employee No. 75935
Canara Bank, Ramgarh
Jharkhand
Email: bikashkumar75@canarabank.in
Mobile No: 07903617795

137712

Versus

Respondent

The General Manager
Canara Bank, 112, J. C Road
Bengaluru, Karnataka
Email: hoir@canarabank.com

137718

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 30.08.2022 में कहना है वह 40 प्रतिशत लोकोमोटर दिव्यांगजन कर्मचारी है। शिकायतकर्ता का कहना है कि वह कैनरा बैंक में प्रबंधक के पद पर कार्यरत है और रांची अंचल के अग्रतगत रामगढ़-2 डी.पी. (17471) में अगस्त 2021 से कार्यरत था। मई 2022 में उनका स्थानांतरण कोलकता कर दिया गया जबकि शिकायतकर्ता बाएं पैर से दिव्यांगजन है। शिकायतकर्ता का कहना है कि उनका स्थानांतरण नियम के अनुसार नहीं किया गया तथा उसके बाद जुलाई 2022 में स्थानांतरण में बदलाव करके उन्हें जमशेदपुर क्षेत्रीय कार्यालय किया गया जो रामगढ़ से 200 किलोमीटर की दूरी पर है। शिकायतकर्ता का कहना है कि वह दिव्यांगता तथा पारिवारिक जिम्मेदारी के कारण वह जमशेदपुर जाने में असमर्थ है। अतः शिकायतकर्ता ने मुख्य आयुक्त दिव्यांगजन कोर्ट से आग्रह किया है कि उनका स्थानांतरण स्थगित करके उन्हें कैनरा बैंक रामगढ़-2 डी.पी. या हजारीबाग के किसी शाखा में रखने की कृपा की जाए।

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, the General Manager, Canara Bank vide, his email dated 12.10.2022, has submitted that the complainant who had joined the services of the bank on 17.08.2009, was posted in various branches/offices of the bank coming within the Agra, Patna, Mumbai and Ranchi Circle offices during his courses of employment. He has been working in branches within the Ranchi Circle office from 03.07.2017 till 27.05.2022 i.e. for more than 5 years.

4. The respondent further submitted that he was transferred from Ramgarh branch, Jharkhand to Zonal Inspectorate, Kolkata vide proceedings dated 11.05.2022, which is as per the transfer policy of the bank and its administrative requirements. The complainant expressed difficulty in joining duties at the Zonal Inspectorate, Kolkata, the competent authority had compassionately considered his request for modification of transfer and in partial modification of the transfer order dated 11.05.2022, posted him to Regional office, Jamshedpur, vide order dated 07.07.2022. However, despite accommodating him at Regional Office, Jamshedpur, the complainant again requested for his retention at Ramgarh branch citing various difficulties. The competent authority of the bank, considering the facts and circumstances of the case including his physical limitations, has favourably considered his request for retention at Ramgarh branch within Ranchi circle office. Accordingly, in modification of the earlier transfer proceedings dated 07.07.2022, the complainant has been transferred to Ramgarh branch under Ranchi Circle Office, vide proceedings dated 23.09.2022. The complainant has reported to the said branch and is working there since 27.09.2022.

5. The complainant did not file the rejoinder comments against the letter issued by Court of Chief Commissioner for Persons with Disabilities vide letter dated 26.10.2022.

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

- i) **Shri Bikash Kumar Jha : Complainant**
- ii) **Shri Manu Pandey, General Manager, Canara Bank: Respondent**

Observations /Recommendations:

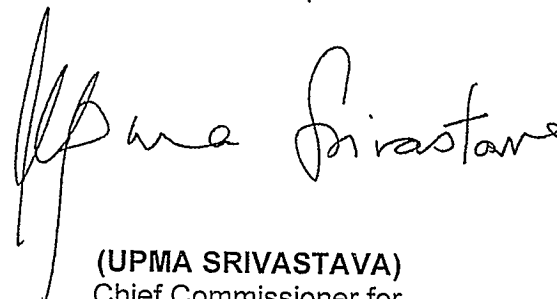
7. Complainant submits that he is employed on the post of Manager in the Respondent establishment. He claims that the Respondent transferred him to Kolkata in May 2022. Thereafter he was again transferred to Jamshedpur in July 2022. His native place is Ramgarh. Distance between Ramgarh and Jamshedpur is 200 K.Ms. He prays this Court to direct the Respondent to transfer him to his native place, where he was posted before May 2022.

8. Respondent submits that the complainant who had joined the services of the bank on 17.08.2009, was posted in various branches/offices of the bank coming within the Agra, Patna, Mumbai and Ranchi Circle offices during his courses of employment. He has been working in branches within the Ranchi Circle office from 03.07.2017 till 27.05.2022 i.e. for more than 5 years. The respondent further submitted that he was transferred from Ramgarh branch, Jharkhand to Zonal Inspectorate, Kolkata vide proceedings dated 11.05.2022, which is as per the transfer policy of the bank and its administrative requirements. The complainant expressed difficulty in joining duties at the Zonal Inspectorate, Kolkata, the competent authority had compassionately considered his request for modification of transfer and in partial modification of the transfer order dated 11.05.2022, posted him to Regional office, Jamshedpur, vide order dated 07.07.2022. However, despite accommodating him at Regional Office, Jamshedpur, the complainant again requested for his retention at Ramgarh branch citing various difficulties. The competent authority of the bank, considering the facts and circumstances of the case including his physical limitations,

has favourably considered his request for retention at Ramgarh branch within Ranchi circle office. Accordingly, in modification of the earlier transfer proceedings dated 07.07.2022, the complainant has been transferred to Ramgarh branch under Ranchi Circle Office, vide proceedings dated 23.09.2022. The complainant has reported to the said branch and is working there since 27.09.2022.

9. During online hearing, Complainant submitted that all his grievances have now been resolved. He has been transferred to location of his choice. 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: 07.02.2023



ए.प.प. (32)

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: 13420/1024/2022

Complainant: Shri Sharad Tripathi

E-mail: <sinceresharad6@gmail.com>

Mob: 9828545636

Respondent: The Director

Directorate of Estate

Nirman Bhawan, Near Udyog Bhawan

New Delhi – 110011

Respondent No. 01

The Secretary

Department of Personnel & Training

M/o Personnel, PG and Pensions

Govt. of India, North Block, New Delhi

Respondent No. 02

Complainant: 100% visual impairment

GIST of the Complaint:

The complainant Shri Sharad Tripathi vide complaint dated 04.08.2022 has submitted that he is working as Assistant Director/District Youth Officer in Nehru Yuva Kendra Sangathan (NYKS), an autonomous body under Ministry of Youth and Sports Affairs. NYKS is 100% funded by Govt. of India through budgetary support and comes under purview of definition of 'State' within Article 12 of the Constitution of Republic of India. He further submitted that many private owners of houses has denied him house on rent because of his blindness. He has drawn the attention towards Ministry of Housing Affairs OM dated 07.11.2020 and submitted that the concerned memo discriminates on two grounds, firstly only Central Government Employees are allowed Central Residential Pool of Government Quarters which is against the spirit of Rights of Persons with Disabilities Act, 2016 specifically Section 03 – Equality and non-discrimination & Section 05 – Community life.

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2. He also drawn attention towards Ministry of Housing Affairs OM dated 16.09.2020 as per which All India Service Officers and Class 'A' Officers of the Central Government are allowed this facility. As per him such facility is accorded to Director General of NYKS who is not a Person with Benchmark Disability. Hence, discrimination is on the following grounds:-

(i) Class I officer of NYKS is treated differently from Class A officer of Central Government despite being on same level – 10 pay at joining.

(ii) Director General of NYKS is treated differently from PwDs employees of NYKS/autonomous employees.

(iii) Autonomous bodies are treated differently than PwDs employees of Central Government Offices of Delhi/NCR in matter of essential things to living i.e. Shelter purposes.

(iv) He has requested to direct Directorate of Estate under Ministry of Housing and Urban Affairs and Secretary, DoP&T to make suitable changes in its official policy (OM No. 36035/3/2013-Estt (Res) dated 31.03.2014) and include Persons with Disabilities from Central Government Autonomous bodies as well.

3. The matter was taken up with the Respondent vide letter dated **01.09.2022** under Section 75 of the RPwD Act, 2016 followed by Reminder dated 04.10.2022 but till date no response has been received.

4. Dy. Director of Estates (Policy), Ministry of Housing & Urban Affairs, Directorate of Estates (Respondent No. 01) vide letter dated **03.11.2022** has submitted that Nehru Yuva Kendra Sangathan (NYKS) is an autonomous body under Ministry of Youth Affairs and Sports. It is not the Secretariat of a Ministry or an Attached Office or a Sub-ordinate Office. Hence, as per Rule 4 of CGPRA Rules, 2017, the NYKS does not fulfil requirements for declaring an office eligible for accommodation in Delhi. Further, in pursuance of the direction of Cabinet Committee on Accommodation (CCA) and as per DOE's OM dated 07.11.2020 regarding "Eligibility for allotment of General Pool Residential Accommodation to Chairperson / Members posted on mandatory basis to



Contd..(Pg. No. 3)

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PSUs/Autonomous bodies etc. in Delhi”, only Director General/Assistant Director General (DG/ADG equivalent) are eligible for allotment of General Pool Residential Accommodation. Also, this allotment is subject to the condition that, the officers, shall be posted on deputation on mandatory basis to Autonomous/Statutory Bodies, Public Sector Undertakings, Commissions, Tribunals etc. in Delhi by DoP&T. Accordingly, they are allotted accommodation as per their entitlement in the CWG Village only as per the availability.

5. Dy. Director of Estate (Policy) has submitted that:

a. This Directorate looks after the policy of General Pool Residential Accommodation (GPRA) which is meant only for Govt. Employees working in Central Govt. Offices eligible under Central Govt. General Pool Accommodation (CGGPRA) Rules, 2017.

b. Vide its OM dated 17.11.1997, provisions have already been made by this Directorate to provide suitable General Pool Residential Accommodation (GPRA) on disability grounds to a Central Govt. Staff/Officer who belongs to an office eligible for GPRA.

c. The provision of GPRA vide OM dated 07.11.2020 for DG/ADG equivalent officers of Autonomous Bodies is never a discrimination on disability grounds. Rather, this is the policy to un-draw certain discrimination between Officers. It is to mitigate the hardship faced by such officers who are mandatorily posted by DOP&T to Autonomous Bodies in public interest vis-a-vis their counterparts posted in Central Ministries/attached offices/sub-ordinate offices.

d. This Directorate can provide relief to PwDs by acting only within its own jurisdiction and it has already done so by favouring PwDs who are Govt. employees of offices eligible for GPRA. It cannot extend its hand beyond that.

e. As per above the present complaint against Directorate of Estate, Mo HUA is not justified and may not be entertained.



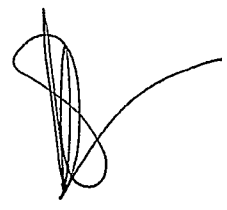
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6. Complainant vide rejoinder dated 17.11.2022 has submitted that their policy is at variance with Rights of Persons with Disabilities Act, 2016 as he is working in Nehru Yuva Kendra Sangathan, an autonomous body under Ministry of Youth Affairs and Sports at Level-10 of Pay Matrix of Central Government and should be treated at par with Central Government Employees especially when all the rules of CCS CCA applies to us *ipso facto*. Further, person with disability in its housing accommodation needs should not be discriminated because he/she is member of autonomous body and not Central Government per se as housing is basic need of life under Right to life Article 21 of the Constitution of India.

Further, Rights of Persons with Disabilities Act, 2016 in Section 2 Sub-section 'x' speaks about "Public Facilities and Services" and Section 2 Sub-section 'y' speaks about 'reasonable accommodation'.

7. If read together with Office Memorandum DoPT No.36035/3/2013-Estt (Res) dt.31.03.2014 paragraph (E) "Preference in Govt Accommodation" titled " Guidelines for providing certain facilities in respect of persons with disabilities who are already employed in Government for efficient performance of duties" it is clear that Directorate of Estate can at policy level, end this discrimination between Government Employees of Autonomous Bodies and Central Government especially in view of the fact the NYKS gets its grant from budgetary support from Central Government and doesn't have its own housing like SBI/RBI or IIT Delhi/JNU. If read with FAQs on CGPRA Rules 2017 published by Directorate of Estate Question 4- regarding eligibility point (c) Staff is paid from Consolidated Fund of India then again I can be "reasonably accommodated" in terms of RPwDs Act, 2016 notwithstanding the fact that Nehru Yuva Kendra Sangathan is an autonomous body. The fact that Directorate of Estate is resorting too such a narrow interpretation to deny housing to 100% blind officer only shows lack of sound judgement and empathy towards persons with disabilities.

8. He has requested to direct Directorate of Estate that in view of special circumstances suitable arrangement can be made especially when private residential owners don't prefer 100% blind tenant.



Contd...(Pg.No.5)

9. After considering the reply dated 03.11.2022 filed by the Respondent No. 01 and the complainant's rejoinder dated 17.11.2022, it was decided to hold a personal hearing in the matter and therefore, the case is listed for personal hearing on 29.12.2022.

Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 29.12.2022. The following were present in the hearing:

- Shri Sharad Triatphi – complainant
- Shri Pinaki Banarjee, Dy. Director of Estates for Respondent No.1

Observation/Recommendations:

10. Complainant submits that he is working as Assistant Director in Nehru Yuva Kendra Sangathan (NYKS). The Complainant alleges that M/o Housing Affairs O.M. dated 16.09.2020 is discriminatory on the basis of disability because as per the O.M. only Class A officers and All India Service Officers are allowed government quarters facility and other officers are not allowed this facility. Result of which is that Director General of NYKS who is not divyangjan is allowed facility of government quarters, whereas the Complainant who is divyangjan is not allowed this facility because he is neither Class A officer nor he is All India Service Officer.

11. Respondent No. 1 submits that NYKS does not fulfill the criterion for declaring an office eligible for accommodation in Delhi. Further, as per DoE O.M. dated 07.11.2020, only Director General/Assistant Director General are eligible for allotment of General Pool Residential Accommodation.

12. After perusal of submissions made by the Complainant and the Respondent this court concludes that there is no discrimination on the ground of disability. It is pertinent for Complainant to disclose the discrimination on the grounds of disability. Hon'ble Supreme Court laid down the importance of such disclosure in STATE BANK OF PATIALA v. VINESH KUMAR BHASIN (2010) 4 SCC 368 whereby it was held in Para 29 as under

“29. The grievances and complaints of persons with disabilities have to be considered by courts and authorities with compassion, understanding and expedition. They seek a life with dignity. The Disabilities Act seeks to provide them a level playing field, by certain affirmative actions so that they can have adequate opportunities in



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matters of education and employment. The Act also seeks to ensure non-discrimination of persons with disabilities, by reason of their disabilities. But the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

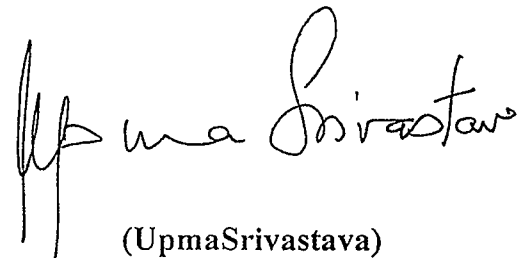
13. Hon'ble Court further illustrated the point in following words:

“Illustration:

Let us assume a case where the age of retirement in an organisation is 58 years for all Class II officers and 60 years for all Class I officers. When a Class II officer, who happens to be a person with disability, raises a dispute that such disparity amounts to discrimination, it has nothing to do with disabilities. Persons with disability as also persons without disability may contend in a court of law that such a provision is discriminatory. But, such a provision, even if it is discriminatory, has nothing to do with the person's disability and there is no question of a person with disability invoking the provisions of the Disabilities Act, to claim relief regarding such discrimination.”

14. This Court is satisfied with the Reply filed by the Respondent. Intervention of this Court in the present Complaint is not warranted.

15. The case is disposed off.



(UpmaSrivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 07.02.2023



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: 13499/1022/2022

Complainant:

Shri Pankaj Kaushal
Sakori Chail (Emp. No: 50109)
UCO Bank
Email: pankajkaushal56@gmail.com

137694

Vs

Respondent:

The Zonal Manager
HRM Department
UCO Bank, Zonal Office
Himland Hotel Annexe, Circular Road
Shimla-171001
Phone No: 0177-2628604
Email: zoshimla.hrm@ucobank.co.in

137695

GIST OF COMPLAINT

The complainant filed a complainant dated 28.09.2022, that he is employee of UCO Bank and he is visually impaired with 40% of his right eye and visibility of his left eye (6*18) is also reducing day by day. The complainant has already raised many representations for choice posting vide letter dated 13.07.2020 forwarded from B/O Rajgarh, vide letter dated 03.08.2021, 16.07.2022, 28.07.2022 and 09.09.2022 forwarded from B/O Chail but has not received any reply.

2. The complainant has submitted that bank has issued guidelines vide circular dated 01.03.2021 for providing certain facilities to persons with disability. The manner of selection of PwDs for various posts preference in transfer and posting, special leave, vacancies shall be governed by the guidelines issued by the government from time to time. The complainant stated that as per the Govt. of India and bank's guidelines management has to consider his request for choice posting. However, he raising so many representations but his request has not been considered and has not received any reply from the bank side. The complainant has requested to this Court to give directives to the respondent to give the complainant his choice of posting.

3. The matter was taken up with the Respondent vide letter dated 14.10.2022 under Section 75 of the RPwD Act, 2016.

4. In response, Deputy General Manager-HRD, UCO Bank, vide his email letter dated 28.10.2022, submitted that the complainant a person with 40% Visual Impairment, working in the UCO bank, requesting for choice of posting. The respondent taking cognizance of the matter and have appraised the said employee. As a bank they considerate about the matter of the complainant presently posted at B/O Sakori Chail (0995).

5. The respondent submitted that bank has taken lead in considering the posting of differently abled, ladies and has given suitable postings to these categories of employees. Bank is following the government guidelines meticulously. Bank has given him Equal Opportunity at par with the abled employees. The complainant belongs from Solan (H.P) and his present place of posting is 38 Kms from Solan (which is very well connected).

6. The complainant had joined the bank as physically handicapped and bank has given him suitable postings since his joining. The complainant has always been posted in nearby stations since his joining and his disability issue was kept at fore by the bank. Even after he took promotion to MMG-II on 01.04.2021 he was not posted at non-family station (however abled employees/officers of his cadre were posted at far off places/non family stations), and according to his scale in the officer cadre and as per administrative requirements, he was given posting at b/O Sakori Chail (0995) which is at a very approachable distance from his hometown.

7. The complainant has filed his rejoinder vide email dated 05.12.2022 and submitted that actual distance is 45 km from Solan Bus stand to Sakori Chail (which will take approx. 2.30 hour journey on daily basis on one side) and distance of Rajgarh is 40 km. The complainant stated that he is a sole bread earner in his family and condition of his eyes is not good. Currently he is blind with one eye and facing visibility problem with another eye. Sometime he needs helper at night to move from one place to another due to poor visibility. He has to live alone in the current place of posting as it is not viable for him to travel on daily basis from his home town and his family is facing problem in taking care of him in case of any emergency. He is not able to do any computer related work and requested to this Court to instruct the department to provide non computer job. The complainant further submitted that in such big organisation which is managing 25000 employees, they are not able to adjust one needy employee as per Govt. of India guideline related to posting of physically handicapped employees. The department is not considering his request of transfer from last 1 year. There are more than 5 branches in the radius of 15 km from his residence, but they have not considered his transfer request. The complainant has again requested to this Court to give directives to the respondent to take appropriate decision related to his transfer request as soon as possible.



8. **Hearing:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 12.01.2023. The following were present:

- i) **Shri Pankaj Kaushal: Complainant**
- ii) **Shri Sanjay Jain, AGM, UCO Bank, Zonal Office, Shimla: Respondent**

Observations /Recommendations:

9. Main contention of the Complainant is that currently he is posted in Sakori Chail (Himachal Pradesh) branch of the Respondent establishment. His hometown is Solan (Himachal Pradesh). Actual distance is 45 km from Solan Bus stand to Sakori Chail which takes approx. 2.30 hour journey on daily basis on one side. The complainant stated that he is a sole bread earner in his family and condition of his eyes is not good. Currently he is blind with one eye and facing visibility problem with another eye. Sometime he needs helper at night to move from one place to another due to poor visibility. He has to live alone in the current place of posting as it is not viable for him to travel on daily basis from his home town and his family is facing problem in taking care of him in case of any emergency. Furthermore, he has also filed Complaint w.r.t. nature of duties assigned to him. He claims that he is not able to do any computer related work and requested this Court to instruct the department to provide non computer job.

10. Respondent submits that they always adopted lenient approach towards transfer of the Complainant. Complainant was always posted near his hometown since his joining. In 2021 when the Complainant was promoted he was retained at same branch and he was not transferred like other non-divyang employees. Presently he is posted at the branch which is situated only at the distance of 30K.Ms. from his hometown.

11. During online hearing, Respondent gave assurance to this Court that the Complainant will be transferred to his hometown within 3 months. As far as issue of computer related work is concerned, Respondent informed that another officer has been deputed to assist the Complainant in performing computer related work.

12. Since the Respondent gave assurance on record that the Complainant will be transferred within 3 months hence this Court shall not intervene in the issue of transfer. However, on the issue of 'computer related work' this Court recommends that the practice of deputing another officer to assist the Complainant shall be continued even at new place of posting.

13. The present Complaint is disposed off with liberty granted to the Complainant to approach this Court again in case the Complainant is not transferred to his hometown within 3 months of receiving the copy of this Recommendation-Order.



14. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from 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.

15. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 07.02.2023



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. 13513/1024/2022

Complainant: Sh. Jajati Tripathy
Qr. No. 33, Type-II,
Postal Colony, Unit – IV
Bhubaneswar - 751001

137683

Respondent: The Director General
Department of Posts, Dak Bhawan
Sansad Marg, New Delhi

137684

Complainant : 55% hearing Impairment

Gist of Complaint:

The Complainant Sh. Jajati Tripathy, filed a complaint dated 02.10.2022 regarding harassment by officer of Department of posts. He is working under the Chief Post Master General, Odisha Circle. He has filed a complaint against Shri Suwendu Kumar Swain, Chief Post Master General, Odisha Circle, Shri Basanta Kumar Panda, Sr. Superintendent of Post Offices, Bhubaneswar Division and Shri Siba Shankar Satapathy, Sr. Post Master, Bhubaneswar GPO for physical and mental torture, financial harassment, violation of human rights and natural justice. He became a person with disability in the year 2017/18 and submitted a copy of his disability certificate in office on 20.05.2021 with a request to allow him to avail the facilities as employee with disability including financial benefit as per the RPwD Act, 2016.

2. In response to his representation he was informed to submit the disability certificate issued by competent authority in the proper format, thereafter he obtained the certificate on 02.08.2022 and submitted the same in his office on 16.08.2022.

3. As per complaint he was promoted to the rank of LSG supervisor (SBCO) and posted to work in Bhubaneswar GPO. He assumed the charge on 15.06.2021. He found his new assignment to be difficult and to get accustomed to proceed with the work, he requested the Controlling Authority Sh. Basanta Kumar Panda, SSPO, Bhubaneswar to facilitate him training for smooth management of SBCO Branch. He submitted the

Contd...(Pg. No.2)

--2--

representation to SSPO on 09.07.2021 and reminder on 29.04.2022, but the authority remained silent even after his representation. He has already submitted the copy of disability certificate to his authority on 20.05.2021. The SSPO during his visit called him at Sr. Post Master Chamber and told him "recently you have got your promotion as LSG (SBCO) but your performance is not satisfactory further frequently remaining absent by taking plea in the name of your hockey game and disability certificate," using such type of words without hearing him, abused him in loud voice with filthy words.

4. He has prayed for the following: -

- i. His monthly salary has been stopped for more than five months. For such type of inhumanity, the three senior officers of the organisation as mentioned in the complaint are squarely responsible.
- ii. Despite the order of Hon'ble CAT, Cuttak Bench the authority is very rigid to consider for his posting adjustment in Bhubneshwar GPO to continue his practice as a Hockey Goalkeeper.
- iii. Furthermore, he was appointed as a Hockey Goalkeeper and maintaining his game from the date of joining i.e. 25.11.2010 to till date by participating in National Tournaments and even in inter Department Tournaments, but authority has stopped his game.

5. The matter was taken up with the Respondent vide letter dated **20.10.2022** under section 75 of the RPwD Act, 2016 followed by the reminder dated **22.11.2022**, but no reply has been received from the respondent.

Hearing : The case was heard via Video Conferencing by Chief Commissioner for persons with disabilities on dated **19.01.2023**. The following were present in the hearing :

Complainant: Sh. Jajati Tripathy – In Person

Respondent : Sri Subhash Chandra Parikh, Director (Postal Service), HQ Odisha Circle for Respondent.

Observation/Recommendations:

6. Complaint is related to harassment by officers of Department of posts. Complainant

Contd... (Pg. No.3)



submits that he is working under the Chief Post Master General, Odisha Circle. He has filed a complaint against Shri Suvendu Kumar Swain, Chief Post Master General, Odisha Circle, Shri Basanta Kumar Panda, Sr. Superintendent of Post Offices, Bhubaneswar Division and Shri Siba Shankar Satapathy, Sr. Post Master, Bhubaneswar GPO for physical and mental torture. He claims that he acquired disability in the year 2017/18 and submitted a copy of his disability certificate in office on 20.05.2021 with a request to allow him to avail the facilities as employee with disability including financial benefit as per the RPwD Act 2016.

7. Later he was promoted to the rank of LSG supervisor (SBCO) and posted to work in Bhubaneswar GPO. He assumed the charge on 15.06.2021. To get accustomed to proceed with the work, he requested the Controlling Authority Sh. Basanta Kumar Panda, SSPO, Bhubaneswar to facilitate him training for smooth management of SBCO Branch. He submitted the representation to SSPO on 09.07.2021 and reminder on 29.04.2022, but the authority remained silent even after his representation.

8. He further claims that the SSPO during his visit called him at Sr. Post Master Chamber and used abusive language and pointed out that the Complainant's performance is not satisfactory. He claims that his monthly salary has been stopped for more than five months.

9. During online hearing the Complainant submitted that he approached Central Administrative Tribunal raising the same issue which is raised in the present Complaint. The Complainant further submitted that the CAT by Order dated 17.11.2022 decided the issue in his favour and quashed the transfer of the Complainant.

10. During online hearing, the Respondent submitted that an inquiry was conducted in the allegations. No evidence was found and Complaint was found baseless.

11. This Court asked the Respondent why the Order given by Central Administrative Tribunal ('CAT') was not implemented. Respondent informed that the CAT in its Order directed the Complainant to file application. Since the application was received only a day before the date of hearing hence the Order could not be implemented.

12. This Court recommends that the Respondent shall conduct a meeting with the Complainant so as to guide him properly about the procedural formalities relating to implementation of the Order given by CAT. Further this Court recommends that the Respondent shall implement the Order of CAT as soon as possible.

Contd...(Pg. No.4)

13. Because the issue raised by the Complainant in the present Complaint has already been adjudicated by the CAT and the Order has been passed in favour of the Complainant, hence this Court concludes that the intervention of this Court in the present Complaint is not warranted.

14. The case is disposed off.

Dated: 07.02.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

Extra

45



Case No.13410/1121/2022/150683

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. 13410/1121/2022/150683

Complainant:

Shri Aman Tiwari,
H.No. 599, BrahmNagar,
Auraiya, Uttar Pradesh-206122
Email: amantiwari1672000@gmail.com

137658

Respondent:

The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital
Baba Kharak Singh Marg,
Near Gurudwara Bangla Sahib,
New Delhi, Delhi 110001
Email: diary.section@rmlh.nic.in; duggalnandini@gmail.com

137659

Affected Person: The complainant, a person with 40% Visual Impairment (Low Vision)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 25.07.2022 regarding re-medical examination under Chapter 14 of DoPT for the post of Postal Assistant in Post Office, New Delhi West.

1.2 The complainant submitted that he had cleared SSC CHSL Examination 2018 and selected for the post of Postal Assistant under disability category in New Delhi West. After that he was sent to Dr. RML Hospital for medical examination. The Medical Authority at Dr. RML Hospital examined him and sent the report of unfitness to the Post Office directly. The complainant further submitted that since he is fit for the post of Postal Assistant, he prayed this Court that under Chapter 14 of the DoPT Guidelines, necessary orders be issued for his re-medical examination.

2. Submissions made by the Respondent:

The respondent filed its reply dated 29.09.2022 and submitted that the complainant Shri Aman Tiwari was medically examined on 04.03.2022. He

1 / Page

had been referred to the Department of Ophthalmology where he was assessed for visual impairment and he was found to have 30% visual disability as per the criteria given in Gazette Notification of 2012 for guidelines of visual disability, REGD. No. D.L.-33004/99. The candidate, Shri Aman Tiwari was selected for the post under PwD category for visual disability, but he could not qualify for the post under PwD category as his disability is 30%. He was stated fit if selected under General Category.

3. Submissions made in Rejoinder:

The aforesaid reply of the respondent was forwarded to the complainant vide email dated 20.10.2022 for filing rejoinder/comments on it. However, no response has been received so far.

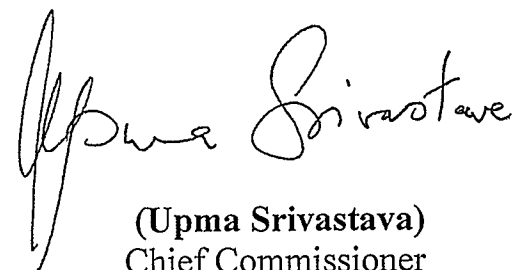
4. Observations & Recommendations:

4.1 As per the Respondent's reply, the complainant's visual impairment was assessed and found to have 30% visual disability. As per Section 2 (r) of the Rights of Persons with Disabilities Act, 2016 person with benchmark disability means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

4.2 In the light of the above, the reply filed by the respondent is satisfactory and no discrimination has been found on the ground of disability. Hence, no further intervention is warranted in this case.

4.3 Accordingly the case is disposed off.

Dated: 08.02.2023


(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. 13366/1101/2022

Complainant:

Dr. Balasubramaniam Rathinavel,
R/o 12/45, Thiyagi Natesan Street No.2,
Ammamet, Salem 636003, Tamil Nadu;
Email: maniamindia@gmail.com; Mobile: 9443090575

— P37662

Respondent:

The Chief Post Master General,
Tamil Nadu Postal Circle,
Chennai, Tamil Nadu;
Email: pg.tn@indiapost.gov.in

— P37663

Affected Person: The complainant, a person with 55% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 05.07.2022 regarding inaccessibility of the Post Office in Ammapet, Salem (Tamil Nadu).

1.2 The complainant submitted that he frequently visiting the Ammapettai Salem Post Office for sending registered/speed post articles. Recently, the said Post Office has been shifted to a new premises. The said building is most unfriendly for the persons with disabilities like him. The Nodal Officer has failed to follow the laid down rules. The persons with disabilities are suffering.

2. Submissions made by the Respondent:

2.1 The respondent filed its reply dated 07.09.2022 and submitted that the Post Office had been shifted on 26.07.2021 in the present building. The landlord was appraised of the provision of having a Ramp with Handrails for easy access for the persons with disabilities. Due to the road expansion work carried out by the corporation authorities, the landlord was unable to provide the ramp in the building. Now, a Ramp with Handrails has been

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constructed in the Ammapet Sub Post Office and the Post Office is easily accessible for persons with disabilities.

2.2 The respondent further submitted that a review will be done in respect of all the Post Offices functioning in rented building in Tamilnadu Circle from accessibility point of view for Persons with Disabilities and necessary action as far as feasible will be taken.

3. Submissions made in Rejoinder:

3.1 The complainant filed his rejoinder dated 09.09.2022 and inter-alia refuted the reply of the respondent that road expansion work was carried out. Only during June-July 2022, the local municipal corporation authorities constructed sewer connection in front of the Post Office. The ramp provided is a toy like one. The proof for having tested the efficacy of that ramp is not furnished by the respondent. The ramp should be tested with actual wheelchair which can be procured by the Post Office and the photographs be taken and be sent to this Court. From the photograph sent by the respondent (to the complaint), it is quite evident that a wheelchair person cannot use this ramp. The complainant further alleged that there is no seating arrangement for the customers in this Post Office. Every time he had visited the Post Office, he had to stand up in the queue for availing the services.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **22.12.2022**. The following persons were present during the hearing:

- (1) Dr. Balasubramaniam Rathinavel, the complainant.
- (2) Shri K. Arunachalam, Sr. Superintendent of Post Offices, Selum East Division for Respondent.

5. Observations & Recommendations:

5.1 Complaint is related to inaccessibility of the Post Office in Ammapet, Salem (Tamil Nadu). The complainant submitted that he frequently visits the Ammapettai Salem Post Office for sending registered/speed post articles. Recently, the said Post Office got shifted to a new premises and the new location of the office is most unfriendly for the divyangjan like him because of lack of ramp.

5.2 Respondent submitted that the Post office got shifted to new location which is a rented accommodation. The landlord was appraised of the provision of having a Ramp with Handrails for easy access for the persons



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with disabilities. Due to the road expansion work carried out by the corporation authorities, the landlord was unable to provide the ramp in the building. Now, a Ramp with Handrails has been constructed in the Ammapet Sub Post Office and the Post Office is easily accessible for persons with disabilities.

5.3 The respondent further submitted that a review will be done in respect of all the Post Offices functioning in rented building in Tamil Nadu Circle from accessibility point of view for Persons with Disabilities and necessary action as far as feasible will be taken.

5.4 Complainant also filed rejoinder and submitted that the ramp constructed is not of right gradient. Respondent should conduct audit of the ramp and submit report along with photographs.

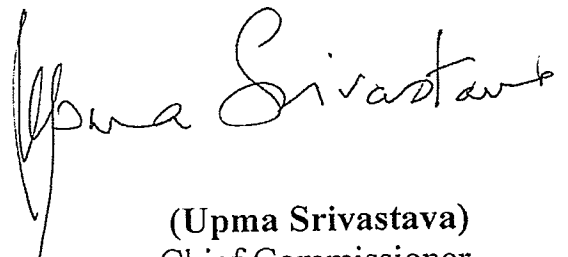
5.5 During online hearing Respondent further submitted that the post office relating to which the Complaint is filed is situated on rented accommodation. The entry gate of the post office is such that if ramp with right gradient will be constructed, the ramp will encroach upon the road/footpath and the municipal authorities will consider it as 'encroachment' and will destroy the same.

5.6 This Court recommends that the respondent shall form a team which shall contact with municipal commission and shall explain the whole situation so that the ramp with right gradient can be constructed and the municipality does not consider as 'encroachment'.

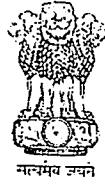
5.7 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the 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: 08.02.2023



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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Case No.13367/1011/2022

(ST)

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.13367/1011/2022

Complainant:

Shri Saurabh Kumar,
Toshiyas Sachiv,
Toshiyas Sanstha, G-8, Nandan Tower Colony More,
Kankarbagh, Patna-800020
Email: toshiyassaurabh@gmail.com
Shri Debdas Sardar,
S/o Shri Sabir Sardar,
Village Bhaluva Bonagrom,
Vrishnanagar, Subdi

Respondent:

The Chairman,
Railway Recruitment Board,
Behind IRASET Complex,
South Lallaguda,
Secunderabad-500017;
Phone: 040-27821663;
Email: asrrb@scr.railnet.gov.in

Affected Person: Shri Debdas Sardar, a person with 100% Visual Impairment, R/o Vill – Banagram, Post: Joania Bhaluka, District: Nadia, West Bengal-741317; Email: info.debdas95@gmail.com; Mobile: 8101292408

1. Gist of Complaint:

The complainant filed a complaint dated 04.07.2022 regarding non receipt of call for document verification by Shri Debdas Sardar, a person with 100% Visual Impairment after passing Recruitment Exam in 2018 [Roll No.282042081160086] conducted by the Railway Recruitment Board Secunderabad under CEN 02/2018 – Level 1 Posts.

2. Submissions made by the Respondent:

No comments/reply has been received from the Respondent despite issue of final reminder dated 12.09.2022 and lapse of statutory time limit.

3. Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **13.12.2022**. The following were present:

- (1) Shri Saurabh Kumar, the complainant.
- (2) Shri Srinivas for the respondent.

4. Observation/Recommendations:

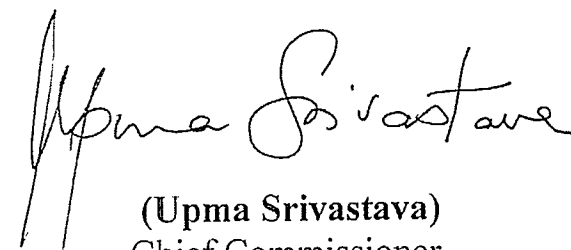
4.1 The complainant filed a complaint regarding non receipt of call for document verification by Shri Debdas Sardar, a person with 100% Visual Impairment after passing Recruitment Exam in 2018 [Roll No.282042081160086] (RRB/LEN 02/2018) conducted by the Railway Recruitment Board Secunderabad under CEN 02/2018 – Level 1 Posts.

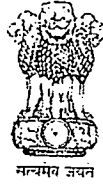
4.2 Respondent submitted that the cut off marks for VI category was 68.43882. Marks secured by the Complainant after normalization are 42.80549. Since the marks obtained by the Complainant are less than the cut off marks, hence the Complainant was not in 'zone of consideration' and therefore the Complainant was not called for document verification.

4.3 This Court concludes that the Complainant has not made any case of discrimination on the basis of disability, therefore, intervention of this Court in the present Complaint is not warranted.

4.4 Accordingly the case is disposed off.

Dated: 08.02.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



मान्यमय जयन

Case No.13358/1103/2022

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

Case No.13358/1103/2022

Complainant:

Shri Rohit Kumar Gupta.
R/o 385/87, Jeevan Nagar,
Sohna Road,
Faridabad-121005;
Email: rohitkumarguptasocialworker@gmail.com;
Mobile: 8743096904

13358/23

Respondent:

General Managar.
Northeast Froniter Railway.
District : Kamrup. PO : Maligaon,
Assam, Pin – 781011;
Email: gm@nfr.railnet.gov.in

13358/74

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

1. Gist of Complaint:

The complainant filed a complaint dated 30.06.2022 regarding misbehaviour/ misconduct by the Railway Staff Shri Rajiv Kar and for not providing concessional railway ticket at Kamakhya Railway Station. The complainant submitted that on 25.06.2022 he had gone to Kamakhya Railway Station for buying concessional ticket for divyang person. He had Railway Concessional Certificate issued by National Association for the Blind. Shri Rajiv Kar was sitting on that counter. He looked and went through the Railway Concessional Certificate and thereafter, returned the Railway Concessional Certificate to the complainant saying that it is not authentic.

2. Submissions made by the Respondent:

No reply was received from the respondent despite issuance of Notice on 15.07.2022 followed by reminder dated 07.09.2022.

3. Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **22.12.2022**. The following persons were present during the hearing:

(1) Shri Rohit Kumar Gupta, the complainant

1 | Page

(2) Shri Sanjib Ghosh, Dy. Chief Commercial Manager for the respondent

4. Observation/Recommendations:

4.1 The complainant submitted that on 25.06.2022 he had gone to Kamakhya Railway Station for buying concessional ticket for divyang person. He had Railway Concessional Certificate issued by National Association for the Blind. Shri Rajiv Kar was sitting on that counter. He looked and went through the Railway Concessional Certificate and thereafter, returned the Railway Concessional Certificate to the complainant saying that it is not authentic.

4.2 During online hearing Respondent informed this Court that CMI, Guwahati conducted the inquiry and it was found that some other officer was present on the counter and Sri Rajiv Kar was not even present on that day as he was on leave on that day. Further the Respondent informed this Court that the concessional ticket was not given because the 'concessional certificate' was found to be outdated. Now, photo identity card is mandatory.

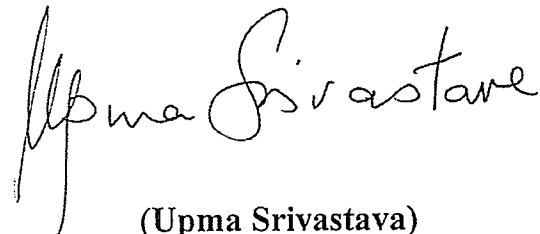
4.3 Respondent also filed Reply dated 22.12.2022 whereby the Respondent attached Commercial Circular No. 18 of 2015, Commercial Circular No. 28 of 2016 and Commercial Circular No. 64 of 2017. In these circulars detail procedure for obtaining 'concessional certificate' is explained.

4.4 This Court recommends that the Respondent shall forward a copy of the above circulars to the Complainant and extend all possible support to the Complainant to obtain 'concessional certificate' as per rules. If need be, the Respondent representative shall also meet the Complainant in person and assist him in obtaining the concessional certificate.

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: 08.02.2023



(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 13357/1102/2022

परिवादी -

श्री पवन कुमार,
पता - 385/87, भाती डेयरी के पीछे,
सोहना रोड, जीवन नगर,
फरीदाबाद (हरियाणा)
ईमेल - pawankumar256246@gmail.com;

1337677

प्रतिवादी -

शाखा प्रबन्धक,
भारतीय स्टेट बैंक,
फरीदाबाद मुख्य शाखा,
नीलम चौक, एनआईटी हरियाणा
फरीदाबाद (हरियाणा); ईमेल - sbi.00734@sbi.co.in;

1337678

पीड़ित व्यक्ति - परिवादी, 100% दृष्टि दिव्यांग व्यक्ति

1. परिवाद का सार—

1.1 परिवादी ने भारतीय स्टेट बैंक, फरीदाबाद मुख्य शाखा में स्थित अपने बैंक खाता (संख्या 32816514898) में नामांकित व्यक्ति का नाम बदलवाने के क्रम में प्रतिवादी बैंक - भारतीय स्टेट बैंक, फरीदाबाद मुख्य शाखा के अधिकारियों द्वारा अपमानित करने से सम्बन्धित एक शिकायत दिनांक 08.06.2022 इस न्यायालय में प्रस्तुत किया।

1.2 परिवादी का कहना था कि उनके उपरोक्त बैंक खाते में नामांकित व्यक्ति उनकी माँ थी जिनका स्वर्गवास हो चुका है। इसलिए, नामांकित व्यक्ति अपनी स्वर्गवासी माँ के स्थान पर अपनी पत्नी का नाम डलवाना चाहता था जिसके लिए परिवादी ने फार्म भरकर, फार्म पर अंगूठा लगाकर शाखा प्रबन्धक से मिला। शाखा प्रबन्धक ने परिवादी को बताया कि अंगूठा लगाने वाले व्यक्ति पर वे भरोसा नहीं करते हैं। इस पर परिवादी ने शाखा प्रबन्धक को बताया कि वे हरियाणा सरकार में सरकारी कर्मचारी हैं और वे इस प्रकार की बातें करते हैं तो शाखा प्रबन्धक ने परिवादी को उसी बैंक में मैनेजर मैडम से मिलने को कहा। मैनेजर मैडम ने वही उत्तर दिया कि अंगूठा लगाने वाले व्यक्ति पर वे भरोसा नहीं करते हैं।

[Signature]

2. प्रतिवादी द्वारा प्रस्तुत उत्तर—

परिवादी की शिकायत पर 30 दिनों के भीतर उत्तर/टिप्पणी प्रस्तुत करने के लिए इस न्यायालय द्वारा प्रतिवादी को नोटिस दिनांक 19.07.2022 जारी किया गया। परन्तु, अंतिम अनुस्मारक दिनांक 07.09.2022 जारी करने और पर्याप्त वैधानिक समय बीत जाने के पश्चात भी प्रतिवादी से कोई उत्तर प्राप्त नहीं हुआ।

3. अवलोकन एवं अनुसंशाएँ—

3.1 शिकायतकर्ता ने कहा कि उसका स्टेट बैंक ऑफ इंडिया, फरीदाबाद की मुख्य शाखा में बैंक खाता है। उस बैंक खाते में नॉमिनी उनकी माँ थीं, जिनका निधन हो गया। इसके बाद उसने बैंक के रिकॉर्ड में नॉमिनी का नाम बदलने के लिए आवेदन किया। उन्होंने विधिवत रूप से आवेदन पत्र भरा और अपने अंगूठे का निशान लगाया। शाखा प्रबंधक व एक अन्य प्रबंधक ने उसका आवेदन लेने से इंकार कर दिया।

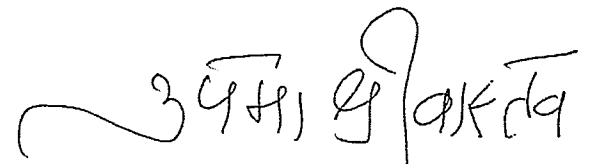
3.2 बार-बार नोटिस और अनुस्मारक जारी करने के बाद भी प्रतिवादी ने शिकायत पर कोई उत्तर नहीं दिया। इसलिए, यह न्यायालय शिकायत पर एकपक्षीय निर्णय लेने के लिए बाध्य है।

3.3 शिकायतकर्ता को बैंक खाता रखने का अधिकार है। चूँकि, शिकायतकर्ता की माँ स्वर्गवासी हो चुकी हैं, इसलिए यह प्रतिवादी प्रतिष्ठान का कर्तव्य है कि वह बैंक के अभिलेख में नॉमिनी का नाम बदल दे। यह न्यायालय अनुसंसा करता है कि प्रतिवादी जल्द से जल्द बैंक के रिकॉर्ड में नॉमिनी का नाम बदलने के लिए उचित प्रक्रिया का पालन करेगा। बैंक की ओर से किसी भी तरह की अत्यधिक देरी को दिव्यांगजन का उत्पीड़न माना जाएगा।

3.4 प्रतिवादी को इस आदेश की अनुपालन रिपोर्ट इस आदेश की तिथि से 3 माह के भीतर प्रस्तुत करने का निर्देश दिया जाता है। यदि प्रतिवादी आदेश की तारीख से 3 महीने के भीतर अनुपालन रिपोर्ट प्रस्तुत करने में विफल रहता है, तो यह माना जाएगा कि प्रतिवादी ने आदेश का अनुपालन नहीं किया है और इस मुद्दे को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 78 के अनुसार संसद को सूचित किया जाएगा।

3.5 तदनुसार मामले का निपटारा किया जाता है।

दिनांक 08.02.2023



(उपमा श्रीवास्तव)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13402/1022/2022

Complainant:

Shri Ravindra Kumar
Mate Painter (SSK)
MES-486435
C/o Garrison Engineer (AF)
Military Engineer Services
Bamrauli Prayagraj
(Uttar Pradesh) – 211012
Email: ravipr006@gmail.com
Contact: 7905089342

132692

Vs

Respondent:

The Chief Engineer
HQ Chief Engineer Central Command
Lucknow- 226002, Uttar Pradesh
Email: jtdgcontceengrll-mes@nic.in; worldstar-301@gov.in
Contact No: 2480046/2480940/2483725

132693

GIST OF COMPLAINT

Shri Ravindra Kumar, Mate Painter (SSK), complainant has filed a complaint dated 23.07.2022 requesting for posting/transfer near to Kanpur Area for taking care of his disabled parents (father 100% VH and mother suffering from Brain Haemorrhage).

2. The complainant has submitted that his father Shri Vishnu Dayal aged about 67 years is fully visual impairment 100% and wholly dependent upon him. His mother is also suffering from Brain Haemorrhage and her treatment is running under "The Panacea Multisuper Speciality Hospital, Kanpur. The applicant is only male member in entire family to look after his blind father and mentally disabled mother, who are residing in his native place i.e. Kanpur Nagar along with his wife. His sister, who is married, is looking after his mother, but it is not possible to take care regularly from in laws house. The complainant found himself in metal agony that how to manage his liabilities and responsibilities towards discharging his Govt. duties as well as to look after his parents staying at Kanpur as Prayagraj station is approximately 250 Kms away from Kanpur. The complainant further submitted that being a low paid employee, his whole salary has spent in conveyance and nothing to save for future responsibilities. Hence, it is becoming very difficult day by day to meet the both his liabilities and responsibilities properly and smoothly from this station.

3. Due to above situation, he has to frequently visit to Kanpur for taking care of his parents and for regular check-up of his mother. The complainant had requested to Head Quarter Chief Engineer Central Command, Lucknow for posting near Kanpur area vide his application dated 31st March 2022 through proper. His case for posting has been returned by HQ CE Lucknow Zone, Lucknow dated 28.06.2022 duly stating that "Board is already finalized and forward the same as and when next board is convened.

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

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

The complainant further submitted that every year Head Quarter CE Central Command Lucknow issued convening order for the posting on compassionate Ground/Mutual Posting, but his case for the posting is different from the above Board. The complainant also submitted that medical condition of his parents is very poor and he is unable to do his moral duties towards his parents. The complainant has requested to give directive to the respondent for issuance of posting order near to Kanpur station for care of his parents.

4. The matter was taken up with the Respondent vide letter dated 12.09.2022 under Section 75 of the RPwD Act, 2016.

5. The Col (Personnel) for Chief Engineer, Central Command, Pin-900450 C/o 56 APO, vide email dated 14.10.2022 has filed a reply in the matter. The Respondent has submitted that the complainant is aggrieved with Headquarters Chief Engineer Lucknow Zone (CELZ) letter dated 28.06.2022, vide which his application dated 31.03.2022 for posting to Kanpur has been returned to CWE Allahabad, stating that the Board is finalized and with a suggestion that the same may be forwarded when the next Board is convened. The Respondent further submitted that the complainant holds the view that this action was incorrect as his case is different from the Compassionate Ground/Mutual Posting Boards and has requested the Chief Commissioner to issue direction for issuance of posting to Kanpur. The complaint and records pertaining to the case available at this Headquarters have been examined in conjunction with the posting policy in vogue and it is observed that there has been no discrimination against the complainant by the Headquarter.

6. The respondent also submitted that the complainant is not a person with disability and the applicability of provisions of the Rights of Persons with Disabilities Act, 2016 to his complaint dated 23.07.2022 may call for a review. Prima-facie no provision of the Act appears to have been violated by any office of the Department in so far as the complainant is concerned. As per Respondent no representation against CELZ letter dated 28.06.2022 was received from the complainant at the Headquarter.

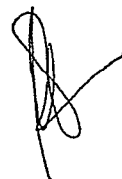
7. The complainant vide email dated 25.11.2022, has filed his rejoinder and submitted that he is not satisfied and agreed as Head Quarter Chief Engineer Central Command, Lucknow instructed to HQ Chief Engineer Lucknow Zone to process his case in next BOO. He has submitted that his father and mother are in worst condition and they are suffering a lot without his support and care. A time approx. 08 months has elapsed and his posting has not been issued. The complainant once again requested to this Court to give direction to the respondent for posting him to Kanpur Station, so that he may fulfill his moral responsibility towards parents.

8. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 17.01.2023. The following were present:

- i) **Shri Ravindra Kumar: Complainant**
- ii) **Shri Shiv Prasad Ram, Director (Pers.) Lucknow Zone, Central Command, Lucknow: Respondent**

Observations /Recommendations:

9. Complainant submits that currently he is posted in Allahabad. His native place is in Kanpur. His father is divyangjan with Visual Impairment (100%). He is the only care giver of his divyang father. His mother is also suffering from elder-age related ailments. He prays before this Court to recommend the Respondent to transfer him to Kanpur so that he can take care of his divyang parents.



10. Respondent submits that the transfer to Kanpur is not possible because now the board has been finalized and transfer may be done when next board will be convened.

11. During online hearing, Complainant informed the Court that it is not possible for him to take his parents along with him to Allahabad because of parents' old age. Further in Kanpur he can take care of his parents with the help of other relatives. In Allahabad it will not be possible for him to take care of his parents because of the nature of his disability.

12. Respondent informed this Court that the application of the Complainant is under consideration. Normally compensatory transfer applications are considered every year in months of February and August, however Complainant's application is under consideration even before the month of February. Further Respondent informed that there is provision for posting for 2 years on compensatory grounds and further assured that the transfer of the Complainant will be done.

13. Since, the Respondent is already considering the Complainant's application positively and has assured that the transfer will be done to the Complainant's choice of posting, this Court concludes that intervention at this stage is not reasonable. The Complaint is disposed off with liberty granted to the Complainant to approach this Court again in case he is not transferred to Kanpur within 3 months of receiving the copy of this Recommendation-Order.

14. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 08.02.2023



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: 13514/1022/2022

Complainant:

Shri Vimlesh Kumar

Inspector, Office of the Assistant Commissioner

Central circle-1, NH-4, NIT, Faridabad

Email: vimleshkaushik35@gmail.com

132696

Vs

Respondent:

Office of the Principal Chief Commissioner of
Income Tax (NWR)

Aayakar Bhawan, Sector-17-E, Chandigarh

Email: chandigarh.pccit@incometax.gov.in

132692

GIST OF COMPLAINT

प्रार्थी ने अपनी शिकायत पत्र दिनांक 16.09.2022 के माध्यम से सूचित किया है कि वह 40 प्रतिशत लोकोमोटर दिव्यांगजन है। प्रार्थी का आगे कहना है कि उन्होंने आयकर विभाग में दिनांक 20.10.1999 को अवर श्रेणी लिपिक के पद पर दिव्यांगजन श्रेणी के अंतर्गत कार्यालय मुख्य आयकर आयुक्त, पंचकूला में कार्य भार ग्रहण किया था। प्रार्थी को पंचकूला से अपने गृहराज्य बिहार जाने में काफी असुविधा होती थी इस कारण उन्होंने विभाग से निवेदन करके वर्ष 2003 में फरीदाबाद स्थानान्तरण करवा लिया था।

2. प्रार्थी वर्ष 2003 से 2011 तक फरीदाबाद में कर सहायक के पद पर कार्यरत रहा। मुख्य आयकर आयुक्त, एनडब्लूआर, चण्डीगढ़ के आदेश संख्या दिनांक 11.05.2012 के अनुसार उनकी पदोन्नति वरिष्ठ कर सहायक के पद पर हो गई।

3. प्रार्थी का आगे कहना है कि वरिष्ठ कर सहायक के पद पर पदोन्नति के बाद मुख्य आयकर आयुक्त, एनडब्लूआर, चण्डीगढ़ के आदेश संख्या 70 वर्ष 2012 दिनांक 21.06.2012 के अनुसार उनका स्थानान्तरण फरीदाबाद से शिमला किया गया था। प्रार्थी ने उस समय स्थानान्तरण रद्द करने के लिए आवेदन भी दिया था। अतः प्रार्थी ने सीसीपीडी कोर्ट से विनम्र निवेदन किया है कि उनका स्थानान्तरण जल्दी से जल्दी लुधियाना से फरीदाबाद करवाने की कृपा की जाए।

4. The matter was taken up with the Respondent vide letter dated 03.11.2022 under Section 75 of the RPwD Act, 2016.

5. In response, Deputy Commissioner of Income Tax, Head Quarter, Admin, Chandigarh, vide email/letter submitted that tenure is Faridabad station for transfer is 4 years. However, the complainant has been posted at Faridabad station from 01.04.2015 till this year's orders. Thus, the official has spent 07 years at a station whose prescribed tenure is 4 years for all other employees. Therefore, official has been granted exemption from transfer from past 3 years. The official has earlier been posted at Panchkula from 1998 to 2003 and has also been transferred to Gurgaon and remain posted there from 2012 to 2015. So its not the case that he has never been transferred or has never travelled due to transfer.

6. The respondent further submitted that Faridabad is a highly sought-after station among the employees of NWR. The North West region is spread across 3 states and 3 UTs which includes mountain state of Himachal Pradesh, UTs of J&K and Ladakh and border areas such as Amritsar. As the living conditions in these are very harsh and nobody prefers posting in these places, it has been included in the transfer policy that officials who have spent hard posting at these stations will be given preference postings. Therefore, officials who were posted at hard stations were given their preferred posting which included station of Faridabad as well.

7. The respondent further stated that transfer from a particular station also depends on the total working strength in the cadre and on the demand of that station. There was a total of 58 officials in the cadre of Inspector who were demanding Faridabad station during the AGT. There were only 15 vacancies at the station. They have to be adjusted only against those who were due from Faridabad i.e., who have spent 4 years at Faridabad.

8. Furthermore, without prejudice to the above, the medical examination of the complainant may be conducted from a medical board in a reputed Central Government Hospital like PGI, Chandigarh or PGI, Rohtak to determine the extent of disability and suitability for transfer.

9. The complainant has filed his rejoinder comments vide email dated 04.12.2022 and submitted that he is not satisfied with the comments submitted by the respondent. The complainant once again requested to this Court to transfer him as early as possible to Faridabad from Ludhiana.

10. **Hearing:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 19.01.2023. The following were present:

- i) **Shri Vimlesh Kumar: Complainant**
- ii) **Shri Robin Bansal, DCIT HQ (Admin), Principal Chief Commissioner of Income Tax (NWR): Respondent**

Observations /Recommendations:

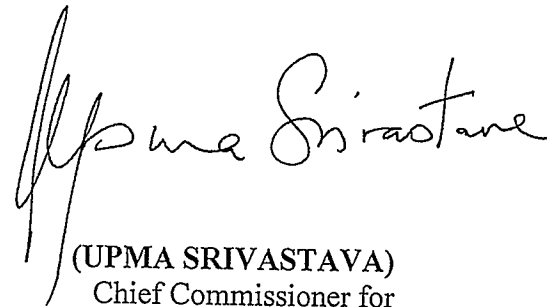
11. Complaint is related to transfer to home-state. Complainant has made submissions related to history of his postings and transfers. As per the submissions, the Complainant joined respondent establishment on 20.10 1999 as Upper Division Clerk. Initially he was posted in Panchkula there after he requested for transfer to Bihar which is his home state. In 2003 the respondent establishment transferred him to Faridabad. From 2003 till 2011 he was posted in Faridabad. Thereafter in 2012 he was promoted to the post of Assistant. After being promoted he was transferred from Faridabad to Shimla. Thereafter in 2012 he was transferred to Gurugram and remained posted in Gurugram till 2015. Thereafter in 2015 he was transferred to Faridabad and remained posted in Faridabad till 2022. In 2022 he was transferred to Ludhiana.

12. Respondents submits that the case of the complainant was always considered sympathetically. From 2012 till 2015 he was posted in Gurugram. Thereafter from 2015 till 2022 he was posted in Faridabad. Normal tenure of posting in Faridabad is 3 years whereas the complainant was kept posted in Faridabad for 7 years. Furthermore the respondent submits that as per transfer policy those employees who remain posted in difficult positions such as J&K, Ladakh

etc are posted at locations like Faridabad etc, because of this reason stations like Faridabad are highly sought after stations among the employees of the respondent establishment. Complainant already remained posted in Faridabad and in Gurgaon for more than 9 years. Therefore, now it is not possible for the respondent establishment to accommodate him in Faridabad.

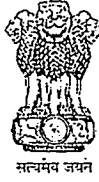
13. Disability certificate of the complainant was perused. It is to be noted that the nature of disability of the complainant is 'amputation of one finger and thumb'. Further disability certificate mentions that the difficulty which is faced by the complainant because of his nature of disability is 'typing'. Though every Divyangjan faces more difficulty in day-to-day life as compared to non Divyangjan however when percentage of disability is low in case of any Divyangjan or the nature of disability is such that Divyangjan can overcome hardships with the help of family members easily then in such cases government establishment's administrative exigencies have to be given more weight over the needs of the divyang employee. Hence this Court concludes that considering the nature and percentage of disability of the complainant, intervention of this Court in the present Complaint is not warranted.

14. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 08.02.2023



OLC (63)

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: 13408/1022/2022

Complainant:

Shri Sukhvinder
Sr. Manager (Elex),
Deptt. of CNS, AAI CNS, OTB
Civil Air Terminal,
Chandigarh
Email: sukhvinder@aai.aero
Mobile No: 9464990253

132698

Vs

Respondent:

The Chairman,
Airport Authority of India
Rajiv Gandhi Bhawan
Safdarjung Airport Area
New Delhi-110003
Email: sct.chq@aai.aero
Phone No : 011-2462950

132699

GIST OF COMPLAINT

The complainant, a person with 50% Locomotor Disability, has filed a complaint dated 08.08.2022 requesting for ensuring the compliance of established standard of deployment of employees with disabilities to their nearest duty place from their dwelling place by stopping wilful harassment by ego blinded administrators.

2. The complainant is working as Navigational Communication Personal and presently deputed at Old Terminal Building, Civil Air Terminal, Chandigarh. He has submitted that Chandigarh International Airport (CHIAL) is a joint venture airport with 51% stake of Airport Authority of India (AAI) which provide passenger related services whereas AAI directly serves the Airspace navigation services. The complainant further submitted that on the recommendations of CHIAL, first several AAI officers were moved to nearby airports under the euphemism of manpower rationalization. This scenario resulted in shortage of executive workforce at Chandigarh. To cope up with it, CHIAL again orchestrated the out of turn transfer of 04 AAI officers to CHIAL through their vassals at senior levels. The complainant was affected personal of this man made situation having already served at CHIAL for the period of 19.10.2015-26.04.2018 and repatriated in AAI, Old Terminal after the development of occupational deformities at the time of previous tenure, a humble representation was made by him followed by grievance to designated officer of organization under suitable provisions of RPwD Act 2016 with a plea to re-consider the case citing relevant facts/provisions of AAI transfer policy/Circulars/DoPT guidelines for providing duty deployment to PwD employees to duty place nearest to their dwelling place. However he has been denied any relief by the officers who only consider the cases backed by patronage of higher incumbents notorious of granting undue benefits to their backed cronies in every possible manner.

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

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

3. The matter was taken up with the Respondent vide letter dated 30.08.2022 under Section 75 of the RPwD Act, 2016.

6. In response, Jt. General Manager (HR), Directorate of Human Resource Management, Airports Authority of India vide email dated 07.10.2022 has submitted that the local transfer of the complainant from Chandigarh to CHIAL has been cancelled on PwD grounds and the official has been retained at Old Terminal Building, Chandigarh Airport, vide order .no. A.22012/07/2022-HR (EC) dated 15.09.2022. Therefore, the matter may be considered as resolved.

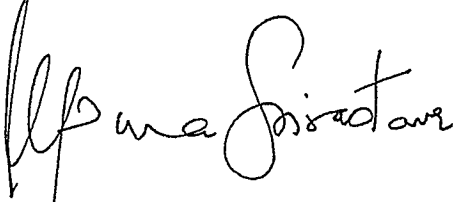
7. The complainant has in his rejoinder dated 01.11.2022 has submitted that though his transfer to CHIAL has been cancelled after intervention of Hon'ble Court vide AAI CHQ order dated 15.09.2022 yet he is discharging duties at CHIAL and awaiting relieving which might take some time as per decision of relieving authority but assured/likely to be materialized soon.

Observations /Recommendations:

8. On going through the documents on record, this court recommends that the respondent may relieve the complainant at the earliest to join his new place of posting, if he has not been relieved so far.

9. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from 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.

10. The case is disposed off accordingly.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 08.02.2023

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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: 13442/1022/2022

Complainant:

Dr. Monica Bishnoi
2/135, Vastu Khand, Geetamandir Road,
Gomti Nagar, Lucknow-226010
Uttarpradesh
Contact No: 09451155458
Email: monabish@gmail.com

132700

Vs

Respondent:

The Additional Director
Central Government. Health Scheme
B-114, 115, Vibhuti Khand, Gomti Nagar
Lucknow- 226010, Uttar Pradesh
Email: cghslko@nic.in

132701

GIST OF COMPLAINT

Dr. Monica Bishnoi, complainant, CMO (NFSG), CGHS, and a person with 85% Locomotor Disability has filed a complaint dated 02.09.2022, requesting for cancellation of her transfer order.

- The complainant has submitted that she has been transferred to a place which is 15 Kilometer from her residence and on a highly congested route. To commute to such a location on a daily basis will be very cumbersome distressing and tiring for her. The complainant is suffering from painful left knee posterior cruciate ligament degeneration. Daily commuting is very dangerous and cumbersome. It is not possible for her to commute to the distant difficult location. She had given a representation to the Office of Additional Director and requested to wait till her representation is considered but they want her to get relieved with immediate effect and to join the new place of posting. The complainant has requested to this Court to give directive to the respondent for cancellation of her transfer order and to remain her at either Wellness center no. 1 or 5 where commuting an working is feasible for her.
- The matter was taken up with the Respondent vide letter dated 06.09.2022 under Section 75 of the RPwD Act, 2016.
- In response, Additional Director, CGHS Lucknow, vide letter dated 14.09.2022, submitted that the complainant has always been exempted from rotational transfer policy. As per the guidelines, all GDMO's have to be transferred from their place of posting after completion of 3/5 years. The complainant was posted at the same location (wellness Center) for the last 8½ years (since 24 February 2014), hence, it is evident that the complainant has been exempted from rotational transfer policy as per guidelines of Government of India, Ministry of Health & Family Welfare order dated A-22012/01/2021-CGHS. To the extent feasible she was retained in the same Wellness Center-5 as per her choice till date.
- The respondent further submitted that as per the instruction received by the AS&DG during his visit of CGHS Lucknow, an additional lab was made fully functional in November, 2021 in the interest of

CGHS beneficiaries. Huge investments were made by the Ministry in establishing the lab to procure latest equipment. The lab is operational in ground floor keeping in view that majority of beneficiaries coming to pathology are senior citizens. There is a large influx of patients coming to the lab and the services of a qualified pathologist is necessary for efficient functioning of the lab.

6. The complainant is the only qualified pathologist (MD pathology) in GDMO cadre in CGHS Lucknow and she is continuously taking PG allowance also her services can be optimally utilized at CGHS WC-6 in public interest. The complainant has claimed that her place of posting is 15 km from her residence. As per google map, her current place of posting (WC-5) is 11.06 km and her new place of posting (WC-6) is 12.06 km from her residence. The google map printout taken at same time indicates that the travel time of the 2 locations is almost the same rather less 26 minutes to WC-5 & 25 minutes to WC-6. The new place of posting is adjacent to NH230/NH30 and NH230 and is located on the ground floor of the building. The transfer was recommended by the transfer committee comprising of three senior SAG Grade Officers.

7. The complainant has filed her rejoinder vide email dated 22.10.2022, and submitted that she is not satisfied with the comments submitted by the respondent. The complainant once again requested to this Court to give true and favourable judgement for cancellation for her transfer order dated 10.08.2022.

8. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 17.01.2023. The following were present:

- i) Dr. Monica Bishnoi : **Complainant**
- ii) Dr. Anju Nanda, Additional Director/ CMO, CGHS, Additional Director, Central Government Health Scheme : : **Respondent**

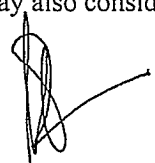
Observations /Recommendations:

9. Complainant submits that she was transferred to another office in Lucknow. She wants cancellation of her transfer order because new place of posting is 15 K.Ms. away from her residence and hence it will be tiring for her to travel this distance.

10. Respondent submits that the Complainant was always exempted from rotational transfer. She was posted in same office since last 8.5 years. Recently new lab was made fully functional. Complainant is the only qualified pathologist (MD pathology) in GDMO cadre in CGHS Lucknow, hence she was posted in new lab. Respondent further submits that her earlier place of posting was situated only at 12 K.Ms. away from her residence and her new place of posting is situated at only 13 K.Ms. away from her residence.

11. Complainant informed during online hearing that main problem faced by her in new place of posting is related to commutation between her home and office. Reason behind the problem is that the Complainant travels through modified car. Respondent informed during online hearing, that the Respondent establishment is duly paying her Travel Allowance and P.G Allowance.


12. The fact that the Complainant is posted in Lucknow since last 8.5 years is evidence of the fact that the Respondent is sensitive towards rights of divyang employees. This Court is inclined to note that the grievance raised by the Complainant can be resolved amicably. Hence, this Court recommends that the Respondent may opt to provide vehicle facility to the Complainant in lieu of 'Travel Allowance' paid to her so that her grievance relating to commutation can be resolved or another option of reimbursement of taxi expenses, if the Complainant is availing taxi service for travelling between her office and home, instead of payment of 'Travel Allowance' can also be opted for. Further, Respondent may also consider to



facilitate the Complainant by providing 'pooling' facility in lieu of Transport Allowance which is granted to the Complainant. Further the Respondent is also recommended to post the Complainant back to her old office as and when other MD pathology can be found in place of the Complainant. Further intervention of this Court in the present Complaint is not warranted.

13. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from 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.

14. This case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 08.02.2023



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: 13453/1022/2022

Complainant:

Shri Hitesh Sukheja
Assistant Manager (Emp. 112426)
Central Bank of India, Br.- Gangai Barkheda
Regional Office: Jabalpur-482001, Madhya Pradesh
Email: hiteshsukheja16@gmail.com

Vs

Respondent:

The General Manager (HRD)
Central Bank of India
Chandramukhi Building, Nariman Point
Central Office, Mumbai-400021, Maharashtra
Contact No: 022-66387777
Email: ghhrd@centralbank.co.in

GIST OF COMPLAINT

Shri Hitesh Kumar Sukheja, complainant is working as Assistant Manager, in Central Bank of India, Gangai Barkheda Branch under Regional Office Jabalpur (M.P). He has filed a complaint dated 06.09.2022, requesting for cancellation of his rotational transfer order dated 26.04.2022 vide which he has been transferred from Jabalpur to Rajkot Region, Gujarat. He has submitted that he is care giver to his mother who is a person with disability (60% Locomotor Disability). He has to stay at Jabalpur for taking care of his disabled mother.

2. The complainant has submitted advance copy of his representation dated 16.03.2022 through proper channel to his Central Office Mumbai for cancellation of his transfer order but after completion of 5 months, his transfer order has not been cancelled yet although he has sent 10 reminders to his office. The complainant has requested this Court to consider his request and give directive to the respondent for cancellation of his transfer order.

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

4. Deputy General Manager-HRD, Central Bank of India, Mumbai, vide letter dated 26.09.2022 has inter-alia submitted that the complainant is a native of Satna (M.P.) has been posted in Bhopal Zone since date of his joining the bank, i.e. 29.01.2011. The officer has completed over 11 years in the zone as on 31.03.2022. The respondent further submitted that periodical rotation transfers of bank officers is done in compliance with the guidelines issued by the Central Vigilance Commission from time to time which inter-alia provide for periodical rotation on 3 years. The said Central Vigilance Commission (CVC) guidelines is implemented uniformly for all officers. Therefore, the transfer of the complainant is in keeping with the CVC guidelines.

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

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

5. He further submitted that the complainant has completed 11 years at a stretch and he along with *other similarly placed officers have been transferred out of zone*. The complainant mother is suffering from 60% locomotor disability and therefore he being caregiver of his mother, should not be transferred to take care of his mother. The respondent further submitted that his wife is also working as Assistant Manager in Indian Bank at Jabalpur. Since his wife is posted in Jabalpur, she can very well take care of her disabled mother-in-law at Jabalpur. The Bank follows the Government guidelines issued from time to time. As per para 3 (i) of the O.M. dated 08.10.2018 provides that a Government Employee who is a care giver may be exempted from routine exercise of transfer/rotational transfer subject to the administrative constraints. The placement of the complainant has been made considering administrative exigencies and availability of vacancies.

6. The complainant filed his rejoinder reply vide email dated 02.11.2022 and inter-alia submitted that since his joining in the bank, he has been posted in different branches of Bhopal zone as per the existent transfer policy from time to time. The complainant is a Probationary Officer of 2011 batch and most of his batch mates are serving either in Scale III or IV. Though he was an aspiring Career oriented Officer, but for continual critical illness of his parents he had to forgo his career. It is not matter of satisfaction or achievement to complete 11 years of service in one zone on the pretext of illness of his parents. He has further submitted that his mother is suffering from locomotor disability and the medical board of private specialist doctors constituted by ZO Bhopal in compliance to Central Office letter dated 28.06.2022, have confirmed that disability of his mother is more than 40% (verbally they have stated 60%). His mother has appeared before the Medical Board of private specialist doctors on 15.07.2022 at Bhopal. He has never demanded exemption from rotational transfer, but he has requested that being Caregiver to his disabled mother, his services may be transferred to any branch/office in Jabalpur where his bank has more than 15 branches/offices. This would serve the very purpose of CVC's guidelines and also mitigate is hardship as care giver.

7. The complainant further submitted that his wife is working in Indian Bank as Assistant Manager, but she cannot claim Care-giver status with her bank as mother-in-law is not included as dependent as per the GOI guidelines dated 08.10.2018. She is of great help to him to look after his two little daughters of 2-3 years of age, disabled mother and critically ill father. She has been posted in Jabalpur by her bank on the basis of guidelines issued by GOI in the matter of working spouse. The complainant once again requested to this Court to give directive to the respondent for retain his services at Jabalpur branch.

8. **Hearing:** The case was fixed for hearing on **08.12.2022** which was re-scheduled to **27.12.2022**, **30.12.2022** and again rescheduled to **12.01.2023**. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **12.01.2023**. The following were present:

- i) Shri Hitesh Sukheja: **Complainant**
- ii) Shri Atul Sahai, Dy Zonal Manager: **Respondent**

Observations /Recommendations:

9. 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.

10. 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

11. 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;
 - (a) full and effective participation and inclusion in society;
 - (b) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
 - (c) equality of opportunity;
 - (d) accessibility;
 - (e) equality between men and women;
 - (f) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

12. 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.

13. 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.

14. 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 dependant.

STATUTORY PROVISIONS AND GUIDELINES

15. 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 dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

16. 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 in short) 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.

17. Even in case of employee who serves as care giver of Divyang dependant, 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.

18. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of Divyang dependant 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

19. ISSUE – Exempting Divyang employee from transfer if Service Rules prescribe for mandatory transfer.

20. 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

21. 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.

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

23. 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.

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

25. 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.

26. 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.

27. 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.

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

29. 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.

30. **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?

31. 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.

32. 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 'dependant'.

33. 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.

34. 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

35. 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.

36. 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:

37. Complainant has filed the Complaint requesting for cancellation of his rotational transfer order dated 26.04.2022 vide which he has been transferred from Jabalpur to Rajkot Region, Gujarat. Reason given by the Complainant is that his mother is Divyangjan with Locomotor Disability (60%) hence he is caregiver of his Divyang mother.

38. Respondent submits that the Complainant was posted in Bhopal zone since his appointment in 2011. Complainant was transferred in accordance with the CVC guidelines which prescribe for transfer after every 3 years.

39. During online hearing, Complainant submitted that he even denied promotion to avoid transfers. Mother of the Complainant cannot move along with him because movement from one place to another may result into fracture of bones.

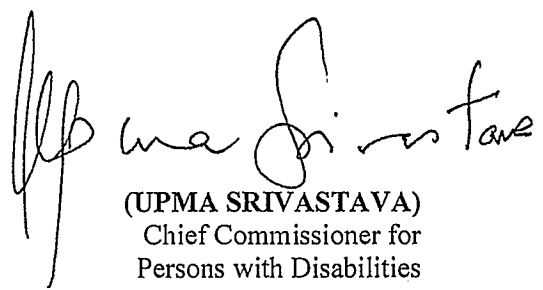
40. In the present case the complainant is caregiver of divyang mother. His wife is also posted in Jabalpur and she cannot move along with him to new place of posting. Hence, this Court concludes that the case of the Complainant should be considered sympathetically. Case of the Complainant should be dealt with according to guidelines laid down in O.M. No. 36035/3/2013 dated 31.03.2014 issued by DoP&T. As per the guidelines, Divyang employees should be excluded from the practice of rotational transfer.

Furthermore, the case of the Complainant should also be considered according to O.M. No. 42011/3/2014 dated 08.10.2018 issued by DoP&T, which provides that the employee who is serving as care giver of Divyang dependent shall be exempted from routine transfer.

41. This Court recommends that the Respondent shall deal the case of the Complainant in accordance with the guidelines delineated above and shall cancel the Complainant's transfer and shall retain him in Jabalpur.

42. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from 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.

43. This case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 08.02.2023



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: 13449/1022/2022

Complainant:

Shri Nanak Chand Atolia
Scale-1 Manager,
Central Bank of India
Parliament Street Branch, New Delhi
Contact No: 09811639450
Email: atolia_nc@yahoo.co.in

137704

Vs

Respondent:

The Chairman and Managing Director
Central Bank of India
Chandramukhi Building
Nariman Point, Mumbai-400021
Maharashtra
Contact No: 022-66387777
Email: gmhrd@centralbank.co.in

137705

GIST OF COMPLAINT

The complainant Shri Nanak Chand Atolia, Scale-1 Manager, vide email dated 05.09.2022 has filed a complaint dated 16.08.2022, submitting that in recent transfer process his services were transferred to Ludhiana Regional Office, under Chandigarh Zone w.e.f. 29.04.2022 vide Central Office Order dated 16.04.2022.

2. The complainant has submitted that his younger brother is a person with multiple disabilities (Mentally Retardation and Orthopedically) which is above the Benchmark Disability for giving relaxation/exemption to employees who are care giver of fully dependent of such siblings/brother on transfers and the same incorporated in the transfer policy of their Bank. He has given a representation on 18.04.2022 for seeking exemption/cancellation of his transfer order in line with compliance of Government norms and transfer policy of their Bank. His representation was forwarded to the General Manager, HRD Central Office, Mumbai through proper channel but bank has not taken any action on his representation till filing of the complaint. Since then he is waiting for cancellation of his orders and is on leave to take care off his dependent unmarried brother Shri Kalu Ram.

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

4. In response, Manager, HRD (R&P), Central Bank of India vide email dated 30.09.2022 has attached a copy of reply dated 26.09.2022 and submitted that the complainant was posted in Delhi Zone since 09.10.2006 and has completed over 15 years in the Zone as on 31.03.2022. The periodical rotation transfers of Bank Officers is done in compliance with the Guidelines issued by the Central Vigilance Commission (CVC) from time to time which inter-alia provide for periodical rotation on 03 years. The

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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

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said CVC's guidelines are implemented uniformly for all officers and the transfer of the complainant was made in the light of CVC's guidelines. As the complainant has completed 15 years at a stretch, hence, he along with other similarly placed officers have been transferred out of Zone. The Bank is following the guidelines issued by the Government of India on the physically disabled persons from time to time. The placement of the complainant was made considering administrative exigencies and availability of vacancies.

5. The complainant has filed his rejoinder vide email dated 02.11.2022, and inter-alia submitted that the CVC's guidelines are pertained to the sensitive posts and in routine Banking system there are very meager chances of a post which can be defined as sensitive. Moreover, the track record of an officer clearly shows if there is any fault on his part. The Bank has issued guidelines based on "Equal Opportunity Policy" which are self-explanatory and the same are very much related to the "Caregiver" category of Bank Employees.

6. **Hearing:** The case was fixed for hearing on 08.12.2022 which was re-scheduled to 27.12.2022, 30.12.2022 and again re-scheduled to 12.01.2023. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 12.01.2023. The following were present:

- i) Shri Nanak Chand Atolia: **Complainant**
- ii) Ms. Manisha Kaushik, AGM : **Respondent**

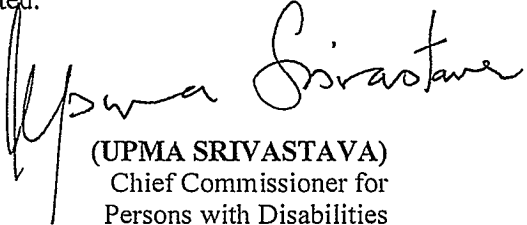
Observations /Recommendations:

7. Complainant submits that he was posted in Delhi zone. By order dated 16.04.2022 he was transferred to Ludhiana circle office, Chandigarh zone. He submits that his brother, who is divyangjan with 'Mental Retardation' and Orthopaedic disability, is dependent upon him and hence he needs to take care of him and prays for cancellation of his transfer to Ludhiana circle office.

8. Respondent submits that the Complainant was posted in Delhi zone since last 15 years. He was transferred on the basis of CVC guidelines which prescribe for rotation of the employees after every 3 years.

9. During online hearing Complainant informed this Court that he has been posted within Delhi since 2006 and since then he has never been posted to any branch which is situated outside Delhi. Respondent informed this Court that the Complainant never informed the Respondent establishment about divyang dependent brother. Complainant updated his service related records after he was transferred hence the same was considered as afterthought. Respondent further informed that the Complainant will superannuate in April 2025.

10. Considering the fact that approximately 2 years are left in superannuation of the Complainant, hence his case may be considered sympathetically by the Respondent and he may be retained in Delhi. Further intervention of this Court in the present Complaint is not warranted.


 (UPMA SRIVASTAVA)
 Chief Commissioner for
 Persons with Disabilities

Dated: 08.02.2023

Extra

79



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: 13481/1141/2022

Complainant: Mr. Nur Islam Saikh,
Village: Binod, Post: Gobardhandanga,
PS: Sagardighi, District: Murshidabad (West Bengal)
Email: nurislamsaikh707@gmail.com

Respondent: The Director,
National Institute for Locomotor Disabilities (Divyangjan)
B.T. Road, Bonhooghly, Kolkata-700090
Email: mail@nioh.in

Complainant: 80% Locomotor disability

GIST of the Complaint:

Complainant Mr. Nur Islam Saikh vide complaint dated 03.09.2022 has requested to Change of old Plastic Leg and Fitting of New Plastic Leg by the National Institute for Locomotor Disabilities (Divyangjan), Kolkata.

2. The matter was taken up with the Respondent vide letter dated 13.10.2022 under Section 75 of the RPwD Act, 2016.

3. In response, respondent vide e-mail dated 29.10.2022 has inter-alia submitted that Mr. Nur Islam Saikh reported to NILD on 31.08.2022 and he had submitted the documents required for fabrication of prosthesis under ADIP guidelines and the complainant was informed to report to the Institute after 15 days. After submission of documents on 31.08.2022, the complainant did not enquire or report to the Institute for measurement or fabrication of prosthesis. Moreover, after uploading the documents of the complainant in the portal, he was called twice over telephone, but his telephone was out of reach. The complainant finally came to the Institute on 12.09.2022 for his measurement. He paid the fees on his own for his prosthesis and measurements were taken on the same date. As such it may be presumed that his instant complaint case has become infructuous since the complainant has completed all the formalities on his own volition. It is also stated that in NILD most of the patients are PwDs and there is no discrimination among the patients and all the patients are equally treated.

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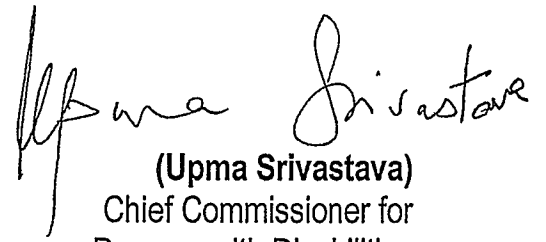
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4. A copy of the above reply was forwarded to the complainant on 11.11.2022 for submission of rejoinder but till date no response has been received.

Observation/Recommendations:

5. Complainant filed complaint in this Court on 03.09.2022. Thereafter, he approached respondent establishment and completed all the procedures and formalities for availing the services and fabrication of his prosthesis. Hence, the instant complaint has become infructuous and is accordingly disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 09.02.2023



नृत्यमेव नृत्यते

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: 13379/1022/2022

Complainant:

Mohd Akman

Stenographer Grade-II

Office of the Commissioner of GST & Central Excise

Chennai Outer, Newry Tower, No. 2054-1

2nd Avenue Anna Nagar

Chennai-600040

Email: bx.akman1@gmail.com

Mobile No: 9198195738

1337690

Vs

Respondent:

The Principal Chief Commissioner of GST & Central Excise

Tamil Nadu & Puducherry Zone

26/1, Mahatma Gandhi Road

Nungambakkam Chennai-600034

Email: ccu-cexchn@nic.in

Contact No: 044-28331010

1337691

GIST OF COMPLAINT

The complainant, a person with 50% Locomotor Disability, working as Stenographer Grade-II, in the GST & Central Excise, Chennai has filed a complaint dated 15.07.2022 regarding Inter Commissionerate Transfer on Loan basis to Commissioner of GST & Central Excise Allahabad Commissionerate.

2. The complainant has submitted that he had joined as Stenographer Grade II of Central Excise & Customs, Chennai Outer Commissionerate in the Central Excise & Customs Department as a direct recruit in CCA Chennai Zone under CBEC (Now CBIC) on 16.03.2020, after qualifying SSC Steno Grade D Exam, 2017. The complainant is presently working as Stenographer Grade II of GST & Central Excise, Chennai Outer Commissionerate under the Cadre Controlling Authority (CCA), Chennai Zone. He is a native of District Kaushambi, Uttar Pradesh.

3. The matter was taken up with the Respondent vide letter dated 17.08.2022 under Section 75 of the RPwD Act, 2016.

4. In response, Addl. Commissioner CCA Establishment, Office of the Principle Chief Commissioner of GST & Central Excise, Tamil Nadu & Puducherry Zone, vide email/letter dated 10.10.2022, has submitted that the Stenographer Grade C & D are recruited through the Staff Selection Commission and selected candidates are allocated to different Zones on their merit cum preference criteria. The complainant had joined the department on 16.03.2020 on selection through SSC Stenographer Grade D exam 2017. The representation made by the employee belonging to the category of Persons with Disabilities is thoroughly reviewed and is being addressed to on time, keeping in view of the concern of the officer. This office has received the transfer representation through only proper channel on 09.09.2022 and was under process.

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

5. The Inter Commissionerate transfer for any cadre is granted under the clause 'recruitment by absorption' mentioned in the Recruitment Rules of that particular cadre. For Stenographer Grade II cadre, in the Recruitment Rules 2011, the clause 'recruitment by absorption' is not mentioned. Hence, ICT in this grade is not being granted. Also, the transfer of the complainant across the Zones on loan basis is not considered as per para-2 (iv) of the Board's letter dated 17.12.2020.

6. The respondent further submitted that the case which was referred in the Court's notice dated 17.08.2022, i.e. of Shri Dinesh Kumar, Stenographer Grade II, is transfer on loan basis to Lucknow Zone as per the recommendations of the Chief Commissioner of Court of Persons with Disabilities. However, the recommendation is in personam to Shri Dinesh Kumar and hence, not applicable to other Stenographers in Gr. II. As such the request of the complainant for Inter Commissionerate transfer on loan basis to Allahabad Commissionerate, cannot be acceded to as per the extant guidelines.

7. The complainant did not file his comments the rejoinder in response to letter dated 17.10.2022 issued by the Court of Chief Commissioner for Persons with Disabilities

Observations /Recommendations:

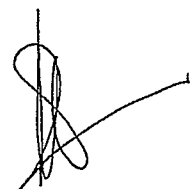
8. This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and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

9. 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

10. 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.

11. 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.

12. 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.

13. 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 dependant.

ANALYSIS OF THE PROVISIONS & GUIDELINES

14. 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 in short) 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.

15. Even in case of employee who serves as care giver of divyang dependant, 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.

16. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant 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

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

18. 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

19. 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.

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

21. 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.

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

23. 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.

24. 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.

25. 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.

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

27. 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.

28. **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?

29. 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.

30. 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 'dependant'.

31. 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.

32. 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

33. 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.



34. 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: -

35. After perusal of the Complaint and reply this court concludes that the case of the complainant squarely falls under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T. O.M. lays down that divyang employees may be posted near to their native place. The same guideline was reiterated in O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. In this O.M. it is provided that at the time of transfer/posting divyang employee may be given preference in transfer/posting. Objective of these guidelines is to provide an environment to divyang employee where they can perform and achieve desired results.

36. It is noteworthy to mention that recently Hon'ble Supreme Court decided an identical case of transfer in case titled as **SK NAUSAD RAHMAN & ORS. v. UNION OF INDIA, Civil Appeal No. 1243 of 2022 (judgment dated 10.03.2022)**. In that case, Hon'ble Supreme Court decided the validity of Order which banned the ICT. Hon'ble Court held that though Order which banned Inter Commissionerate Transfer is valid and constitutional. Union of India must revisit its policy and exception must be created in favor of a) posting of spouses, b) divyangjan and c) compassionate transfers. Court has held –

“Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and Article 21 of the Constitution are duly protected.”

37. Hence this Court recommends that the Respondent shall transfer the Complainant to his native place, in accordance with O.M. No. 14017/16/2002 dated 13.03.2002 and other guidelines delineated above.

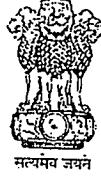
38. The case is disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 09.02.2023

887



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: 13443/1022/2022

Complainant:

Shri Sandip Ankush Patil
Assistant Manager
Village: Kembali Tal-Kagal
Distt: Kolhapur, Maharashtra-416221
Email: Sandip.patil231@gmail.com
Mobile No: 09004308313/09146074296

137706

Vs

Respondent:

The Regional Head : Respondent - 1
UCO Bank, Pune Zonal Office
2190/2191, Sanskrit Vidya Mandir
Sports Complex, Sahakar Nagar, No. 1
Lane No. 4, Pune-41100

137707

The General Manager : Respondent - 2
UCO Bank
Operations & Services Department
Head Office, 10, BTM, Sarani
Kolkata-700001
Contact No: 033-44558424
Email: hosp.cscell@ucobank.co.in

137708

GIST OF COMPLAINT

Shri Sandip Ankush Patil, complainant an employee with 40% Visual Impairment, working in the UCO Bank as Assistant Manager has filed a complaint dated 02.09.2022 regarding his transfer/posting and harassment.

2. He has submitted that he was posted at Kolhapur main branch (0088) but within six months he has been transferred to 60 kms away from his home to Ichalkaranji Branch. But now, he has been transferred to a Branch which is 275 kms away from his home which is neither suitable nor convenient and very risky for his life. He further submitted that his original posting Branch Kolhapur main is very convenient and suitable for his job and life. He sent request application and reminder application regarding transfer and posting to Zonal Manager, Zonal Office, Pune, but they neither send any reply nor taken any accountability/responsibility regarding junior facility and problems. He further submitted that his salary has been stopped from the month of August-2022. He was tortured, facing harassment and losses in different ways from the last three years. The complainant has requested to this Court to give direction to the bank for his transfer/posting and as well harassment.

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

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

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

4. In response, Advocates, M/s I.S. Chauhan & Associates, on behalf of the respondent bank filed a reply vide his letter dated 20.10.2022. The respondent has submitted that contents of the complaint, made by the complainant, are not correct and the allegations leveled by the complainant against the bank are false hence denied. The complainant is a Probationary Officer who was posted at the Ichalkaranji Branch of the respondent bank, and is in habit of violating the orders of his superiors and uses to abuse not only his superiors but the customers as well. On the fateful day the complainant sent a mail to the branch in which he had prayed for leave. The then in-charge of the Branch, who happens to be Assistant Branch Head, immediately responded back through official email-id of the branch and advised the complainant to contact the Branch Head telephonically to seek his permission for leave as the Branch Head was on leave that day, so that an alternate staff could be arranged on deputation in his place to ensure uninterrupted and seamless services to the customers. The respondent further submitted that complainant in response to the Branch's email replied back the Bank through his email ID using unacceptable and unparliamentary language which cannot be described in writing, showing his indecent behavior and disrespect to his organization and the co-workers and is not expected from a prudent and duty-bound officer.

5. The respondent further submitted that the competent authority of the bank considering his indecent behavior and non obedience of the order of the superiors has taken a lenient action against the complainant and got him transferred to another branch of the bank Pimpri MC, Pune. The complainant is transferred to one of the prestigious branches of the bank in terms of infrastructure and accessibility in order to provide him an opportunity for acquiring necessary skills which will enable him to render prompt services to the customers during his probation period. The Pimpri MC branch wherein the complainant is posted is a Forex based Branch located in the heart of the city. The complainant's claim that he has been transferred to distant place as a harassment is not justifiable as the above branch is a desired place of posting for many of the employees of the bank.

6. Accordingly, the relieving order was issued to the complainant by the Ichalkaranji Branch. At the time of relieving the complainant showed his insubordination and left the branch after crumpling the transfer order/relieving letter and throwing it on the floor evincing an indecent behavior not suiting the workplace. Instead of adhering to the transfer order, the officer under probation has declined the order in such manner which is detrimental to the working environment of the bank and the said act will deteriorate the moral of his co-workers and create a precedence.

7. The complainant has filed his rejoinder vide email dated 01.11.2022, submitted that after two years in joining the bank the probation period has completed. He has completed three years on 27.05.2022 so he is not in probation but a confirmed employee. The complainant stated that his batchmates employees with disabilities are confirmed before one year. The complainant stated that from three months he and his family totally collapse and physically, mentally, socially and financial disturb and broken. The complainant stated that he should fully contribute as per his capacity in holistic development and progress of his bank. If he will be posted in Kolhapur branch he worked more and more efficiently and effectively for bank with extra time. The complainant once again requested to this Court to give directives to the respondent to give him as soon as joining also transfer him convenient and very ease Kolhapur Main branch (0088) because other employees have getting convenient posting and transfer as per there request.

8. **Hearing:** The case was fixed for hearing on 08.12.2022 which was re-scheduled to 27.12.2022 and again re-scheduled to 30.12.2022. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 30.12.2022. The following were present:

- i) Shri Sandip Ankush Patil : **Complainant**
- ii) Ms. Abhaya Koshti, Legal Officer, UCO Bank : **Respondent**

Observations /Recommendations:

9. Complainant submits that he was posted in Kolhapur branch when he got appointed and later, he was transferred to Ichalkaranji branch which is 60 K.Ms. away from his hometown. He was again transferred to Pimpri MC, Pune branch which is 250 K.Ms. away from his hometown. He prays before this Court for retention in Kolhapur branch.

10. Respondent submits that the Complainant was never posted in Kolhapur branch. He was initially posted in Ichalkaranji branch. He is in habit of violating the orders of his superiors and uses to abuse not only his superiors but the customers as well. On the fateful day the complainant sent a mail to the branch in which he had prayed for leave. The then incharge of the Branch, who happens to be Assistant Branch Head, immediately responded back through official email-id of the branch and advised the complainant to contact the Branch Head telephonically to seek his permission for leave as the Branch head was on leave that day, so that an alternate staff could be arranged on deputation in his place to ensure uninterrupted and seamless services to the customers. The respondent further submitted that complainant in response to the Branch's email replied back the Bank through his email ID using unacceptable and unparliamentary language which cannot be described in writing, showing his indecent behaviour and disrespect to his organization and the co-workers and is not expected from a prudent and duty-bound officer.

11. The respondent further submitted that the competent authority of the bank considering his indecent behaviour and non-obedience of the order of the superiors has taken a lenient action against the complainant and got him transferred to another branch of the bank Pimpri MC, Pune. The complainant is transferred to one of the prestigious branches of the bank in terms of infrastructure and accessibility in order to provide him an opportunity for acquiring necessary skills which will enable him to render prompt services to the customers during his probation period.

12. During online hearing Complainant also reiterated his claims relating to non-payment of salary since last 5 months. Respondent submitted on this point that the salary was stopped because the Complainant did not join at his new place of posting. Respondent further assured that if the Complainant will join at new place of posting, his salary will be restored. Respondent further informed that same position was also informed to the Complainant via email.

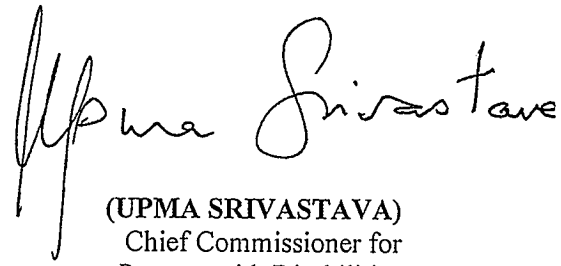
13. During online hearing, Complainant further informed this Court that he was posted in Kolhapur office since his joining in May, 2019. After 6 months in November, 2019, he was transferred to Ichalkaranji branch. Thereafter, by order dated 06.08.2022 he was transferred to Pimpri branch.

14. From the record it is clearly evident that the Complainant is subjected to rotational transfer, which is against the guidelines of DoPT O.M. No. 36035/3/2013 dated 31.03.2014 read with O.M. No. 14017/16/2002 dated 13.03.2002. Respondent's submission that the Complainant was transferred because he used unparliamentary language also cannot be accepted. It is evident that Respondent has used transfer as tool of punishment, which is wrong. At the same time it is also important to note that the Complainant has also committed wrong in not joining the branch to which he was transferred.

15. This Court recommends that the Complainant shall join the branch to which he has been transferred. Thereafter he can apply for transfer to native place. If any such application is filed by the Complainant, then the Respondent shall transfer the Complainant to his native place in Kolhapur, as per the guidelines of DoPT O.M. No. 36035/3/2013 dated 31.03.2014 read with O.M. No. 14017/16/2002 dated 13.03.2002. As far as 'disciplinary proceedings' are concerned, the above observations and recommendations shall not interfere with the continuation of any disciplinary proceedings against the Complainant.

16. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from 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.

17. This case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 09.02.2023



सत्यमेव जयते

92

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: 13448/1022/2022

Complainant:

Shri Narinder Singh
AE (Civil) AGEB/R
Abohar Cantt
Mobile No: 09914951536
Email: narindersinghkamboj8893@gmail.com

137709

Versus

Respondent

The Engineer in Chief Branch
Military Engineer Service,
Directorate General (Personnel)
Kashmir House, Rajaji Marg
New Delhi-110011
Email: dirpers1-mes@nic.in
Contact: 011-23019685

137710

GIST OF COMPLAINT

The complainant has filed his complaint 24.08.2022, working as AE (civil) AGEB/R in Abohar Cantt and person with 50% physical disability regarding posting in native place. The complainant has requesting to Engineer Chandigarh CHD zone and Western command for consideration of posting for PwDs. The complainant has requested to this Court that posting must be considered in his native station i.e. Patiala, Ambala, Chandigarh.

2. The matter was taken up with the Respondent vide letter dated 09.09.2022 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. Dir Pers (C&M), Engineer-in-Chief branch, New Delhi vide letter dated 23.09.2022, submitted that MES-372303 Shri Narinder Singh, AE (Civ) is posted at GE Abohar as AGE (B/R) since 03 Nov 2021. The complainant was posted on promotion-cum-posting from JE (Civil) to AE (Civil) with posting order MES/74/2021 dated 18.10.2021 from GE (South) Patiala as JE(B/R) to GE Abohar as AGE (B/R). Before issue of posting order the complainant had submitted his request for posting with reference to the circular from DPC with letter No. nil dated 18.02.2021 wherein he brought out his physical issues and choices of stations.

4. The respondent further submitted that the department endeavour is to post officers in executive appointment as executives are the real face of the department in delivering services to the armed forces. The individual by virtue of his promotion was given an opportunity to perform executive duties at GE Abohar as AGE 9 (B/R). The hometown of the officer, as per the data is Patiala. As a convention, department does not post officers in hometown on executive appointment.

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

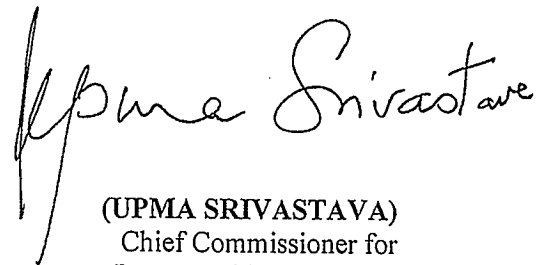
E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

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

5. The respondent further stated that after issue of Promotion-cum-posting individual reported at GE Abohar on 03.11.2021 as AGE (B/R). The SOS (Struck off Strength) date from GE (South) Patiala is 23.10.2021 as per Cadre Management Policy-2015 approved by the MoD, the individual is provided sufficient opportunity to represent against posting. At times the organisation interests and individual requirements are at crossroads, however the organizational requirements are paramount in such situation. Observing from the dates chronologically i.e. date of individual application, date of Promotion-cum-posting order, date of SOS from GE (South) Patiala and date of reporting at GE (Abohar) on promotion, it is clearly evident that the individual was keen to take over executive duties at GE Abohar as AGE (B/R). As per the Cadre Management Policy 2015, the officers request for posting dated 18.05.2022 was turned down by the competent authority and accordingly order were issued vide letter No. B/19002/BR/E1B(PET-II) dated 04.07.2022. It is further informed that the individual may apply for fresh posting on compassionate grounds, if required, without TA/DA for consideration by competent authority as he has completed stipulated tenure of 03 years at GE (Abohar) as AGE (B/R).
6. The complainant has not submitted the rejoinder against the letter issued by the Court of Chief Commissioner for Persons with Disabilities vide email dated 18.10.2022.
7. **Hearing:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 17.01.2023. The following were present:
- i) **Shri Narinder Singh: Complainant**
 - ii) **Shri Ajay Jain, Engineer in Chief Branch, Military Engineer Services: Respondent**

Observations /Recommendations:

8. Complainant submits that his native place is Patiala. Currently he is posted in Abohar. He prays before this Court to direct the Respondent to post him in or near his native place.
9. Respondent submits that the Complainant was posted in Patiala and later on being promoted to the post of AE (Civil), he was transferred to Abohar. Respondent submits that the transfer was done on promotion considering the man-power strength in different offices. Further the Respondent submits that the Complainant can file transfer request after completing 3 years tenure at present location.
10. During online hearing Complainant informed this Court that he has now been transferred to Patiala by Order dated 11.01.2023.
11. Since the grievance of the Complainant has now been redressed, further intervention of this Court is not warranted.
12. This case is disposed off


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 09.02.2023



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. 13327/1011/2022

Complainant:

Md Sarwar Ali,
R/o Gazzu Khan Lane,
Nathnagar, Nurpur (CT),
Nathnagar, Bhagalpur-812006,
Email: sarwar07414@gmail.com;
Mobile No.9470083421

— 13327664

Respondent:

The Chairman, Railway Recruitment Board,
Opposite GCS Hospital, Near DRM Office,
Amdupura, Ahmedabad - 382 345
Phone: 079-2294 0858; Email: as-rrbadi@nic.in

— 13327665

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

1. Gist of Complaint:

The complainant filed a complaint dated 23.05.2022 regarding irregularities in Exam Result of RRB Ahmedabad for recruitment of Level-1 Posts under Advt. No.CEN-02/2018.

2. Submissions made by the Respondent:

The respondent filed a reply vide email dated 29.07.2022 and submitted that the application and answer key attached along with the application is under examination and the final reply would be submitted in due course.

3. Hearing (1):

3.1 The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 06.09.2022. The following persons were present during the hearing:-

- (1) Shri Sarwar Ali, the complainant in person
- (2) Sri Teja Ram Meena, Asst. Secretary, Railway Board, for respondent

3.2 During the hearing, both the parties were heard. As the issue was related to another Railway Recruitment Board and the reply from which was yet to be received by the respondent, on the request of the representative appeared on behalf of the respondent this Court granted 3 weeks' more time to file the reply on merit.

4. Reply filed by the Respondent:

4.1 The respondent filed its reply dated 29.09.2022 and submitted as under:-

(1) The complainant, Shri Sarwar Ali, being a PwBD candidate was exempted from PET test. The RRB had issued the result of non-PwBD candidates eligible for PET. The result of Shri Sarwar Ali was not issued with the other non-PwBD candidates.

(2) RRB published provisional answer key along with candidate QP response sheet to invite objection, if any. After reviewing the objections, final answer key was published along with candidates QP response sheet. The QP response sheet submitted by the candidate is the one with the provisional answer key. The total question attempted is 58, Total correct Answer is 51, total Wrong answer is 07, Total ignored questions are 02, Valid question is 98, Revised Score is 48.66667, Protected Score is 49.65987 and Normalized Score is 52.58049. The result of Shri Sarwar Ali is correctly issued.

(3) The contention of the candidate that his normalization mark is lesser than compared to other candidates is not correct. The normalization formula is equally applied to all candidates.

5. The reply dated 29.09.2022 filed by the Respondent was forwarded to the complainant vide this Court's email dated 10.11.2022 for filing Comments/Reply.

6. Submission made in Rejoinder:

6.1 The complainant filed its Comments/Reply vide email dated 14.11.2022 and refuted the reply filed by the respondent. The complainant submitted that his complaint is not on the 'objection question' but on "ignored Question". RRB itself in its note had said that the Question Nos. 51, 59, 70, 71, 81 and 89 (Total 06) were the Ignored Questions for all candidates, then why a candidate would pay his/her attention towards those ignored questions. Moreover, RRB has talked about the Final Answer Key at the time of Score Card. RRB had uploaded the Answer Key twice. While uploading the First Answer Key the number of the total ignored questions were 6 whereas in the Answer Key uploaded at the time of Score Card the number of Ignored

Questions have been shown as 04 i.e. Question Nos. 50, 52, 57 and 60. In the Complainant's Score Card the number of Ignored Questions is 02. On the basis of which Answer Key the Score Card can be said a valid one.

6.2 Further, the complainant submitted that as stated by the respondent, the Normalization Formula has not been applied equally. For example, the complainant has submitted the Score Card of a candidate Shri Mukesh Kumar Meena (Regn. No.1880954627, Roll No.182095106240001) –

Total attempted question	=	76
Total correct	=	44
Total wrong	=	32
Total question ignored	=	01
Total valid question	=	99
Raw Marks out of total valid question	=	33.33333
Pro-rated marks out of 100	=	33.67003
Normalised Marks	=	57.89824
In normalisation he has been given	=	24.22821(57.89824-33.67003)

Shri Mukesh Kumar Meena had been called for document verification while he had scored only 44 marks after attempting 76 questions. On the other hand, Shri Sarwar Ali had scored 51 marks after attempting only 59 questions.

7. Hearing (2):

The case was again heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 12.01.2023. The following persons were present during the hearing:-

- (1) Shri Sarwar Ali, the complainant in person
- (2) Shri Teja Ram Meena, Asst. Secretary, Railway Board, for respondent

8. Observations & Recommendations:

8.1 Complainant submitted that he appeared in RRB examination. His grievance is that his result was not declared along with other candidates, and was declared on later date. He submits that in his result only 2 answers were marked as 'ignored' whereas, in his answer key 6 questions were marked as 'ignored'.



8.2 Another issue raised by the Complainant is related to 'normalization' of marks. Complainant claims that after his marks were normalized, only 3 marks increment happened in his case. Whereas in case of another candidate, namely Mukesh Kumar Meena (Regn. No.1880954627, Roll No.182095106240001) there was increment of 24 marks applying 'normalization'.

8.3 Complainant further submitted that his result was declared later than other candidates.

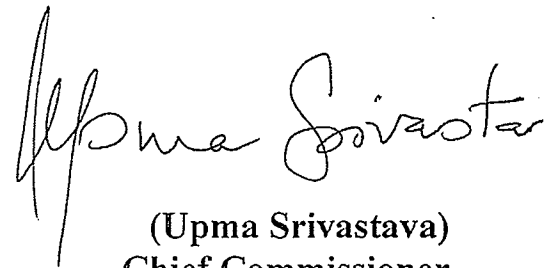
8.4 Respondent submitted that the complainant, being a PwBD candidate was exempted from PET test. The RRB had issued the result of non-PwBD candidates eligible for PET separately. This is the reason that the result of Shri Sarwar Ali was not issued with the other non-PwBD candidates.

8.5 RRB published provisional answer key along with candidate QP response sheet to invite objection, if any. After reviewing the objections, final answer key was published along with candidates QP response sheet. The QP response sheet submitted by the candidate is the one with the provisional answer key. The total question attempted is 58, Total correct Answer is 51, total Wrong answer is 07, Total ignored questions are 02, Valid question is 98, Revised Score is 48.66667, Protected Score is 49.65987 and Normalized Score is 52.58049. The result of Shri Sarwar Ali is correctly issued. Respondent further submitted that the normalization process was not discriminatory. Respondent also informed during online hearing that all the answer scripts were checked through computer software.

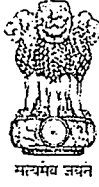
8.6 This Court concludes that the Complainant has not made any case of discrimination on the basis of disability. Intervention of this Court in the present Complaint is not warranted.

8.7 Accordingly the case is disposed off.

Dated: 10.02.2023



**(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities**



सत्यमेव जयते

Case No.13297/1041/2022

Extra 98

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. 13297/1041/2022

Complainant:

Smt. Bhumika Mandlekar
Irrigation Colony, Quarter No.- 100
Shanti Nagar, Raipur - (Chhattisgarh)
Mobile No. 9399074474

13297668

Respondents:

(1) The Registrar,
Malaviya National Institute of technology Jaipur
JLN Marg Jaipur- 302017 (Rajasthan)
Email: registrar@mnit.ac.in

13297669

(2) Director,
Indian Institute of Technology Kharagpur.
Organizing Chairman. JEE (Advanced) 2021.
Kharagpur - 721302
Email: director@iitkgp.ac.in

13297670

Affected Person: Shri Rishabh Mandlekar. a person with 60% Mental Illness

1. Gist of Complaint:

The complainant filed a complaint dated 01.06.2022 on behalf of her son Shri Rishabh Mandlekar, a person with 60% Mental Illness alleging that Shri Rishabh was not provided extra time to at the Exam Centre at ION Digital Zone IDZ Sorona Parthivi Province Commercial Complex, Sant Ravi Das Ward No.70, Sorona Raipur (Chhattisgarh) where he had appeared in JEE (Advanced) 2021 exam. The complainant further alleged that Shri Rishabh had been allotted a seat by JOSAA 2021 but later on his seat got cancelled.

2. Submissions made by the Respondents:

2.1 The Respondent No.1 filed its reply dated 15.07.2022 (Para 8, Page 11/264/Cor.) and submitted that Shri Rishabh Mandlekar appeared in JEE (Main) Examination conducted by National Testing Agency (NTA) with application No.210310137799 and he was ranked at number 838759 in All India Ranking in Open category, at number 81960 in All India Ranking in SC category, at number 2643 in All India Ranking in Open PwD category and at number 174 in All India Ranking in SC-PWD category. Thus the JEE (Main) Examination in which Shri Rishabh Mandlekar appeared was conducted by NTA only and not by

1 |

JoSAA/CSAB-2021 and they had no role in conducting of JEE (Main) Examination and as such the examination centre where he appeared, was not in ambit of JoSAA/CSAB-2021.

2.2 The Respondent No.2 filed its reply dated 15.07.2022 (Page 1/264/Cor.) on affidavit and submitted that as per their records, Shri Rishabh Mandlekar had not registered for JEE (Advanced) 2021 and thereby compensatory time as claimed did not arise at all. Further, since Shri Rishabh Mandlekar did not appear in JEE (Advanced) 2021, he was not eligible to apply for seats in IITs through JoSAA. Only application for seats in IITs falls within the mandate of the JEE (Advanced) Office, the complaint regarding seat withdrawal does not come within the ambit of their operations in connection with IIT seats.

3. Submissions made in Rejoinder:

The complainant filed its rejoinder dated 15.09.2022 (Page 195/264/Cor.) and refuted the reply filed by the Respondent No.1 (CSAB-2021). The complainant submitted that her son had completed all 4 attempts on JEE (Mains) 2021. After that he was allotted a seat in NIT Raipur (Chhattisgarh). All his documents were verified and his medical test got done. He had been allotted the seat in NIT Raipur only after deposition of a fee of Rs. 15,000/- through State Bank. Thereafter, his seat was cancelled.


4. Observations & Recommendations:

4.1 Respondent has submitted on affidavit that the candidate did not even register for IIT JEE (Advance) hence there is no question of extra time or seat allotment. Since this submission is made on affidavit hence may presume to be true.

4.2 Complaint along with attached documents perused. Complainant has not submitted documents like Admit Card, Registration Form etc. If the candidate had appeared in the examination, he must have registered and got copy of the registration form. Similarly Admit Card must have been issued to him. Complainant has not filed any such document. Complainant has filed screenshots of sms received on mobile from a private phone number and screenshot of Respondent's website. Hence, there is no proof filed by the Complainant on record to make a prima facie case against the Respondents. Therefore, no further intervention is warranted in this case.

4.3 Accordingly the case is disposed off.

Dated: 14.02.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

Extra (100)



Case No.13411/1011/2022151381

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. 13411/1011/2022/151381

Complainant:

Dr. Haradhan Maity,
R/o 84/B/10, Dum Dum Cossipore Road,
Aikatan Abasan, Kolkata-700074 (WB);
Email: hmaity.maths@gmail.com

137666

Respondent:

The Director,
Indian Institute of Technology (IIT Guwahati),
Guahati 781039;
Emails: director@iitg.ac.in;

137667

Affected Person: The complainant, a person with 60% Locomotor Disability (Right Upper Limb)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 03.08.2022 regarding arbitrary, illegal, mala fide, biased, and whimsical recruitment process of IIT Guwahati, and requested for separate recruitment for the persons with Disability category.

1.2 The complainant submitted that he made an application under the PwD category for the post of Assistant Professor in Mathematics on 15.11.2021 under the Special Recruitment Drive for Reserved Category (SC, ST, OBC, EWS, & PwD) at IIT Guwahati. IIT Guwahati assigned Application Ref No: IITG/REC/SPL/MAT-ASST/09-10-2021//00052. The complainant alleged that he did not receive any interview call from the authority concerned of IIT Guwahati whereas he completely fulfilled all the recruitment criteria according to the recruitment rules of IIT Guwahati. He further submitted that he has more adequate qualifications than the institute recruitment rules. The complainant further alleged that when he wanted to know his application status from the authority concerned of IIT Guwahati, he received an ambiguous reply from the IIT Guwahati authority, saying that "We are sorry to inform you that your application is not shortlisted for interview by the Shortlisting Committee".

1.3 The complainant prayed —

(1) to instruct the authority concerned of IIT Guwahati to consider his application and accommodate my appointment soon;

(2) to investigate the following matter and fact, and to take the necessary action for keeping and maintaining the reservation roster of Persons with Disabilities (PwDs); and

(3) the authority concerned of IIT Guwahati be directed to fill up the PwD vacant posts according to the roster.

2. Submissions made by the Respondent:

2.1 The Respondent filed its reply dated 28.09.2022 and submitted that in the Advertisement, it was clearly mentioned that candidates should possess Ph.D. with First class at the preceding degree or equivalent in the appropriate branch with a very Good Academic record. But Dr. Maity does not possess 1st Class throughout his all preceding degrees, which was one of the requisite criteria for shortlisting candidates for the interview. Further, it was also mentioned in the advertisement that "Mere eligibility will not vest any right on any candidate for being called for an interview. The decision of the Institute in all matters will be final".

2.2 The Respondent also submitted that one PwD candidate was called for the said interview for the post of Assistant Professor in the Department of Mathematics, but he was not selected by the Selection Committee. After the implementation of "The Central Education Institution (Reservation in Teachers' Cadre) Act, 2019", the recruitment process started in the year 2021 for SC/ST/OBC/PWD/EWS category. The process is not over and IIT Guwahati strongly believes that vacant positions would be filled up by qualified PwD candidates.

3. Submissions made in Rejoinder:

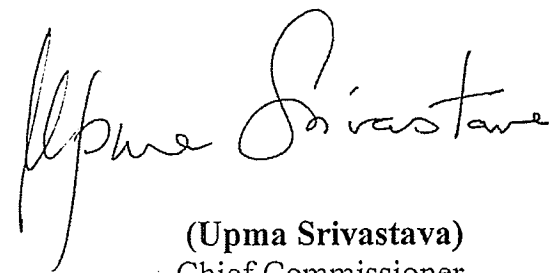
The complainant filed his rejoinder dated 23.11.2022 and inter-alia submitted that IIT Guwahati is trying to mislead and divert the attention of this Court from the original state of the affairs.

4. Observation/Recommendations:

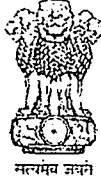
4.1 Upon considering the reply filed by the parties, this Court concludes that complainant's right is limited to being considered against the post advertised. There is no right to be shortlisted or appointed against the post. There is no discrimination appears to be made by the respondent. The reply of the respondent is satisfactory, hence, intervention of this Court is not warranted in the matter.

4.2 Accordingly, the case is disposed off.

Dated: 10.02.2023



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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

Case No. 13355/1014/2022

Complainant:

Smt. Uma Kasi Raman;
Patents Arvind Ramesh.
R/o Plot No.97,
4th Street, Malleswari Nagar, Selaiyur.
East Tambaram.
Chennai-600126:
Email: skashiram8127@gmail.com

R32675

Respondent:

Deputy General Manager,
Human Resource Management Department.
Reserve Bank of India.
Fort Glacis. 16. Rajaji Road.
St. George, Chennai-600001
Email: srangarajan@rbi.org.in

R32676

Sub.: Complaint dated 10.06.2022 of Smt. Uma Kasi Raman regarding not considering her son Shri Arvind Ramesh, a person with 72% Autism Spectrum Disorder for recruitment to the post of 'Office Assistant' under reservation quota with regard to Advt. dated 24.02.2021 issued by Reserve Bank of India

Refer to the complaint dated 10.06.2022 and Respondent's reply dated 18.08.2022. The Complainant filed her rejoinder vide email dated 05.09.2022 on the subject mentioned above.

2 Since the complainant has already filed a Writ Petition No.18980/2022 in this matter before the Hon'ble High Court of Judicature at Madras, no intervention of this court is required in the matter.

3. The case is accordingly disposed off.

Dated: 10.02.2023

(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Extra

103



Case No.13424/1141/2022/150486

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

Dated 14.02.2023

Case No.13424/1141/2022/150846

Complainant:

Shri Chandan Kumar Choudhary,
R/o S-251/61, Mosque, Manav Kalyan Camp,
Amichand Khand, Giri Nagar, Kalkaji,
New Delhi-110025;
Email: Chandanchaudhary6869@gmail.com
Mobile: 9999046869

137656

Vs

The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008
Email: gm.dms@nic.in

137657

Sub: Complaint dated 01.08.2022 regarding compliance of the Hon'ble High Court orders to re-allocate shop under Delhi Milk Scheme of NCT of Delhi

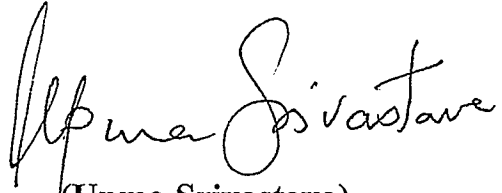
The matter was taken up with the General Manager, DMS vide letter dated 30.08.2022.

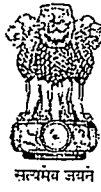
2. General Manager, DMS vide letter dated 13.09.2022 filed a reply in the matter and submitted that the complainant had willingly chosen the said location of the booth and requested for allotment of booth at the said location. Based on his application, Booth No. 1513-1514 were allotted to the complainant following due procedure. Subsequently, on the basis of request received from the complainant, supply of milk and milk products to the said booth was closed w.e.f. 19.03.2019.

3. As regards shifting of DMS Milk booth/depot, re-allocation /shifting of milk booth/depot from one location to another location is not admissible as per booth contract agreement and as per booth allotment policy. On receipt of the request letter from the complainant, the same was transmitted to SDMC, CPWD and to Hon'ble Minister for PWD, Govt. of NCT of Delhi.

1 | Page

4. As regards Judgement of Hon'ble High Court of Delhi, the Sr. Panel Counsel of DMS opined that DMS should file a review application as Judgement was awarded without listening the plea of DMS. As advised by the Litigation Section, Hon'ble High Court they requested DAHD, Ministry of Fisheries, Animal Husbandry and Dairying to solicit opinion/approval of Ministry of Law and Justice, Department of Legal Affairs for filing the Review Petition/Appeal against the award passed by the Hon'ble High Court of Delhi. DAHD vide letter dated 06.09.2022 had raised some query which was replied by DMS vide letter dated 12.09.2022. Approval/directives regarding filing Review Petition is awaited from DAHD/Ministry of Law and Justice, Department of Legal Affairs.
5. In view of the above, this Court cannot intervene further in the matter as the matter was decided by the Hon'ble High Court of Delhi and Delhi Milk Scheme (DMS) is going to file the Review Petition before the Hon'ble High Court in the matter.
6. The case is accordingly disposed off.


(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: 13391/1022/2022

Complainant:

Shri Dinesh Kumar Chaudhary
Office Superintendent
ESIC, SRO Udaipur
Rajasthan
Email: dineshk.chaudhary@esic@nic.in

138112

Vs

Respondent:

The Director General
Employees State Insurance Corporation (ESIC)
Panchdeep Bhawan, CIG Marg, New Delhi-110002
Email: dir-gen@esic.nic.in; vipin.kumar1@esic.nic.in

138118

The Regional Director
ESIC, Panchdeep Bhawan
Bhawani Singh Marg, Jaipur
Rajasthan-302001
Email: rd-rajasthan@esic.nic.in

138119

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 20.07.2022 में कहना है कि वह 40 प्रतिशत लोकोमोटर दिव्यांगजन है एवं उप क्षेत्रीय कार्यालय, कर्मचारी राज्य बीमा निगम, उदयपुर कार्यालय में अधीक्षक के पद पर कार्यरत है। उक्त पद कार्मिक विभाग द्वारा निर्धारित सी श्रेणी में आता है।

2. शिकायतकर्ता के अनुसार क्षेत्रीय कार्यालय जयपुर द्वारा कार्यालय आदेश संख्या 128 (ई) दिनांक 03.09.2021 द्वारा स्थानान्तरण आदेश किया गया था जिसमें क्रम संख्या 2,3,7,8,10,11,16,18,20 तथा 23 तक वर्णित कर्मचारियों को जयपुर, जोधपुर, किशनगढ़ नजदीकी तैनाती किया गया था। जबकि 15 पर वर्णित कर्मचारी जो दिव्यांगजन है, बीमार चल रहा है तथा जिनकी माताजी गले में कैंसर से पीड़ित है एवं जिनका उपचार भगवान् महावीर कैंसर हॉस्पिटल, जयपुर में चल रहा है और जिनकी देखभाल करने वाला कोई नहीं है, उसी को सबसे दूर उदयपुर, जो कि गृह जिले से 7 से 8 घंटे की दूरी पर है स्थानान्तरित किया गया है। शिकायतकर्ता के अनुसार जयपुर में अनेक पद खाली पड़े हैं। शिकायतकर्ता ने विनम्र निवेदन किया है कि उनका स्थानान्तरण कर्मचारी राज्य बीमा निगम जयपुर, राजस्थान स्थित किसी कार्यालय में पदस्थापन करने की कृपा की जाए।

3. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के तहत दिनांक 12.08.2022 के पत्र द्वारा प्रतिवादी के समक्ष उठाया गया।

4. प्रतिवादी का कहना है कि वर्तमान में मुख्यालय द्वारा क्षेत्रीय कार्यालयों/उप क्षेत्रीय कार्यालयों के सम्बन्ध में सहायक निदेशक स्तर तक के क्षेत्रीय स्थानान्तरण के सम्बन्ध में स्थानान्तरण नीति दिनांक 20.05.2022 को जारी की गयी है। जिसके द्वारा कोई भी स्थानान्तरण आवेदन सिर्फ ऑनलाइन माध्यम से ही प्रेषित किया जाना है। उक्त स्थानान्तरण नीति के अंतर्गत दिव्यांग श्रेणी के कर्मचारियों के लिए निम्नलिखित निर्देश दिए गए हैं :-

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

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

Criteria for staff with disability (PH) or Staff who have differently abled dependent children:

Transfer/Posting of staff covered under criteria prescribed in this Note shall be recommended by the Transfer Committee for decision of the prescribed competent authority on case to case basis as per extant DoPT instructions. The Transfer Committee shall consider the percentage of disability of PH staff. The Transfer Committee shall consider the percentage of disability of dependent children in respect of officials who have differently abled dependent children.

5. श्री दिनेश चौधरी आल इंडिया केंद्र से सम्बन्ध रखते हैं जिसके तहत उन्हें देशभर में स्थित किसी भी निगम कार्यालय में पदस्थापित किया जा सकता है। उनके साथ पदोन्नत अधिकारियों को भी बाहर के केन्द्रों पर काफी संख्या में पोस्ट रिक्त होने के कारण जयपुर केंद्र से बाहर के केन्द्रों पर तैनाती दी गयी थी। उपरोक्त कर्मचारी को स्थानांतरित किये हुए अभी एक (01) वर्ष भी पूर्ण नहीं हुआ है। कर्मचारी मूल रूप से बिहार राज्य का निवासी हैं, फलस्वरूप जयपुर उनका गृह नगर नहीं है एवं अधिकारी की कुल सेवा में से लगभग 12 वर्ष की सेवा जयपुर केंद्र पर ही की गयी है। उनके साथ पदोन्नत अधिकारियों को जयपुर से बाहर के केन्द्रों पर पोस्टिंग दिया गया है। श्री दिनेश चौधरी की माता के स्वास्थ्य को ध्यान में रखते हुए ही उनका स्थानान्तरण उदयपुर जैसे बड़े केंद्र पर किया गया था ताकि उनकी माता की चिकित्सा सुविधायें बाधित न हो।

6. एसएसओ केंद्र में मुख्यालय द्वारा नई स्थानांतरण नीति जो कि श्रम मंत्रालय, भारत सरकार द्वारा अनुमोदित है, उसमें कमपैशनैट लेवल पर स्थानान्तरण हेतु पैरामीटर निर्धारित किए गए हैं। अतः मुख्यालय द्वारा उक्त नीति को आनलाइन लागू करने पर उक्त अनुसार ही शिकायतकर्ता का स्थानान्तरण किया जा सकता है। सामाजिक सुरक्षा अधिकारी केंद्र के लिए निगम की स्थानान्तरण नीति (श्रम मंत्रालय से अनुमोदित) के अनुसार स्थानान्तरण के लिए आन लाइन पोर्टल पर आवेदन मांगे जाने पर उनसे आवेदन प्राप्त होने पर आवेदन को स्थानान्तरण समिति के समक्ष रखा जा सकेगा व समिति की सिफारिश के अनुसार ही स्थानांतरण के संबंध में आवश्यक कार्यवाही की जा सकती है। नई स्थानांतरण नीति में स्थानांतरण संबंधी शिकायतों के लिए स्थानांतरण शिकायत निवारण समिति का गठन किया गया है। शिकायतकर्ता स्थानांतरण शिकायत निवारण समिति के समक्ष अपना प्रतिवेदन आनलाइन पोर्टल खुलने पर प्रस्तुत कर सकते हैं एवं समिति द्वारा उनके स्थानांतरण के संदर्भ में दी गई सिफारिश के अनुसार आवश्यक कार्यवाही की जा सकेगी।

7. शिकायतकर्ता का अपने प्रत्युत्तर दिनांक 23.11.2022 में कहना है कि वह कर्मचारी राज्य बीमा निगम विभाग द्वारा दिए गए प्रत्युत्तर से सहमत नहीं है। अतः शिकायतकर्ता ने सीसीपीडी कोर्ट से विनम्र निवेदन किया है कि उनका स्थानान्तरण कर्मचारी राज्य बीमा निगम जयपुर, राजस्थान स्थित किसी कार्यालय में करने की कृपा की जाए।

8. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 12.01.2023. The following were present:

- i) **Shri Dinesh Kumar Chaudhary: Complainant**
- ii) **Shri Manish Sharma, Dy. Director: Respondent**

Observations /Recommendations:

9. Complainant submits that he is employed in respondent establishment on the post of Superintendent. He submits that the respondent by order dated 03.09.2021, transferred him along with many other employees. He claims that non-PwD employees have been transferred to nearby place like Jaipur, Jodhpur, whereas he is transferred to Udaipur which is far away from his home town, Jaipur. Complainant claims that his mother is suffering from life threatening disease and he is the only care taker in the family. He expresses his inability to move to Udaipur because treatment of his mother is continuing in a hospital in Jaipur. Before being transferred by

order dated 03.09.2021 he was posted in Jaipur. He requests this court to cancel his transfer and post him in any office situated in Jaipur.

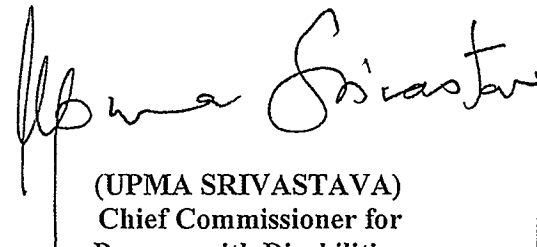
10. Respondent submits that there is Transfer Policy in existence in Respondent establishment. As per the Transfer Policy, criteria for transfer of divyang employees is that such transfer decision of divyang employee is taken by transfer committee after consideration of percentage of disability of the employee or of dependent Divyangjan. Complainant belongs to All India Cadre and he is liable for all India posting. Complainant was never posted out of Jaipur even at the time of his promotion.

11. Respondent further submits that as per the records, Jaipur is not the home town of the complainant. As per the record his home town is situated in Bihar. Complainant has spent 12 years of service in Jaipur only. Whereas other employees were transferred out of Jaipur on promotion. Complainant was always exempted from transfer out of Jaipur considering the disability of his mother. Even this time complainant has been transferred to Udaipur where adequate medical facilities are available so that he can take care of his mother. Complainant has option to file complaint against his transfer before Transfer Grievance Redressal Committee which is established as per new Transfer Policy.

12. During online hearing, Respondent further informed this Court that the case of the Complainant was considered sympathetically and therefore he was transferred to Udaipur which is nearest station to Jaipur. Complainant was posted in Jaipur in 2009 on being promoted. Thereafter he was promoted twice, first in 2011 then in 2015, but he was retained in Jaipur. Other employees who were posted to station nearer to Jaipur were those who were given field posting. Complainant cannot be given field-posting because of the nature of his disability.

13. This Court concludes that the fact that the Complainant is posted in Jaipur since 2009 and was retained at same location even after transfer is evident of the fact that the Respondent has considered his case sympathetically in the past. Complainant cannot expect to remain posted at same location for whole of his career. Hence, this Court recommends that the Complainant can first join in Udaipur and in case if medical facilities are needed then he can take leave and apply for transfer on the portal of the Respondent establishment.

14. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 09.02.2023



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

Dated: 15.02.2023

Case No: 13170/1021/2022

Complainant: Shri K Ganesaramu
Section Officer (R&I E-Office E-Dak)
3/5 NCERT, Govt. of India, Ministry of Education
Sri Aurobindo Marg, New Delhi – 110016
E-mail:<kganesaramu@gmail.com>

138136

Respondent: The Director
National Council of Education Research & Training
Sr. Aurobindo Marg, New Delhi – 110016
E-mail:<director.ncert@nic.in>

138132

Complainant: 100% hearing impairment

GIST of the Complaint:

Complainant Shri K. Ganesaramu, Section Officer vide complaint dated nil submitted that NCERT had published an advertisement during the year 1996-2000 for filling up of about 40 posts of Assistant and he had attended the written examination and qualified under PwD quota . He further submitted that due to large scale irregularities and Court Cases etc the offer of appointment issued in 2000 were kept pending. After receiving of Judgement of Hon'ble High Court, he was received an offer of appointment for the post of Assistant in July 2009 instead of joining in 1996. He alleged that by the time of his joining in 2009 all his juniors promoted upto the level of Deputy Secretary in Pay Level 12. He has requested that his seniority in the post of Assistant may be fixed since 2009.

2. The matter was taken up with the Respondent vide letter dated **05.04.2022** under Section 75 of the RPwD Act, 2016 but despite reminder dated **10.05.2022**, no response has been received from the respondent.

3. On 28.06.2022, Respondent informed that copy of the Complaint has not been received by the Respondent, further it made request to forward the copy of the Complaint and grant time to file Reply. RoP was issued and time of 15 days was granted to conduct meeting with the Complainant. Further, time was granted to file written reply by 02.09.2022.

Thereafter on 27.09.2022 Court issued RoP and asked both the parties to meet and resolve the issue.

Hearing : The case was heard via Video Conferencing by Chief Commissioner for persons with disabilities on dated **28.06.2022, 27.09.2022** and **19.01.2023**. The following were present in the hearing :

- Complainant : K. Ganesaramu – Adv. Aishwarya Dheer; Adv. Rishabh Dheer
- Respondent : NCERT – Ms. Kiran Juneja, Dy. Secretary (Admin)

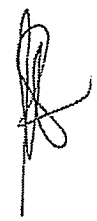
Observation/Recommendations:

4. Complainant submits that recruitment process was initiated in 1996, however the recruitment process got delayed because of court cases. He submits that finally he was appointed in 2009. He submits that employees junior to him, who got appointed between 1996 and 2009, were promoted. He claims that his seniority must be counted from 1996 and he must be promoted accordingly.

5. Hearing was conducted on 28.06.2022. During the hearing, the Respondent informed that copy of the Complaint has not been received by them and requested to forward the copy of the Complaint and also grant time to file Reply. Record of Proceedings was issued and time of 15 days was granted to conduct meeting with the Complainant. Further, time was granted to file written reply by 02.09.2022. Another hearing was conducted on 27.09.2022. After listening to both the parties during the hearing on 27.09.2022, Court issued RoP and asked both the parties to meet and resolve the issue.

6. Complainant has sent a letter dated 07.11.2022 whereby he has informed that the Respondent conducted meeting with him on 29.09.2022. He claims that in the meeting Respondent admitted that the Complainant must have got promotion in 1985. Further he claims that he should be promoted w.e.f. 1985.

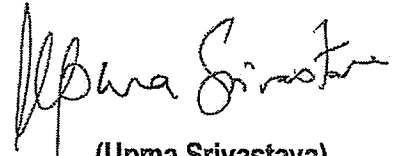
7. Hearing was again conducted on 19.01.2023. During the hearing, the Respondent informed this Court that the meeting with the Complainant was conducted on 29.09.2022. In the meeting issues related to posting, salary release and promotion issues were on agenda. After discussion on 'posting' issue, the Complainant left abruptly. Further Complainant submits that the Complainant has now been posted to his choice of department. Further, the Respondent submitted that the promotion shall be given whenever the same will be due.



8. Complainant submitted during online hearing that the promotion was given to his junior but he was denied the promotion. On being asked further details, the Complainant failed to inform any particular incidence of promotion of junior and denial of promotion to the Complainant.

9. This Court concludes that the Reply of the Respondent is satisfactory. In absence of any particular instance of denial of promotion to the Complainant, this Court is not inclined to intervene in the present Complaint.

10. The Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.02.2023



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. 13479/1014/2022

Complainant:

Shri Pravendra Kumar,
S/o Late Shri Prakash,
R/o Village + Post: Bawali,
Patti Deshu, District: Bagpat,
Uttar Pradesh: 250621;
Email: pravendrakumarbaoli@gmail.com;
Mobile: 9058912460

238766

Respondent:

Addl. Director of Income Tax (CMD-I)(HRD),
Directorate of Income Tax,
Human Resource Development,
Central Board of Direct Taxes,
Jawaharlal Nehru Stadium, Second Floor,
Lodki Road, New Delhi-110003;
Email: addldit.exam@incometax.gov.in

238761

Affected Person: The complainant, a person with 50% Locomotor Disability (Lower extremity)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 23.09.2022 and submitted that he had been selected under PH-OBC Quota to the post of Stenographer Grade-II in CBDT through Stenographer Grade C & D Examination 2019 conducted by SSC. His appointment has been made at Kochi. It is not possible for him to join his duty at Kochi which is 3000 km away from his home town/village. He requested that his appointment may be made in Delhi Region or nearby places in place of Kochi.

2. Submissions made by the Respondent:

2.1 The complaint was taken up with the respondent and notice dated 10.10.2022 was issued to submit reply/comments. Despite issue of reminders and lapse of statutory period, no reply/comments have been received from the respondent.

3. Hearing:

The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **19.01.2023**. The following persons were present during the hearing:

- (1) Shri Pravendra Kumar, the complainant
- (2) None appeared for the respondent

4. Observation/Recommendations:


4.1 Complainant submitted that he had been selected under PH-OBC Quota to the post of Stenographer Grade-II in CBDT through Stenographer Grade C & D Examination 2019 conducted by SSC. He has been allocated post at Kochi. He has submitted that it is not possible for him to join his duty at Kochi which is 3000 kms away from his home town/village. His hometown is situated in Uttar Pradesh. He requested that his appointment may be made in Delhi or NCR in place of Kochi.

4.2 Respondent was given opportunity to appear in the hearing, however, no one appeared during the online hearing. Complainant informed during online hearing that he has not yet joined the Respondent establishment where he had been given posting.

4.3 This Court is not inclined to interfere in the present Complaint because the Complainant has not yet joined the Respondent establishment. By filing this Complaint even without joining the Respondent establishment, the Complainant cannot claim that he is facing any kind of difficulty in the office where he has been posted. Complainant has also failed to observe and follow the correct procedure for seeking posting at his choice of location. Instead of joining and filing Application before the Respondent establishment the Complainant has directly approached this Court. Bypassing of administrative duties and functions and tactics of 'arm-twisting' cannot be allowed by this Court. Hence, this Court concludes that intervention in the present Complaint is not warranted.

4.4 Accordingly the case is disposed off.

Dated: 24.02.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities