



Exbr 2/2

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. 13475/1032/2022/157153

Complainant:

Dr. Sandeep Sharma,
F/o Shri Swastic Sharma,
B.Tech Electrical Engineering,
Hostel-Chenab, Room No.CE-129/CEPED-101,
Indian Institute of Technology Ropar,
Punjab,
Email: drsandeepsharma75@gmail.com

[Handwritten signature]

Respondent:

The Registrar,
Indian Institute of Technology Ropar,
Rupnagar, Punjab-140001
Email: director@iitrpr.ac.in; registrar@iitrpr.ac.in

[Handwritten signature]

Affected Person: Shri Swastic Sharma, a person with 50% Cerebral Palsy

1. Gist of Complaint:

1.1 Dr. Sandeep Sharma filed a complaint dated 04.09.2022 regarding safety of his son with disability who is studying in IIT, Ropar (Punjab).

1.2 The complainant submitted that his son Shri Swastic Sharma, a person with 50% Cerebral Palsy and a student of B.Tech Electrical Engineering in IIT Ropar is residing in Chenab Hostel in the campus of IIT Ropar. Shri Swastic uses Mobility Scooter to commute in the campus. The complainant alleged that Shri Swastic is not feeling safe and independent in the IIT Ropar campus due to rising population of stray dogs in the campus. It is not possible for a student with disability to show immediate reflexes when 8-10 dogs attack him. Some dogs follow him & bark at him, anything can happen. For the last one month he is finding it difficult to go to the Library, Lecture Halls and even Mess. He is on Rice & External food, which is showing bad effects on his academics, health and behaviour. The complainant is continuously writing to IIT Ropar authorities since July, 2022 but no solution. The population of dogs are increasing day by day.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 27.10.2022 and admitted that the IIT Ropar had been receiving a number of complaints against stray dogs in the

campus and also had been writing to the concerned authorities since 08.09.2020, namely, Deputy Director, Animal Husbandry, Rupnagar; Executive Officer, Municipal Council, Rupnagar; Deputy Commissioner, Rupnagar pleading before them the difficulties and concern being faced by the students. But no action had been taken till date.

2.2 The respondent further submitted that the Government of India has promulgated Prevention of Cruelty to Animals Act, 1960 and under Section 38 of the Act, the Animal Birth Control (Dogs) Rules, 2001 has been framed with regard to the street dogs and mandating therein, that the "Street Dogs cannot be beaten, killed or driven away or displaced or dislocated, they can only be sterilized. Rule 7 of the said deals with the procedure to be followed upon receipt of a complaint; the Municipality cannot just pick up dogs simply because some persons/administrators don't like their being around. Even the dogs that are complained about can only be sterilized and immunized, and then left back at the locations that they had been picked up from. Rule 7 also provides that on receiving specific complaints, the said complaints shall be attended on priority basis and a dog capturing squad along with necessary means would be informed and sterilization and vaccination is carried out.

2.3 With the above legal backing of law and due to lack of the expertise, IIT Roper has taken the following measures on its own to address the present issue— (A) has provided security guards to help Shri Swastic Sharma when he is moving within the campus; (B) has identified the designated places to feed the dogs; these places are far away from the hostels, academic area and residential area in the campus; and (C) has put the neckbands on the dogs which are attacking nature to identify them.

3. Submissions made in Rejoinder:

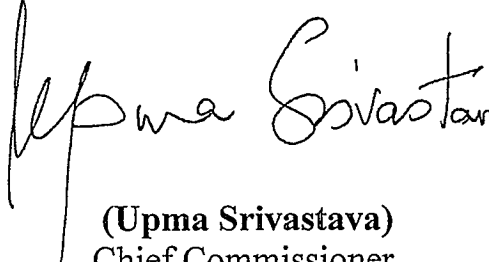
The complainant filed his rejoinder vide email dated 07.11.2022 and expressed his satisfaction with the alternative arrangement done by IIT Roper.

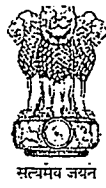
4. Observations & Recommendations:

4.1 From the facts mentioned above it appears that, the grievance of the complainant has been redressed and the complainant has expressed his satisfaction with the alternative arrangement made by the respondent, IIT Roper. Hence, no further intervention is warranted in this case.

4.2 Accordingly the case is disposed off.

Dated: 01.03.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



Extra - 2/2

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. 13461/1011/2022/150467

Complainant:

Ms. Divya Sharma,
D/o Shri Chhotelal Sharma,
R/o House No.77, Block A,
Model Town, North West District,
Delhi-110033;
Email: divyasharma120nov@gmail.com
Mobile: 8630582805

Respondent:

The Chairman & Managing Director,
Small Industries Development Bank of India (SIDBI),
Sidbi TOWER, 15,
Ashok Marg,
Lucknow-226001
Email: dsmishra@sidbi.in

Affected Person: Ms. Divya Sharma, a person with 60% Low Vision

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 16.08.2022 (pg. 10-21/co.) regarding illegal denial of joining by SIDBI.

1.2 The complainant submitted that she was a person with benchmark disability with both eyes and both hands affected. She was selected in SIDBI as a Assistant Manager Examination Grade 'A' post. However, SIDBI denied her to give joining and cancelled her candidature rejecting the UDID Card and asked for disability certificates in their format only as per RPwD Act, 2016. She further submitted that SIDBI has denied her home posting earlier.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 20.10.2022 along with email dated 25.10.2022 and submitted that the grievance of the complainant has already been dealt in Case No.13390/1022/2022 and Case

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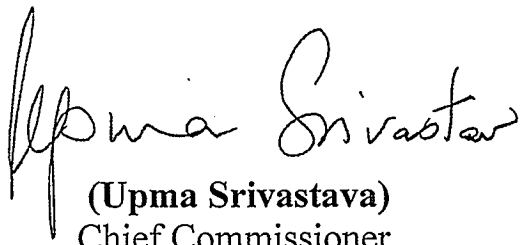
No.13434/1024/2022 filed by the complainant before the Court of CCPD. The respondent also furnished a copy of the replies. The respondent also submitted that the complainant does not bring forth any new fact/issue before this Court. In support of their contention the respondent has also enclosed one copy each of the application dated 20.03.2022, the certificate of disability and the UDID card submitted by Ms. Divya Sharma along with the offer letter issued by SIDBI, which has since been withdrawn due to continued refusal on her part to complete the requisite formalities.

3. Observations & Recommendations:

3.1 It is observed that the complainant had already filed two other cases on the same issues which were registered under different codes, viz. Case No.13390/1022/2022, and Case No.13434/1024/2022. The case No. 13434/1024/2022 referred above, was heard on 06.12.2022 and an order was passed. A copy of the order is enclosed for ready reference.

3.2 Hence, no further intervention is warranted in this case and the case is accordingly closed.

Dated: 01.03.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

Encl.: As above



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: 13434/1024/2022

Complainant: Ms. Divya Sharma
 House No. 209 Durga Empire,
 Chattarpur Rudrapur, Udham Singh Nagar,
 Uttarakhand - 263153
 E-mail: <divyasharma120nov@gmail.com>
 Mob: 8630582805

Respondent: The General Manager (HR) — R 36439 .
 Small Industries Development Bank of India (SIDBI)
 Swavalamban Bhawan, G-Block, Bandra-Kurla
 Complex, Bandra East, Mumbai – 400051
 E-mail: <venugopal@sidbi.in>

Complainant: 60% visually impaired

GIST of the Complaint:

प्रार्थी सुश्री दिव्या शर्मा का अपनी शिकायत दिनांक 16.08.2022 में कहना है कि भारत सरकार ने दिनांक 01.06.2021 से UDID Certificate पूरे भारत में मान्य कर दिया है किन्तु SIDBI द्वारा उन्हें ग्रेड 'ए' पद पर नियुक्ति इसलिए नहीं दी गयी क्योंकि उन्हें disability certificate अपने ही format में चाहिए। प्रार्थी ने प्रार्थना की है कि उन्हें जवाइनिंग उनके वर्तमान पते पर दिल्ली में दी जाए ताकि वह अपने परिवार के साथ रह के कार्य कर सके तथा उनकी सिनियोरिटी fix की जाये।

2. The matter was taken up with the Respondent vide letter dated 02.09.2022 under Section 75 of the RPwD Act, 2016.

3. In response, General Manager (HRD) Vertical, SIDBI vide letter dated 12.10.2022 has submitted that Ms. Divya Sharma, in response to SIDBI's advertisement dated 04.03.2022 had applied for the post of Assistant Manager – Grade 'A' during March, 2022. While submitting her application, she indicated her category as 'Person with Benchmark Disability (PwBD) – Sub-category-Multiple Disabilities (MD) – Low Vision & One Arm (OA). However, the disability certificate dated 12.11.2020 submitted by her was prima facie showing her visual disability only and not Multiple Disabilities. Although 'Both Hand' was found to be mentioned in para (c) of the above referred certificate, it was not supported by any diagnosed disease or disability. The diagnosis indicated in the certificate was permanent

की मजिद, एमआईएसडी भवन, प्लॉट नो 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

(यथा शक्यता में परिवार के साथ निवास करने का अधिकार सुरक्षित है)



to the disability of eyes only. It was for this reason, that the complainant was requested to submit a fresh certificate in the prescribed format, which should clearly support her claim of having 'Multiple Disabilities', which is the category under which the reserved employment had been offered to her. However, despite repeated requests, the complainant did not provide the requisite certificate as also certain other documents pertaining to her previous employment, even after reminders and extensions granted, as a result of which the said offer was withdrawn by SIDBI on August 10, 2022.

4. Complainant vide rejoinder dated 04.11.2022 has submitted that submission made by SIDBI is false and misleading. SIDBI authorities never asked her to include name of ailment related to her hands or/either raised any objection of this kind at the time of interview. It is however indeed true that they have agitated the issue of FORM VI format. It is first time they are raising the issue of content of digital disability certificate. They have asked for FORM VI but CMO has plainly refused by saying that only UDID certificates are now valid and he has authority to issue that only. She further submitted that if this court finds any issue with the certificate, she will happily comply with courts directions and if she fail to comply then she has no issue even if her appointment to said post is cancelled. She further submitted that she has made application of Multiple Disabilities on UDID portal and her eyes and hands both were examined and then this certificate was issued which clearly mentions BOTH EYES and BOTH HANDS. However, CCPD can issue suitable directions.

5. After considering the respondent's reply dated 12.10.2022 and the complainant's rejoinder dated 04.11.2022, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 06.12.2022.

Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 06.12.2022. The following were present in the hearing:

- Adv. Shri Rahul & Ms. Divya Sharma - complainant
- Shri Rajiv Singh, GM; Shri Ranjeet Singh, Asst. GM, Shri Rahul Kenkre, Manager on behalf of respondent

Observation/Recommendations:

6. Complainant submits that she applied against the vacancy advertised by the Respondent establishment. She claims that she successfully passed the exam however the Respondent refused to accept the UDID certificate submitted by her to prove her disability.

7. Respondent submits that the Complainant applied against vacancies on the post of Assistant Manager. In the application form she mentioned her category as PwD – Multiple Disability. Complainant submitted disability certificate in which 'Visual Disability' is mentioned along with diagnosed disease of myopia. Further the certificate certifies the Complainant as having 60% disability in relation to her 'both eyes' and 'both hands', but the disability certificate does not mention anywhere that she is a case of 'multiple disability' and the certificate does not clearly mention disease of hands.

8. Respondent further submits that because of this reason she was asked to submit another disability certificate but she failed to do the same and letter of appointment issued to her was later withdrawn.

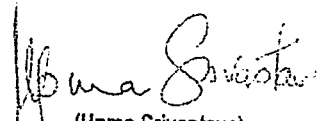
9. Complainant has filed her rejoinder in which she submits that the Respondent never told her reason in writing for rejection of her disability certificate. Earlier the Respondent only asked to submit disability certificate issued in format prescribed in Form – VI, however CMO refused to issue the same and told that UDID certificate can only be issued.

10. Disability certificate submitted by the Complainant was perused. It is clearly mentioned that the Complainant is person with disability in both eyes and both hands. However, 'multiple disability' is not mentioned anywhere hence confusion is created. There seems no fault of the Complainant hence the issue can be resolved amicably, particularly because the Complainant secured position in merit list despite of challenges which she might have faced because of her disability. Furthermore, it was the duty of the Respondent to have informed the Complainant about all the shortcomings in the Disability Certificate submitted by the Complainant. It is certain from the facts that the Respondent clearly failed to do the same, instead the Respondent chose to cancel the candidature of the Complainant, which is arbitrary because Respondent never gave any reason in writing to the Complainant for cancelling the candidature.

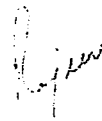
11. This Court makes following recommendations:-

- a) Respondent shall issue a letter addressed to the Complainant listing out the discrepancies/shortcomings in the disability certificate submitted by the Complainant within 1 week of receiving the copy of this Recommendation Order.

- b) Further, this Court recommends that after receiving the copy of the letter issued by the Respondent, as mentioned in point (a) above, the Complainant shall approach the concerned Chief Medical Office of the appropriate jurisdiction who shall conduct the assessment of hands and eyes of the Complainant and thereafter reissue the disability certificate clearly specifying all the disabilities and diagnosis of the disabilities. In case the Complainant is divyangjan with more than one disability then the concerned Chief Medical Officer shall clearly specify that the Complainant is person with 'Multiple Disabilities'.
- c) The respondent shall than take necessary action as per the disability certificate.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 30.12.2022





Extra-2/2

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. 13428/1011/2022/150467

Complainant:

Shri Himanshu Taneja,
R/o 382/14, Sargodha Colony,
Jind Road, Kaithal-136027;
Email: himanshutaneja87@gmail.com; Mobile:9896833383

1238406

Respondent:

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

1238407

Affected Person: The complainant, a person with 90% Locomotor Disability (Both Legs)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 26.07.2022 regarding not filling up the post of Assistant Professor reserved for candidates with disabilities since 2015 by the Miranda House College, University of Delhi.

1.2 The complainant submitted that in the year 2015 Miranda House College conducted interviews for recruitment of 04 posts where 01 was for UR category, 01 for OBC, 01 for SC and 01 was for ST. Also, the respondent had mentioned in the advertisement that 01 post was reserved for PwD (OH) out of above four. But the respondent did not select any candidate of OH category and also did not call candidates with disability separately which is violation of the rules. After the interview they found all the candidates with disabilities not suitable. The post has to be re-advertised as per the Rules but the college didn't take any step to fill up this post.

2. Submissions made by the Respondent:

2.1 The matter was taken up with the respondent vide Notice dated 01.09.2022 followed by reminders dated 16.09.2022 and 07.10.2022. Despite lapse of sufficient time no response was received from the respondent.

3. Observations & Recommendations:

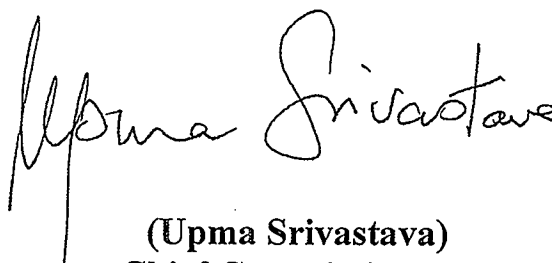
3.1 The complaint is relating to non-filling up the post of Assistant Professor reserved for candidates with disabilities since 2015 by the Miranda House College, University of Delhi. The complainant submitted that in the year 2015 Miranda House College conducted interviews for recruitment of 04 posts where 01 was for UR category, 01 for OBC, 01 for SC and 01 was for ST. Also, the respondent had mentioned in the advertisement that 01 post was reserved for PwD (OH) out of above four. But the respondent did not select any candidate of OH category and also did not call candidates with disability separately, which is violation of the rules. After the interview they found all the candidates with disabilities not suitable. The post had to be re-advertised as per the Rules but the college didn't take any step to fill up this post.

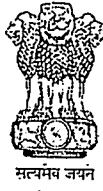
3.2 Hearing was scheduled and Complainant and the Respondent were issued 'hearing notice'. Thereafter the Complainant informed that he was intending to withdraw the Complaint and did not want to proceed further with the Complaint.

3.3 Hence this Court disposes this Complaint with no intervention.

3.4 Accordingly the case is disposed off.

Dated: 01.03.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



Extra-2/2

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

भारत सरकार / Government of India

Case No. 13427/1011/2022/154257

Complainant:

Shri Manish Agarwal,

Email: manish100742@gmail.com

1238408

Respondent:

The Secretary,

Department of Personnel & Training,

Ministry of Personnel, Public Grievances and Pensions,

North Block, New Delhi-110001

1238409

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

1. Gist of Complaint:

The complainant vide email dated 18.08.2022 filed a complaint and submitted that he had achieved 446 rank in Civil Services Examination 2021 with Roll No. 1145452. He was not allocated any service in the service allocation list. His rank made him eligible for Indian Revenue Service and also he was fulfilling the physical requirements as per his medical report for this particular service. He also submitted that he written his examination without the help of scribe. His arms have only minor muscular weakness due to walking with crutches, but he can do everything with his arms and this also highlighted in his medical reports.

2. Submissions made by the Respondent:

The matter was taken up with the respondent vide Notice dated 01.09.2022 to file comments on the complaint followed by reminders dated 19.09.2022 and 07.10.2022. Despite lapse of statutory time limit no response has been received from the respondent.

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

(1) Shri Manish Agarwal, complainant

(2) Shri Anshuman Mishra, Under Secretary, D/o P&T

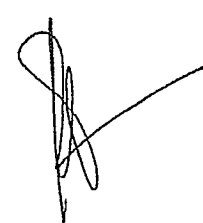
4. Observations & Recommendations:

4.1 Present complaint is related to non-selection in Civil Service Exam, 2021. Complainant has submitted that he secured 446 rank in Civil Service Examination, 2021. He claims that he is eligible for appointment in Indian Revenue Services but the Respondent rejected his candidature because of his disability. He claims to be physically fit for appointment in Indian Revenue Services.

4.2 Respondent countered the claim and submitted that the Complainant's candidature was not rejected because of any ill-intention towards the complainant. The decision to reject his claim for appointment to Indian Revenue Services was based on Medical Examination Report. Respondent further informed that the candidate has also filed the similar case before Central Administrative Tribunal, Jaipur which is pending before the Hon'ble Tribunal as on the date of hearing before the Court of Chief Commissioner with Persons with Disabilities. During online hearing this Court specifically asked the Complainant whether the complaint before this Court was filed prior to O.A. filed before Central Administrative Tribunal, Jaipur or if it is vice versa. Complainant specifically answered that this Complaint before this Court was filed prior to the O.A filed before Central Administrative Tribunal, Jaipur. Since, the Complaint filed before this Court pre dates the O.A filed before Central Administrative Tribunal, Jaipur therefore, this Court decides to inquire into the present complaint as per section 75 of Rights of Persons with Disabilities Act, 2016.

4.3 Respondent has also filed their reply on merits whereby it is submitted that as per Civil Service Examination Rules ('CSE Rules') candidates belonging to PwBD category were to be required to meet special eligibility criteria in terms of functional classifications and physical requirements consistent with requirements of the identified services as prescribed by Cadre Controlling Authorities. Respondent further submitted that the name of the complainant was recommended by UPSC at Sr. No. 446 along with copy of documents submitted by the complainant. Respondent claims that upon perusal of documents it was found that complainant had submitted disability certificate dated 23.02.2018 as per which the functional classifications of the complainant was declared as 'Both Lower Limbs 'disability under 'Locomotor Disability'. Respondent further submitted that the medical examination is an integral part of Civil Services Examination. In the instant case complainant was also subjected to medical examination duly conducted by Central Standing Medical Board (CSMB). Further, after conducting medical examination, CSMB declared the complainant as a PwBD category candidate with 75% Locomotor Disability and CSMB declared functional classifications of the complainant as 'Both Legs and Arms' disability.

4.4 Further respondent submitted that as per Civil Service Examination Rules, PwBD candidates with functional classifications as 'Both Legs and Arms' disability can be considered for allocation to IAS, ICAS, ICLS, IIS, ITS, DANICS



and PONDICS only. Candidates with functional classifications as 'Both Legs and Arms' cannot be considered for allocation to Indian Revenue Service as per the CSE Rules. Vacancy was reserved for Locomotor Disability in IAS and IRS. Vacancy of IAS which was reserved for locomotor disability was allocated to Shri Priyanshu Khati who secured 245 rank which is higher in merit than that of complainant who secured 446 rank. Further, respondent submitted that considering the preference and rank of the complainant and availability of vacancies in various services, the complainant was not allocated any service because he was not meeting the functional classifications and physical requirements. Another candidate Shri Manoj who secured 615 rank and who is PwBD of locomotor disability category was allocated against the vacancy in Indian Revenue Services which is reserved for PwBD of Locomotor Disability category.

4.5 Complainant has not raised any issue with respect to procedure adopted for reserving various vacancies for PwBD category. The complainant has also not raised any issue related to identification of posts. The only issue raised by the complainant is that his functional classifications should not be considered as 'Both Legs and Arms'. Complainant's claim that he could perform various functions with his both arms and findings of Central Standing Medical Board ('CSMB') are not correct. Complainant has submitted in his support that he had written his examination without using any facility of scribe hence it proves that he can perform various functions with his arms. Further, complainant claimed that there is very minor weakness in his arms but it does not preclude him from performing various functions with his arms.

4.6 Though this Court cannot assume the functions of Central Standing Medical Board and cannot examine any candidate with respect to his functional qualifications and physical requirements. However, it is pertinent to note that there is difference of opinion in the conclusion made by Central Standing Medical Board and Disability Certificate submitted by the complainant. Central Standing Medical Board concluded that functional classifications of the complainant are Both Legs and Arms disability whereas Disability Certificate dated 23.02.2018 declares functional classifications of the complainant as Both Legs disability. Moreover, it is also pertinent to note that the complainant wrote his examinations by himself without taking any assistance of scribe. This claim was not even refuted by the Respondent hence proving that the complainant is able to perform functions with his arms.

4.7 It is also important to take into consideration the judgement delivered by Hon'ble Karnataka High Court in M. Dinesan Vs. State Bank of India (ILR 1999 KAR 341). Hon'ble High Court while deciding similar issue held that -:

“physical defect or deformity which in no way interferes with the normal or efficient functioning should not be considered as an absolute bar to public employment, in regard to posts not associated with physical activity.



There can be no doubt that a person with only one eye can be rejected if on medical examination he is found to be unfit to discharge the functions normally associated with a supervisory personnel or managerial personnel. Similarly, such a person may also be rejected for the post of a Driver of a vehicle. But, where interference with normal or efficient functioning is not likely, on account of such defect, and medical examination and opinion does not say so, existence of a mere physical defect or deformity by itself cannot be termed as unfitness for a job”

4.8 In the present case this Court concludes that even if there exists weakness in arms of the complainant, it may be of very minor nature and may not effect or interfere with the efficient functioning in discharging the duties associated with Indian Revenue Services. The reason for reaching this conclusion is that the complainant was able to write his exam without using the facility of scribe and was able to secure rank 446 in Civil Services Examination, 2021.

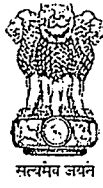
4.9 This Court recommends that the Respondent shall conduct another Medical Examination of the complainant to find out the magnitude/scale of weakness in both arms of the complainant and if the weakness is of such magnitude that the complainant cannot perform functions associated with Indian Revenue Service then no further action is required and if the weakness is not of any severe nature and functions associated with Indian Revenue Service can be performed then the respondent shall take consequential actions to allocate Indian Revenue Service to the complainant.

4.10 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.

4.11 Accordingly the case is disposed off.

Dated: 01.03.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



Extra 2/2

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. 13221/1011/2022

Complainant:

Shri Sonu,
S/o Shri Ranbir Singh,
Village –Balkara,
District-Charkhi Dadri,
Haryana-127022
Email: skphogat.622014@gmail.com

238410

Respondent:

The Director,
ICAR – Indian Agricultural Research Institute,
Pusa, New Delhi-110012
Email: director@iari.res.in

238411

1. Gist of Complaint:

The complainant filed a complaint dated 28.03.2022 regarding non-implementation of Section 32 of the Rights of Persons with Disabilities Act, 2016 with regard to 4% reservation of seats for Persons with Benchmark Disabilities in the Notification dated 18.12.2021 for recruitment to the 641 posts of Technician (T-1) issued by ICAR – Indian Agricultural Research Institute. The complainant alleged that only 06 posts had been reserved for Persons with Benchmark Disabilities (PwBD) whereas in accordance with 4% reservation, at least 26 posts should have been reserved for PwBD.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 27.05.2022 and submitted that the establishment of post of Group-C i.e. Technician (T-1) at various ICAR Institutes is at respective Institute under the controlling authority of respective Appointing Authorities i.e. Directors of respective institute. Also, a reservation roaster for the post of Technician is maintained by respective ICAR Institute located all over India. ICAR-IRAI had received the compiled vacancies from various ICAR Institutes as per the reservation policy of Government of India applicable on ICAR and its Institutes. Since the vacancies are available at different ICAR Institutes located all over India,

the straight calculation of 4% earmarked reservation for PwBD is not connected and appropriate. As per the vacancies compiled and taking into account the reservation policy of the Government of India, the vacancies have been notified.

3. Submissions made in Rejoinder:

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

4. Hearing (1):

4.1 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) The complainant – absent
- (2) Shri Harshit Aggarwal, Sr. Admn. Officer on behalf of Respondent

4.2 During online hearing, this Court inquired about certain facts like calculation of vacancies, maintenance of Reservation Roster etc. which were not known to the Respondent's representative. This Court by exercising its powers under Section 77 of Rights of Persons with Disabilities Act, 2016 seeks further clarification from the Respondent on following points:-

- (i) Confirm that the vacancies were calculated and reserved for PwBD as per Section 34 of the RPwD Act 2016.
- (ii) Why as against 26 vacancies only 06 vacancies were reserved for PwBD;
- (iii) If the vacancies were notified by the respective Institutes, inform the no. of vacancies notified by the respective Institute and the vacancy reserved for PwBD by the respective Institute along with the copy of the requisition.
- (iv) Send copy of Reservation Roster maintained from 01.01.1996 by respective Institute/Cadre controlling authorities or by ICAR.

5. Hearing (2):

The case was again 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 Sonu, the complainant



(2) Shri Harshit Aggarwal, Sr. Admn. Officer on behalf of Respondent

6. Observations & Recommendations:

6.1 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’.

6.2 Respondent submits 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.

6.3 Hearing was conducted on 06.09.2022 whereby the Respondent sought time to review vacancies in different institutes. Hence the adjudication was adjourned. Thereafter the hearing was conducted on 03.01.2023. During online hearing on 03.01.2023 the Respondent informed this Court that the result for the post of ‘Technician’ has been with-held. The total number of vacancies for the post of Technician is under revision and is being re-ascertained. The same was also reiterated by the Respondent in its written reply received in this Court after the hearing.

6.4 This Court concludes that interference of this Court in the present Complaint is not warranted because the Respondent has itself undertaken to review the vacancies. However, it is pertinent to note that the Respondent establishment is bound to reserve 4% vacancies for divyangjan, in accordance with Section 34 of Rights of Persons with Disabilities Act, 2016. This Court recommends that the Respondent shall reserve 4% vacancies arising in different units where the reservations roster is maintained.

6.5 Accordingly the case is disposed off.

Dated: 01.03.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



18

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13551/1141/2022/159125

Complainant: Shri Jang Bahadur,
Qtr. No.3, Staff Quarters Campus,
K.V. No.2, A.F.S Hindon,
Ghaziabad (UP), Pin:201004,
Email: jangbahadur12@yahoo.in

138301

Respondent: The Chairman,
Life Insurance Corporation of India,
Central Office, 'Yegakshema',
Jeewan Bima Marg, Nariman Point,
Mumbai - 400021
Email: chairman@licindia.com

138302

Complainant: 50% locomotor disability

शिकायत का सार:

प्रार्थी का अपनी शिकायत दिनांक 14.09.2022 में कहना है कि उन्होंने भारतीय जीवन बीमा निगम, अमेठी, उत्तर प्रदेश (मुख्य ब्रांच भारतीय जीवन बीमा निगम, फैजाबाद ऑफिस, अयोध्या, उत्तर प्रदेश) से एक पालिसी नं: 218608352 दिनांक 28.07.2009 को ली थी जिसकी किस्त प्रत्येक वर्ष जुलाई में जमा होती है। प्रार्थी का आगे कहना है कि उन्होंने पॉलिसी कि किस्त एचडीएफसी बैंक क्रेडिट कार्ड से दिनांक 20.08.2021 को ऑटो मोड से रुपये 19679/- जमा किये थे परन्तु उसी दिन एलआईसी से मैसेज आया कि पॉलिसी की राशि जमा नहीं हुई। प्रार्थी ने एलआईसी ऑफिस गाजियाबाद, उत्तर प्रदेश में पुनः चैक संख्या 36306 दिनांक 24.08.2021 द्वारा पुनः राशि रु 19679 जमा किये जोकि उनके अकाउंट से दिनांक 30.08.2021 को डेबिट हुए।

1.2 इस तरह एक ही किस्त को दो बार जमा होने पर उन्होंने कई प्रार्थना पत्र भारतीय जीवन बिमा निगम अधिकारियों को भेजे कि उनकी एक किस्त की राशि वापस कि जाए परन्तु अभी तक कोई कार्रवाई नहीं हुई। उधर HDFC बैंक द्वारा बार बार उनको नोटिस आ रहा है कि वह पालिसी का अमाउंट क्रेडिट कार्ड में जमा करें।

2. The matter was taken up with the Respondent vide letter dated 18.11.2022 under Section 75 of the RPwD Act, 2016.

...2...

प्रतिवादी द्वारा प्रस्तुतियाँ

3. प्रबन्धक, शिकायत निवारण अधिकारी, एलआईसी का अपने पत्र दिनांक 23.11.2022 में कहना है कि प्रीमियम राशि भारतीय जीवन बीमा निगम के खाते में दिनांक 25.08.2021 को जमा हुई | दिनांक 25.08.2021 को भारतीय जीवन बीमा निगम, शाखा कार्यालय, गाजियाबाद (शाखा कोड 2006) में उक्त प्रीमियम की राशि पुनः जमा की गई | पालिसीधारक की भारतीय जीवन बीमा निगम, शाखा कार्यालय गाजियाबाद में जमा प्रीमियम रिजेक्ट होकर दिनांक 26.08.2021 पॉलिसी के अन्तर्गत पॉलिसी डिपाँजिट खाते में अन्तरित कर दी गई। चूंकि बीमाधारक की पॉलिसी में अन्तर्गत बैंक खाते के विवरण उपलब्ध नहीं थे, अतः उक्त जमा राशि पॉलिसी को वापिस नहीं की जा सकी। पॉलिसीधारक को धनराशि की वापसी हेतु बैंक खाते के विवरण उपलब्ध कराने हेतु सम्पर्क किया गया एवं दिनांक 21.11.2022 को बैंक विवरण प्राप्त होने पर मूल जमा राशि 19679/- एवं उक्त राशि पर ब्याज रू0 604/- ;कुल रू 20283/- का भुगतान दिनांक 21.11.2022 को नेफ्ट द्वारा बीमाधारक के खाते में कर दिया गया है। जोकि दिनांक 21.11.2022 को बीमाधारक के बैंक खाते में क्रेडिट दिखा रहा है।

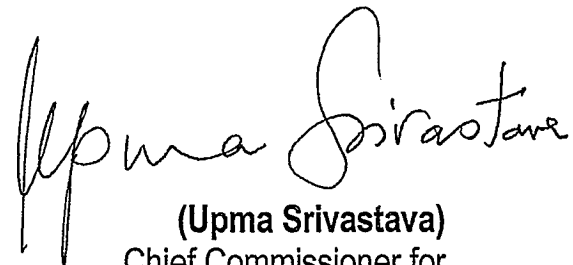
प्रत्युत्तर के तहत प्रस्तुतियाँ

4. उक्त जवाब की प्रति प्रार्थी को दिनांक 20.12.2022 को उनके टिप्पण हेतु भेजी गई थी परन्तु अभी तक कोई जवाब नहीं आया

Observation/Recommendations:

5. After perusal of the records, it is seen that the grievance has already been redressed by the respondent and no further intervention of this Court is required in the matter.

6. The Case is disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 02.03.2023



EX/PC

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. 13356/1102/2022

Complainant:

Ms. Baby Sahu,
R/o House No.2671,
Sector-55, Faridabad,
Haryana-121005;
Email: rohitkumarguptasocialworker@gmail.com

138756

Respondent:

The Branch Manager,
Bank of India,
Peeragarhi Chowk,
Rohtak Road, Delhi-110087;
Email: sme.newdelhi@bankofindia.co.in

138757

Affected Person: The complainant, a person with 100% Blindness

1. Gist of Complaint:

The complainant filed a complaint dated 08.06.2022 regarding not providing ATM Card/Cheque Book by the respondent – Bank of India, Peeragarhi Chowk, Rohtak Road, Delhi.

2. Submissions made by the Respondent:

The respondent bank filed a reply dated 20.09.2022 and submitted that they had contacted the complainant, Ms. Baby Sahu and both ATM/Cheque Book had been applied and would be delivered to her as soon as they receive the same. The respondent further submitted that the complainant had also withdrawn her complaint.

3. Submissions made in Rejoinder:

The complainant filed her rejoinder vide email dated 19.10.2022 and submitted that her grievance has been half redressed as the respondent had assured that they would inform within 15 days, but no information had been received so far.

4. Observations/Recommendations:

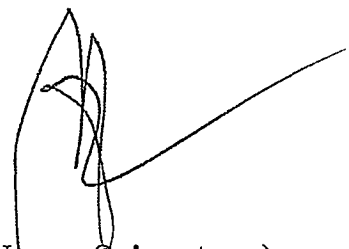
4.1 This Court vide letter dated 20.12.2022 advised the respondent bank to confirm that the ATM Card and Cheque Book have been issued to the complainant by the Bank or otherwise.

4.2 The respondent vide email dated 22.12.2022 confirmed that the ATM Card and Cheque Book had been issued to complainant.

4.3 Since the complainant's grievance has been redressed, no further intervention is warranted by this Court.

4.4 Accordingly the case is disposed off.

Dated: 10.03.2023



**(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. 13507/1033/2022(164410)

Complainant:

Ms. Priyanka Sharma M/o Shiven Sharma
A 34 Mount Kailash East of Kailash
New Delhi 110065
Email: anu_rag_sharma@yahoo.com;
priyankagrover234@gmail.com

R38862

Respondent:

(1) Secretary,
Central Board of Secondary Education
Shiksha Kendra, 2, Community Centre,
Preet Viha, Delhi-110092
Email: secv-cbse@nic.in
Tel No. 011-22549627, 22549628

R38863

(2) Principal,
Amrita Vidyalayam
23/42a, Birla Vidya Niketan Marg,
Sector-VII, Pushpa Vihar, New Delhi-110017
Email: amrita.vidyalayam@gmail.com
Tel No. 011-29561744, 011-29561363

R38864

Affected Person: Mr. Shiven Sharma, a person with 43% Locomotor disability (Muscular Dystrophy)

1. Gist of Complaint:

1.1 Ms. Priyanka Sharma, filed a complaint dated 12.10.2022 regarding change of 5th subject from Mass Media (subject code 835) to Horticulture (subject code 816) with respect to her son, Mr. Shiven Sharma, a person with 43% Locomotor Disability (Muscular Dystrophy), a student of class XII in Amrita Vidyalam, Delhi.

etc

1.2 She has submitted that her son tried to study Mass Media for the brief period but due to lack of interest he was not compatible going ahead with it. Her son is interested in Horticulture as a subject instead of Mass Media. She had contacted the school as well as CBSE for the same and written numerous application which were not heard.

2. Submissions made by the Respondent:

2.1 The CBSE, Respondent No.1 filed their reply dated 17.11.2022 and inter-alia submitted that the School, Amrita Vidyalayam had been informed that CBSE did not have facilities of staff and number of students in the subject to cater the needs of Horticulture subject. The school did not also opted for registration of the subject Horticulture on CBSE's online OASIS Portal. The case was processed by the office

to

on CBSE E-office online system on 24.05.2022. As the school did not offer horticulture as registered subject for 2021-22, the school was asked on 10.06.2022 to update this subject on CBSE's OASIS Portal, so that the request of the candidate could be considered for approval by Board. Since the school did not introduce the subject, the matter was again processed for orders of competent authority of CBSE. The case was not considered by the competent authority of CBSE vide Order dated 13.06.2022 on Board's E-file in the light of Chapter XI of CBSE's Circular dated 01.09.2022 which reads as under:

“As per Section XII of Board's Circular dated 01.09.2021 which states “In no manner, any request to change the subjects that parents will make their own arrangement of study will be accepted by the CBSE. Now, almost all the subjects are having internal assessment and schools need to provide the performance in internal assessment of the student. Hence without regular study, internal assessment cannot be done. Schools will not deviate from the directions issued by the CBSE. If in any case, it is found that instructions have not been followed, CBSE will reject the request for which school will be held responsible.”

2.2 Amrita Vidyalaya, Respondent No.2 filed its reply dated 14.11.2022 and submitted that Master Shiven Sharma had continued his Class XII with the same subjects which he opted in Class XI i.e. English Core, Painting, IT, Sanskrit and Mass Media. Later his parents requested for change of his subject from Mass Media to Horticulture. The school on 13.05.2022 duly forwarded the request to CBSE to change the subject. On 10.06.2022, CBSE replied that “after updation of the Horticulture subject on the OASIS portal the student should apply for change of a subject. On 11.06.2022, the school replied to CBSE that “School does not have required infrastructure for the subject. Horticulture not has a competent staff and number of required students.” On 12.05.2022 vide letter No.AV.Del/extrnl/2022/05/025 CBSE had been informed by school that the School is not in a position to opt for the “Horticulture” subject. On 14.06.2022 the school received a mail from CBSE that the request for change of subject had not been approved by the Competent Authority of CBSE for session 2022-23.

3. Submission made in Rejoinder:

The reply received from the Respondent No.1 has been forwarded on 21.11.2022 to the complainant for Rejoinder which is awaited.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 06.12.2022. The following persons were present during the hearing:

- (1) Ms. Priyanka Sharma, the complainant, mother of Shiven Sharma, in person.
- (2) Shri Sanjeev Das, Regional Director (Delhi East), CBSE, for Respondent No.1.
- (3) Shri Sudarshan Rajan Advocate; and Ms. P. Vijaylaxmi, Vice Principal for the Respondent No.2.

5. Observations & Recommendations:

5.1 Complaint is filed by the mother of divyang son. She submits that her son tried to study Mass Media for the brief period but due to lack of interest he was not compatible going ahead with it. Her son is interested in Horticulture as a subject instead of Mass Media. She had contacted the school as well as CBSE for the same and written numerous application which were not heard.

5.2 The Respondent No.1 filed their reply dated 17.11.2022 and inter- alia submitted that the School, Amrita Vidyalayam had been informed that CBSE did not have facilities of staff and number of students in the subject to cater the needs of Horticulture subject. The school did not also opted for registration of the subject horticulture on CBSE's online OASIS Portal. The case was processed by the office on CBSE E-office online system on 24.05.2022. As the school did not offer horticulture as registered subject for 2021-22, the school was asked on 10.06.2022 to update this subject on CBSE's OASIS Portal, so that the request of the candidate could be considered for approval by Board. Since the school did not introduce the subject, the matter was again processed for orders of competent authority of CBSE. The case was not considered by the competent authority of CBSE vide Order dated 13.06.2022 on Board's E-file in the light of Chapter XI of CBSE's Circular dated 01.09.2022.

5.3 Respondent No.2 – Amrita Vidyalaya filed its reply dated 14.11.2022 and submitted that Master Shiven Sharma had continued his Class XII with the same subjects which he opted in Class XI i.e. English Core, Painting, IT, Sanskrit and Mass Media. Later his parents requested for change of his subject from Mass Media to Horticulture. The school on 13.05.2022 duly forwarded the request to CBSE to change the subject. On 10.06.2022, CBSE replied that “after updation of the Horticulture subject on the OASIS portal the student should apply for change of a subject. On 11.06.2022, the school replied to CBSE that “School does not have required infrastructure for the subject. Horticulture not has a competent staff and number of required students.” On 12.05.2022 vide letter No.AV.Del/extrnl/2022/05/025 CBSE had been informed by school that the School is not in a position to opt for the “Horticulture” subject. On 14.06.2022 the school received a mail from CBSE that the request for change of subject had not been approved by the Competent Authority of CBSE for session 2022-23.

5.4 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 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.

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.”

5.5 Complainant failed to disclose any violation of any rule or regulation which mandates school or CBSE to change subject of the student at any point in time. Hence, this Court concludes that the Complaint is not related to disability. Therefore, intervention of this Court in the present Complaint is not warranted. However, all the parties are at liberty to discuss the issues and reach to any conclusion.

5.6 Accordingly, the case is disposed off.

Dated: 17.03.2023



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



26

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: 13401/1141/2022

Complainant: Dr Satendra Singh,
Doctors with Disabilities: Agents of Change (DwDAoC)
Address: A5-303, Olive County, Sec-5,
Vasundhara, Ghaziabad, UP – 201212
Email: dr.satendra@gmail.com

139028

Respondent: Shri Advait Chandan,
Director of the Film **Laal Singh Chaddha**
through producer Viacom18, Media Pvt Ltd
Zion Biz Wprld, Subhash Road 'A'
Vile Parle (East), Mumbai -400057
Email: legal@viacom18movies.com

139029

.....Respondent No. 01

Shri **Srijit Mukherji**,
Director of the Film **Shabaash Mithu**
through producer Viacom18, Media Pvt Ltd,
Zion Biz Wprld, Subhash Road 'A',
Vile Parle (East), Mumbai -400057
Email: legal@viacom18movies.com

139080

.....Respondent No. 02

Central Board of Films Certification
Through the Chairperson
Films Division Complex, Phase- I Building,
9th Floor, Dr. G. Deshmukh Marg, Mumbai- 400026
Email : chairperson.cbfc@nic.in

139081

.....Respondent No. 03

Ministry of Information & Broadcasting,
Through the Secretary
Shastri Bhawan, New Delhi-110001
Email: secy.inb@nic.in

139082

.....Respondent No. 04

Complainant: 70% locomotor disability

GIST of the Complaint:

The complainant filed a complaint dated 17.08.2022 before this Court and the same complaint was also forwarded to this Court by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment. The complaint was regarding Demeaning remarks ridiculing disability community in the 02 films – (1) '**Laal Singh Chaddha**' directed by Shri Advait Chandan; and (2) '**Shabaash Mithu**' directed by Shri Srijit Mukherji, both through the Producer M/s Viacom18 Media Pvt. Ltd., Mumbai.

....2....

2. The complainant submitted that the film Amir Khan starrer "Laal Singh Chaddha" was released on August 11, 2022. At 40 minutes into the film, there was a scene called "Bhaag, Laal, bhaag!" which depicted the bullying of boy Laal Singh, wearing leg braces. A group of bullies in the scene threatened young Laal by throwing stones at him and by shouting "pakad langde ko" (catch the crip). Though the scene glorified "inspiration porn" by showing a disabled boy shattering his caliper and bolting away and running with astonishing speed, what was more hurtful was the use of demeaning expressions in the post-Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016) era.
3. Another film, Taapsee Pannu starrer "Shabaash Mithu", released by the same producer, Viacom18 studios on OTT (Netflix and Voot) on August 12, 2022, has a song "Masti Takita Dhum" written by Swanand Kirkire with the lyrics: Atki jo tangadi, gol gattam khali, Ho gayi langadi (The word spun as has been tripped, Can't stop limping enough).
4. The complainant further submitted that imagery and cultural representations have the potential to sustain the psycho-emotional pathways of oppression. Since the social model of disability holds society and the environment responsible for creating attitudinal barriers, derogatory words and language further disable us. Cinema is responsible for perpetuating stereotypes, and more often than not, people with disabilities are at the receiving end. Unfortunately, Bollywood is replete with illustrations of disability being used as a metaphor or a means of degrading and mudslinging. Post RPwD Act, 2016, we have a law respecting the Convention on the Rights of Persons with Disabilities (CRPD), empowering us with the principle of "respect for difference and acceptance of persons with disabilities as part of human diversity and humanity." The Viacom Media with its films and the influential celebrities with their huge impact unfortunately has clearly violated the following section of the RPwD Act, 2016:-

"Section 92(a): Whoever, — (a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view; shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."
5. One may ask whether calling a person 'langade' or 'langadi' amounts to intentionally insulting with the intent to humiliate the disability community. The usage of such words by non disabled people is an act of insult, abuse, and derision. Calling a person 'langda' 'disabled in the RPwD Act, 2016 era is, nowadays, today an abusive language and is highly offensive. In fact, the said expression when used is not normally used to denote a disability but to intentionally insult and humiliate someone. Since these things are said in films, these offensive words are now in the public view, giving the wrong (and illegal) impression that usage of these expression are justified. The Government of India enacted the RPwD Act, 2016 to prevent indignities, humiliations, and harassment towards the disability community, as is evident from the preamble taken from CRPD. As a result, when interpreting Section 92(a) of the RPwD Act, 2016, the popular meaning of the expression must be considered, as acquired through usage, rather than the etymological meaning.

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6. The same logic was used by the Hon'ble Supreme Court of India in Swaran Singh & Ors. vs State Tr.Standing Council & Anr., 2008 in Criminal Appeal No.1287 of 2008. The apex Court, while allowing an FIR, stated that addressing Scheduled Castes people as 'chamar' may amount to an offence punishable under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The court stressed that, "If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation."
7. In this connection, it may be mentioned that in America today, using the 'N'-word for an African American is regarded as highly offensive and is totally unacceptable, even if it was acceptable 50 years ago. Similarly, in India, in the RPwD Act, 2016 era, in August 2021, Justice Gautam Patel in the Bombay High Court warned, "Lunacy, mad man, mentally retarded are antiquated... I'm not going to, even if required, look at these statutes. In my court, if these words are used, an order of cost will follow."
8. The complainant prayed for the following reliefs:-
- (1) The matter be investigated and appropriate action be taken against the director and filmmakers in violation of Section 92(a) of RPwD Act, 2016;
 - (2) CBFC be directed to ask filmmakers to delete the said expression from both films and to issue a written apology for hurting the feelings of the disability community;
 - (3) CBFC be directed to prohibit the use of the 'langda' expression in any cinematic medium and to refuse future film clearances; and
 - (4) Ministry of Information and Broadcasting may be requested to ensure future filmmakers attend awareness programmes and campaigns to promote values of inclusion, tolerance, empathy, and respect for diversity towards persons with disabilities as mandated under Section 39(2)(a) of the RPwD Act, 2016.
9. The matter was taken up with the Respondent vide letter dated **22.08.2022** under Section 75 of the RPwD Act, 2016.
10. The Respondent No.1 filed his reply dated **04.11.2022** and Respondent No.2 filed its reply dated **07.11.2022** respectively. Both the Respondents have inter-alia submitted that the complaint is absolutely frivolous, vexatious and unfounded and deserves to be dismissed. Further, after completion of shooting and production of the films, as per statutory requirements, the same was submitted before the CBFC which has the sole power and authority for granting cinematograph films permission for public exhibition and exploitation basis. CBFC having already reviewed the said film and having granted the

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CBFC Certification which established that the said films are in compliance with the guiding principles including all applicable laws of the land.

11. Respondent No.3 (CBFC) filed its reply dated **16.09.2022** and inter-alia submitted that 'Lal Singh Chaddha' (Hindi) is a Fiction film and there is also a clear and very prominent disclaimer of Fiction and the filmmaker not intending to hurt or mockery any individual, including those who are differently abled or disabled and also that certain expressions used in the film are purely for dramatizing the performances. Further, the plot of the film only depicts the challenges faced by its specially-abled character but also presents a story of grit and determination, meant purely for the purpose of entertainment. Since the incidents depicted were crucial for the narrative, CBFC did not find them to be offending the sentiments or mockery of any person or class of people who are differently abled or disabled. Respondent No.3 further submitted that the film 'Shabaash Mithu' (Hindi) is based on the life of former Test and ODI Captain of the India Women's National Cricket Team, Mithali Raj. Through the song "Musti Takita Dhum.....", the filmmaker has presented and showcased incidents from Mithali Raj's childhood life. CBFC did not find anything offending or mockery of any individual, including those who are differently abled or disabled, and also that certain expressions used in the film are purely for dramatizing the performances.

12. No reply has been filed by the Ministry of Information and Broadcasting (Respondent No. 04).

13. The complainant filed his rejoinder dated **10.10.2022** to the reply filed by CBFC with regard to the film "Lal Singh Chaddha" (Hindi). He submitted that in the 2002 Hindi film 'Rishtey' (scene starts at 15-18 minutes into the film), directed by Indra Kapoor, there was a similar scene where Anil Kapoor asks his disabled son, wearing a caliper, to participate in a school racing competition with non-disabled peers. In a dramatic and unrealistic portrayal, when the child lags behind, the child looks at his depressed father and suddenly starts running with his caliper shattering just like in the 'Laal Singh Chaddha' scene, and he comes first, beating all the non-disabled children. Such scenes bring false hope into the minds of parents of disabled children. The complainant further submitted that he had worn calipers in his entire life and know how it feels when it breaks, whole life stops, one can't move a bit, and one has to crawl. The complainant being a medical doctor said that he knows there is no cure for polio, but such a portrayal creates an everlasting negative impact on the psyche of people with mobility disabilities like him. This is no inspiration; rather, this is abusing the power of cinema to create a false narrative. Disability scholars refer to this phenomenon as "inspiration porn".

14. The complainant further submitted that mention of the expression "langde" was not required in the film. It was not done in the film mentioned above using the same scene. Moreover CBFC has the history of muting the objectionable expressions. For the 2014 Hindi film "Ek Villain" the CBFC told the makers to mute the word 'hazzam' (barber in Hindi) from the film, as they did not want any community to object. Earlier, the use of the word barber in Shah Rukh Khan's 2009 film Billu Barber had also irked the Board when they had

....5....

asked the filmmakers to remove the word. When "barbar" and "hazzam" words can be muted why cant demeaning words like "langde/langdi" that too after passage of the Rights of Persons with disabilities Act, 2016. The Act also mentions awareness of disability as diversity and awareness campaigns on disability rights and dignity but it seems none of the CBFC staff is sensitized about respecting disability as differences. The Censor Board and Ministry of Social Justice & Empowerment must prove their accountability towards such incidents if they really believe in the dictum of "sabka saath, sabka vikas, sabka vishwas".

15. In reply to the film 'Shabaash Mithu (Hindi), the complainant submitted that amongst all the 05 members of Examining Committee of CBFC, the lack of involvement of people with disabilities gives license to non-disabled people to "assume" and what is right or wrong about disability. Non-disabled can never have the lived experience of disability. The complainant submitted that the scenes violate the following guidelines under Section 5B of the Cinematograph Act, 1952, the notification of the Government of India in the Ministry of Information and Broadcasting No. S.O. 9E), dated 7th January, 1978, and Gazette Notification dated 06.12.1991 which makes it binding that the Board of Film Certification (CBFC) shall ensure that:

2(iii)(b): scenes showing abuse or ridicule of physically and mentally handicapped persons are not presented needlessly.

2(iv): scenes as may have the effect of de-sensitizing or de-humanizing people are not shown.

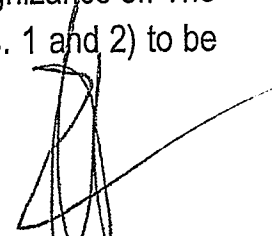
2(ix): scenes degrading or denigrating women in any manner are not presented.

2(xviii): visuals or words involving defamation of an individual or a body of individuals are not presented.

Observation/Recommendations:

16. Considering the reply of Respondent No. 3, it is clear that the overall message of the movie in question is to showcase the indomitable spirit of characters played. Hence, some small part of the film cannot be isolated from the whole movie and taken cognizance of. The case is disposed off with recommendation to film makers (Respondent Nos. 1 and 2) to be respectful and sensitive with respect to vocabulary used for divyangjan.

17. The Case is disposed off accordingly.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 17.03.2023



EX/100

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. 13484/1011/2022/158062

Complainant:

Shri Vijay Pal,
Email: ervijaypalruhil@gmail.com

Respondent:

The Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
Recruitment Branch,
BSNL Corporate Office,
Room No.215, 2nd Floor,
Eastern Court, Janpath,
New Delhi-110001
Email: emdbsnl@bsnl.co.in

Affected Person: The complainant a person with 75% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 16.08.2022 which was received from the Department of Empowerment of Persons with Disabilities vide letter No.16/51/2022-PG (VOL.I) dated 30.08.2022 regarding not declaring 4% reservation of seats for Persons with Benchmark Disabilities in the Notification No.BSNLCO-11/13(12)/2/2022-RECTT-CO dated 21.04.2022 for promotion of Group 'C' employees to the grade of Junior Telecom-Officer (Telecom) in BSNL under 50% internal quota for the vacancy year 2021 for vacancies upto 31.12.2021.

1.2 The complainant submitted that he is working as J.E. in BSNL Bahadurgarh. He appeared in the Limited Internal Competitive Examination (LICE) on 07.08.2022 with Roll No.801659 notified on 21.04.2022 for promotion of Group 'C' employees to the grade of Junior Telecom Officer (Telecom) under 50% internal quota. He also submitted that there was no vacancy for person with Benchmark Disabilities under Rights of Person with Disabilities Act, 2016 even after this Act effective from 19.04.2017 and in the said notification it was clearly mentioned that the number of vacancies are tentative and subject to change. Reservation would be given as per

Government of India Policy/Guidelines/Court Orders, if any. The complainant prayed that reservation for PWBD be provided before declaring the result of this exam.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply vide letter dated 14.11.2022 and submitted that BSNL follows the DoPT guidelines in the matter of reservation and had endorsed DoPT OM dated 17.05.2022 regarding reservation in promotion to PwBD. This OM had been issued on 17.05.2022 and there is no mention about retrospective date of effect of this OM. Further, the notification of LICE promotion to the cadre to JTO(T) for vacancies upto 31.12.2021 only was notified on 21.04.2022 which is prior to the date of effect of DoPT OM dated 17.05.2022. Hence, DoPT OM dated 17.05.2022 was not applicable for the said LICE.

3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 28.11.2022 and reiterated his complaint.

4. Observations & Recommendations:

4.1 On going through the papers on record, it is observed that the reply filed by the respondent is satisfactory. Complainant has not made any case relating to the discrimination in providing reservation to Persons with Benchmark Disabilities in promotion. Hence, no further intervention is warranted in this case.

4.2 The case is disposed off accordingly.

Dated: 17.03.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13440/1141/2022

Complainant: Shri Birendra Kumar
S/o Shri Shankar Ram
Homeless, Shankar Gali
Sitaram Bazar, Delhi
Mobile: 7210947458

13908

Respondent: The Director
Pt. Deendayal Upadhyaya National Institute for
Persons with Physical Disabilities (Divyangjan)
4, Vishnu Digamber Marg, New Delhi - 110002
E-mail: <director@iphnewdelhi.in>

139084

Complainant: 84% Locomotor disability

GIST of the Complaint:

Complaint of Shri Birendra Kumar was received through Office of the State Commissioner for Persons with Disabilities, Govt. of NCT of Delhi vide letter dated **01.08.2022**. Complainant has alleged that he has been harassed by officers of Pt. Deendayal Upadhyaya National Institute for Persons with Physical Disabilities (Divyangjan) and he has requested to take action against them.

2. The matter was taken up with the Respondent vide letter dated **08.09.2022** under Section 75 of the RPwD Act, 2016. But despite reminders dated 26.09.2022 & 21.10.2022, no response has been received from the respondent. Therefore, hearing scheduled on **23.02.2023** but due to administrative exigency, the scheduled hearing is re-scheduled to **09.03.2023**.

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

- Shri Birendra Kumar - Complainant
- Shri G. Pandian, Assistant Professor, Grievance Redressal Officer on behalf of respondent

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Observation/Recommendations:

3. Complainant submits that he requested the Director of the Respondent establishment to provide him job in the Respondent establishment. The staff members of O/o Director of Respondent establishment interviewed him but instead of providing job, they used un-parliamentary language and made fun of his disability.
4. During online hearing, this Court inquired if any inquiry was initiated in the incident. Respondent informed that no such hearing was conducted.
5. This Court recommends that the Respondent shall initiate the inquiry in the incident reported in the Complaint. Further, it is recommended that Grievance Redressal Officer shall preside such committee and submit the report within 1 month of receiving the copy of this Recommendation. The copy of the report shall be forwarded to the Complainant as well as to this Court.
6. The case is disposed off.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 22.03.2023



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: 13213/1023/2022

Complainant

Dr. Satish Kumar
Assistant Professor
St. Stephen's college
University Enclave, Delhi-110007
Email: satishk64o@gmail.com

139043

Vs

Respondents:

The Principal
St. Stephen's College
University Enclave, Delhi-110007
Email: principal@ststephens.edu

139044

Complainant Dr. Satish Kumar, Assistant Professor has filed a complaint dated 15.04.2022 against the Principal, Associate Professor, Retired Associate Professor, Contractual Employee, Administrative Officer, former Vice Chancellor, Retired Principal, St. Stephen's College, Assistant Professor, St. Stephen's College and others regarding harassment, threat, castiest remark, victimization on account of disability. He has also submitted that they are making fun of his disability, reducing the seniority illegally, victimization on account of disability, making false and defamatory statement on public platform, conspiracy, withholding of promotion and threat due to revealing the truth of financial irregularity in the college.

2. The matter was taken up with the Respondent vide letter dated 27.04.2022 under Section 75 of the RPwD Act, 2016.

3. Dr. Chinkhanilun Guite, Bursar, Convenor, Grievance Redressal Cell, St. Stephen's College, New Delhi vide letter dated 27.06.2022 has filed the reply. As regards seniority of complainant, he has submitted that the complaint is baseless and without any merit. The seniority of Dr. Ekta Kundra was determined as per rules and with the approval of the University of Delhi. As regards harassment by Ms. Nandita Narain, Dr. M.S. Frank and Dr. Rashmi Sachdeva, he has submitted that the College has not received any official complaint from the complainant in the matter and therefore not in a position to respond. As regards matters involving Dr. Harish Kumar Yadav and Mr. Subha Kumar Dash, he has stated that the proceedings against them were initiated by the complainant in his capacity as the Bursar of the College and not in his personal capacity. As regards allegations against Mr. Anjani Kumar, he has informed that the matter does not come under the purview of the College and therefore, the College is not in a position to respond.

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)

4. As regards the allegations made against the Principal in the matter of complainant's promotion, he has submitted that the claims are untrue and therefore denied. The complainant's promotion has been processed as per UGC rules and in a timely manner. Although the processing of promotion papers was hampered by the lockdowns that were imposed as a result of the COVID-19 pandemic, there were no deliberate delays or discrimination in the manner in which the complainant's papers were sent to the University. As a matter of fact, the Principal has been supportive of Dr. Satish Kumar's promotion. The recommendation of the Principal to promote the complainant was recorded in the minutes of the screening/selection committee. Therefore, the claims of discrimination is baseless and a deliberate attempt on part of the complainant to malign the Principal. He further submitted that the College fails to understand the reason behind such false and misleading allegations despite its full-fledged support to the complainant's "research and academic projects" in the last 12 years since his appointment.

5. Copy of the above reply was forwarded to the complainant on **30.06.2022** for submission of comments but till date no response has been received.

6. **Hearing:** The case was fixed for online hearing on 08.09.2022 which was re-scheduled to 09.09.2022, and again re-scheduled for physical hearing on 06.10.2022. The following were present:

- i) Dr. Satish Kumar: **Complainant**
- ii) Prof. John Verghese, Principal, St. Stephen's College: **Respondent**

Observations /Recommendations:

7. Three issues raised in the Complaint are related to harassment, seniority and promotion. Complainant has filed Complaint against Ms. Nandita Narain, teaching staff; Dr. M.S. Frank, Associate Professor; Dr. Rashmi Sachdeva, Head of Chemistry Department and Prof. JohnVarghese, Principal. Complainant submits that on number of occasions above named staff members harassed, threatened and made fun of the Complainant's disability. Against Prof. JohnVarghese, Principal, the Complainant submits that he did not send the documents to Delhi University because of which his promotion remained pending. He also submits that false case of sexual harassment was filed against him in which one Mr. Anjani Kumar gave false testimony. He also submits that he was appointed before another teacher namely Dr. Ekta Kundra but he was reduced in seniority arbitrarily.

8. On the issue of seniority, Respondent submits that due approval for fixing seniority of Dr. Ekta Kundra was taken from the responsible authorities. Regarding promotion, the Respondent submits that the submissions made are false. On the issue of harassment on the basis of disability, Respondent submits that no such Complaint was filed by the Complainant before the Respondent establishment. On the issue of case of sexual harassment charges, Respondent submits that the due process of investigation was followed and the Complainant was not held guilty.

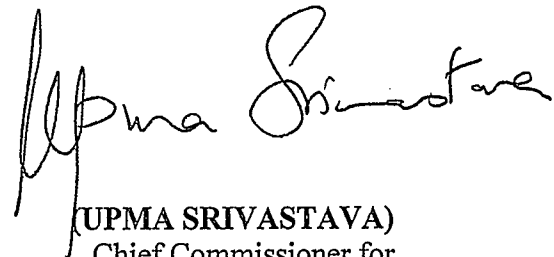
9. Hearing was conducted and both the parties appeared before this Court on 06.10.2022. During the hearing, the Complainant raised some allegations which were new and were not raised

before in written Complaint. Respondent assured that detail inquiry will be conducted into the allegations.

10. Thereafter, by letter dated 27.10.2022 the Respondent informed that the Governing Body, St. Stephens College met on 26.10.2022, (Wednesday) and it was decided that a retired judge of the Supreme Court of India will be requested to look into the matter and provide an independent inquiry report.

11. This Court is satisfied with the fact that the Respondent has decided to conduct an inquiry under the watch of retired judge of Hon'ble Supreme Court of India. This Court disposes of the Complaint with recommendations to the respondent to take all necessary steps to execute the decision at the earliest, taken by Governing Body, St. Stephens College during its meeting held on 26.10.2022.

12. The case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated:22.03.2023



38

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: 13502/1022/2022

Complainant

Shri Abhay Dwivedi
PF no: 5198648
28-Adarsh Vihar, Kanpur-15
Email: abhayisdwivedi@gmail.com
Mobile no: 09517476307

13502/1022/2022

Versus

Respondent

The Chief General Manager (HRMD)
Punjab National Bank
Corporate Office, Plot No. 4
Sector-10, Dwarka, New Delhi-110075
Email: hrd_ir@pnb.co.in

13502/1022/2022

GIST OF COMPLAINT

The complainant is a person with 40% locomotor disability has filed a complaint dated 03.10.2022, regarding for posting him at any branch near to his residence.

2. The complainant has submitted that he has joined the services of Punjab National Bank with effect from 21st August 2017 and currently posted at branch office Indergarh in Kannauj District in Uttar Pradesh. The complainant submitted that Punjab National bank is a leading Public Bank having come into existence under the provisions of banking companies Act 1970 having its registered head office at New Delhi. Since bank is an instrumentality of the State under Article 12 of the Constitution of India, the OMs, Notifications, Directions, Instructions etc; issued by Government of India are binding on the bank. The complainant submitted that he has been treated unfairly and have posted at branch office Indergarh in Kannauj district which is almost 150 KM far away from his home city. The complainant has been constantly representing against his posting at far of place and has been requesting the authorities to explore the responsibilities of posting him at any of the branches in his home city. He has even applied for request transfer to Kanpur City through HRMS in accordance with rules of the bank.

3. The complainant further submitted that the transfer diary no. is 113782 requested on 03.09.2020. Previously his transfer diary no is 101093 requested on 18.03.2020, which was withdrawn due to technical issue in HRMS. The complainant further submitted that bank is having more than 60 branches in his home city Kanpur and number of vacancies exists in these branches on account of retirements, death, promotion, request transfer etc. However, authorities of the bank have been reluctant to consider his request for transfer sympathetically with humane approach considering the hardship he is subject to because of posting at far off place.

4. The complainant has requested to CCPD Court to give directive to the respondent to post him at any of the branches near to his residence in compliance of Government of India instructions as well as in accordance with the policy.

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

5. In response, Dy. General Manager, Punjab National Bank vide letter dated 30.11.2022, submitted that he has posted at B.O-Kannauj Sarai Meera on 08.09.2017 falling under Kanpur circle. Thereafter, on amalgamation of three banks i.e. Punjab National Bank, e- OBC and e-UBI the B.O-Kannauj Sarai Meera Came under administrative jurisdiction of Circle Office-Etawah w.e.f 22.06.2020.

6. The respondent further submitted -that the complainant was suspended on 06.09.2021 for his alleged involvement in the matter of cash missing amounting of Rs. 10,00,000/- from his cash cabin in the branch (Kannauj Sarai Meera) premises. It was observed that he left the cash cabin unlocked during working hour, he did not lock the cash cabin during working hour; he did not put the cash in the drawer with the lock while the drawer with lock was available in the cabin.

7. The respondent further submitted that during the pendency of departmental proceedings, competent authority i.e. Circle Head, Circle Office- Etawah decided to revoke his suspension on 17.01.2022 and posted him at B.O-Indergarh, Distt: -Kannauj i.e. one of the nearest branch of B/o Kannauj Sarai Meera as well as nearest branch from Kanpur (his native city) under Etawah Circle. After long waiting of pending investigation with Uttar Pradesh Police, a charge sheet dated 15.11.2022 has been served upon him for gross negligence as per provision of Settlement, for failing to save bank interest.

8. The respondent further submitted that complainant has applied for inter circle transfer request from Circle office-Etawah to circle office, Kanpur city on 05.04.2021 through HRMS. His transfer request could not be considered due to non-availability of vacancy position in circle office, Kanpur city as per provisions of extant transfer policy.

The vacancy position of clerk in Kanpur city circle was surplus /excess as on 19.07.2021 and 30.06.2022.

9. The complainant has submitted the rejoinder comments dated 27.12.2022 and submitted that he is not satisfied with the comments submitted by the respondent.

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

- i) Shri Abhay Dwivedi : **Complainant**
- ii) Shri Mukesh Kumar Sinha, DGM (HRD) : **Respondent**
- iii) Ms. Sumati Choudhary, Chief Manager (HR) : **Respondent**

Observations /Recommendations:

11. 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.

12. 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

13. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('UNCRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the UNCRPD, it became obligation of the state to enact new law in furtherance of the commitments under



UNCRPD. 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.

14. 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.

15. 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.

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

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

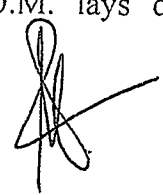
STATUTORY PROVISIONS AND GUIDELINES

17. 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

- 18. 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.
- 19. 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.
- 20. 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

21. ISSUE – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.
22. 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
23. 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.
24. ISSUE – Since, transfer is an incidence of service should employee follow transfer Orders without exception?
25. 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.
26. ISSUE – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?
27. 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.

28. 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 employec.
29. 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.
30. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.
31. 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.

32. **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?
33. 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.
34. 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'.
35. 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.

36. 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

37. 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.

38. 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.

39. Complainant submits that he is employed in the Respondent establishment. He joined the Respondent establishment on 21 August 2017. He submits that he is posted in Indergarh, Kannauj, Uttar Pradesh branch of the Respondent establishment. He claims that he filed application for transfer to his hometown, however till the date of filing of Complaint he has not been transferred. His hometown is Kanpur and has requested the Court to direct the Respondent to transfer him to his hometown.

40. Respondent submits that the Complainant was posted at Kannauj Sarai Meera branch on 08.09.2017 which came under Kanpur circle. Thereafter, on amalgamation of three banks i.e. Punjab National Bank, e- OBC and e-UBI the B.O-Kannauj Sarai Meera Came under administrative jurisdiction of Circle Office-Etawah w.e.f 22.06.2020. Hence, the Complainant is now posted in Etawah circle and not in Kanpur circle.

41. Respondent further submits that the Complainant was suspended because of misconduct. Later his suspension was revoked and he was posted in Indergarh,



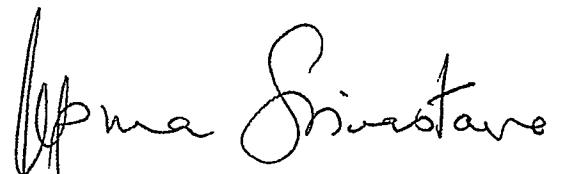
Kannauj, Uttar Pradesh branch which is nearest to Kanpur. Complainant also filed inter-circle transfer application however, the same was rejected because of lack of vacancies in Kanpur circle.

42. The case of the Complainant can be decided in accordance with O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T read with another O.M. of DoPT, i.e. O.M. No. 14017/41/90 dated 10.05.1990. The O.M. dated 13.03.2002 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.

43. Respondent failed to provide any plausible reason for not transferring the Complainant to his native place. Respondent submitted that there are no vacancies in Kanpur circle, however, it has to be noted that the Respondent can find avenues, for instance mutual transfer, to find some vacant position in Kanpur circle. This Court recommends that the Respondent shall implement the guidelines of DoPT mentioned in preceding paragraphs and transfer the Complainant to his native place i.e. Kanpur.

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

45. This case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 24.03.2023

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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. 13483/1033/2022/161545

Complainant:

Shri Surya S
S/o Shri Selvam,
B/2, Indira Nagar,
Main Road, Nanmangalam,
Tambaram (Talik),
Chennai- 600129
Mobile No. - 9176075816;
Email - surya.s@nift.ac.in

139040

Respondent:

Director General,
National Institute of Fashion Technology
Hauz Khas,
Near Gulmohar Park,
New Delhi - 110016
Email: info@nift.ac.in

139041

Director,
National Institute of Fashion Technology,
NIFT Campus,
Rajiv Gandhi Salai Taramani,
Chennai-600113 (T.N);
Tel No: 044-22542759
Email: director.chennai@nift.ac.in

139042

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

1. Gist of Complaint:

1.1 The complainant, filed a complaint dated 22.09.2022 alleging that the NIFT Chennai Authorities have maliciously cheated him by using his name and certificates in view to receive scholarship funds from National Scholarship Portal (NSP) stating to him that insufficient funds at NIFT Chennai in the academic year 2020-21.

1.2 He further submitted that he was granted two scholarships one from NIFT Chennai and another from the NSP that was applied by the NIFT Chennai Academic Section Officials but without his consent and signature. The

इकी 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)

same was processed under the command of the Campus Director and Academic Section in-charge using his name and certificates stating that insufficient funds at NIFT Chennai. As per him he was not aware of the scholarship schemes or rules regarding it, thus, he was not able to understand what they were doing using his name and certificates in the academic Section Office. Upon receipt of NSP scholarship, he told NIFT Chennai authorities that he had received two scholarships for the academic year 2020-21, therefore he wants to return the NIFT Sarthak scholarship which he received from the college amounting to Rs. 2,41,215 for the academic year 2020-21 back to NIFT Chennai. He received a letter from the Director that at a time a student can avail only one scholarship even though the student is eligible to apply for multiple scholarship schemes. No reply has been given to him with regard to his willingness to return the amount of Rs. 2,41,215 back to NIFT Chennai.

1.3 The double scholarship availing incident happened only once, that is in the academic year 2020-21 in particular during the corona virus pandemic period. During his 3rd year i.e., before his 6th semester examination, NIFT conducted an investigation on him internally at the campus level with 4 to 5 college faculties stating that Non-Disclosure of Scholarship which perplexed him so much that he was not able to understand what they were trying to do with him. The NIFT Chennai Authorities made him a victim and devised the office order dated 25.08.2022 to prevent him from coming to college in hoping that he will die of poverty and disability so that the NIFT authorities could hide all their mistakes and wrong doings performed by them in his scholarship matters.

2. Submissions made by the Respondent:

2.1 The Nodal Officer (NSP), NIFT Chennai filed their reply dated 16.11.2022 and inter alia submitted that the candidate is currently pursuing 7th semester in B. F. Tech. (Apparel Production) programme, Batch 2019-2023. The claims of the complainant are fictitious, unsubstantiated, blasphemous and defamatory. The fact is that application to avail scholarship in the NSP Portal is completely online and only the complainant will be able to apply through the confidential login credentials provided to him adhering to the Standard Operating Procedure (SOP) of NSP. The complainant had Suo-moto applied for Scholarship for Top Class Education for Students with Disabilities in the NSP Portal and informed the status to NIFT Chennai.

2.2 It is very pertinent to mention here that NIFT Chennai did not send any communication citing insufficient funds to complainant at any point of time from any Department of the Institute as claimed by him without evidence. The complainant is in receipt of 100% scholarship through NIFT SARTHAK Policy for 3 consecutive years from 1st to 3rd year (2019-20, 2020-21 & 2021-22).

2.3 The respondent further submitted that he had applied for scholarship in NSP under "Scholarship for Top Class Education for Students with Disabilities" scheme during the 2020-21 and availed double benefit thereby preventing the opportunity of the other deserving disabled candidates.

3. Submissions made in Rejoinder:



The complainant filed his rejoinder dated 25.11.2022 and inter-alia submitted that the Respondent no. 1 to revoke the office order dated 25.08.2022 which was maliciously against him by the Campus Director, Joint Director in charge and Enquiry Committee Members of NIFT Chennai Campus. He also prayed to NIFT, Head Office to enable him to continue and complete his graduation by removing all penalties from him concerning his under privileged life circumstances and his passion for education.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **Tuesday, the 21.02.2023 between 04.00 p.m. to 05.30 p.m.** The following were present:

Complainant: Shri Surya S.

Respondent No. 1: Col. Vikrant Lakhanpal, Registrar; Sri K. Murugan, Asst. Professor, National institute of Fashion Technology, New Delhi.


Respondent No. 2: Prof. Raghuram Jayaraman, National institute of Fashion Technology, Chennai.

5. Observations & Recommendations:

5.1 The complainant alleges that the NIFT Chennai Authorities have maliciously cheated him by using his name and certificates in view to receive scholarship funds from National Scholarship Portal (NSP) stating to him that insufficient funds at NIFT Chennai in the academic year 2020-21.

5.2 He further submitted that he was granted two scholarships one from NIFT Chennai and another from the NSP that was applied by the NIFT Chennai Academic Section Officials but without his consent and signature. The same was processed under the command of the Campus Director and Academic Section in-charge using his name and certificates stating that insufficient funds at NIFT Chennai. As per him he was not aware of the scholarship schemes or rules regarding it, thus, he was not able to understand what they were doing using his name and certificates in the academic Section Office. Upon receipt of NSP scholarship, he told NIFT, Chennai authorities that he had received two scholarships for the academic year 2020-21, therefore he wants to return the NIFT Sarthak scholarship which he received from the college amounting to Rs. 2,41,215 for the academic year 2020-21 back to NIFT Chennai. He received a letter from the Director that at a time a student can avail only one scholarship even though the student is eligible to apply for multiple scholarship schemes. No reply has been given to him with regard to his willingness to return the amount of Rs. 2,41,215 back to NIFT Chennai.

5.3 Respondent submits that the candidate is currently pursuing 7th semester in B. F. Tech. (Apparel Production) programme, Batch 2019-2023. Respondent has refuted the claims of the Complainant and submitted that application to avail scholarship in the NSP Portal is completely online and only the complainant will be able to apply through the confidential login credentials provided to him adhering to the Standard Operating Procedure (SOP) of NSP. The complainant had Suo-moto applied for Scholarship for Top Class



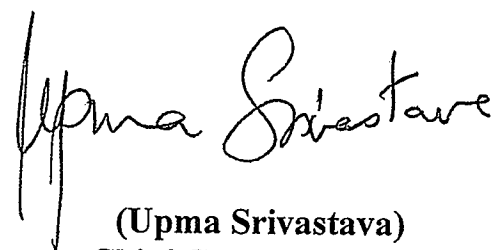
Education for Students with Disabilities in the NSP Portal and informed the status to NIFT Chennai.

5.4 It is very pertinent to mention here that NIFT Chennai did not send any communication citing insufficient funds to complainant at any point of time from any Department of the Institute as claimed by him without evidence. The complainant is in receipt of 100% scholarship through NIFT SARTHAK Policy for 3 consecutive years from 1st to 3rd year (2019-20, 2020-21 & 2021-22).

5.5 During online hearing this Court asked specific question from the Complainant whether he informed the NIFT administration when he received extra amount in his account and asked the Complainant to provide the supporting evidence. Complainant failed to provide any evidence to support his claims made in Complaint. Hence in absence of evidence this Court cannot interfere with the present Complaint only on the basis of vague allegations.

5.6 Accordingly, the case is disposed off.

Dated: 24.03.2023



**(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. 13544/1032/2022/163517

Complainant:

Ms. Madhu Sharma
V. P. O. Kohand, teh. Gharaunda
Distt. Karnal, State- Haryana
Pin Code - 132114
Email: madhupolist@gmail.com
Mob. No. 8168908148

139038

Respondent:

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

139039

1. Gist of Complaint:

1.1 Ms. Madhu Sharma, a student with 90% Locomotor Disability filed a complaint dated 08.10.2022 regarding her admission under disability quota.

1.2 She submitted that she had appeared for CUET 2022 under PwD category, but after CUET her Form for Delhi University shows that she has applied under General Category. As per complainant that was happened by mistake of internet cafe owner and her father could not see the mistake on the spot as he is not much educated. She always aimed to be part of Delhi University and under General Category her aim seems not to be achieved. Her family members tried to make this correction from Delhi University but the admission branch refused for the correction. She has requested for changing the category so that she can save one precious year of her life.

2. Submissions made by the Respondent:

The respondent in their reply dated 30.11.2022 submitted that category cannot be changed as per Bulletin of Information 2022.



3. Submissions made in Rejoinder:

The respondent's reply was forwarded to the complainant vide letter dated 16.12.2022 for filing rejoinder/comments. However, no response has been received from the complainant so far.

4. Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 09.03.2023 The following persons were present during the hearing:

Complainant: Madhu Sharma

Respondent: Sri O.P. Sharma, Deputy Registrar (Admin); Sri Girindra Kumar Pathak, Advocate - University of Delhi

5. Observations & Recommendations:

5.1 Complainant submits that she had appeared for CUET 2022 under PwD category, but after CUET her Form for Delhi University shows that she has applied under General Category. As per complainant that was happened by mistake of internet cafe owner and her father could not see the mistake on the spot as he is not much educated. She always aimed to be part of Delhi University and under General Category her aim seems not to be achieved. Her family members tried to make this correction from Delhi University but the admission branch refused for the correction. She has requested for changing the category from General to 'Person with Disability'

5.2 Respondent submitted that category cannot be changed as per Bulletin of Information 2022.

5.3 During online hearing, this Court was apprised that the Complainant has received admission in Daulat Ram College and ultimate aim of the Complainant to get admission in the college has now been fulfilled. Hence intervention of this Court in the present Complaint is not warranted.

5.4 Accordingly, the case is disposed off.

Dated: 24.03.2023

(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: 13503/1022/2022

Complainant:

Shri K. Avinash Nandan
PF No. 111057
Assistant Manager
Central Bank of India, Patna Zone
Contact No: 09955073539
Email: avinash290280@hotmail.com

138998

Respondent:

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

138999

GIST OF COMPLAINT

Shri K. Avinash Nandan, Complainant working as Assistant Manager in Central Bank of India, and care giver of his dependent son master Arnav Nandan, a child with 90% Intellectual Disability (ASD+ADHD) filed a complaint dated 30.09.2022, requesting for reversal of rotational transfer order.

2. The complainant stated that he posted as Assistant Manager at Central bank of India, Zonal Office, Patna. He had been transferred to "Jalpaiguri Region" under Kolkata Zone. Due to rotational transfer as per transfer order in Staff circular no. 1208, file no. 44, Dept. running no. 475 dated 13.04.2022 lateral transfer of scale 1 officers.

3. The complainant stated that he is caregiver of his disabled child Master Arnav Nandan, who is suffering from ASD +ADHD Mental illness with 90% Disability. Due to his problem, he was favourably transferred to Patna in 2019. Since then, his family somehow manage to take care of his child at Patna with adequate medical facility & family support. But after joining to Jalpaiguri, it will be very difficult for him and his family to take care of his child health and life. The complainant also submitted a representation to

5वीं भंजिल, एनआईएसडी भवन, प्लॉट न०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

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

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

General Manger, HRD on 18.04.2022 & 28.06.2022 through proper channel to his Central office Mumbai for reversal of his transfer order and retain his service at Patna, under “specified disability” in clause 1.2 of General provisions applicable to all types of transfer, mentioned in staff circular no. 1168 dated 08.12.2021 for norms for transfer of mainstream/specialist officers in scale 1, II and III. But still no action has been taken and even his zonal head has recommended for consideration in his case to the central office on 14.04.2022.

4. The complainant further submitted that central office has reverse transfer orders in few cases of different zones. In similar case in his Patna Zone transfer order of Shri Arun Rajak, PF No. 68280 is reverse on 08.09.2022, and his service is retained at Patna. The complainant has requested to this Court to give directives to the respondent to reverse his transfer order and retain his service at Patna.

5. The matter was taken up with the Respondent vide letter dated 26.10.2022 under Section 75 of the RPwD Act, 2016.

6. In response, Deputy General Manager-HRD, Central Bank of India, Mumbai, vide their email dated 02.11.2022, submitted that who is a native of Patna, has been posted in Patna Zone since his joining the bank in 2011. The officer has completed over 10 years in the Zone as on 31.03.2022. the periodical rotation transfers of bank officers are done in compliance with the guidelines issued by the Central Vigilance Commission from time to time incorporated in policy which inter alia provide for periodical rotation on 3 years. These guidelines are implemented uniformly for all officers. Therefore, the transfer of the complainant is in keeping with the policy guidelines. It is noteworthy that the complainant has completed over 10 years at a stretch and he along with other similarly placed officers have been transferred out of Zone. The respondent submitted that representation of the complainant has submitted that his 8 years old son is suffering from Mental Illness with 90% Locomotor Disability and he being caregiver, should not be transferred as he has to take care of his son.

7. The complainant has not filed the rejoinder in the matter.

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

- i) **Shri Avinash Nandan : Complainant**
- ii) **Shri M.V. Pandit, Asst. G.M., Zonal Office, Patna : 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 ('UNCRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the UNCRPD, it became obligation of the state to enact new law in furtherance of the commitments under UNCRPD. 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.

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 dependent.

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

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

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

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 COMPLAINT

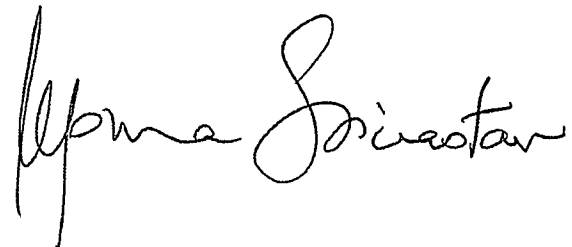
37. Complainant submits that he is working as Assistant Manager in Central Bank of India, and care giver of his dependent son master Arnav Nandan, a child with 90% Intellectual Disability (ASD+ADHD). The complainant submits that he was posted as Assistant Manager at Central bank of India, Zonal Office, Patna. He had been transferred to "Jalpaiguri Region" under Kolkata Zone w.e.f. 13.04.2022.

38. The complainant submits that he is caregiver of his disabled child Master Arnav Nandan. Due to his problem, he was favourably transferred to Patna in 2019. Since then, his family managed to take care of his child at Patna. But after joining to Jalpaiguri, it will be very difficult for him and his family to take care of his child health and life. The complainant also submitted a representation to General ²Manger, HRD on 18.04.2022 & 28.06.2022 through proper channel to his Central office Mumbai for reversal of his transfer order and retain his service at Patna, but till date no decision has been taken.

39. Respondent submits that the Complainant is posted in Patna Zone since 2011. Transfer of the Complainant was done in accordance with CVC guidelines. As per the guidelines, periodical/rotational transfer is done after every 3 years. These guidelines are uniformly applied on all the officers.

40. During online hearing, Respondent was specifically asked if status of disability of the Complainant's child was known at the time of his transfer. Respondent informed that the status was known. Complainant also filed application for cancellation of his transfer however the same was rejected because it lacked merits. However, Respondent failed to explain 'lack of merits'.

41. Case of the Complainant squarely falls within the ambits of O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T which 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. The execution of this O.M. even becomes more important in cases when divyang dependent of government's employee is divyangjan with ADHD. In such cases the person with ADHD becomes habitual with one place and with same set of people. Hence, any change in living space of the divyangjan or change of tutors/teachers can severely hamper the rehabilitation process of divyang child.
42. Hence this Court recommends that the transfer of the Complainant to Jalpaiguri shall be cancelled and the Complainant shall be posted back to Patna.
43. 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.
44. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 27.03.2023



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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: 13525/1022/2022

Complainant

Shri Shiv Kumar Bhagat,
Chief Manager,
Punjab National Bank
PF No. 5123059
MCC Sonipat, Regional Office
Mobile No: 07206881643
Email: shivkumar1970@gmail.com

138996

Respondent

The Chairman & Managing Director
Punjab National Bank
Plot No. 04, Sector-10
Dwarka, New Delhi-110075
Email: reservationcell@pnb.co.in

138992

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 16.10.2022 में कहना है कि वह 50 प्रतिशत लोकोमोटर दिव्यांगजन है। शिकायतकर्ता का कहना है कि वह पंजाब नेशनल बैंक में मुख्य प्रबंधक के पद पर कार्यरत है। 2 जुलाई 2022 को उनका स्थानांतरण चंडीगढ़ में कर दिया गया जहां से उनकी पोस्टिंग एमसीसी सोनीपत ब्रांच में आंतरिक मुख्य ऑडिटर के पद पर कर दी गई। आज डिजिटल युग का समय है। हमारा बैंक भी डिजिटल है लगभग हर कार्य कंप्यूटर के द्वारा हो रहा है। ऑडिटर को भी कंप्यूटर में काम करना पड़ता है और हमेशा कंप्यूटर में कमेंट करने पड़ते हैं, इसके लिए टाइपिंग स्किल्स की जरूरत है। हम सभी जानते हैं कि टाइपिंग में 10 उंगलियों की जरूरत पड़ती है। कई बार हमें बहुत लंबे लंबे कमेंट करने पड़ते हैं। शिकायतकर्ता शारीरिक रूप से दिव्यांग होने के कारण उनको दैनिक कार्यों में मुश्किलों का सामना करना पड़ता है। हालांकि असुविधा होने के बावजूद शिकायतकर्ता को अपना कार्य एक हाथ से धीरे धीरे करना पड़ता है। शिकायतकर्ता ने अपनी शिकायत बैंक के सामने रखी थी जिसे बैंक ने सीधे से रिजेक्ट कर दिया जो कि एक दिव्यांगजन का मजाक है। अतः शिकायतकर्ता ने सीसीपीडी कोर्ट से विनम्र निवेदन किया है कि उनकी दिव्यांगता को देखते हुए उनका स्थानांतरण उनके होम टाउन में करवाई जाए।

2. The matter was taken up with the Respondent vide letter dated 09.11.2022 under Section 75 of the RPwD Act, 2016.
3. In response, Dy. General Manager, vide email letter dated 22.12.2022 submitted that the complainant transfer to ZAO Chandigarh was on administrative grounds and as per the bank requirement and availability on vacancy. Presently, the complainant is posted at MCC-Sonipat which is a well-developed city having all the medical facilities and the city is well connected by way of road and railways. The respondent further submitted that the complainant joined the bank on 17.08.1992 in the clerical cadre at Uttarakhand/Dehradun/Haridwar which is away from his hometown i.e. Yamuna Nagar. The complainant has been promoted from time to time on merits.

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 bank at every point of time has taken into consideration his disability and during the period from 2010-2019. The complainant was posted at his hometown/circle, i.e. Yamuna Nagar/Kurukshetra, at various offices. During his service in bank of 30 years, he has always been posted within 160 Km from Yamuna Nagar and has been given posting mostly in Haryana and its bordering districts.

4. The respondent further submitted that the transfer of the complainant to MCC Sonipat was an administrative decision based on the banks requirement and availability of vacancy. Sonipat is a well-developed city having all the medical facilities and is well connected by road and railways. The complainant has been posting at MCC-Sonipat, in his home state, Haryana on administrative grounds and availability of vacancy position. Further, the bank has always taken into account, the complainant disability and approximately from 2010 till 2019 was posted near to his hometown, i.e. Yamuna Nagar.

5. The complainant has filed his rejoinder by email dated 15.01.2023 and submitted that he is not satisfied with the comments submitted by the bank.

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

- i) **Shri Shiv Kumar Bhagat** : **Complainant**
- ii) **Shri Mukesh Kumar Sinha, DGM (HRD), PNB** : **Respondent**
- ii) **Ms. Sumati Choudhary, Chief Manager (HR), PNB** : **Respondent**

Observations /Recommendations:

7. Complainant submits that he is employed on the post of Chief Manager in the Respondent establishment. He joined the Respondent establishment in 1992. He submits that he is posted in Sonipat branch of the Respondent establishment. His hometown is Yamuna-Nagar and has requested the Court to direct the Respondent to transfer him to his hometown.

8. Complainant has pointed out that at his new place of posting, nature of his duties is computer-intrinsic. His nature of disability is – ‘loss of four fingers’ and hence he faces difficulty in performing his job. He claims that he informed the Respondent establishment about the problem he faces but no action was taken by the Respondent.

9. He further claims that the Respondent with sole intention to demean, he was assigned duty of recovery of NPAs. He claims that as per guidelines only Scale-I to Scale-III officers were to be assigned task of recovery of NPAs. However, the Respondent assigned him duty of recovery of NPAs though the Complainant is Scale-IV officer.

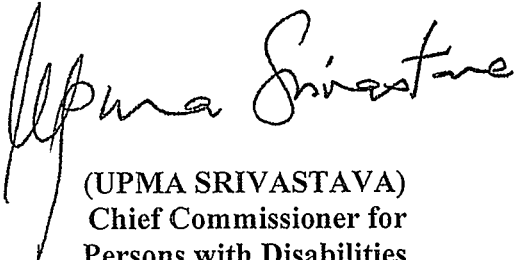
10. Respondent submits that when the Complainant was appointed he was initially posted in Uttarakhand. From 2010-2019 he was posted in Yamuna-nagar, his hometown. During his service he has always been posted in or near his hometown.

11. Respondent claims that the Complainant never raised any issue related to not being able to perform his job because of his disability. Respondent submits that the Complainant was already in charge of NPA Accounts and hence his name was proposed for officer responsible for NPA

recovery. However, the proposal was later withdrawn. During online hearing, Respondent submitted that the Complainant was posted in Yamuna Nagar from 2011 till 2019. In 2020 he was promoted to Scale-IV level officer and hence he was transferred to Sonipat.

11. This Court concludes that the Reply filed on the issue of assignment of 'NPA-recovery' duty is satisfactory. On the issue of transfer, this Court concludes that Complainant has failed to explain as to why he cannot live along with his family in Sonipat and how he faces problem in Sonipat vis-à-vis his disability. Furthermore, the fact that the Complainant was posted in Yamuna Nagar from 2011 till 2019 is evidence of the fact that the Respondent has not discriminated against the Complainant in the matters of transfer and posting. Hence, intervention of this Court in the present Complaint is not warranted.

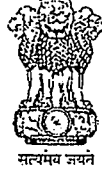
12. This case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated:27.03.2023

Extra

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Case No.13004/1014/2021 & 13035/1141/2021

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. 13004/1014/2021 & 13035/1141/2021

Complainant:

Shri P.K.Vasudevan Nair
R/o Flat No. C-601,
Saisimran Housing Society,
Deonar Village Road, Mumbai-400088;
Mobile No. 9869834635;
Email: pkvnpc@rediffmail.com

139016

Respondents:

- (1) The Dy. Director,
National Career Service Centre for Differently Abled
Ministry of Labour and Employment, ATI Campus,
V.N. Purav Marg, Sion, Mumbai – 400088
E-mail: vrcmumbai@hub.nic.in
- (2) Chairman & Managing Director,
National Handicapped Finance Development Corporation,
Unit No. 11 & 12, Ground Floor, DLF Prime Tower,
Okhla Phase – I, Near Tehkhand Village,
New Delhi – 110020; Email: nhfdc97@gmail.com
- (3) Department of Empowerment of Persons with Disabilities,
(Through : Secretary),
Room No. 524, B-III, 5th Floor,
Pt. Deen Dayal Antyodaya Bhavan,
CGO Complex, Lodhi Road,
New Delhi-110003.

139017

139018

139019

Affected Person: Shri Anish Vasudevan Nair, a person with 50% Mental Retardation

1. Synopsis of the Case:

1.1 The complainant had filed a complaint on behalf of divyang son of the Complainant, referred to as 'beneficiary'. Complainant had submitted that in 2014, the beneficiary completed 1 year training course in Respondent No. 1, i.e. Vocational Rehabilitation Center, Mumbai. This establishment comes

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under M/o Labor & Empowerment. The complainant submitted that the Respondent No.1 was supposed to pay stipend of Rs.12000/- to the beneficiary, however till date no stipend has been paid.

1.2 Respondent No. 1 submitted that the stipend and other financial support were to be provided by NHFDC (National Handicap Finance & Development Corporation). Respondent submits that it has written letter to NHFDC to give stipend to the participants who undertook training. NHFDC had replied to the Respondent No.1 that since no prior permission had been taken from NHFDC hence, stipend could not be given. Complainant was not the only one, similar cases of other 68 divyangjan were also pending because NHFDC had not been releasing stipend money.

1.3 Respondent No. 2, i.e, NHFDC (National Handicap Finance & Development Corporation) had submitted that VRC, Mumbai (Respondent No 1) had not taken prior approval hence stipend money could not be given.

1.4 Hearing in the Complaint was conducted on 26.05.2022. This Court recommended that Respondent No. 2 shall obtain 'post-facto' approval. In order to do the same, Respondent No. 1 shall prepare the whole case and forward it to Respondent No. 2 within 2 weeks of receiving the copy of this Recommendation. Further, Respondent No. 2 shall forward the case to Secretary of the department for obtaining 'ex-post-facto' approval. Thereafter, DEPwD informed this Court that ex-post facto approval cannot be given because the training was not conducted under DEPwD scheme.

2. **Hearing:** The case was again heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **17.01.2023**. The following persons were present during the hearing:

- (1) Shri P.K. Vasudevan Nair, the complainant
- (2) Shri S.K. Khushwaha, Head of NCSC, Mumbai
- (3) Shri Manoj Sahoo, for NHFDC

3. **Observations & Recommendations:**

3.1 Hearing was again conducted on 17.01.2023. During online hearing Respondent No. 2 informed this Court that there was no such scheme in existence. Respondent No. 1 conducted the training course on its own and after expiry of 10 months, Respondent No. 1 informed Respondent No. 2 and asked for releasing stipend. Till 2013 there was a scheme as per which training used be conducted and stipend used to be given. Whenever the training was conducted as per that scheme, prior approval was always

obtained from Respondent No. 2. However, the scheme got closed in 2013. During the training which is subject matter of the present Complaint, neither the scheme was in existence nor was the prior approval taken.

3.2 After perusal of the submissions made by all the parties to the Complaint, this Court concludes that irregularity exists on the part of Respondent No. 1 because the training was conducted without obtaining prior approval. It is evident that due procedure for conducting training was not followed by Respondent No. 1.

3.3 Since, there is no violation of any scheme related to divyangjan hence, intervention of this Court in the present Complaint is beyond the scope of powers and functions endowed upon this Court by The Rights of Persons with Disabilities Act, 2016.

3.4 The case is disposed off.

Dated: 28.03.2023



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13385/1022/2022

Complainant :

Shri Neeraj Singh Bahaduria
SWO-A
H. No. 366 E/III Gangaganj Colony,
Panki, Kanpur-208020
Uttar Pradesh
Email: neerajbhaduria12@gmail.com

13385/1022/2022

Respondent:

The Regional Head
Central Bank of India
Regional Office,
117/H-1/240, Pandunagar,
Kanpur-208005Uttar Pradesh
Email: rmkanpro@centralbank.co.in

13385/1022/2022

GIST OF COMPLAINT

The complainant, a person with 45% Locomotor Disability, working in the Central Bank of India, has filed a complaint dated 18.07.2022 regarding change of his branch of posting from Nayaganj, Kanpur to any nearby branch of his residence situated in ground floor preferably at (i) Panki, (ii) Kalyanpur and (iii) Keshavpuram.

2. The complainant has submitted that due to his serious accident he had suffered from fracture and PLC ligament tear in right knee and injury in back bone. After treatment, he had been disabled 45% permanently. The complainant submitted that General Manager (HRD) Central Office, Mumbai had considered his request for transfer at Kanpur city and the same has been materialised vide letter no. dated 05.05.2022 at serial no. 512. The complainant further submitted that despite his oral and written request the Regional Head Kanpur has not been issued transfer order till 15.06.2022. As per the complainant all transfer orders have been issued by Regional Head, Kanpur, but his

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13385/1022/2022

request for transfer order has been intentionally delayed, though he was entitled for preference over and above any other nature of transfer order as mentioned in Central Office Letter No. 344 (Point 3 request transfer should be processes first followed by rotation/deployment).

3. The complainant also submitted that he was shocked as he is being continuously harassed by HR Officials of Regional Office, Kanpur. He was posted to a very far away Branch Nayaganj, Kanpur on 16.06.2022 which is more than 15 kms from his residence. He has complied with instructions of his transfer order and has reported at Nayaganj branch Kanpur on 18.06.2022. He is really very shocked, harassed and depressed to see that Nayaganj branch is situated at first floor and it is quite impossible for him to survive being 45% physically disabled person having acute problem in his knee and back bone. The complainant has requested to this Court to give directive to the respondent to post him at a nearby branch situated in ground floor preferably i) Panki ii) Kalyanpur and iii) Keshavpuram.

4. The matter was taken up with the Respondent vide letter dated 12.08.2022 under Section 75 of the RPwD Act, 2016.

5. In response, Chief Manager, Central Bank of India, Regional Office Kanpur vide letter dated 20.09.2022, has submitted that the complainant joined the bank under 'Normal' category and in April 2022, he produced his disability certificate. As per bank norms the competent authority for approving physical disability certificate given by CMO/sub Divisional Medical Officer and incorporating necessary changes in HRMS/service records for sub staff is DGM (HRD), Central Office. Request of the complainant has already been forwarded to Zonal Office, Lucknow vide letter dated 06.07.2022, and decision of the competent authority is still awaited. As such, as per the service records of the complainant, he is not a person with disability as on date.

6. The respondent further submitted that due to promotion as Head Cashier-II, services of the complainant vide office order dated 30.07.2021 were transferred to Branch office Sisahi on basis of district wise seniority. The complainant only after receiving his transfer order informed the bank about his physical disability from November 2016 i.e. before joining the bank and applied for cancelling his transfer/promotion order. His request was denied by Zonal Office Lucknow vide letter dated 10.09.2021. Despite repeated reminder, the complainant did not join at Sisahi branch. Accordingly, his absence was considered to be 'Unauthorized'. The same was conveyed to him vide letter



dated 14.09.2021. Meanwhile the complainant met with an accident and through mail dated 02.11.2021 requested bank to depute him temporarily at any Kanpur city center branch. Looking to his genuine request, it was considered by bank immediately and his services were temporarily deputed at Vikas Nagar, Kanpur branch vide letter dated 02.11.2021.

7. The respondent further submitted that after almost four months health condition of the complainant improved. Since there was acute shortage of staff at B/o Sisahi, his deputation was cancelled and he was advised to report back at his parent branch i.e. Sisahi, but the complainant again violated instruction of higher office and did not join B/o Sisahi. Again repeated reminders were sent to him, but the complainant did not join at B/o Sisahi. The respondent vide letter no. dated 26.04.2022 was again informed that his absence might be treated as 'Unauthorized'. Meanwhile, various transfer requests were considered by Central Office vide letter no. dated 28.04.2022 and the complainant request was also considered. Further, the complainant was the only clerk posted at B/o Sisahi at that time and his unauthorized absence affected branch working as well as customer service very badly. It was not possible to transfer the complainant without posting any other staff/reliever at B/o Sisahi. Since no request was available for posting at B/o Sisahi, only in June 2022, newly joined clerk could be posted at B/o Sisahi.

8. Since, the complainant deliberately disobeyed instructions of Controlling Office and remained "Unauthorised Absent" for 164 days from August, 2021 to May, 2022, it was decided by the Competent Authority to initiate Disciplinary action against him. A memo dated 15.06.2022 was issued to him calling for his explanation. However, taking a lenient view the services of the complainant was transferred to Kanpur City Center and placed at B/o Nayaganj, Kanpur vide Office Order dated 16.06.2022 where vacancy existed at that time.

9. The complainant has filed his rejoinder vide email dated 05.11.2022, and submitted that he had submitted the disability certificate well in time in April, 2022 and it took about three months in forwarding the same to Higher Authorities. He is not a sub staff as mentioned by the respondent in its reply. It was done to delay the issue and to keep it pending for a long time. As per him no disciplinary action is pending against him for absence. He again prayed for his posting at i) Panki ii) Kalyanpur and iii) Keshavpuram.

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



i) Shri Neeraj Singh Bhadauria – Complainant

ii) Shri C.M. Telang, Chief Manager; Shri Shivam Dixit – Respondent

Observations /Recommendations:

11. Complainant submits that he is posted in Nayaganj, Kanpur branch. He claims that the office in Nayaganj is situated on first floor and it is difficult for him to reach to his office because of his disability. Moreover, Nayaganj branch is situated at a distance of 15 K.Ms. from his home. He prays before this Court to post him to any branch located near his home. He has suggested following branches which are closer to his home – Panki, Kalyanpur and Keshavpuram.

12. Respondent submits that the complainant joined the bank under 'Normal' category and in April 2022, he produced his disability certificate. As per bank norms the competent authority for approving physical disability certificate and incorporating necessary changes in HRMS/service records for sub staff is DGM (HRD), Central Office. Request of the complainant has already been forwarded to Zonal Office, Lucknow vide letter dated 06.07.2022, and decision of the competent authority is still awaited. As such, as per the service records of the complainant, he is not a person with disability as on date.

13. Further the Respondent submits that after promotion on 30.07.2021, the Complainant was transferred to Sisahi. After being transferred the Complainant submitted 'disability certificate' claiming his disability since November 2016. Complainant never joined at Sisahi branch. Thereafter in November 2021 the Complainant met an accident and requested the Respondent establishment to transfer him to any branch in central Kanpur. Hence, the Complainant was temporarily deputed at Vikas Nagar branch w.e.f. 02.11.2021. After 4 months when his condition improved, his temporary deputation was cancelled and he was posted back to Sisahi branch where he never joined. On 15.06.2022 he was served memo for not attending office for 164 days.

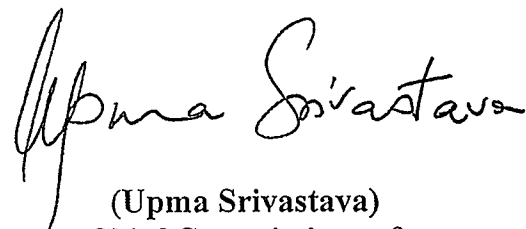
14. On the issue of updating of service record, Respondent informed this Court that after cross checking the Disability Certificate it has been moved forward for updating service record.

15. Considering the fact that present posting of the Complainant is within 15 K.Ms. of his home, this Court does not agree with the Complainant's submission that ^{he} should be posted near to his home. The main issue in the present Complaint is related to posting of the Complainant in a branch which is situated on First Floor. During online hearing, the Respondent assured that the Complainant will be posted to some branch situated on Ground Floor or to some branch in which facility of lift is available.



16. This Court recommends that the Respondent shall transfer the Complainant to some branch situated on Ground Floor or to some branch, within Kanpur city, in which facility of lift is available, as assured by the Respondent during online hearing. This Court dispose off this Complaint with liberty granted to the Complainant to approach this Court again in case the Respondent does not fulfil its assurance within 2 months of the date of this Recommendation Order.

17. The case is disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 29.03.2023



Case No.13617/1011/2023/152446

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. 13617/1011/2023/152446

Complainant:

Shri Naveen Kumar Rathee,
H. No.163, VPO Bhogipur Rajlu Garhi,
THE-GANAUR,
Distt. - Sonipat, Haryana-131101;
Phone: 8390792190, 9466738715;
Email: nvnrathee8@gmail.com

Respondents:

(1) The Comptroller & Auditor General of India,
Pocket-9, Deen Dayal Upadhyaya Marg,
New Delhi-110124;
Email: cagoffice@cag.gov.in

(2) Deputy Director General (Administration),
O/o Directorate General of Defence Estates,
Raksha Sampada Bhawan,
Ulaan Baatar Marg,
Delhi Cantt - 110 010
Email: ddgadm@dggest.org; Ph. 011-25674981

(3) The Chairman,
Staff Selection Commission (SSC HO),
Block-12, CGO Complex, Lodi Road,
New Delhi-110003
E-mail id- enquirysscnr@gmail.com

1. Gist of Complaint:

Shri Naveen Kumar Rathee, a person with 40% Mental Illness filed a complaint dated 16.10.2022 against the respondents regarding cancellation of the Final Result published by SSC of 04 candidates selected out of 5 vacancies by SSC for the post B 29 i.e. Divisional Accountant in the O/o CAG and ask them to send the updated permissible disabilities to SSC to update the document verification software by SSC for the fresh document verification for Divisional Accountant and UDC posts of others category (d+e).

2. Observations & Recommendations:


2.1 While going through the complaint filed by the complainant, it was observed that the complainant in response to SSC notification dated 22.10.2019 had applied under the category Mental Illness. He submitted that he had cleared the examination and appeared for document verification on 29.09.2021. As per him, only the post of ASO in Ministry of Electronics and Information Technology was identified suitable. On 08.04.2022, SSC declared the final result of SSC CGL-2019, but his name was absent in the final result list.

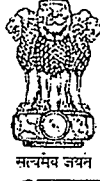
2.2 Similar matters have already been adjudicated by this Court and Order dated 06.12.2021 in Case No.12788/1011/2021 (Shri Amit Yadav Vs SSC); Order dated 09.12.2021 in Case No.12891/1011/2021 (Shri Bishwadip Paul Vs SSC); and Order 19.12.2022 in Case No.13351/1011/2022 (Shri Tijo M Thomas Vs SSC) have been passed wherein it was observed by this Court that the vacancies advertised before 04.01.2021 are not governed by MoSJE Notification dated 04.01.2021, hence, no intervention is warranted.

2.3 This Court is inclined to observe that the fault is not of the Respondent but of the establishments on behalf of which vacancies were issued by SSC. Before 04.01.2021, list which was prevalent was issued in 2013. In that list no post was identified suitable for Mental Disability category. In RPwD Act, 2016, provision was there to reserve vacancies for Mental Disability category, however till 04.01.2021 only few establishments identified posts suitable for mental disability category.

2.4 Hence, no further intervention by this Court is required in the instant matter and the case is accordingly, closed.

Dated: 27.03.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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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: 13496/1022/2022

Complainant

Shri Rajender Kumar
Inspector, (125447)
Office of the Commissioner of Income Tax
Income Tax Bhawan
Sector-14, Hisar
Email: insprkgangwa001@gmail.com

139002

Respondent

The Principal Chief Commissioner
Office of the Principle Chief Commissioner of
Income Tax (NWR), Aayakar Bhawan
Sector-17-E, Chandigarh
Tel: 0172-2544244/2544626
Email: chandigarh.dcit.hq.admin@incometax.gov.in

139003

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

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 15.09.2022 में कहना है कि वह 60 प्रतिशत लोकोमोटर दिव्यांगजन है। शिकायतकर्ता का कहना है कि वह आयकर विभाग हिसार में आयकर निरीक्षक के पद पर कार्यरत है। शिकायतकर्ता का कहना है कि माननीय प्रधान मुख्य आयकर आयुक्त उत्तर पश्चिम क्षेत्र चण्डीगढ़ के अधीन आयकर विभाग हिसार का कार्यालय आता है तथा प्रत्येक वर्ष वार्षिक स्थानांतरण नीति के तहत आयकर विभाग में कर्मचारियों के स्थानांतरण होते हैं। प्रधान मुख्य आयकर आयुक्त उत्तर-प्रदेश के स्थानांतरण आदेश सं 83 आफ 2022 दिनांक 24.08.2022 के तहत उनका स्थानांतरण हिसार (हरियाणा) से बठिण्डा (पंजाब) जो कि उनके गृह नगर से 200 कि.मी. दूरी पर कर दिया गया है।

2. शिकायतकर्ता का आगे कहना है कि प्रधान मुख्य आयकर आयुक्त उत्तर पश्चिम क्षेत्र, चण्डीगढ़ के स्थानान्तरण आदेश से पहले स्थानांतरण करवाने हेतु इच्छा जाहिर करने के लिए विभाग द्वारा आनलाईन माध्यम से फार्म भरवाया जाता है जिसमें शिकायतकर्ता ने उस समय स्थानांतरण न करने हेतु प्रार्थना की थी तथा उनको अवगत करवाया था कि वह दिव्यांगजन है तथा सफर करने में असमर्थ है लेकिन स्थानांतरण आदेश सं 83 आफ 2022 के आधीन उनका स्थानांतरण हिसार (हरियाणा) से बठिण्डा (पंजाब) कर दिया। अतः शिकायतकर्ता ने सीसीपीडी कोर्ट से विनम्र निवेदन किया है कि उनकी दिव्यांगता को देखते हुए उनका स्थानांतरण रूकवाया जाए।

3. The matter was taken up with the Respondent vide letter no. dated 14.10.2022 under Section 75 of the RPwD Act, 2016.

- 2 -

4. In response, Deputy Commissioner of Income Tax, Chandigarh, vide letter no. dated 15.11.2022 submitted that the complainant has been transferred since he has already spent 10 years at a station whereas the normal tenure of this station is 4 years. The official had filed representation against order number 83 of 2022 dated 24.08.2022. The said representation was disposed off vide order sheet noting dated 14.09.2022. The content of the said noting are reproduced and facts of the representation are that the prescribed tenure of Hisar station for transfer is 4 years. However, the complainant has been posted at Hisar station from 13.07.2012 till passing of this year order. Thus, the official has spent 10 years at a station whose prescribed station prescribed station tenure is 4 years for all other employees. Therefore, official has been availing exemption from transfer as per DoPT OM dated 31.03.2014 from past 6 years. The official has earlier been posted at Faridabad from 1997 to 1999 and has also spent tenure at Rohtak from 2000 to 2001 and again from 2011 to 2012. So, it is not the case that he has never been transferred or has never travelled due to transfer. Further the respondent submitted that Hisar 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 Hisar as well. Also, certain officials who have come to this region from far away regions such as Chennai/Mumbai have also been given their choice posting as they have come in NWR for only 3 years on loan basis and it will not be in the interest of justice if they are not posted on their choice stations.

5. The complainant has filed his rejoinder vide email letter dated 18.12.2022 submitted that he is not satisfied with the comments submitted by the respondent. The Complainant has requested to this Court to give directive to the respondent for cancellation his transfer order as early.

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

- i) **Shri Rajender Kumar – Complainant**
- ii) **Shri Robin Bansal, Dy. Commissioner (HQ) – Respondent**



Observations /Recommendations:

7. Complainant submits that he is employed on the post of Inspector, Income Tax in the Respondent establishment. He submits that he was posted in Hisar, Haryana office of the Respondent establishment. Later he was transferred to Bhatinda, Punjab by Order dated 24.08.2022, which is 200 K.Ms. away from his hometown. He claims that because of his disability he faces problem travelling to his new place of posting. He has prayed before this Court to cancel his transfer to Bhatinda.

8. Respondent submits that the Complainant was transferred since he has already spent 10 years at a station whereas the normal tenure of this station is 4 years. Complainant was posted in Hisar in 2014, since then he has been availing exemption from transfer.

9. Respondent further submits that Hisar 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 Hisar as well. Also, certain officials who have come to this region from far away regions such as Chennai/Mumbai have also been given their choice posting as they have come in NWR for only 3 years on loan basis and it will not be in the interest of justice if they are not posted on their choice stations.

10. During online hearing, Complainant submitted that he was posted in Hisar. He submitted that he faces additional problems in Hisar because he cannot travel due to his disability.

11. Respondent submitted following dates of Complainant's transfer and postings -:

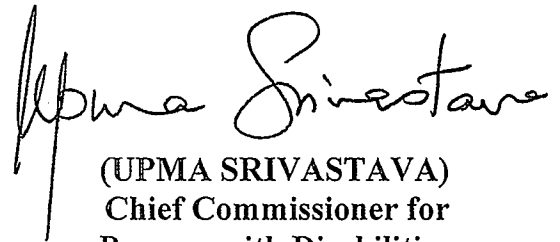
- Posting in Faridabad – 1997-1999
- Posting in Rohtak – 2000-2001
- Posting in Hisar – 2002 – 2011
- Posting in Rohtak – 2011-2013
- Posting in Hisar – 2013-2022.



12. Respondent further submitted that Complainant can avail government accommodation. Respondent further assured that if the Complainant will apply for government accommodation, the same shall be allotted to him on priority basis.

13. The fact that the Complainant was posted in Hisar for 18 long years during his entire tenure, is proof that the Respondent has accommodated the Complainant at his choice of posting. In the present case, the Respondent is ready to allocate the government accommodation to the Complainant on priority basis, hence, this Court concludes that no case of discrimination on the grounds of disability is made by the Complainant in the present Complaint. Intervention of this Court in the present Complaint is not warranted.

14. This case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 29.03.2023

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Case No – 13575/1033/2022/165485

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. 13575/1033/2022/165485

Complainant:

Shri Satwik Choudhury,
M-29, R/o B-5/159, Kalyani, Nadia,
West Bengal - 741235, Mobile: 9123645018;
Email: satwikchoudhury@gmail.com; s.choudhury@vecc.gov.in

139036

Respondent:

The Director
Variable Energy Cyclotron Center,
A/AF, Canal Side Road, AF Block,
Sector-1, Bidhannagar, Kolkata,
West Bengal-700064;
Email: ssom@vecc.gov.in

139037

1. Gist of Complaint:

1.1 The complaint, a person with 70% Mental Illness filed a complaint dated 22.10.2022 regarding Mental Harassment, Torture and Criminal Offence with a differently-abled by Variable Energy Cyclotron Center (VECC), Kolkata.

1.2 The complainant submitted that an illegal/forged doctoral committee report was issued intentionally by the Doctoral Committee of the Respondent to harass him conspiratorially. Grievances were conveyed to Dean-Academic and Director, although none of them addressed/resolved VECC administration depriving him from his entitlement. The aforementioned grievances were escalated to nodal appellate authority of CPGRAMS due to non-resolution by competent authority with same denial of duty and repeated intentional ignorance of all reminders. Vigilance Officer was also provided copies of the proof of above events, who also acted as none other an abettor of the crimes. Despite enough efforts by him as guided his doctoral adviser failed to publish even one paper by showing him innumerable times of rejection(s) from journals precluding any possibility of future publication and thereby darkening the future of the petitioner.

1.3 Dr. Anshul Singhal, Member of HBNI grievance cell, blatantly lied the petitioner that she's not the Member of the Cell. It's not only abetment, but doesn't it clearly hint a conspiracy.

2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 03.01.2023 and submitted that Shri Satwik Chaudhury was enrolled as Junior Research Fellow (JRF) for pursuing Ph.D. from VECC/HBNI on 12.09.2017. After completion of two years of his fellowship, his fellowship was upgraded to Senior Research Fellow (SRF) from 12.09.2019. Initially the academic performance of the complainant for the period 2018-19 as reviewed by the Doctoral Committee was Very Good, however, in the later Progress Review Reports for the years 2019-20 and 2020-21, the Doctoral Committee graded the performance of complainant as Good and Poor respectively. Due to complainant's poor performance in the progress review for the period 2020-21, the Committee recommended the complainant to appear for a fresh review in one month's time.

2.2 In the fresh Doctoral Committee Progress Review Report dated 29.12.2021 for the period 2020-21, complainant's performance was mentioned satisfactory and the Committee recommended the complainant to continue his research work and further advised to put emphasis on publishing the simulation work and to speed up in setting up the experiment. The Doctoral Committee in each of the review reports made their recommendations for improvement of complainant's performance. During his research the complainant wrote several emails to different eminent Scientists/Editors of the World and some of them express their concern about Complainant's health so that suitable action can be taken. Accordingly, a committee comprising of Senior Officials of VECC was constituted who in its meetings held on 06.07.2021 examined the matter and felt to inform parents of complainant. VECC had issued a letter dated 30.07.2021 to Complainant's father.

2.3 Due to absence from fellowship and not following up of the Doctoral Committee's Progress Review Report recommendation dated 29.12.2021, VECC issued letter dated 20.04.2022 to Complainant informing him to submit leave application and to join the fellowship immediately. In response, the Complainant vide letter dated 25.04.2022 informed that he was unable to attend work due to his illness and requested that he may be granted leave for that period of absence. Later on, the Complainant submitted a copy of Disability Certificate dated 07.02.2020 showing 70% Mental Illness. The Certificate was issued to Complainant on 07.02.2020 and the Complainant submitted the Certificate to VECC on 05.06.2022.

2.4 After knowing the fact of disability the Complainant's period of absence was regularized from March 2020 to November 16, 2021 as work from home and a letter dated 08.07.2022 was sent to the Complainant. In response to letter dated 08.07.2022, the Complainant's Mother had informed that the Complainant was not fit to join VECC as the concerned Doctor did not give him the fitness certificate. The Complainant neither joined with fitness certificate nor forwarded any communication requesting for extension of time limit for completion of his PhD programme as the Five-Year tenure period had already been over on 11.09.2022.



3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 25.01.2023 and has reiterated his complaint.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 10.03.2023. The following persons were present during the hearing:

Complainant:

Satwik Choudhury

Respondent:

Dr. Tilak Ghosh, Scientific Officer (G) & Dean (Students Affair)

Prof Sandip Pal, Scientific Officer (H)

Shri Samit Bandhopaydhay, Scientific Officer (G)

Ms. Chandra Elangovan, Admin Officer - III

5. Observations & Recommendations:

5.1 The Complainant in its written Complaint alleged that illegal/forged doctoral committee report was issued with intention to harass him. Further it is alleged that forged letter was issued by the Respondent administration depriving the Complainant from his 'entitlement'. It is alleged further that despite enough efforts made by the Complainant, his doctoral adviser failed to publish even one paper by showing him rejection from journals and hence precluding possibility of future publication of papers written by him.

5.2 Complainant has levied allegations that certain officers of the Respondent establishment conspired against him and did not cooperate. Complainant has not filed any proof to this effect. Certain allegations pertaining to State Commissioner for Persons with Disabilities, West Bengal have also been levied by the Complainant without supported by evidence.

5.3 Complainant further sought following relief -:

- a) Written apology from the concerned officers of the Respondent establishment with assurance that 'unlawful' behavior will not be repeated in future.
- b) Arrangements and assurance of suitable recruitment for the petitioner.
- c) Performance of duties by the Respondent establishment.

5.4 To support his contention that doctoral committee report was illegal and forged, Complainant has attached Attachment No. 2. This document is email dated 16 November 2021, sent by the Complainant addressed to one Sri P. V. Vasudeva Rao. In this email Complainant has filed an appeal against report of doctoral committee. This Court is not inclined to accept the contention of the Complainant that this document proves that doctoral committee report was illegal or forged. This email is merely a 'complaint' written by the Complainant against report of doctoral committee.



5.5 To support his allegation relating to ‘forged letter’ written by Respondent administration, Respondent has attached Attachment No. 9. This document is again an email dated 20 July 2022 addressed to ‘Administrative Officer III/B. In this email, Complainant has filed objections relating to his absence. This document also cannot be considered as proof of ‘forged’ letter written by the Respondent administration.

5.6 During online hearing, Complainant further alleged that the Respondent establishment is ‘abusing’ the Complainant since 2021. He claims that he lodged several grievances with the Dean and Director Respondent establishment, however, no action was taken.

5.7 This Court inquired from the Complainant how many numbers of times he visited his guide since 2017. Complainant informed that he visited his guide on number of occasions in 2017, 2018 and 2019. Thereafter, due to Covid and due to his disability, he did not visit. The Court further inquired about the work he did from 2017 till 2019. He submitted that he wrote research paper during this period, however the same was rejected by his guide. The Court further inquired what the Complainant believes to be reason behind rejection of his paper. Complainant did not provide any direct answer however, submitted that he took ‘Applied Physics’ as subject on his own will. However, he did not study this subject during his graduation or post-graduation.

5.8 Respondent also gave elaborated details during online hearing. Respondent submitted that from 2017 -18 the Complainant performed ‘course-work’. Thereafter in 2018-19 he performed ‘simulation-work’. Then in 2019 he was awarded good marks by Performance Review Committee. The work he performed and paper he wrote was reported to various journals for review and publication. One of the reviewers accepted his work for printing after minor correction, however other reviewer recommended for major correction. Respondent appealed to the editor of the journal who got the paper reviewed by other reviewers however, the result was same. Thereafter final remarks were given that “experimental work should be conducted.”

5.9 Considering all these facts, Preference Review Committee report for Complainant’s work performed during 2018-19 was ‘good’. However, for 2019-20 the report of the committee was ‘poor’ because the Complainant was performing only repetitive work with very little improvement in simulation work. Thereafter, Covid happened and the Complainant stopped coming to the campus of the Respondent establishment.

5.10 Respondent further submitted that in end of 2021 Performance Review Committee found his work ‘poor’ and asked him to appear within 1 month. He appeared and committee recommended that he should join again and perform experimental work. After that he only came 4-5 times and did not perform the experimental work.

5.11 This Court specifically asked the Respondent how can the Complainant be given any kind of relief, considering the Complainant’s disability.

Respondent specifically answered that the Complainant can get fitness certificate from doctor and visit campus of Respondent establishment to perform experimental work. Respondent informed that the same status has been informed to the Complainant as well. Complainant expressed his dissatisfaction with the Respondent's suggestion and submitted that considering the things done in past, he does not trust the guide.

5.12 This Court, after perusal of the written Complaint and Reply and after listening the submissions made by both the parties during online hearing, concludes that the Complainant has not made any case of discrimination on the basis of disability. Complainant has not submitted any proof to establish that the work/paper written by the Complainant were rejected because of his disability. Furthermore, this Court cannot step into the shoes of Professor/Academician of 'Applied Physics' and review the work/paper written by the Complainant to evaluate the work on merits. The scope of this Court is limited to look for discrimination on the ground of disability, to which effect the Complainant has not established his case.

5.13 This Court also expresses satisfaction with the fact that the Respondent categorically stated that if the Complainant will join the Respondent establishment and is willing to perform the experimental work then his application to change the guide can also be considered and his request will be forwarded to the appropriate committee.

5.14 This Court recommends that if Complainant is willing to pursue his Ph.D. any further, he can visit and meet Dean (Academics) and express his willingness to continue his Ph.D. If Complainant desires to change the 'guide' such request can be made in writing and in such case the Respondent shall forward his application to the appropriate authority/committee. All necessary cooperation shall be extended by the Centre in holding his hand for completing the experimental work and change of guide if so requested.

5.15 Accordingly, the case is disposed off.

Dated: 31.03.2023


(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.13560/1033/2022/162989

Complainant:

Mr Karri Uma Maheshwar Rao
202 Rahul Kunj Plot No 7
Srinivasanagar, Ring Road
Vizianagaram- 535002
Mobile: 9491602830
Email: umamaheswararao.svn@gmail.com

139034

Respondent:

Chairman & Managing Director
National Handicapped Finance & Development Corporation
Unit No. 11 & 12, Ground Floor,
DLF Prime Tower,
Okhla Phase - I, Near Tehkhand Village,
New Delhi – 110020; Email: nhfdc97@gmail.com

139035

Affected Person: Mr. Rahul Ranjan Karri, a person with 100% Hearing Impairment

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 02.11.2022 regarding non-payment of scholarship from NHFDC to his son, Mr. Rahul Ranjan Karri.

1.2 The complainant has submitted that his son Mr. Rahul joined at NID, Ahmedabad in academic year 2017-18 and is a scholarship awardee in NHFDC. His Registration No. is TF/17/01046. He received scholarship in the year 2017 for the Ist Semester fee amounting to Rs. 1,40,500/- on 21.08.2018. The Complainant is renewing for the next academic years and moreover his son's academic performance is more than satisfactory for the scholarship. But his son didn't get any further scholarship. The Complainant further submitted that his son is at the verge of his graduation and lots of projects are to be done that requires more money which the Complainant can't afford. Delay in providing the scholarship might hamper his son's academic journey.

2. Submissions made by the Respondent:

2.1 Chief Manager (S&P), NHFDC filed reply dated 27.12.2022 and submitted that the Board of Trust Fund for Empowerment of Persons with

1

Disabilities approved the Scholarship Scheme under Trust Fund for Persons with Disabilities in its meeting held on 30.04.2010 wherein NHFDC was entrusted responsibility of providing scholarship to eligible persons with disabilities as per Scheme. The Scholarship amount in respect of fresh Scholarships and renewal thereof was provided by NHFDC as per conditions contained in the Scheme, in accordance with the sanction accorded by Scholarship Screening Committee (SSC).

2.2 He further submitted that as the Trust Fund was merged with National Fund by DEPwD and National Fund being under control of DEPwD so it was decided by the Governing Body of National Fund in its first meeting held on 09.01.2018 that all Fresh Scholarships after Academic Year 2017-18 are to be handled by DEPwD and only renewal Scholarships under Trust Fund are to be handled by NHFDC. Accordingly, applications received from Shri Rahul Ranjan Karri for Scholarship was placed before Scholarship Screening Committee (SSC) each year and the outcome are as under: -

a) Academic Year (AY) 2017-18 – An amount of Rs. 1,09,500 for Course fee & Rs. 31,000 for Maintenance amount was sanctioned to Shri Rahul Ranjan Karri by SSC.

b) AY 2018-19 – SSC could not sanction the renewal scholarship, as Shri Rahul Ranjan Karri could not provide Original Bonafide Certificate as a proof of continuation of his study from his Institution as per requirement of Scheme.

c) AY 2019-20 - SSC could not sanction the renewal scholarship, to Shri Rahul Ranjan Karri as original copy of Scholarship application form was not received from him.

d) AY 2020-21 – Course fee receipts were not submitted by Shri Rahul Ranjan Karri for his 4th year (7th and 8th Semester) with his application for scholarship, so SSC could not sanction any course fee to him and sanctioned maintenance amount of Rs. 31,000/- as per scheme.

In accordance with the sanction, NHFDC has already released Rs. 31,000/- to Shri Rahul Ranjan Karri towards Scholarship in respect of his academic year 2020-21.

2.3 NHFDC has already released Scholarship amount to Shri Rahul Ranjan Karri as per sanction granted by SSC of Trust Fund for Persons with Disabilities as per conditions of Scholarship Scheme framed/approved by Board of Trust Fund. Further, NHFDC is not in position to release any funds further to Shri Rahul Ranjan Karri under Scholarship (Trust Fund) beyond approval of SSC of Trust Fund for Persons with Disabilities.

3. Submissions made in Rejoinder:

3.1 The respondent reply was forwarded to the complainant vide letter dated 20.01.2023 for submission of rejoinder but no rejoinder has been filed by the Complainant.

4. **Hearing:** The case was heard via Video Conferencing by ^{chief} Commissioner for Persons with Disabilities on 10.03.2023. The following persons were present during the hearing:



Complainant: Karri Uma Maheshwar Rao
Respondent: Sri Manoj Kumar Sahu, Chief Manager, NHFDC

5. Observations & Recommendations:

5.1 The complainant filed a complaint dated 02.11.2022 regarding non-payment of scholarship from NHFDC to his son, Mr. Rahul Ranjan Karri. The complainant has submitted that his son Mr. Rahul joined at NID, Ahmedabad in academic year 2017-18 and is a scholarship awardee in NHFDC. His Registration No. is TF/17/01046. He received scholarship in the year 2017 for the 1st Semester fee amounting to Rs. 1,40,500/- on 21.08.2018. The Complainant is renewing for the next academic years and moreover his son's academic performance is more than satisfactory for the scholarship. But his son didn't get any further scholarship. The Complainant further submitted that his son is at the verge of his graduation and lots of projects are to be done that requires more money which the Complainant can't afford. Delay in providing the scholarship might hamper his son's academic journey.

5.2 Respondent applications received from Shri Rahul Ranjan Karri for Scholarship was placed before Scholarship Screening Committee (SSC) each year and the outcome are as under: -

- a) Academic Year (AY) 2017-18 – An amount of Rs. 1,09,500 for Course fee & Rs. 31,000 for Maintenance amount was sanctioned to Shri Rahul Ranjan Karri by SSC.
- b) AY 2018-19 – SSC could not sanction the renewal scholarship, as Shri Rahul Ranjan Karri could not provide Original Bonafide Certificate as a proof of continuation of his study from his Institution as per requirement of Scheme.
- c) AY 2019-20 - SSC could not sanction the renewal scholarship, to Shri Rahul Ranjan Karri as original copy of Scholarship application from was not received from him.
- d) AY 2020-21 – Course fee receipts were not submitted by Shri Rahul Ranjan Karri for his 4th year (7th and 8th Semester) with his application for scholarship, so SSC could not sanction any course fee to him and sanctioned maintenance amount of Rs. 31,000/- as per scheme.

5.3 In accordance with the sanction, NHFDC has already released Rs. 31,000/- to Shri Rahul Ranjan Karri towards Scholarship in respect of his academic year 2020-21. NHFDC has already released Scholarship amount to Shri Rahul Ranjan Karri as per sanctions granted by SSC of Trust Fund for Persons with Disabilities as per conditions of Scholarship Scheme framed/approved by Board of Trust Fund. Further, NHFDC is not in position to release any funds further to Shri Rahul Ranjan Karri under Scholarship (Trust Fund) beyond approval of SSC of Trust Fund for Persons with Disabilities.

5.4 During online hearing, Respondent submitted that if the Complainant will submit the requisite documents i.e., original receipts of fees submitted by



the Complainant, certified by the college then the issue can be resolved and application of the Complainant can be put before SSC for release of amount.

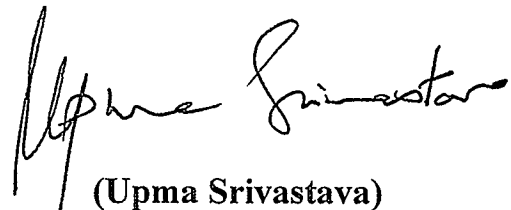
5.5 This Court is satisfied with the submissions of the Respondent. Respondent cannot issue scholarship amount in absence of requisite documents. It is utmost duty of the Respondent to follow due procedure so that it can be assured that the scholarship amount is granted to truly deserving person and it is not being misused.

5.6 This Court recommends that the Complainant shall submit the requisite documents i.e., original receipts of fees submitted by the Complainant, certified by the college along with an application mentioning the reasons for delay. Thereafter the Respondent shall forward the documents and the application of the Complainant to SSC for release of amount.

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: 31.03.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities