



Exp

## 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: 13220/1022/2022

Complainant:

Shri Vijay Krishna Mathur,  
General Secretary,  
Punjab & Sind Bank Officers Federation,  
10, Sai Vihar Colony, Naya Kheda,  
Near Abdul Kalam Technical University,  
Jankipuram Extension, Lucknow-226031.  
Contact No: 09415502592  
Email: mathurvijayk@gmail.com

- R36283

Vs

Respondent:

The Manager,  
Punjab & Sind Bank,  
H.O. Human Resources Development Dept.,  
5<sup>th</sup> Floor, Bank House,  
21, Rajendra Place, New Delhi-110008.  
Phone No: 011-25716407  
Email: ho.hrd@psb.co.in

- R36287

### GIST OF COMPLAINT

The complainant, Shri Vijay Krishna Mathur, General Secretary, All India Punjab & Sind Bank Physically Handicapped Employees Association and General Secretary, Punjab & Sind Bank Officers Federation (UP and Uttarakhand) has filed a complaint dated 22.04.2022 alleging that Shri Asheesh Bansal, a person with 50% Locomotor disability, was transferred from Bhatinda Zone to Faridkot Zone on promotion.

2. The complainant has submitted that Shri Asheesh Bansal has been transferred on promotion from Bhatinda Zone to Faridkot Zone with the instruction to join his new place of posting immediately. It has also been mentioned in the letter that as per rules he is not eligible for TA/DA and also joining time is not applicable. It shows that the Bank is too much against the employees with disability. He also submitted that when he came to know about the matter he immediately wrote a request letter to the Management to withdraw these unlawful transfer order but no reply has been received till filing of the complaint. He also cited the judgement passed by the Court of Chief Commissioner for Persons with Disabilities on 15.01.2021 in the matter titled Satish Chandra Sharma Vs Zonal Manager, Punjab and Sind Bank, Bareilly (Case No. 12369/1022/2020). He has requested for (i) to immediate withdraw all unlawful transfer orders in all zones of the bank, (ii) to always obey Government's guidelines and do not pass any order to transfer of the employees with disability in the bank, (iii) imposed penalty for wilful disobeying the Government Orders regarding employees with disabilities and (iv) any other order as deemed fit by the Court.

3. The matter was taken up with the Respondent vide letter dated 11.05.2022 under Section 75 of the RPwD Act, 2016 followed by reminder dated 21.06.2022.

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं० जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275  
5<sup>th</sup> 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 मविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

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

4. In response, General Manager (HRD), Punjab & Sind Bank, New Delhi, vide letter dated 28.06.2022 has submitted that Shri Asheesh Bansal, Senior Manager has been transferred back to Bhatinda Zone at a branch which is located at comfortable location from his residence. He also assured this Court that all employees with disabilities will be deployed at locations easily accessible at a location near to their place of residence.

5. The General Manager (HRD), Punjab and Sind Bank in his affidavit has stated that the alleged grievance has not been raised by Shri Asheesh Bansal but the same has been raised by Shri Vijaya Krishna Mathur, General Secretary of Punjab and Sind Bank's Federation and as per him he has no locus-standi to raise any such alleged grievance on behalf of Shri Asheesh Bansal. Shri Asheesh Bansal was transferred on his request, neither Shri Asheesh Bansal had raised any grievance nor any grievance has been raised by anybody else on his behalf, much-less by the Officer's Federation, who has no locus-standi to raise any such grievance. The transfer order was issued keeping in view the guidelines issued by D/oP&T vide O.M. dated 31.03.2014 including the request made by Shri Asheesh Bansal for his transfer. There was no discrimination in the matter of transfer of Shri Asheesh Bansal from Jalalabad to Zonal Office Bhatinda as alleged, more particularly when the said transfer was effected at the request of Shri Asheesh Bansal on 01.06.2022. He has now been posted at Branch Office Model Town, Bhatinda w.e.f. 16.06.2022.

6. The complainant did not file the reply against the rejoinder letter issued by the Office of CCPD vide letter dated 20.07.2022

7. **Hearing:** The case was fixed for hearing on 08.09.2022 which was re-scheduled to 13.12.2022. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 13.12.2022. The following were present:

- i) Shri Vijay Krishna Mathur: **Complainant**
- ii) Shri Kanwar Lal, DGM (HRD) Head Quarter, Punjab & Sind Bank: **Respondent**

**Observations /Recommendations:**

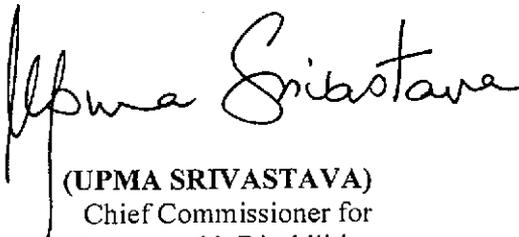
8. Complaint is filed on behalf of employee in Respondent establishment, namely Shri Asheesh Bansal. Complainant submits that the Respondent establishment is engaged in transferring of divyang employees. Complainant points towards a specific instance of employee named Shri Asheesh Bansal. He was transferred from Bhatinda zone to Faridkot zone. Complainant further submits that the Respondent establishment denied TA/DA. Complainant wrote a letter of request for releasing TA/DA however, till date no reply has been filed by the Respondent establishment.

9. Respondent submits that the Complainant has now been transferred back to Bhatinda zone. Further, Respondent assured that in future will be posted to locations near to their hometown.

10. During online hearing, complainant affirmed that his grievance has now been settled.

11. Since the grievance has now been settled hence, no intervention in this Complaint is required. However, this Court is inclined to observe that the Respondent shall implement DoPT guidelines relating to transfer and posting of divyang employees.

12. The case is disposed off.

  
(UPMA SRIVASTAVA)  
Chief Commissioner for  
Persons with Disabilities

Dated: 21.12.2022



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. 13328/1014/2022

### Complainant:

Shri Oomang Bablani,  
R/o Shahani Colony, Navghar Road, Mulund East,  
Mumbai-400081; Email: oomangbablani99@gmail.com  
Phone: 7204711192

— R36304

### Respondents:

(1) Pr. DGIT (HRD), Directorate of Income Tax,  
Human Resource Development,  
Central Board of Direct Taxes,  
2<sup>nd</sup> Floor, Jawaharlal Nehru Stadium,  
Pragati Vihar,  
New Delhi-110003;  
Email: dgithrd@incometax.gov.in  
Phone: 011-24369294; 9013854229

— R36305

(2) Regional Director,  
Staff Selection Commission (WR),  
Pratishtha Bhawan, Old C.G.O. Building,  
Maharshi Karve Road, Mumbai-400020  
Email: sscnomwr@gmail.com; rdsscwr@gmail.com

— R36306

Affected Person: The complainant, a person with <40% Specific Learning Disability

### 1. Gist of Complaint:

1.1 The complainant filed a complaint dated 21.06.2022 against the respondents regarding non-consideration for joining as Tax Assistant in CBDT being a candidate with Specific Learning Disability (SLD) despite being finally selected as Tax Assistant in CBDT through CGLE 2018.

1.2 The complainant submitted that he had cleared the tests conducted by SSC (Respondent No.2) through CGLE-2018 for recruitment to the post of Tax Assistant in CBDT (Respondent No.1). During document verification he was given an Option Form for Posts from among 23 posts in descending order for which SLD category candidates were eligible. There were 49 posts for which recruitment was conducted. The complainant being an SLD candidate was shown eligible only for 23 posts. He filled up the Option Form and submitted to SSC. When final result published, he had been declared passed and was selected for the post of Tax Assistant

(Contd... Page-2)

( 2 )

in Income Tax Department i.e. CBDT. The complainant further submitted that the Respondent No.1 vide their Letter F. No.HRD/CM/127/12/2020-21/153 dated 16.06.2021 called for the preference of the Zone for posting. The complainant submitted preference form by post to the Respondent No.1. When the Zone Allocation List was published on 07.10.2021, the name of the complainant was not appearing in the list. He inquired from the respondent for not appearing his name in the zone allocation list as well as sent various emails for the same but no reply has been received from the respondent.

**2. Submissions made by the Respondent:**

2.1 The Under Secretary, Staff Selection Commission (Respondent no. 2) vide letter dated 20.08.2022 has inter-alia submitted that the Staff Selection Commission is a recruiting agency which conducts examinations for recruitment of various Group B and Group C posts for filling up the vacancies reported by the indenting Ministries/Departments/Organizations. The total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category, including reservation for PwDs through the system of maintenance of roster are the exclusive domain of respective indenting Ministries/Departments/Organizations. Thus, they report the vacancies to the Commission to be filled up by Direct Recruitment. The Commission does not have any role in the maintenance of reservation roster for PwDs in a particular indenting Department or in the recognition of a particular post suitable for a particular disability. He further submitted that the post of Tax Assistant in CBDT, at the time of DV of CGLE-2018, was identified for BL, OL, PD, D, PB, B, OA, OAL.

2.2. The Respondent No.1 filed their reply dated 14..09.2022 and inter-alia submitted that the Benchmark Disabilities as specified in Clause (d) of Section 34(1) of the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] and Clause (e) as well, as far as it affected by Clause (d) i.e. persons with disabilities namely Autism, Intellectual disability, Specific Learning Disability, Mental Illness and Multiple Disabilities to the extent covered under Clause (d) are considered to be not suitable for the post of Group-A, B and C Cadres of the Income Tax Department by the Expert Committee constituted by the CBDT in compliance of the Order of the Hon'ble Supreme Court in the matter of Shri Anuj Goyal Vs UOI and Others for identification of posts suitable for persons with Benchmark Disabilities. The Minutes of the Meeting of the Expert Committee had been communicated vide email dated 26.07.2019 to Shri K.V.S. Rao, Director, Department of Empowerment of Persons with Disabilities [DEPWD] (who was also a member of the Expert Committee); and no objections were raised by DEPWD. The minutes contain the details of posts which were found suitable for divyangjan.

(Contd... Page-3)



( 3 )

2.3 In the case of Shri Oomang Bablani, notification was issued by SSC on 05.05.2018 for filling up of online form for CGLE-2018. However, DEPWD published the Notification on 04.01.2021 without inclusion of Minutes of Meeting of the Expert Committee despite the communication made by this directorate. Meanwhile, the result of CGLE-2018 was declared on 01.04.2021 by SSC. Subsequently, dossiers of selected candidates had been received in this directorate till 04.06.2021, including the dossier of Shri Oomang Bablani who is selected in Other Category under Clause (d) of Section 34(1) of RPwD Act, 2016 for the post of Tax Assistant cadre under CGLE-2018. In respect of the Minutes of the Meeting of the Expert Committee which was approved by the then DGIT-HRD on 19.07.2019, on the basis of the dossier of Shri Oomang Bablani, a candidate selected with disabilities mentioned in Clause (d) of Section 34(1) of RPwD Act, 2016 i.e. Autism, Intellectual Disability, Specific Learning Disability and Mental Illness and Multiple Disabilities to the extent covered under Clause (d), was returned to SSC on 08.09.2021 after getting approval from the competent authority.

**3. Submissions made in Rejoinder:**

The complainant in his rejoinder dated 30.09.2022 reiterated his complaint and prayed that the submissions to SSC preliminary objections the plea of SSC be thoroughly rejected. He has requested this court to pass necessary instructions to Income Tax Department and SSC to be extra sensitive towards candidates with disabilities and facilitate his joining.

**4. Observation/Recommendations:**

4.1 For proper disposal of the present Complaint, perusal of the List of Identified Posts issued by MoSJ&E dated 04.01.2021 is indispensable. In MoSJE list, the post of 'Tax Assistant' (Group C) is mentioned at Sr. No. 1432 of the list and is identified suitable for SLD category. Hence, Respondent's contention is wrong. Respondent's contentions are contrary to law. Note 6 of notification dated 04.01.2021 is clear. It lays down that when any department has separate list of identified posts, the list which has wider scope supersedes the other one. In this case, 2021 list of MoSJE has wider scope because post of Assistant is identified suitable for 'Mental Illness' at Serial No. 80 (Group B posts) and at Serial No. 89 (Group C posts) of the list dated 04.01.2021. As far as exemption is concerned, there is proper procedure laid down in Section 34 of RPwD Act, 2016 to seek exemption. As per the provision, if any department seeks exemption from reservation, it has to send the proposal to Department of Empowerment of Persons with Disabilities (M/o SJ&E), which may decide to exempt after consultation with O/o CCPD.

4.2 Another issue which is relevant for this Court's consideration is that the impugned notification was issued in 2018 and DEPWD issued list of identified posts on 04.01.2021, in which the post of 'Tax Assistant' is identified suitable for 'SLD' category of divyangjan. Hence, the issue is whether the list dated 04.01.2021 was

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( 4 )

applicable on the impugned notification. On this issue this Court concludes that the Respondent had an opportunity to implement the list while issuing the final result because the result of the examination was declared on 01.04.2021, after the list dated 04.01.2021 was issued by DEPWD.

4.3 Hence, this Court concludes that the recommendations given by the 'expert committee' constituted by the Respondent contradicted the DEPWD list of Identified Posts dated 04.01.2021 and hence are not valid.

4.4 Hence, this Court recommends that the Complainant shall be appointed against the post of 'Tax Assistant' in the Respondent establishment.

4.5 Accordingly the case is disposed off.

**Dated: 22.12.2022**

  
(Upma Srivastava)  
Chief Commissioner  
for Persons with Disabilities



Ext 17

## 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. 13353/1092/2022

### Complainant:

Shri Abhijit Mondal  
S/o Shri Sristidhar Mondal  
Vill & P.O. Orgram, P.S. – Bhatar  
District: Burdwan, Pin: 713128 (WB)  
Email: abhijitmondal.it@rediffmail.com

— R36346

### Respondent:

Director/CEO  
Beekay Auto Pvt. Ltd.  
NH-2, Chandni More  
Sattar Mile, Burdwan-713101, West Bengal  
Email: beekayautoburdwan@gmail.com  
Mobile: 9932049462

— R36347

**Affected Person:** The complainant, a person with 80% Locomotor Disability (Right Lower Limb)

### Gist of Complaint:

The complainant filed a complaint dated **08.06.2022** regarding deprivation of rights of a person with disability by the car manufacturer M/s Maruti Suzuki India Ltd. and the Dealer M/s Beekay Auto Pvt. Ltd.

2. The complainant submitted that he was granted a valid GST Concession Certificate for the purchase of a car – Maruti-Suzuki Swift VXI AGS. He booked the car with the dealer, "Beekay Auto Pvt. Ltd. at NH-2, Chandni More, Sattar Mile, Burdwan, West Bengal which was delivered to him on 11.12.2021. The complainant alleged that the said car was registered by the dealer in the wrong class of vehicle as 'Motor Car (LMV)' whereas it should have been registered as 'Adapted Vehicle as per Para No.3 of the GST Concession Certificate dated 06.03.2021. The dealer collected Rs.44,000/- as 'Road Tax amount' from the complainant, but as per the receipt merely Rs.35,734/- was paid against Road Tax amount and Incidental Charges, the remaining amount Rs.8,266/- was unknown and unexplained to him by the dealer. The dealer also collected Rs.27,257/- against car insurance and did not allow any concession in the insurance premium being owned by a person with disability.

*Abha Srivastava*

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3. The complainant prayed that the dealer may be directed (1) to get the car registered as an 'Adapted Vehicle' within a fixed time limit for better mobility; and (2) to refund the concessional amount of the insurance premium for a person with disability.

4. The matter was taken up with the Respondent vide letter dated **14.07.2022** under Section 75 of the RPwD Act, 2016 but despite reminder dated **07.09.2022**, no response has been received from the respondent. Therefore, hearing scheduled on **18.10.2022**.

**Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **18.10.2022**. The following were present:

- Shri Abhijit Mondal - Complainant
- Sh. Anindya Director/CEO, Beekay Auto Pvt. Ltd on behalf of respondent

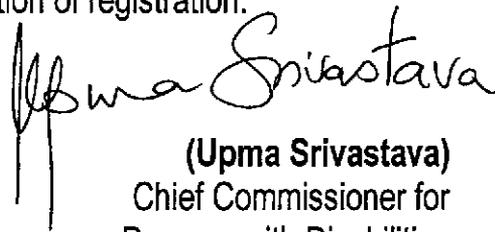
**Observations & Recommendations:**

5. The complainant submits that he was granted a valid GST concession certificate for the purchase of the car. Complainant claims that he booked a car with the Respondent establishment. The complainant alleges that the said car was registered by the dealer as 'motor car' instead of registration as 'adapted vehicle'. Further, the complainant claims that amount of Rs. 8,266/- was charged in excess towards road tax.

6. During online hearing, the Respondent submitted that he is ready to refund excess amount but the Complainant is not submitting his bank's details. Further, the Respondent claimed that the process of alteration of registration has been informed to the complainant, however, he does not take any steps towards the same.

7. This Court concludes that no case of discrimination on the case of disability is made by the complainant. Both the complainant as well as the Respondent can approach the concerned RTO Office and take necessary steps for alteration of registration.

8. The case is disposed off.

  
(Upma Srivastava)  
Chief Commissioner for  
Persons with Disabilities

**Dated: 23.12.2022**

Extra



## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)  
दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)  
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment  
भारत सरकार / Government of India

Case No. 13337/1141/2022

### Complainant:

Shri Lalit Kumar,  
Divyang Booth, ESIC Hospital,  
Jhilmil, Shahdara, Delhi-110095  
Email: lalitsharma0719@gmail.com;

- R36310

### Respondent:

The Medical Superintendent,  
ESIC Hospital, Jhilmil,  
Shahdara, Delhi-110095;  
Email: jhilmildelhi@esic.nic.in

- R36311

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

### 1. Gist of Complaint:

1.1 The complainant filed a complaint dated 09.06.2022 submitting that since 1992 he had been allotted a booth in ESIC Hospital, Jhilmil, Shahadra. An electricity sub meter was also installed in the booth. He had deposited the requisite fee for digital sub meter. The hospital administration is taking reading on regular basis but sending the bills on average basis.

1.2 The complainant prayed that a Digital Sub-meter may be installed at his booth and billing may be done on the basis of actual consumption of electricity. The old bills may also be reviewed.

### 2. Submissions made by the Respondent:

The respondent filed a reply dated 10.09.2022 and submitted that the complaints of the complainant are baseless as the digital meter has not still been installed in spite of their Office communication dated 01.04.2022 and subsequent reminders dated 06.06.2022 and 04.07.2022. Further, the bill had not been calculated on average but it is calculated on actual basis.

### 3. Submissions made in Rejoinder:

The reply of the respondent was sent to complainant through email on 23.09.2022 for filing Rejoinder, but no rejoinder has been received from the complainant so far.

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( 2 )

**4. Hearing:**

The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **24.11.2022**. The following persons were present during the hearing:

- (1) Shri Lalit Kumar, Complainant in person.
- (2) None appeared for Respondent.

**5. Observations & Recommendations:**

5.1 The complainant filed a complaint dated 09.06.2022 submitting that since 1992 he had been allotted a booth in ESIC Hospital, Jhilmil, Shadhara. An electricity sub meter was also installed in the booth. He had deposited the requisite fee for digital sub meter. The hospital administration is taking reading on regular basis but sending the bills on average basis.

5.2 The complainant prayed that a Digital Sub-meter may be installed at his booth and billing may be done on the basis of actual consumption of electricity. The old bills may also be reviewed.

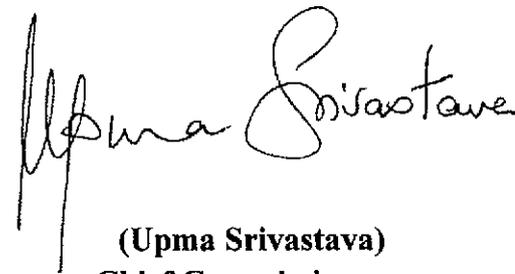
5.3 The respondent filed a reply dated 10.09.2022 and submitted that the complaints of the complainant are baseless as the digital meter has not still been installed in spite of their Office communication dated 01.04.2022 and subsequent reminders dated 06.06.2022 and 04.07.2022. Further, the bill had not been calculated on average but it is calculated on actual basis.

5.4 Since the Complainant has submitted requisite fees hence, this Court recommends that the Respondent shall ensure that the digital meter is installed. Further, extend all benefits which are given to divyangjan, in favour of the Complainant. Taking a sympathetic view, the Respondent shall assist the Complainant in obtaining all the benefits which are given to divyangjan.

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

5.6 Accordingly the case is disposed off.

**Dated: 23.12.2022**



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



सत्यमेव जयते

Expt

**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. 13375/1144/2022

**Complainant:**

Ms. Moondeep Batra,  
 R/o FE 37, Ground Floor,  
 Near Shiv Mandir Shivaji Enclave,  
 Delhi -110027  
 Email: moon\_deep@rediffmail.com; moonbatra04@gmail.com;

— R36348

**Respondent:**

The Deputy Commissioner of Police,  
 West District, 1st Floor Police Station,  
 Vishal Cinema Road, Rajouri Garden,  
 Delhi – 110027; Email: dcp-west-dl@nic.in

— R36349

**1. Gist of Complaint:**

1.1 The complainant a person with 70% visually impairment filed a complaint dated 11.07.2022 regarding violence against disabled person and no assistance by the Delhi Police; and also regarding empowerment for disabled women through various schemes under the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016].

1.2 The complainant submitted in her email dated 21.05.2022 that she had informed to the State Commissioner for Persons with Disabilities, Govt. of NCT of Delhi (SCPD, Delhi) about an attempt made by her husband Shri Ajay Chadha upon her life to kill her on 05.04.2022 by strangling her neck and hitting hard upon her left ear, due to which her ear drum of left ear was punctured and she lost hearing sense of left ear (which is called traumatic perforation in medical terminology). In pursuance, SCPD Delhi asked ATR report from DCP West Police Station several times, but no response was received till date.

1.3 The complainant submitted that she came here in the Court of CCPD because—

- (1) No action against her husband is taken even after FIR is lodged on 19.04.2022.
- (2) No charge-sheet was filed before the Court unnecessarily delaying in investigation.

(Contd... Page-2)

( 2 )

- (3) Accused works in NTPC and has influenced the investigation so far etc.

The complainant prayed to provide her assistance under the scheme by Central and State Government. She claimed urgent need of medical facilities for the grievous injury caused by her husband.

**2. Submissions made by the Respondent:**

The matter was taken up with the Respondent – DCP West District, Delhi vide this Court's Notice dated 10.08.2022 followed by reminder dated 12.09.2022. Despite lapse of statutory time limit, no reply has been received from the respondent.

**3. Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **24.11.2022**. The following persons were present during the hearing:

- (1) Ms. Moondeep Batra, the complainant in person.
- (2) None appeared for the respondent.

**4. Observations & Recommendations:**

4.1 The complainant, a person with 70% visually impairment filed a complaint dated 11.07.2022 regarding violence against disabled person and no assistance by the Delhi Police. The complainant submits that an attempt was made by her husband Shri Ajay Chadha upon her life to kill her on 05.04.2022 by strangling her neck and hitting hard upon her left ear, due to which her ear drum of left ear was punctured and she lost hearing sense of left ear (which is called traumatic perforation in medical terminology). Complainant prays that the Respondent must take some action against the accused.

4.2 This Court takes serious note of the fact that the Respondent did not appear during online hearing despite several notices of this Court. Respondent also failed to file its written Reply. Being an establishment which is entrusted with the duty of

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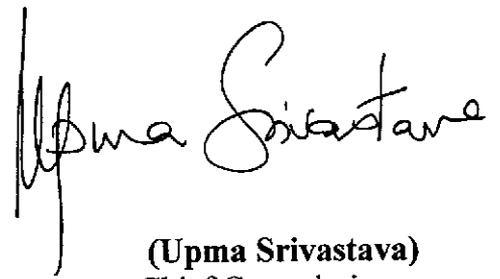
maintaining law and order, which cannot be fulfilled without having a sympathetic attitude towards the victims of 'unfortunate' incidents. Respondent's failure to file written reply and failure to attend the online hearing reflect the unsympathetic attitude of the Respondent.

4.3 Complainant appeared during online hearing and informed this Court that she had also approached concerned magistrate Courts to get her Complaint registered. Without interfering with the proceedings going on in the Magistrate Court, this Court recommends that the Respondent shall register a case with respect to allegations made by the Complainant and shall conduct fair investigation.

4.4 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.

4.5 Accordingly the case is disposed off.

**Dated: 26.12.2022**



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

Copy to:

The Commissioner,  
Delhi Police,  
Jai Sing Road, New Delhi-110001  
Email: [cp.sanjayarora@delhipolice.gov.in](mailto:cp.sanjayarora@delhipolice.gov.in)



सत्यमेव जयते

Ex 105

## 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. 13302/1092/2022

### Complainant:

Mr. Gautam Rajani,  
B 404 Siddhivinayak Enclave CHS,  
N L Cross Road, Somwar Bazar,  
Malad West, Mumbai 400 064 (Maharashtra)  
Email: gautamrajani@yahoo.com; Mobile: 9892239784

— R 36350

### Respondent:

The Chairman,  
Insurance and Regulatory Development Authority of India,  
115/1, Financial District, Nanakramguda,  
Hyderabad-500032  
Email: irda@irdai.gov.in

— R 36357

**Affected Person:** Daughter of the complainant, Ms. Bhavya Rajani, a person with 72% Multiple Disability (Autism Spectrum Disorder + Intellectual Disability)

### 1. Gist of Complaint:

1.1 The complainant filed a complaint dated 13.05.2022 regarding denial by Insurers of Mediclaim Insurance Policies to persons with Autism by Insurers. The complainant submitted that when he approached to the Insurance companies for Mediclaim Insurance Policy for his family members including Ms. Bhavya Rajani, who is a person with 72% Multiple Disability (Autism Spectrum Disorder + Intellectual Disability), the Insurance Companies refused to issue Medical Insurance Policy for his daughter due to her disability i.e. Autism.

1.2 The complainant has also submitted that this Court, in Case No.12446/1092/2020 – Shri Danish Mahajan Vs Aditya Birla Health Insurance Co. Ltd. and Chairman, Insurance Regulatory and Development Authority of India, had inter-alia directed as under:

“7.9 Considering Section 24 of RPwD Act, 2016 read with Section 14 of IRDAI Act, 1999, it is certain that IRDAI is under statutory mandate to ensure that comprehensive insurance policy is made for Divyangjan.

7.10 The responsibility does not end with mere issuing of circulars. It should through a consultative and advisory role, proactively ensure that Insurance Companies, private as well as public, form separate pools for higher risk people and design insurance products dedicated for Divyangjan.”

(Contd.... Page-2)

( 2 )

1.3 The complainant has requested for the following reliefs:-

(i) Directive/order may kindly be issued by IRDAI to all the Insurers for issue of mediclaim and other policies (including family floater policies) to persons suffering from Autism/disabilities. The policies to be issued should be without any discrimination/restrictions, co-pay, limits on reimbursements, exclusions etc. No additional premium should be charged due to Autism/disability only. Further, no claim made under the policy should be denied due to Autism/disability. Such directive/order may be widely disseminated to the public at large from time to time;

(ii) IRDAI to sensitize the Insurers to not to discriminate against the persons with autism/disability and respect their right to life with equality and dignity like other individuals; and

(iii) IRDAI to cause to constitute a supervisory authority/committee comprising of senior officials of the concerned Ministry, IRDA and external eminent persons for monitoring the effective implementation of such directive/order.

**2. Submissions made by the Respondent:**

2.1 The respondent filed their reply dated 12.07.2022 and inter-alia submitted that in terms of provisions of IRDAI (Health Insurance) Regulations, 2016 (HIR 2016), it is stipulated that any proposal for health insurance may be accepted as proposed or on modified terms or denied wholly based on the underwriting policy as approved by the Board of the respective insurance company. The underwriting policy shall cover the approach and aspects relating to offering health insurance coverage not only to standard lives but also to non-standard lives (for example persons with disability, suffering from ailments etc.). Thus, insurance companies shall have the norms covering PwDs in their respective underwriting policies.

2.2 Further, in order to bring in more awareness, transparency and to facilitate better flow of information to above category of population for availing insurance services, IRDAI vide its circular dated 02.06.2020 instructed all the insurance companies to disclose their underwriting philosophy and approach with regard to providing health insurance coverage inter-alia to persons with disabilities on their websites and as part of public disclosures.

2.3 As regards constituting an external supervisory authority/committee for monitoring the effective implementation of such directive/order, the respondent has submitted that IRDAI had laid down well defined health insurance framework in terms of IRDAI (Health Insurance) Regulations, 2016. In terms of provisions therein, all insurers are mandated to put in place a board approved underwriting

(Contd.... Page-3)



( 3 )

policy based on which all insurers shall ensure proper evaluation of proposals from persons with disability in line with its underwriting policy. The appropriate regulatory measures are already in place to protect the interests of policy holders including persons with disability. The respondent has submitted that in view of the guidelines there is no requirement for constitution of any external supervisory authority/committee for monitoring the effective implementation of such directive/order.

**3. Submissions made in Rejoinder:**

3.1 No rejoinder was received from the complainant so far.

**4. Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **18.10.2022**. The following persons were present during the hearing:

- (1) Shri Gautam Rajani, the complainant in person.
- (2) Ms. Yegna Priya Bharat, Chief General Manager, for the respondent.

**5. Observations & Recommendations:**

5.1 The complainant filed a complaint dated 13.05.2022 regarding denial of Mediciclaim Insurance Policies to persons with Autism by Insurers. The complainant submitted that when he approached the Insurance companies for Mediciclaim Insurance Policy for his family members including Ms. Bhavya Rajani, who is a person with 72% Multiple Disability (Autism Spectrum Disorder + Intellectual Disability), the Insurance Companies refused to issue Medical Insurance Policy for his daughter due to her disability i.e. Autism. The complainant has also submitted that this Court, in Case No.12446/1092/2020 (Shri Danish Mahajan v. Aditya Birla Health Insurance Co. Ltd. and Chairman, Insurance Regulatory and Development Authority of India), whereby this Court recommended that IRDAI must ensure that Divyangjan must not be excluded from insurance services. Complainant has sought the relief to recommend that IRDAI must issue directions to all insurance companies to direct that insurance policies must not be denied to Divyangjan.

5.2 Respondent submitted that in terms of provisions of IRDAI (Health Insurance) Regulations, 2016 (HIR 2016), it is stipulated that the underwriting policy shall cover the approach and aspects relating to offering health insurance coverage not only to standard lives but also to non-standard lives (for example persons with disability, suffering from ailments etc.). Thus, insurance companies shall have the norms covering PwDs in their respective underwriting policies. Further, in order to bring in more awareness, transparency and to

(Contd.... Page-4)



( 4 )

facilitate better flow of information to above category of population for availing insurance services, IRDAI vide its circular dated 02.06.2020 instructed all the insurance companies to disclose their underwriting philosophy and approach with regard to providing health insurance coverage inter alia to persons with disabilities on their websites and as part of public disclosures. In terms of provisions therein, all insurers are mandated to put in place a board approved underwriting policy based on which all insurers shall ensure proper evaluation of proposals from persons with disability in line with its underwriting policy. The appropriate regulatory measures are already in place to protect the interests of policy holders including persons with disability.

5.3 Further the Respondent informed this Court that the issue was taken up with the insurer namely HDFC ERGO General Insurance Company. Insurance company has informed the Respondent that the Complainant has been offered insurance policy for the beneficiary.

5.4 The fact that the Complainant has received the insurance policy offer was confirmed by the Complainant during online hearing. However, he submitted that the same was done after 1 year. Further, the Complainant prays that following -:

- a. Insurance policies must be issued in favor of divyangjan including divyangjan with Autism;
- b. Respondent must conduct sensitization programs so that insurers can be sensitized and instances of discrimination with divyangjan in issuance of insurance policies can be reduced;
- c. Committee must be constituted to ensure that recommendation given by CCPD in Complaint titled as Shri Danish Mahajan v. Aditya Birla Health Insurance Co. Ltd. and Chairman, Insurance Regulatory and Development Authority of India, Case No.12446/1092/2020 is implemented.

5.5 This Court takes cognizance of all the prayers of the Complainant and recommends that the Respondent shall formulate a committee to ensure that no discrimination is caused with divyangjan in issuance of insurance policies and ensure that this Court's recommendation-order in Shri Danish Mahajan v. Aditya Birla Health Insurance Co. Ltd. and Chairman, Insurance Regulatory and Development Authority of India, Case No.12446/1092/2020, is implemented. This Committee shall also ensure that guidelines issued by the Respondent on this issue are also effectively implemented. Further this Court recommends that the Respondent shall conduct sensitization programs to sensitize officers of various insurers with respect to rights of divyangjan.

(Contd.... Page-5)



( 5 )

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

5.7 Accordingly the case is disposed off.

**Dated: 26.12.2022**

  
**(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. 13338/1011/2022

### Complainant:

Dr. Dharamraj Bhim Bhole;  
Email: discoverability.drp@gmail.com

— R36314

### Respondent:

The Registrar,  
University of Allahabad,  
Senate House Campus, University Road,  
Old Katra, Prayagraj, Uttar Pradesh 211002  
Email: reg\_au@allduniv.ac.in; Phones: 0532-2461083, 09415214363

— R36313

### 1. Gist of Complaint:

1.1 The complainant, filed a complaint vide email dated 04.06.2022 against the respondent and alleged that under the Advertisement No.UoA/Asst.Prof/01/2021, University of Allahabad, the post of Assistant Professor, in the Department of Statistics and Department of Psychology the posts reserved for Persons with Disabilities have not been filled up.

1.2 The complainant further submitted that this is not an individual matter but is a social crime; and requested this Court to take necessary action.

### 2. Submissions made by the Respondent:

The Registrar, University of Allahabad filed their reply dated 13.07.2022 and submitted that in the current recruitment drive, University of Allahabad had selected 06 PwD candidates out of 100 candidates. The respondent submitted that they have always adhered to the Section 3, Section 33 and Section 34(1) of the Rights of Persons with Disabilities Act, 2016. As regards, Section 34(2), the University is coming out with a fresh advertisement for the PwD positions which could not be filled up due to non-availability of suitable candidates in respective categories.

### 3. Submissions made in Rejoinder:

The complainant filed rejoinder dated 29.08.2022 and submitted that (1) University Guest House is not accessible for PwDs; (2) No clarification has been given by the respondent regarding not filling up the posts of Assistant Professor reserved for PwDs in the Department of Statistics and Department of Psychology; and (3) The actual number of unfilled posts of Assistant Professor reserved for PwDs has not been disclosed.

(Contd.... Page-2)

( 2 )

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 18.10.2022. The following persons were present during the hearing:

- (1) Dr. Dharamraj Bhim Bhole, the complainant.
- (2) Shri Narendra Kumar Shukla, Registrar; Prof. Dharmendra Yadav, Director (Recruitment) for the Respondent

5. **Observations & Recommendations:**

5.1 The Complainant submitted that the respondent issued advertisement notifying the vacancies for the post of Assistant Professor in the Department of Statistics and Department of Psychology. The complainant alleges that the posts reserved for divyangjan had not been filled.

5.2 Respondent submitted that in recruitment drive the respondent had selected 6 divyang candidates out of 100. Further, the University is coming out with fresh advertisement for recruitment of divyangjan.

5.3 Further, enquiry was conducted. During online hearing the complainant submitted that recruitment was conducted in 2019 and 2021. In each recruitment year, vacancies for divyangjan were not filled. Respondent submitted that in 2019 no divyang candidates were recruited. Similarly in 2021 vacancies reserved for divyang could not be filled. Respondent further submitted that it cannot be considered as discrimination with divyangjan because there were divyang representatives in the Interview Committee as well as in Scanning Committee. Respondent further informed that all the unfilled vacancies have been considered as 'backlog' and advertisement will be reissued to fill these backlog vacancies.

5.4 Complainant refuted the submissions made by the respondent during online hearing and claimed that total 4 vacancies were notified in 2021 and all 4 have so far been filled and no divyang candidate has been appointed. Respondent further informed that the University Counsel filled all the vacancies, however, it was further decided to allocate 1 additional post in each department and reserve it for divyangjan. Respondent justified the decision and submitted that the reason for allocation for 01 additional post was that it was better to fill the vacancies instead of keeping them unfilled. Respondent also assured that notification of backlog vacancies will be issued after June 2023.

5.5 During online hearing respondent was asked to submit necessary document to prove that University Counsel has taken decision to allocate 01 additional post in each department and reserved it for divyangjan. However, till date no document has been submitted by the respondent. This Court by using its powers under section 77 of Rights of Persons with Disabilities Act, 2016 grants final opportunity to the respondent to file the document, within 7 days of receiving the copy of this order, to

(Contd.... Page-3)



( 3 )

support this claim of allocation of one additional post in each department, failing which the appropriate legal action can be initiated against the respondent as per relevant provisions of Indian Penal Code read with section 77(2) of Rights of Persons with Disabilities Act, 2016.

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

5.7 Accordingly the case is disposed off.

**Dated: 26.12.2022**

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



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13404/1022/2022

#### Complainant

Smt. Payal Singh

B-24, 3<sup>rd</sup> Floor, Gali No. 9, Sewak Park,

Uttam Nagar Delhi-59

Email: psinghcbi1982@gmail.com

Email: psinghcbi1982@gmail.com

- R36278

#### Versus

#### Respondent

The General Manager

Central Bank of India

Chandramukhi Building

Nariman Point, Mumbai -400021

Maharashtra

Contact No: 022-66387777

Email: gmhrd@centralbank.co.in

- R36279

#### GIST OF COMPLAINT

The complainant has filed a complaint dated 05.08.2022 regarding retaining her service in Delhi Branch from Meerut Branch as she is care giver to her son (Rajas) a person with Multiple Disabilities (90%).

2. The complainant has submitted that she is working in the Central Bank of India as Scale-1 Officer and posted at Vikaspuri, Delhi up to 27.04.2022. But the Management of the Bank has given her transfer order to join Meerut Region, Uttar Pradesh. The complainant further submitted that her husband is working in Delhi Metro Rail Corporation at Dwarka Delhi. Her seven-year-old son (Rajas), is suffering from Cerebral Palsy since birth. His treatment/exercise are being done in supervision of Ganga Ram Hospital Delhi. In this situation she was unable to join Meerut Region. On 21<sup>st</sup> July 2022, she received a mail from Meerut Region to join immediately. The complainant stated that she has joined Meerut Region Pilakhwa Branch on 24<sup>th</sup> July 2022, but her situation is very much hard as her husband is performing duty in Delhi Metro in Dwarka Delhi and she go to perform her duty to Pilakhwa Branch from Delhi.

3. The complainant has submitted that her son is 100% dependent on them. Her husband is doing late evening shift in Delhi Metro. When she reach home from bank, he goes to perform his duty. All daily works and exercise are being done by her husband in day time. The complainant has requested this Court to give directive to the bank to retain her service in Delhi Branch.

4. The matter was taken up with the Respondent vide letter dated 07.09.2022 under Section 75 of the Rights of Persons with Disabilities Act, 2016.

5. In response, Dy. General Manager, HRD (R&P), Central Bank of India vide email letter dated 12.09.2022, has submitted that the complainant, who is a native of Delhi has been posted in Delhi center since her joining the bank in April 2002. The officer has completed over 19 years in Delhi Zone at a stretch and she along with other similarly placed officers had been transferred out of Zone. The

respondent further submitted that periodical rotational transfer of bank officers is done in compliance with the Guidelines issued by the Central Vigilance Commission from time to time which inter alia provide for periodical rotation on 3 years. The said Central Vigilance Commission Guidelines is implemented uniformly for all officers. Therefore, the transfer of the complainant is in keeping with the CVC guidelines and bank's transfer norms.

6. The respondent further submitted that the Bank follows the guidelines issued by Govt. of India on the physically disabled persons from time to time. The guidelines on transfers/posting of physically challenged officers, with benchmark disability and officer who is care-giver of dependent daughter /son/parents/spouse/brother/sister with 'specified disability' as defined under Section 2(r) of the RPwD Act, 2016, is contained in DOPT O.M bearing number 42011/3/2014-Estt (Res) dated 8<sup>th</sup> October, 2018. The said OM provides that a govt. employee who is a Care-Giver may be exempted from routine exercise of transfer / rotational transfer subject to the administrative constraints. The aforesaid direction is subject to administrative constraints and availability of vacancies. The transfer of the complainant is as per banks policy.

7. The complainant has filed the rejoinder vide email dated 03.10.2022 and submitted that the Bank got done the medical examination of her son from the Medical Board of Bank in Delhi on 04.08.2022 and after the examination of her son he was declared 90% of mentally challenged. She also submitted that recently Bank has cancelled/revoked transfer order of Shri Suresh Vekada on 01.09.2022. Similarly transfer order of Shri Vijay Goel, who is a care giver of his blind adult brother was cancelled by Bank and transferred back to Delhi from Jail Chungi Branch, Meerut. She has requested for directions to the Bank to revoke the transfer order for better take care and future of her only son.

8. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **01.11.2022**. The following were present:

- i) Smt. Payal Singh: **Complainant**
- ii) Shri Ajit Singh, DGM, Zonal Office, Lucknow, Central Bank of India: **Respondent**

**Observations /Recommendations:**

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

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

- a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,



- b. To create barrier free environment for Persons with Disabilities,
- c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

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

- a. respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- b. non-discrimination;
- 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 dependant.

#### STATUTORY PROVISIONS AND GUIDELINES

- 15. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.
- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.
- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.
- i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependent 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 intimidated 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 fulfill 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 'dependent'.

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

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

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

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

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

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

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

34. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health,

education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

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

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

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

#### PRESENT CASE

37. The complainant has submitted that she is working in the Central bank of India as Scale-1 Officer and posted at Vikaspuri Delhi up to 27.04.2022. But the Management of the Bank has given her transfer order to join Meerut Region, Uttar Pradesh. The complainant further submitted that her husband is working in Delhi Metro Rail Corporation at Dwarka Delhi. Her son Rajas, seven-year-old is suffering from Cerebral Palsy since birth. His treatment/exercise are being done in supervision of Ganga Ram Hospital Delhi. The complainant stated that she has joined Meerut Region Pilakhwa Branch on 24.07.2022 under compulsion of the bank, but she is facing difficulty in taking care of her child and attend her office which is situated away from her home. Complainant prays to this Court to cancel her transfer Orders.

38. Respondent submits that the complainant, who is a native of Delhi has been posted in Delhi centre since her joining the bank in April, 2002. The officer has completed over 19 years in Delhi Zone at a stretch and she along with other similarly placed officers have been transferred out of Zone. The respondent further submitted that periodical rotational transfer of bank officers is done in compliance with the Guidelines issued by the Central Vigilance Commission from time to time which inter alia provide for periodical transfer/rotation on every 3 years. The said Central Vigilance Commission Guidelines is implemented uniformly for all officers. Therefore, the transfer of the complainant is in keeping with the

CVC's guidelines and bank's transfer norms. Further, during online hearing, Respondent submitted that as per the same guidelines, no employee can be kept in same zone for more than 10 years.

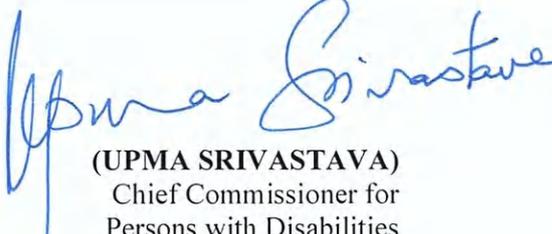
39. During online hearing, on further inquiry, Respondent informed this court that it was not possible to post the Complainant to any location in Noida or Ghaziabad because both these cities fall under administrative control of Delhi zone. Hence, posting in either of these two cities shall not fulfill the purpose of CVC's guidelines.

40. In the present case this Court is entrusted with duty to strike balance between two ends. On one end there is guideline issued by Central Vigilance Commission to not keep an employee within same zone for more than 10 years. On the other end, there is right of a divyang child to live his life with dignity, which cannot be completely exercised without care and support of her mother (Complainant in the present case), on whom the divyang child is dependent. Objective behind CVC's guidelines is to prevent any malpractice of corruption. Whereas, protection of right of divyang child is positive duty of the society as whole.

41. Hence, this Court concludes that scales of justice weighs in favour of right of divyang child to live his life with dignity and right to be taken care of. This Court further concludes that the case of the Complainant must be considered as per instructions of DoPT, laid down in O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoPT. This O.M. is related to posting of government employee 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. This Court recommends that transfer order of the Complainant, whereby she was transferred to Meerut region shall be cancelled and the Complainant shall be transferred back to office situated within Delhi.

42. 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.

43. The case is disposed off.

  
(UPMA SRIVASTAVA)  
Chief Commissioner for  
Persons with Disabilities

Dated: 26.12.2022



सत्यमेव जयते

Exp

## 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: 13333/1022/2022

Dated: 26.12.2022

Dispatch No:

Complainant:

Shri Pavan Kumar Gaur  
Email: pavangaur86@gmail.com  
Mobile No: 08108644474

— R36282

Vs

Respondents:

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

— R36280

2. The General Manager  
UCO Bank, Zonal Office  
Orbit Mall, Civil Lines Ajmer Road,  
Jaipur-302006  
Email: zo.jaipur@ucobank.co.in  
Phone No: 0141-2225617

— R36281

Sub: Complainant dated 11.06.2022 of Shri Pavan Kumar Gaur, a person with 75% Locomotor Disability, regarding cancellation of transfer order of his wife Mrs. Ritu Sharma, Manager, UCO Bank from Jaipur to Ahmedabad as she is caregiver to him.

Please refer to the above-mentioned complaint.

2. Dy. General Manager and Zonal Head, UCO Bank vide letter dated 04.08.2022 has informed that transfer order of Mrs. Ritu Sharma, Manager has already been cancelled and she has been retained at the same branch in Jaipur city.

3. The copy of the reply was forwarded to the complainant for filing the rejoinder vide letter no. dated 19.10.2022, but no rejoinder has been filed by the complainant.

4. In view of the above, it appears that the complainant's complaint has been redressed. Hence, no further intervention is required in the matter.

5. The case is disposed off accordingly.

(UPMA SRIVASTAVA)

Chief Commissioner for Persons with Disabilities



सत्यमेव जयते

Exp

## 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: 13423/1022/2022

**Complainant:**

Smt. Pooja Bhardwaj  
Assistant Manager  
Indian Overseas Bank  
23, United City Colony Jankipuram Sec -I  
Lucknow-226021 Uttar Pradesh  
Mobile No. 07619090222, 09839098345  
Email: poojabhardwaj.axis@gmail.com

R36285

Vs

**Respondent:**

The Chairman and Managing Director,  
Indian Overseas Bank  
Central Office, Chennai-600002  
Phone No: 044- 28519660, 92929282  
Email ID: gmhr@iobnet.co.in, padsup@iobnet.co.in, md@iob.in

R36286

**GIST OF COMPLAINT**

The complainant, has filed a complaint dated 18.07.2022 regarding retaining her service in Lucknow Branch as she is care giver to her daughter Ms. Prisha Singh a person with 50% Intellectually Disabled. The complainant is working as Assistant Manager in Indian Overseas Bank. She has been transferred from Lucknow to Delhi on 28.10.2021.

2. The complainant has submitted that her six years old daughter is suffering from "Epileptic Encephalopathy Neurological Disorder since February 2015 and both the parents are only care giver to the dependent daughter suffering from Mental illness and retardation. The complainant stated that they are three members in the family. Her husband is a cardiac patient and had cardiac attack in June 2022 and he is completely bed ridden. Her daughter is Mentally Retarded dependent child and she is the only working person in the family.

3. The complainant further submitted that as she is the only working member of the family, she has obeyed bank's decision and reported Delhi on 05.11.2021 but due to continuous poor health of her daughter and pathetic situation at home as her husband was not been able to manage her alone as he is a cardiac patient and high Blood pressure patient. As per her, the girl child of six years needs mother for her daily routine work also. She has intimated all the medical records to Regional Office, Delhi time to time but unfortunately her salary was stopped since November 2021, medical records were not accepted and PL leaves were debited, sabbatical leave application was also rejected thrice. She has been sending all her medical records through email and hard copies by post also to Regional Office Delhi and her branch Nehru Market 2086 timely but not got any cooperation from Regional Office Delhi, Regional Office Lucknow, Central Office HRMD and other concerned departments. The complainant has requested to this Court to give directive to the respondent to transfer her to Lucknow region as a special case as care giver to her daughter.

4. The matter was taken up with the Respondent vide letter dated 01.09.2022 under Section 75 of the RPwD Act, 2016.

5. In response, Chief Regional Manager of the Indian Overseas Bank, vide its reply dated 22.09.2022 submitted that the complainant joined the service of the Bank in the year 2012 as Probationary Officer/Assistant Manager. The complainant completed her training period at STC Delhi and thereafter she was posted at Mall Road Branch, Kanpur wherein she was on probation till 11.11.2013. After completion of the probation period the complainant was posted to various Branches in the Lucknow Region till 29.10.2021. The complainant was transferred to RO Delhi vide order dated 16.10.2021 and relieved on 29.10.2021 but she reported to Delhi on 06.11.2021 only after an absence of 38 days and was posted to Nehru Market Branch, Rajouri Garden from 09.11.2021 till 11.03.2022. During this period, she has attended office only for 7 days on 06.11.2021 to 07.11.2021, 08.12.2021 to 10.12.2021 and 16.12.2021 to 17.12.2021. Despite of her absence, at the member's request citing her child's ill health, the member was transferred to Lucknow Region temporarily vide order dated 11.03.2022. The member was posted at Aliganj Branch from 15.03.2022 to 13.06.2022.

6. The respondent further submitted that the complainant case had been considered sympathetically and with compassion by the bank from time to time and she had been given exemptions to the maximum permissible limit of the bank in accordance with its transfer policy. The complainant is holding a sensitive post of the Assistant Manager. As per the transfer policy 2021 which has been formulated in accordance with the Govt. guidelines, the tenure shall not be more than 6 years in a Region, i.e. 2 terms or 10 years in a State. The cut-off date for arriving at the tenure will be 31<sup>st</sup> March of every year. However, the bank shall continue to grant normal exemptions to the officers falling under specific categories for an additional period of one term, i.e. 3 years. In the instant case, she has completed her two terms of three years each from 12.11.2012 as per the bank transfer policy 2021, in Lucknow 'Region.

7. The respondent also submitted that the complainant was transferred to Regional Office, Delhi vide order dated 16.10.2021 in normal course along with other employees. The complainant joined the Delhi region on 05.11.2021. The complainant again submitted request for transferring to Lucknow citing the child's mental disability. The request of the complainant was considered and the bank has issued temporary transfer for 3 months vide order dated 11.03.2022. Hence, the member has completed the additional period of one term of 3 years which is the maximum permissible period under the bank's transfer policy. The respondent submitted that the case of the complainant was considered by the management sympathetically and compassionately and to the maximum limit permissible under law. No further indulgence can be granted to the claimant after exhausting all provisions of the service rules.

8. The complainant has filed her rejoinder vide letter dated 25.10.2022, and submitted that she is not satisfied with the comments submitted by the respondent. The complainant once again requested to this Court to give directive to the bank for retaining her service in Lucknow branch as she is care giver to her daughter.

9. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 01.12.2022. The following were present:

- i) Smt. Pooja Bhardwaj: **Complainant**
- ii) Shri Krishan Kumar, Advocate on behalf of respondent: **Respondent**

**Observations /Recommendations:**

10. 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.

11. 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

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

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

13. 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.

14. 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.

15. Issues related to transfer and posting to divyang employees may be divided into three categories:-
- a) Posting of divyang employee at native place,
  - b) Exemption from routine transfer of divyang employee,
  - c) Posting of employee who serves as care giver of divyang dependant.

STATUTORY PROVISIONS AND GUIDELINES

16. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.
- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.
- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

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

#### ANALYSIS OF THE PROVISIONS & GUIDELINES

17. 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.

18. 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.

19. 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

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

21. 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

22. 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.

23. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?
24. 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.
25. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?
26. 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.
27. 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.
28. 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.
29. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.
30. 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.

31. **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?

32. 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.

33. 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'.

34. 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.

35. 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

36. 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.

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

#### PRESENT CASE

38. The complainant, seeks cancellation of her transfer from Lucknow to Delhi because she is care giver to her daughter who is Divyangjan with 50% Intellectual Disability. The complainant submits that she is working as Assistant Manager in Indian Overseas Bank. She has been transferred from Lucknow to Delhi on 28.10.2021. The complainant submits that her six years old daughter is suffering from 'Epileptic Encephalopathy Neurological Disorder' since February 2015 and both the parents are only care giver to the dependent divyang daughter. The complainant stated that they are three members in the family. Her

husband is a cardiac patient and had cardiac attack in June 2022 and he is completely bed ridden. Her daughter is Mentally Retarded dependent child and she is the only working person in the family.

39. The complainant further submits that as she is the only working member of the family, she has obeyed bank's decision and reported in Delhi branch on 05.11.2021 but due to continuous poor health of her daughter and pathetic situation at home her husband was not able to manage her alone as he is a cardiac patient and high Blood pressure patient at Lucknow.

40. She claims that she has intimated all the medical records to Regional Office, Delhi, time to time but unfortunately her salary was stopped since November 2021, medical records were not accepted and PL leaves were debited, sabbatical leave application was also rejected thrice. She has been sending all her medical records through email and hard copies by post also to Regional Office Delhi and her branch but she has not received any cooperation from the Respondent establishment.

41. Respondent submits that the complainant joined the service of the bank in the year 2012 as probationary officer/Assistant Manager. The complainant was first posted at Mall Road Branch, Kanpur wherein she was on probation till 11.11.2013. After completion of the probation period the complainant was posted to various branches in the Lucknow region till 29.10.2021. Thereafter, the complainant was transferred to RO Delhi vide order dated 16.10.2021 and relieved on 29.10.2021 but she reported to Delhi on 06.11.2021 only after an absence of 38 days and was posted to Nehru Market Branch, Rajouri Garden from 09.11.2021 till 11.03.2022.

42. During this period, she attended office only for 7 days. Despite of her absence, at her request citing her child's ill health, she was transferred to Lucknow Region temporarily vide order dated 11.03.2022. Then she was posted at Aliganj Branch from 15.03.2022 to 13.06.2022, on temporary basis.

43. The respondent further submits that the complainant's case had been considered sympathetically and with compassion and she had been given exemptions to the maximum permissible limit of the bank in accordance with its transfer policy. The complainant is holding a sensitive post of the Assistant Manager. As per the transfer policy 2021 which has been formulated in accordance with the Govt. guidelines, the tenure shall not be more than 6 years in a region, i.e. 2 terms or 10 years in a State. However, the bank shall continue to grant normal exemptions to the officers falling under specific categories for an additional period of one term, i.e. 3 years. In the instant case, she has completed her two terms of three years each from 12.11.2012 as per the bank transfer policy 2021, in Lucknow region. Hence, her request cannot be considered any further.

44. During online hearing, Complainant further submitted that after she was transferred to Delhi, she applied for leaves however the applications were rejected by the Respondent establishment every time. On this issue Respondent submitted that in order to avail leaves, Complainant has to attend office for minimum period. Since she did not attend the office for more than 7 days her leave application was rejected.

45. The facts as presented by both the parties reflects that the Respondent chose to stick to the rules blindly without applying its mind. Respondent itself submitted that in addition to 10 years, an employee can also be posted for 3 more years on special grounds. Complainant was appointed in 2012, since then she was posted in Lucknow region. As per the transfer policy of the Respondent establishment she still can be posted for 3 more years in Lucknow. However, Respondent claims that she has completed maximum possible tenure, hence this point may be clarified from the Respondent.



46. Respondent's transfer policy was also perused. As per the policy, transfer on request can be done of those employees who are care giver of divyang child. There is nothing in the transfer policy to suggest that the Clause which deals with compulsory transfer after 10 years supersedes another Clause which provides for transfer of employee who serves as main caregiver of divyang child. The conflict between the two provisions can be resolved by adopting rules of interpretation of social welfare legislations, also known as 'Beneficial Interpretation' In the case of **Alembic Chemical Works v Workman; AIR 1961 SC 647**, an industrial tribunal awarded more number of paid leaves to the workers than what Section 79(1) of Factories Act recommended. This was challenged by the appellant. SC held that the enactment being welfare legislation for the workers, it had to be beneficially constructed in the favor of worker and thus, if the words are capable of two meanings, the one that gives benefit to the workers must be used. Similarly, in judgment of Kunal Singh (mentioned above), Court held

"In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act"

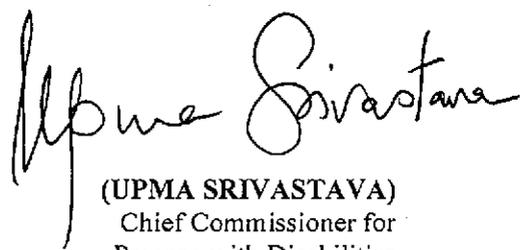
47. The Respondent can rely upon the rule of interpretation of social welfare legislation and hence, the conflict between the two rules, one which deals with compulsory transfer of the employee after 10 years of posting and another one which deals with transfer on request of employee who serves as main care giver of divyang child.

48. As delineated above, in **PRADEEP KUMAR SRIVASTAVA** Case and in **SWARAN SINGH CHAND** (citation mentioned in preceding paragraphs) judgments the Courts interpreted the government guidelines and held that special circumstances warrant special privileges and government instructions must be framed in furtherance of Article 41 of the Constitution.

49. In light of the rules and judgments mentioned above, this Court concludes that the Respondent shall implement all the government guidelines, its own transfer policy and judgment of various Courts in letter and spirit and shall transfer the Complainant back to Lucknow where she can take care of her divyang child and can also focus on her job. Further this Court takes an adverse view of the fact that not only the Respondent failed to implement the government guidelines and hence stopped paying the Complainant her due salary after September 2021, it also rejected the leave applications of the Complainant which shows total apathy to the cause of the Divyangjan. Respondent shall rectify the mistakes it committed and hence this Court recommends that the Respondent shall pay the due salary of the Complainant from the date the salary was deducted.

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

51. The case is disposed off.

  
(UPMA SRIVASTAVA)  
Chief Commissioner for  
Persons with Disabilities

Dated: 26.12.2022



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. 13336/1032/2022

### Complainant:

Shri Santosh Shivajirao Yadav

F 5, Govt. Qtrs 515, Behind District Court, — R 36307

Sadar Market, Satara, Pin: 415001

Mobile: 9881527171

Email: [santoshiyadav161976@gmail.com](mailto:santoshiyadav161976@gmail.com)

### Respondents:

(1) Commissioner NVS ,

Navodaya Vidyalaya Samiti, — R 36308

B-15, Institutional Area,

Sector-62, Noida (UP) 201307

Email: [commissioner.nvs@gov.in](mailto:commissioner.nvs@gov.in); Ph. No. 0120-2975755

(2) Principal,

Jawaharlal Navodaya Vidyalaya

Kshetra Mahuli, District -Satara — R 36309

Maharashtra, India, Pin - 415003

Phone- 91-12162-270157

Email: <jnvsatara@gmail.com>

<jnvsatara@rediffmail.com>

Affected Person: Ms. Bhakti Santosh Yadav, a person with 75% Visual Impairment

### 1. Gist of Complaint:

1.1 The complainant vide email dated 21.06.2022 has attached a copy of his petition dated 13.06.2022 for providing educational facilities to her daughter Ms. Bhakti Santosh Yadav, a person with 75% Visual Impairment who is studying in Class VIII in Jawahar Navodaya Vidyalaya, Satara (Maharashtra) as provided in the Rights of Persons with Disabilities Act, 2016.

1.2 The complainant submitted that his daughter was admitted in Class VI in the year 2020. During Covid-19 Pandemic Lockdown, due to online education, difficulties in her eyes increased and she had to get admitted in the hospital for treatment. After the Lockdown, when Jawahar Navodaya Vidyalaya opened for normal off line education, the Vice Principal of the school called him and said that

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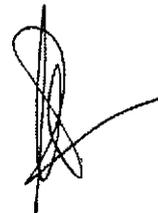
there are no facilities available in the school for visual impaired students and the arrangements from outside are not permissible. Only NVS can provide the facilities for the students of visual impairment. Thus, the petition was filed by the complainant requesting NVS to provide the educational facilities as stipulated in the Rights of Persons with Disabilities Act, 2016.

**2. Submissions made by the Respondent:**

2.1 NVS filed their reply dated 27.07.2022 and submitted that NVS has issued detailed guidelines to provide all necessary facilities to the Divyang students. and accordingly, following arrangements are in place at JNV District Satara (Maharashtra):

- (i) Reservation to Divyang students in admission to JNV;
- (ii) Equal opportunities to all the admitted students in the Vidyalaya by providing inclusive education;
- (iii) Reasonable accommodation for persons with disabilities is available in the Vidyalaya;
- (iv) Barrier free environment by providing Ramps, Accessible Toilets, Hand Rails etc.;
- (v) Inclusion of Divyang students in Sports and Recreation activities;
- (vi) All the concerned subject teachers have been instructed to detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them.
- (vii) All the concerned subject teachers have been instructed to monitor participation progress in terms of attainment level and completion and education in respect of every student with disability;
- (viii) Counselling support is being provided to Divyang student;

(Contd.... Page-3)



( 3 )

- (ix) Matron of the vidyalaya is helping the student (Ku. Bhakti) in completing daily routine. She is being taken to Academic, Block, Mess and other places as per schedule under physical help of Matron or any other student/teacher; and
- (x) Buddy system has been adopted for helping the Divyang girl.

2.2 After giving due consideration to the requests of the parent of Ku. Bhakti, the following additional arrangements were being made:

- (1) Essential text books for VH students were ordered for purchase and the same would be provided from library with other materials. Audio Books are provided by Librarian. Use of resource material available on Open Source Platform is also being promoted. Shiksha Vani Podcast and audio books are available class-wise and subject-wise. Sugamya Pustakalaya and Digital Talking Books facilities are also available.
- (2) Provision is in place to provide scribe during exam for support of VH students. However, Vidyalaya is facing practical problem in arranging scribe as all students remain busy in exam/preparation during the period and nobody can be forced to perform the job of scribe. Therefore, parents are being requested to arrange for suitable scribe (as allowed in provisions) during exam period;
- (3) To ensure a basic set of knowledge, understanding and professional skills about children with disabilities Teacher Training Course as per requirement are provided to teachers of JNV. Teachers of JNV Satara have consulted with special educators about the approaches to teaching, evaluation procedures etc.
- (4) The Principal, JNV Satara is also being directed to engage special educator on part time contract basis as per need.

2.3 A detailed reply dated 08.07.2022 in the matter was also filed by Principal (Incharge), Jawahar Navodya Vidyalaya, Satara.

### **3. Submissions made in Rejoinder:**

No rejoinder has been received from the complainant to the reply filed by NVS.



(Contd.... Page-4)

( 4 )

**4. Hearing:**

The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **18.10.2022**. The following persons were present during the hearing:

- (1) Shri Santosh Shivajirao Yadav, the complainant in person.
- (2) Shri Grish Kumar, Assistant Commissioner, Navodaya Vidyalaya Samiti - Respondent No.1.
- (3) Shri Rajul A Shamkuwar, Vice Principal, Jawahar Navodaya Vidyalaya, Satara (MP) - Respondent No.2.

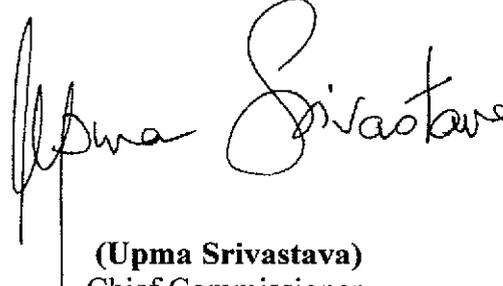
**5. Observations & Recommendations:**

5.1 This Court is pleased to note that the Respondent No.2 (hereinafter referred as the 'Respondent establishment') took remarkable measures for the daughter of the complainant who is the only divyang child studying in that particular school. By taking such remarkable steps the respondent has established an exemplary example for other schools.

5.2 During online hearing complainant submitted that he does not need any teacher of Braille language, however, special device is required which converts Braille language to English language. Respondent informed that it had placed order for Braille kit which would be given to the daughter of the complainant. This Court is not hesitant to conclude that the respondent establishment had taken remarkable steps and it is evident from the reply that the respondent is ready to cooperate and extend all necessary help in favour of complainant's daughter. Hence, this Court recommends that if complainant wants any special device, he can submit the details of the same directly to the respondent establishment who shall find avenues to procure the same.

5.3. Accordingly the case is disposed off.

**Dated: 26.12.2022**

  
(Upma Srivastava)  
Chief Commissioner  
for Persons with Disabilities

Extra



Case No.13307/1011/2022

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

Case No. 13307/1011/2022

**Complainant:**

Shri V. Suresh,  
S/o Shri K. Veerasamy,  
R/o H.No.5-888, Thenpadhi Street,  
Vilundhamavadi, Nagapattinam-611112 (TN)

— R36302

**Respondent:**

Chairman & Managing Director,  
Electronics Corporation of India Ltd. (ECIL),  
ECIL Post, Hyderabad-500062 (Telangana)  
Email: pgrect@ecil.co.in

— R36303

Affected Person: The complainant, a person with 50% Visual Impairment

**1. Gist of Complaint:**

1.1 The complaint regarding not providing age relaxation specified for a person with disability in selection to the post of 'Scientific Assistant' in Electronics Corporation of India Ltd (ECIL), Hyderabad had been forwarded to this Court by the State Commissioner for Persons with Disabilities, Government of Tamil Nadu.

1.2 The complainant had appeared in the written examination conducted by the respondent for the said post based on the age relaxation specified for persons with disabilities. The complainant submitted that within a short span of time he wrote the exam. He was told that there was no age relaxation and rejected his answer sheet. The complainant also submitted that in spite of the fact that he has mentioned that the notification has the age relaxation he was sent out by using derogatory words referring to his disability.

**2. Submissions made by the Respondent:**

2.1 The respondent filed their reply dated 04.08.2022 and submitted that vide the said advertisement applications were invited from the candidates for the post of

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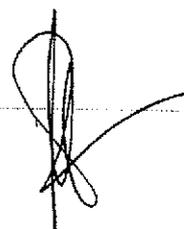
SAA-C, a contractual position at Kudunkulam, a remote location around 700 Kms from Chennai for their customer, NPCIL. The nature of work involves maintenance of Access Control and VSAT Systems which entails availability of the candidate round the clock at the site. The selection to the above contractual post was organized at ECIL's Branch Office, Chennai and the selection process comprised of written test followed by a trade test.

2.2 To fill up the position an advertisement was published incorporating all relaxations and reservations as per Govt. guidelines. The Clause No. II of the advertisement inter-alia stated that age relaxation of 10 years would be allowed to PwD candidates. In the instant case, eligibility criteria for age relaxation was 25 years for UR category with the provision for relaxation of 10 years over and above 25 years for PwD candidates. As such, the same was extended to the complainant also.

2.3 The applicant/complainant Shri Suresh V was allowed to appear in the written test but could not be considered inadvertently for Trade Test by the test conducting officials during the first selection process. Owing to this and non-availability of the suitable candidate, above selection was not concluded. Subsequently another advertisement was released for the same post, in which the complainant applied and was given an opportunity with age relaxation for attending the selection proceedings i.e., written test and trade test. Based on his performance, he was not recommended by the selection committee. The respondent also submitted that as contested by the candidate in his complaint that derogatory words were used referring his disability is incorrect and baseless.

### **3. Submissions made in Rejoinder:**

The complainant in his rejoinder dated 11.08.2022 has submitted that he was the only one who had passed the written test held on 12.04.2022. He has requested the respondent to submit before the Court the CCTV footages of the 'Scientific Assistant' written test held on 01.03.2022 and the written test and interview conducted on 12.04.2022. The complainant further submitted that an employee from ECIL called him from Mobile No.9360250574 on 03.03.2022 and told that the complainant should not file a case regarding that, and he would be selected for the job.



4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **07.11.2022**. The following persons were present during the hearing:

- (1) Shri V. Suresh, the complainant.
- (2) Shri M. Adhani Arora, DGM; Shri Ramsri Krishna, DGM; Shri Bhawani Shankar, DGM, ECIL for the Respondent.

5. **Observations & Recommendations:**

5.1 The complaint had been forwarded to this Court by the State Commissioner for Persons with Disabilities, Government of Tamil Nadu. The complainant submitted that he had appeared in the written examination conducted by the respondent for the said post based on the age relaxation specified for persons with disabilities. The complainant submitted that within a short span of time he wrote the exam. He was told that there was no age relaxation and his answer sheet was rejected. The complainant also submitted that in spite of the fact that he has mentioned that the notification has the age relaxation he was sent out by using derogatory words referring to his disability.

5.2 The respondent submitted that the advertisement in question was published incorporating all relaxations and reservations as per Govt. guidelines for fill up the post of Scientific Assistant on Contract (SAA-C) on contractual basis. Clause No. II of the advertisement inter-alia stated that age relaxation of 10 years would be allowed to PwD candidates. In the instant case, eligibility criteria for age relaxation was 25 years for Unreserved category with the provision for relaxation of 10 years over and above 25 years for PwD candidates. As such, the same was extended to the complainant also.

5.3 The applicant/complainant Shri Suresh V was allowed to appear in the written test but could not be considered inadvertently for Trade Test by the test conducting officials during the first selection process. Owing to this and non-availability of the suitable candidate, above selection was not concluded. Subsequently another advertisement was released for the same post, in which the complainant applied and was given an opportunity with age relaxation for attending the selection proceedings i.e., written test and trade test. Based on his performance, he was not recommended by the selection committee.



5.4 The respondent also submitted that as contested by the candidate in his complaint that derogatory words were used referring his disability is incorrect and baseless.

5.5 Documents perused. Respondent in its notification mentioned that age relaxation of 10 years will be given to divyang candidates. Age limit for Unreserved candidates was 25 and for divyang candidates it was 35. On the date of filing the Complaint, age of the Complainant was 31.

5.6 During online hearing Respondent refuted the claims and submitted that the Complainant qualified written examination and thereafter he was called for 'trade test'. Minimum qualifying marks were 60 out of 100, whereas the Complainant scored only 41.5 marks out of 100 and hence he was rejected on merits and not because of his disability. Respondent further informed this Court that total 4 candidates applied and no one could be selected.

5.7 This Court is inclined to conclude that no case of discrimination is made out by the Complainant. Complainant's claim that the age relaxation was not extended to him cannot be accepted. As on the date of examination, Complainant's age, 31 years approximately, was more than maximum prescribed age, i.e. 25. **Moreover considering the fact that the post was contractual in nature and no one was selected against the post, this Court concludes that candidature of the Complainant was rejected on merits rather on grounds of his disability.** Case of discrimination is not made out by the Complainant. Intervention of this Court in the present Complaint is not warranted.

5.8 Accordingly the case is disposed off.

**Dated: 26.12.2022**

  
(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. 13257/1141/2022

### Complainant:

Ms. Sukhvinder Kaur,  
R/o 21/662, DDA Flats,  
Kalkaji, New Delhi-110019  
Email: skaurxyz@gmail.com;  
Mobile: 7292023020

— R36296

### Respondent:

Joint Secretary (Service and Vigilance),  
Department of Personnel & Training,  
Ministry of Personnel, Public Grievances and Pensions,  
Block-IV, Old JNU Campus,  
New Delhi-110067  
Email: jsv-dopt@nic.in; Phone: 23093227

— R36297

Affected Person: Shri Gundeep Singh Kakkar, a person with 100% Intellectual Disability, son of the complainant, Ms. Sukhvinder Kaur, w/o Shri Paramjeet Singh Kakkar

### 1. Gist of Complaint:

1.1 The complainant, Ms. Sukhvinder Kaur filed a petition vide email dated 20.04.2022 seeking information on Central Government Scheme/Provision for severe intellectual disabled child of Government employee regarding due to limitation of Child Education Allowance as per rule of DoP&T the complainant is unable to claim tuition fee/hostel fee (Rs.45,00/- and Hostel subsidy Rs.13,500/-) on self- certificate basis in view of taking care of daily needs/skills along with personal hygiene, consistent learning and behaviour modification as a part of his education and learning.

1.2 The complainant submitted that her son, Mr. Gundeep Singh (born on 08.04.2005, who is 17 years old and 4.7 feet tall with only 27kg weight) is a case of intellectual disability by birth, needs intensive care. Since birth, even for his day to day routine needs he required special attention, care and support such as education/learning for daily living skills including personal hygiene/wearing

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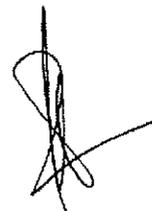
clothes/eating/speech therapy etc. Being special child, in view of his learning should not be hampered, the complainant has to incur a substantial expenditure on keeping attendant for his personal care, the learning/training and for giving him special attention, care and support making him learn daily living skills including personal hygiene. From the year 2016, he started seizures and need always medical attention and personal care. The complainant's husband, who had been employed in a private firm a couple of years ago, had left his job in 2016 under such the compelling circumstance especially to take care of his son. Her husband is not in a position to look after his son for the reason that he had undergone 2 surgeries for ulcerative colitis and is bed ridden and undergoing in the process of 12 cycles of chemotherapy. The complainant also submitted that she had a daughter and being the sole earning member in her family, she has to take care of her.

1.3 The child education allowance rules of DOPT has its limitation where it is not addressing the platform for intellectual child learning/ home rehabilitation/personal care attendant who are not able to go to school or hostel. The Child education allowance is explained as below:

**Provisions of tuition fee/hostel fee allowance for disable children of Government employees--**

(1) The ceiling for reimbursement of Children Education Allowance for disabled children of Government employees has been revised to Rs.36,000/-per annum per child and the rates of Hostel Subsidy for disabled children of Government employees also revised to Rs.9000/- per child per month. (As per O.M. No.A-27012/1/2014-Estt.(Allowance) dated 28.04.2014 of DoPT; and O.M. No.A-27012/1/2017-Estt.(Allowance) dated 17<sup>th</sup> July, 2017 (Ref. Page 61-63/Cor).

1.4. The complainant further submitted that she has been facing crises in managing the role as mother to a special child, and challenges as a Government employee. She prayed that since DoPT has its limitation and the platform, for intellectual disable children who are not able to go to school or hostel for learning/rehabilitation, has not been addressed, her son Shri Gundeep Singh Kakkar may be addressed as a case of severe intellectual disabled child; and he should be allowed to get benefits of children education allowance, i.e. Tuition fee Rs.4,500/- and hostel subsidy Rs.13,500/- on self certification basis in order to provide him an attendant for taking care of his daily



needs/skills along with personal hygiene, consistent learning, and behavior modification as a part of his education and learning.

**2. Submissions made by the Respondent:**

2.1 The respondent – DoPT filed their reply dated 23.06.2022 and submitted that the following implementation of the recommendations of the 7<sup>th</sup> CPC have been made vide OM No.A-27012/02/2017-Estt(AL) dated 17.07.2018 regarding grant of Children Education Allowance (CEA) and Hostel Subsidy w.e.f. 01.07.2017:

a. Children Education Allowance (CEA)

i. CEA for Divyang children of government employees shall be payable @ Rs.45001 per month i.e. double the rate of CEA in respect of normal children {para 2(d) of the OM};

ii. In case of a Divyang child studying in an institution i.e. aided or approved by the Central/State Govt. or UT Administration or whose fees are approved by any of these authorities, CEA paid by the Govt. servant shall be reimbursed irrespective of whether the institution is 'recognized' or not. {Para 2(r) of the OM};

iii. CEA is allowed in case of children studying through "Correspondence or Distance Learning" subject to other conditions laid down in the OM {Para 2(o) of the OM};

iv. In relaxation of the provisions contained in para 2(b) of the OM dated 17.07.2018, it was clarified vide this Department's OM No. A-2701210212017-Estt(AL) dated 01.07.2021 that the CEA claims may also be considered through self-certification made by the employees concerned or through printout of e-mail/SMS of result/ report card I fee payment, in addition to the prescribed modes of claims only for the academic years ending March, 2020 and March 2021.

b. Hostel Subsidy

The OM does not contain any special provisions with regard to the entitlement of Hostel Subsidy in respect of Divyang child. However, it contains the following provisions with regard to Hostel Subsidy:



- i. The amount of Hostel Subsidy is Rs.6750/- per month. To claim the reimbursement of Hostel Subsidy for an academic year, a certificate from the Head of Institution confirming that the child studied in the school will suffice, with additional requirement that the certificate should mention the amount of expenditure incurred by the Government servant towards lodging and boarding in the residential complex. In case such certificate cannot be obtained, self-attested copy of the report card and original fee receipt(s) / e-receipt(s) indicating the amount of expenditure incurred by the Government servant towards lodging and boarding in the residential complex can be produced for claiming Hostel Subsidy. Expenditure on boarding and lodging or the ceiling of Rs. 67501, whichever is lower, shall be paid to the employee as Hostel Subsidy. {Para 2(c) of the OM}
  - ii. Reimbursement of Hostel Subsidy will be done just once in a financial year after completion of the financial year {Para 2(h) of the OM};
  - iii. Hostel subsidy is applicable only in respect of the child studying in a residential educational institution located at least 50 kms. from the residence of the Government servant {Para 2(i) of the OM};
- c. Provisions common to both Children Education Allowance and Hostel Subsidy. The rates/ceiling would be automatically raised by 25% every time the Dearness Allowance on the revised pay structure goes up by 50% {para 2(e) of the OM};
- i. The rates/ceiling would be automatically raised by  $25\frac{0}{10}\%$  every time the Dearness Allowance on the revised pay structure goes up by 50% {para 2(e) of the OM}
  - ii. Hostel Subsidy and CEA can be claimed concurrently {Para 2(f) of the Om};
  - iii. Reimbursement of CEA and Hostel Subsidy shall have no nexus with the performance of the child in his class. In other words, even if a child fails in a particular class, reimbursement of CEA/Hostel Subsidy shall not be stopped. However, if the child is admitted in the same class



in another school, although the child has passed out of the same class in previous school or in the mid-session, CEA shall not be reimbursable {Para 20) of the OM};

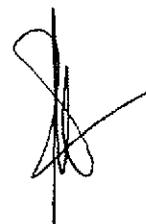
iv. The upper age limit for reimbursement of CEA and Hostel Subsidy in respect of Divyang children has been set at 22 years. In the case of other children the age limit will be 20 years or till the time of passing 12th class, whichever is earlier. There shall be no minimum age. (Para 2(m) of the OM);

v. Reimbursement of CEA and Hostel Subsidy shall be applicable for children from class nursery to twelfth, including classes eleventh and twelfth held by Junior Colleges or schools affiliated to Universities or Boards of Education. {Para 2(n) of the OM};

vi. CEA and Hostel Subsidy is admissible in respect of children studying from two classes before class one to 12<sup>th</sup> standard and also for the initial two years of a diploma/certificate course from Polytechnic/ITI/Engineering College, if the child pursues the course after passing 10<sup>th</sup> standard and the Government servant has not been granted CEA/Hostel Subsidy in respect of the child for studies in '11<sup>th</sup> and 12<sup>th</sup> standards. {Para 2{p} of the OM};

2.2 The Respondent further submitted that complainant sought modification of DoPT Rules regarding Children Education Allowance for providing attendant to the child during the working hours of mother to take care of daily needs/skills along with personal hygiene, consistent learning and behaviour modification as part of his education and learning. The issue regarding 'engagement of attendant' to attend to the special needs of Divyang children falls within the purview of the business allocated to the D/o Empowerment of Persons with Disabilities (Divyangjan), M/o Social Justice and Empowerment. As such, this aspect needs to be examined by that Department.

2.3 As regards complainant's claim for CEA at double the normal rate, she does not get any Sahyogi from Sahyogi Scheme of National Trust. As indicated in para 3(a)(i) above, reimbursement of CEA for Divyang children of government employees has already been allowed @ Rs.4500/- per month i.e. at double the normal rate of



CEA (DoPT's OM No. A-27012/02/2017-Estt (AL) dated 17.07.2018). As for the Sahyogi Scheme, it is governed by National Trust under D/o Empowerment of Persons with Disabilities (Divyangjan). DoPT requested that comments of D/o Empowerment of Persons with Disabilities (Divyangjan) may be sought on the issues concerning them in the complaint filed by Ms. Sukhvinder Kaur.

**3. Submissions made in Rejoinder:**

The reply dated 23.06.2022 was forwarded to the complainant vide email dated 30.06.2022 for submission of Rejoinder/Comments. However, no rejoinder was received from the complainant to the reply filed by the Respondent.

**4. Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.09.2022**. The following persons were present during the hearing:

- (1) Ms. Sukhvinder Kaur, the complainant in person.
- (2) Shri Sunil Kumar, Under Secretary, DoPT for the Respondent.

**5. Observations & Recommendations:**

5.1 Complaint is filed by the mother of the intellectually divyang son. Complainant submits that she is employed and she has engaged a personal attendant for taking care of her son's daily needs including education needs. She submits that as per the existing guidelines of DoPT there is no provision for children educational allowance for those divyang children who are not able to go to school. She further submits that she also does not get any benefit under 'Sahyogi' scheme run by the National Trust. She seeks modifications of DoPT guidelines so that the education allowance can be granted to those divyang children who are not able to go to school, such as 'intellectually divyang' children.

5.2 Respondent submits that as per DoPT O.M. dated 17.07.2018 the education allowance for divyang child of government employee is payable at double the rate as compared to non-divyang child. This allowance is also allowed in case if divyang child is studying through correspondence or distance learning.

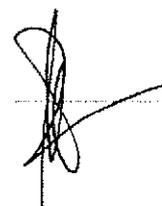
5.3 The present complaint is not related with violation of any particular provision or rights of Divyangjan. The Complainant is praying before this Court to grant allowance which will require modifications of DoPT guidelines. Section 75 of Rights



of Persons with Disabilities Act 2016 (hereinafter referred as 'the Act') lays down functions of Chief Commissioner for Persons with Disabilities. As per clause (c) of sub Section (1) of Section 75 of the Act, this Court can review the safeguards which are in force for the protection of Divyangjan and recommend measures for their effective implementation. Considering this particular function as laid down in Section 75 of the Act this Court is duty bound to intervene in this issue and review the existing guidelines.

5.4 As pointed out in the complaint, the issue deals with education of intellectual disabled Divyangjan. It is well recognised legal fact that Divyangjan have right to life and right to be treated equally at par with non divyagjan. Similarly, divyang children have right to education which is also protected by Section 31 of RPwD Act 2016. Though, Divyangjan do not find any specific mention in Part III (fundamental rights) of the Constitution, they are equally protected by Article 14, 19 and 21 of the Constitution. These rights i.e. Right to Equality and Right to Life are also protected by RPwD Act and in Section 3, Section 6 and Section 7 of RPwD Act, 2016. The aim of RPwD Act is to protect these rights of Divyangjan with full force and vigour.

5.5 As far as right to equality is concerned, it is legally established that concept of equality comprises of two important principals – 'non discrimination' and 'reasonable protection'. The same was recognised by Hon'ble Supreme Court in Jeeja Ghosh v Union of India (2016) 7 SCC 761. The concept of 'reasonable protection' also finds strength and recognition in RPwD Act, 2016 through concept of 'Reasonable Accommodation'. This concept is defined in Section 2(y) of RPwD Act, 2016. As per the provision, it means necessary and appropriate modifications and adjustment to ensure that divyagjan can enjoy the rights equally with others. 'Reasonable Accommodation' acknowledges that in order to rectify the social problems of discrimination with Divyangjan affirmative conditions have to be created for facilitating the development of Divyangjan. In Vikash Kumar v. UPSC 2021 SCC Online SC 85, Hon'ble Supreme Court held that RPwD Act 2016 gives expansive definition of concept of Reasonable Accommodation. The Hon'ble Court held that this concept as recognised in the Act is not a mere formality and it casts affirmative duty and obligation on the government to protect the rights of Divyangjan by taking steps to utilise the capacity of Divyangjan of providing appropriate environment.

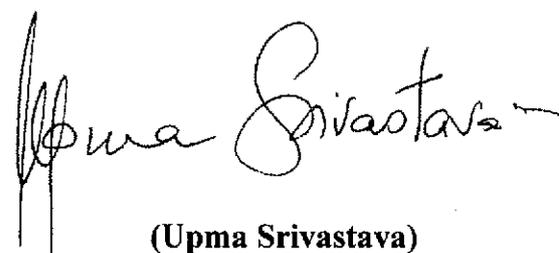


5.6 It is also important to mention that RPwD Act, 2016 contains special category of divyangjan, it is defined as 'Person With Disability having high support needs'. Section 31 which deals with free education of children with benchmark disabilities is also equally applicable on persons with disabilities with high support needs. This Court appreciates the facts that there are guidelines in place which allow higher education allowance for divyang children of government employee. However, these guidelines do not cover those children who are Divyangjan with high support needs and cannot go to school. Hence, there must be some guidelines for providing high education allowance for divyang children of government employee who cannot attend school. This Court recommends that the respondent shall examine the issue and frame suitable guidelines.

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: 26.12.2022**

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

Extra



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)  
दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)  
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment  
भारत सरकार / Government of India

Case No. 13267/10112022

### Complainant:

Miss Shah Vishwa Rakesh Ragini  
R/o 12, Sundaram, Opposite Anandniketan School,  
Near Satya Trivieni Tower, Ramdevnagar Satellite,  
Ahmedabad Gujarat-380015  
Email- shahvishwa10@gmail.com; Phone-8160208874

— R36292

### Respondent:

Managing Director,  
National Cooperative Development Corporation (NCDC)  
4, Siri institutional area Hauz khas,  
New Delhi 110016  
Email: mdncdc@ncdc.in

— R36293

Affected Person: The complainant, a person with 90% Visual Impairment

### 1. Gist of Complaint:

1.1 The complainant filed a complaint dated 27.04.2022 regarding denial of appointment to the post of Personal Assistant under disability quota in pursuance of Advertisement No.02/2018 published by the respondent – NCDC.

1.2 The complainant submitted that NCDC came out with an Advertisement No.02/2018 after a long time. In the Post Code 12 Personal Assistant, out of 05 vacancies 01 was reserved for Persons with Disabilities, but no PwD candidate was got appointed. She secured 88 marks whereas the cut off was declared at 43 marks. She alleged that after qualifying highest score in PwDs merit list, she was not called for further process.

1.3 The complainant prayed (i) to direct the respondent that visually impaired persons are eligible for the post as per MoSJE List. The Respondent cannot exclude the candidate to grab the opportunity; (ii) Since she had given similar skill test of shorthand and typing similar content in upper cadre post of senior personal Assistant in same advt. during same duration of time, there was no meaning of reattempting

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( 2 )

again. The same must be considered in both the case; (iii) The Respondent be also directed to grace 3%-4% marks in skill test as per Para 11 of DoPT OM No.36035/2/2017Estt.(Res) dated 15.10.2018 and (iv) she may be given appointment as Personal Assistant as the post was reserved for PwD.

**2. Submissions made by the Respondent:**

2.1 The Respondent filed their reply dated 23.06.2022 and inter-alia submitted that the submission made by the complainant is not tenable for the reason that the NCDC had identified the posts of Asstt. Director in Group A, Programme Officer/Sr. Personal Assistant in Group B and Jr. Assistant/Personal Assistant in Group C. The respondent further submitted that NCDC has been following the instructions and orders of the Government issued from time to time in the matter of reservation for Persons with Benchmarks Disabilities while filling up of the posts through direct recruitment and promotions and accordingly have been granting concessions/relaxations to PwD incumbents.

2.2 With regard to the complaint of the complainant it has been stated that the Corporation advertised 04 posts of Personal Assistant indicating that out of 04 vacancies, 01 vacancy was earmarked for persons with benchmark disability in category (b) i.e. Deaf and hard of hearing. The Corporation has made all efforts to fill up the 01 post of Personal Assistant earmarked for "B" category of benchmark disability i.e. Deaf and hard of hearing through advertisement No. 02/2018 but due to non availability of suitable candidates this single post have remained vacant. Action has already been initiated to fill up this vacant post of Personal Assistant earmarked for "B" category of benchmark disability.

2.3 The complaint filed by the complainant is factually incorrect. The fact is that the complainant belongs to "A" category of benchmark disability i.e. blindness and low vision, whereas the post was earmarked for "B" category of benchmark disability i.e. Deaf and hard of hearing. This is the reason of not considering the candidature of the complainant. Further, the complainant was considered under UR category and cut off marks of the candidate under UR category for inviting shorthand skill test was 89 whereas the complainant has secured 88 marks.



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2.4 As regards complainant's contention to consider her candidature for the post of Personal Assistant on the basis of her performance in the skill test of shorthand for the post of Senior Personal Assistant is not tenable as the criteria and eligibility of both posts are different. For the post of Senior Personal Assistant, speed required in English Shorthand is 120 w.p.m. whereas for the post of Personal Assistant, speed required in English Shorthand is 80 w.p.m. Accordingly, Shorthand Skill Test had been conducted separately.

**3. Submissions made in Rejoinder:**

The complainant in Rejoinder dated 16.07.2022 submitted that the respondent had excluded visually challenged persons from the post of Personal Assistant and Senior Personal Assistant whereas MoSJE has found suitable. This is discrimination. In Group 'B', PwD seats were not distributed among all posts and in Group 'C', there is direct ignorance. Regarding skill test, she stated to have qualified upper post skill test shorthand.

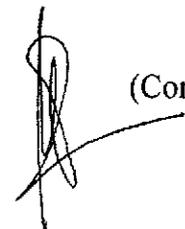
**4. Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.09.2022**. The following persons were present during the hearing:

- (1) Ms. Shah Vishva Rakesh Ragini, the complainant in person.
- (2) Shri Atar Singh Meena, Director, National Cooperative Development Corporation, for the Respondent.

**5. Observations & Recommendations:**

5.1 The Complainant submits that the respondent issued advertisement for the post of 'Personal Assistant'. Out of total 5 vacancies, 01 was reserved for Divyangjan.

5.2 She submits that she secured 88 marks whereas cut off marks for Divyangjan category were 43. She claims that even though she secured more marks than the cut off marks, she was not called for further process. She further claims that on 01 reserved post no one has been appointed. She requested this Court to appoint her against the post of Senior Personal Assistant.



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5.3 Respondent submits that it issued notification advertising vacancies of Personal Assistant (Group C), Senior Personal Assistant (Group B). Total vacancies for the post of Personal Assistant were 11 out of which 01 was reserved for PwD of 'Hard of Hearing' category. 12 vacancies for the post of Senior Personal Assistant were advertised out of which 03 were reserved for PwD of blind, hard of hearing and locomotor category i.e. 01 each for every subcategory.

5.4 Respondent submits that the complainant belongs to the category of low vision/ blindness. She applied for the post of Personal Assistant. Respondent further submits that the cut off for the Divyangjan category for the post Personal Assistant was 43, complainant scored 88 marks, however, her disability category is hard of hearing but the post of Personal Assistant was reserved for low vision category. Therefore, she was considered against unreserved vacancy instead of reserved vacancy. The Cut off marks for unreserved category were 89 and hence she was not called for further process. The Respondent further submits that complainant's candidature could not be considered for the post of Senior Personal Assistant because the selection criteria and eligibility for both the posts are different. For the post of Senior Personal Assistant, speed in English shorthand is 120 words per minute whereas for the post of Personal Assistant it is 80 words per minute.

5.5 This Court is satisfied with the reply of the respondent. Hence, no further intervention is required.

5.6 Accordingly the case is disposed off.

**Dated: 26.12.2022**

  
(Upma Srivastava)  
Chief Commissioner  
for Persons with Disabilities

Extra



## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)  
दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)  
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment  
भारत सरकार / Government of India

Case No. 13262/1041/2022

### Complainant:

Shri Ajambar Barik  
R/o At- Tuhungidadar  
PO- Amithi, Jharbandh  
Dist- Bargarh (Odisha), Pin: 768042  
Email: [ajambarbarik124@gmail.com](mailto:ajambarbarik124@gmail.com)

← R36290

### Respondent:

The Registrar,  
Indira Gandhi National Open University,  
93, Maidan Garhi Road,  
Maidan Garhi, New Delhi- 110068  
Email: [vc@ignou.ac.in](mailto:vc@ignou.ac.in)  
Phone: 1129531480

← R36291

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

### 1. Gist of Complaint:

The complainant filed a complaint dated 18.05.2022 regarding not providing extra time in B.Ed. Entrance Exam conducted by IGNOU on 08.05.2022 at Rajendra University Bolangir (Odisha).

### 2. Submissions made by the Respondent:

The respondent filed its reply dated 12.08.2022 and inter-alia submitted that the complaint has been thoroughly examined and after conducting a detailed enquiry, the IGNOU is of the firm opinion that the complaint does not appear to be bona fide. The respondent further submitted that the Examination Centre was duly requested to make separate arrangements for persons with disabilities. The complainant had neither claimed for extra time nor had submitted any document to get the compensatory time during the test. Further, the complainant had also not submitted any application to the Examination Centre Superintendent seeking extra time. So, curtailing of genuine given time for a divyangjan does not arise.

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**3. Submissions made in Rejoinder:**

The complainant in his rejoinder dated 05.09.2022 submitted that at the time of filling online form he had submitted his Disability Certificate and there was no need to file it again. He further submitted that he wants extra 20 marks or admission in B.Ed as he got 49 marks in entrance exam result. He also submitted that if the respondent gave him extra time he must gets 70 marks.

**4. Hearing:** The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **07.11.2022**. The following persons were present during the hearing:

- (1) Shri Ajambar Barik, the complainant.
- (2) Advocate Mobashir Anwar, for the Respondent.

**5. Observations & Recommendations:**

5.1 The Complaint is related to not providing extra time in B.Ed. Entrance Exam conducted by IGNOU on 08.05.2022 at Rajendra University Bolangir (Odisha). He prays before this Court that 20 marks should be awarded to him because of the mistake committed by the Respondent.

5.2 The respondent submitted that the complaint has been thoroughly examined and after conducting a detailed inquiry, the IGNOU is of the firm opinion that the complaint does not appear to be bona fide. The respondent further submitted that the Examination Centre was duly requested to make separate arrangements for persons with disabilities. The complainant had neither claimed for extra time nor had submitted any document to get the compensatory time during the test. Further, the complainant had also not submitted any application to the Examination Centre Superintendent seeking extra time. So, curtailing of genuine given time for a divyangjan does not arise. Respondent further submits that on the same day another divyang candidate namely Nilesa Behara was given 40 minutes of compensatory time for 2 hours of the examination. Hence, Respondent never intended to deprive the Complainant of his rights.

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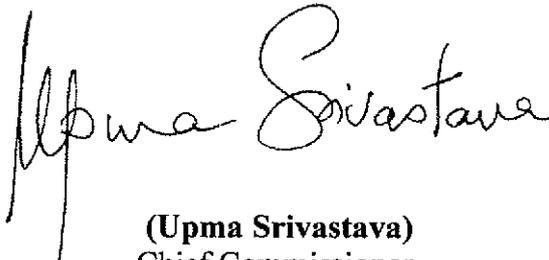
5.3 During online hearing, Complainant reiterated his claim that compensatory time was not given to him because the Respondent intended to commit discrimination. Complainant further submitted that on the day of examination, representatives of the Respondent asked the Complainant to produce Disability Certificate.

5.4 During online hearing, Respondent submitted that the Complainant was not singled out. No other similar Complaint was filed by any other divyangjan. Whoever claimed compensatory time was given the same.

5.5 Complainant has not filed any proof to support his claims. Furthermore, the fact that no other similar Complaint was raised by any other candidate supports the fact that the intention of the Respondent was not to commit any act of discrimination. Reply of the Respondent is satisfactory, intervention of this Court in the present Complaint is not warranted.

5.6 Accordingly the case is disposed off.

**Dated: 26.12.2022**

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



सत्यमेव जयते

Case No.13299/1011/2022

Extra

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

Case No. 13299/1011/2022

**Complainant:**

Shri Bablu Halder, S/o Shri Pinakpani Halder, — R36300  
R/o Village-Bhatpara, Post: Jibanti,  
PS: Kandi, District-Murshidabad-742136 (West Bengal)  
Email: [babluh218@gmail.com](mailto:babluh218@gmail.com)

**Respondent:**

Office of the Superintendent of Post Offices — R36307  
[Through: Superintendent]  
Nadia North Division, P.O. Krishnanagar,  
District – Nadia 741101  
Email: [sposnadianorth@rediffmail.com](mailto:sposnadianorth@rediffmail.com); Phone: 03472-252288

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

**1. Gist of Complaint:**

1.1 The complainant filed a complaint dated 25.05.2022 regarding denial of appointment to the post of GDS Packer, Nadia Postal Circle, West Bengal pursuant to Recruitment No.RECTT./R-100/ONLINE/GDS/ VOL-VI dated 05.04.2018.

1.2 The complainant submitted that he had applied for the post GDS PACKER in Bathuadahari B.O. in the cycle – 1, GDS Recruitment of West Bengal. He was declared selected when the result got declared and he also received the letter of intimation. He then contacted with the Nadia Postal Subdivision where he was given Attestation Form and Medical Form and was told to visit there for verification after filling up those forms. When he reached there on 05.02.2021 with proper filled documents, they denied verifying his documents by saying that he is not suitable for the post since he is a person with 100% Visual Impairment. He then contacted to SI of the Nadia Postal Circle who told him that he was wrongly selected and he will not allow him to do the job.

**2. Submissions made by the Respondent:**

The respondent filed their reply dated 27.07.2022 and submitted that the complainant was provisionally selected as GDSPKR as per GDS online Engagement Notification of cycle 1 dated 05.04.2018. According to Para M of the Notification published, the permissible disability for physically disabled persons for GDS Packer

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post is One Arm (OA) affected, One Leg (OL) affected, Low Vision (LV), and Hearing Impaired (HI). As per Office records available it is seen that during verification the candidate submitted the disability certificate which shows disability of 100% Blind. So, disability of the candidate did not match with the Notification and his candidature was rejected.

**3. Submissions made in Rejoinder:**

The complainant filed his rejoinder dated 31.08.2022 and submitted that when all the disabled people get equal opportunities and provided suitable jobs, why the Postal Department is not providing to persons with blindness.

**4. Hearing:** The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on **29.09.2022**. The following persons were present during the hearing:

- (1) Shri Bablu Hardar, the complainant.
- (2) Shri Pijush Kanti Bhattacharjee for the respondent.

**5. Observation/Recommendations:**

5.1 Complainant submitted that he had applied for the post of Gramin Daak Sevak (GDS). He claimed that in the result, he was declared as successful and was selected on the advertised post. Thereafter, he was called for document verification and medical examination whereby he was informed that he was not medically fit for the post against which he was appointed. Complainant further claimed that some of his friends were also Divyangjan of blind category and are already selected and appointed against GDS post.

5.2 Respondent submitted that the notification for the post of GDS was issued on 05.04.2018. As per the notification, this post was identified suitable for locomotor disability, hearing impaired and low vision categories. The post was not identified suitable for 100% blind category. Complainant's disability is 100% blind hence, he was found medically unfit for the post.

5.3 Department of Empowerment of Person with Disabilities has issued list of posts identified suitable for divyangjan. At Sr. No. 198 on Page No. 2536 of the list the post of Village Postman is identified suitable for divyangjan of Blindness category and 'Low Vision' category. The Nomenclature 'Grameen Daak Sevak' and 'Village Postman' are the same. In Complaint Nos. 12203/1013/2020; 12202/1013/2020; and 11968/1011/2020 this Court recommended that the post of GDS is suitable for divyangjan of 'Blindness' category.

5.4 Since the post is identified suitable by DEPwD and Respondent has not obtained exemption hence, this Court recommends that the Complainant has right to be considered against the post of Graameen Daak Sevak. Copy of the common-recommendation given by this Court in Complaint No. 12203/1013/2020;



12202/1013/2020; 11968/1011/2020 is attached herewith for perusal of the Respondent.

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

5.6 Accordingly the case is disposed off.

**Dated: 27.12.2022**

Encl.: As stated

  
(Upma Srivastava)  
Chief Commissioner  
for Persons with Disabilities

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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. 12203/1013/2020

R-25739  
Complainant: Shri Debabrata Khanra, Vill : Chaksimultala, P.O.: Kumorchak, P.S.:  
Nandakumar, Dist. : Purba Medinipur, West Bengal - 721 652.

Respondent : Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, No.40/C,  
Chittaranjan Ave., Chandni Chawk, Kolkata - 700 012.

R-25740  
Disability : 100% visual impairment

Gist of Complaint:

The complainant vide his complaint dated 20.07.2020 submitted that he has been selected for the post of GDS Packer under West Bengal Postal Circle. After getting the letter of intimation, he went to the Office of the IP of Mote Chandipur during first week of February 2020 for document verification and genuineness of certificates. After the verification, he was given an Attestation Form, Form of Character Certificate and Medical Fitness Certificate which he went to submit duly filled during the last week of February 2020 but he was told that he is not suitable for the post of GDS Packer since he is a person with visual impairment. He submitted that he had applied for a post that is reserved for persons with disabilities and has been selected on merit. But non selection created major mental issue to him.

2. The Assistant Director of Postal Services (Recruitment), O/o the Chief Postmaster General, WB Circle vide letter no. Rectt/R-100/GDS/Cycle-I/PH/2020 dated 11.12.2020 submitted that a notification for GDS online selection-cycle-I for filling up of 5778 posts of GDS MP, GDS MC & BPM was issued under no. Rectt/R-100/Online/GDS/Vol-VI dated 05.04.2018 out of which 220 posts were reserved for PH candidates. The permissible disability in respect of 'PH' candidate for GDS Mail Carrier post were One leg affected (OL), Low Vision (LV) and Hearing Impaired (HH). In spite of declaration of eligibility criteria in respect of 'PH' candidate for the post of GDSMC in the notification dated 05.04.2018, the complainant submitted online application for the post of GDS-MC which was reserved for 'Low vision' candidates, though he is 100% blind and not eligible for the post. The complainant has knowingly submitted online application though he was not eligible for

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सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006  
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001; Tel.: 23386054, 23386154; Telefax : 23386006

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

the post of GDSMC as per notification. The criteria for online selection to the post of GDS was only the marks obtained in 10<sup>th</sup> Standards of approved Boards aggregated to percentage to the accuracy of 4 decimals and the selection was made as per automatic system generated merit list based on the candidature's online submitted application in accordance with the selection criteria. As per online selection process the candidates who have secured highest percentage of marks in 10<sup>th</sup> standard automatically receive an SMS for his provisional selection on the prescribed date followed by system generated intimation letter. Shri Debarata Khanra secured highest percentage of marks in 10<sup>th</sup> standard amongst the applicants applied online for the same post and the system considered Shri Khanra as 'selected' for the post being more meritorious (highest %age of marks) and simultaneously online 'sms' was generated to the selected candidate from the software. Mere getting sms or any other communication on selection will not entitle the candidate to claim for regular selection/appointment. The final selection is based on satisfactory completion of verification & genuineness of all required documents produced by the candidates in support of his/her eligibility for the post in accordance with notification by the Recruiting Authority. The Respondent further submitted that GDS are not Government employees and do not get salaries like a Government Servant. GDS are appointed as extra departmental agents and they are getting allowances for 3 hours or 5 hours of service in a day. Moreover, the duty of Mail Carrier is to carry mailbag containing Registered articles, Parcels, Insured Articles and other valuable documents and cash from one Post Office to another Post Office. The said work is not suitable/fit for 100% blind candidates as decided by the competent authority.

3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.

4. The following persons were present during the hearing ;
- 1) Shri Debabrata Khanra, complainant.
  - 2) Ms. Neetu, Director, Postal Services for Respondent.

#### **OBSERVATIONS & RECOMMENDATIONS**

5. These batch of complaints is filed by 3 Divyangjans who suffer from 100% Visual Impairment. Common grievance expressed in the complaints is non appointment of the Complainants despite of being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.

6. Respondent has submitted in its Reply that the whole selection process was completely automatic and was carried out using computer software without intervention of human beings. Complainants were selected on the basis of marks they secured in their Class: 10<sup>th</sup> examination. No interview or written examination was conducted. The post for which the recruitment was carried could not be filled with Divyangjan suffering from 100% Visual Impairment.

7. During online hearing this court was informed by the Respondents that in Murshidabad, two Divyangjans suffering from 100% Visual Impairment are already employed on the post of Gramin Dak Sewak. As per Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities, if any post is already held by a Persons with Disabilities, it shall be automatically deemed to have been identified for Divyangjans. Moreover, Respondent informed that at the stage of filling up of Application Forms, no candidate was given opportunity to mention their disability sub category. Hence, names of Divyangjans suffering from 100% Visual Impairment could not be eliminated at the initial stage itself.

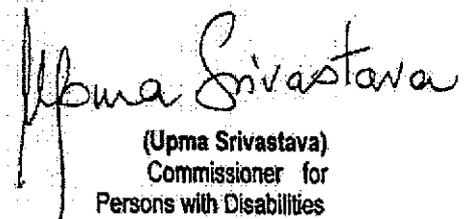
8. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.

9. Contention on the part of the Respondent that such candidates will not be able to perform the duties of a GDS is found to be presumptuous. The complainants are fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.

10. Hence, this court recommends that Respondent shall appoint the Complainants as per the test results and shall give them opportunity for at least 6 months. Further if the Complainants are able to carry out their duty efficiently then the Respondents shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.

11. The case is disposed off.

Dated: 12.01.2021

  
(Upma Srivastava)  
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. 12202/1013/2020

Complainant : Shri Prabir Hazra, Village & Post : Gonna Serandi, P.S.: Ketuhram, Dist. :  
Purba Bardhaman, West Bengal - 731 215.

Respondent : Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, No.40/C,  
Chittaranjan Ave., Chandni Chawk, Kolkata - 700 012.

Disability : 100% visual impairment

**Gist of Complaint:**

The complainant vide his complaint dated nil submitted that he has been selected for the post of GDS Packer at Uchalan under Burdwan H.O. of West Bengal Circle. He went to the Office of the ASP of Burdwan, 1<sup>st</sup> Sub Division on 29.01.2020 for verification and genuineness of certificates. After the verification of documents, he was told that he was not suitable for the said post since he is a person with visual impairment. He was even not issued a Provisional Selection letter. He submitted that he had applied for a post which is reserved for a person with disability and has also been selected on merit. The complainant submitted that this is an harassment to a person with disability.

2. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.

3. The following persons were present during the hearing ;

- Shri Prabir Hazra, the complainant.
- Ms. Neetu, Director, Postal Services.

**OBSERVATIONS & RECOMMENDATIONS**

4. These batch of complaints is filed by 3 Divyangjans who suffer from 100% Visual Impairment. Common grievance expressed in the complaints is non appointment of the Complainants despite of being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.

5. Respondent has submitted in its Reply that the whole selection process was completely automatic and was carried out using computer software without intervention of human beings. Complainants were selected on the basis of marks they secured in their Class 10<sup>th</sup> examination. No interview or written examination was conducted. The post for which the recruitment was carried could not be filled with Divyangjan suffering from 100% Visual Impairment.

6. During online hearing this court was informed by the Respondents that in Murshidabad, two Divyangjans suffering from 100% Visual Impairment are already employed on the post of Gramin Dak Sewak. As per Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities, if any post is already held by a Persons with Disabilities, it shall be automatically deemed to have been identified for Divyangjans. Moreover, Respondent informed that at the stage of filling up of Application Forms, no candidate was given opportunity to mention their disability sub category. Hence, names of Divyangjans suffering from 100% Visual Impairment could not be eliminated at the initial stage itself.

7. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.

8. Contention on the part of the Respondent that such candidates will not be able to perform the duties of a GDS is found to be presumptuous. The complainants are fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.

9. Hence, this court recommends that Respondent shall appoint the Complainants as per the test results and shall give them opportunity for at least 6 months. Further if the Complainants are able to carry out their duty efficiently then the Respondents shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.

10. The case is disposed off.

Dated: 12.01.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



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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. 11968/1011/2020

R-25745  
R-25746

Complainant : Shri Pranjit Das, S/o. Ramkrishna Das, Chilakhana, Coochbehar-736 159.

Respondent : Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, No.40/C, Chittaranjan Ave., Chandni Chawk, Kolkata – 700 012.

Disability : 100% visual impairment

### Gist of Complaint:

The complainant vide his complaint dated 03.06.2020 submitted that he had applied for the post of GDS MC at Krishnapur B.O. in the Cycle-1 GDS Recruitment of West Bengal Circle vide Notification No. RECTT./R-100/ONLINE/GDS/VOL-VI dated 05.04.2018. He got selected in the post and also received a letter of intimation. When contacted the Malda Postal Subdivision regarding this matter, he was given the attestation form and medical form and was asked to visit them for verification after filling up these forms. He reached there on 06.03.2020 as advised with proper and filled documents for its verification but the Respondent refused to verify his documents and told that he was not suitable for the post since he is a person with 100% visual impairment. He contacted the SI of Malda Postal Circle as suggested by the ASP. The SI not only refused to listen to him but also misbehaved with him. The complainant was told that he was wrongly been selected and he will allow him to do the job. When the complainant informed him that some of his friends having similar situation like him, were already been selected after their document verification, he ignored him and quit the conversation.

2. The Assistant Director of Postal Services (Recruitment), O/o the Chief Postmaster General, West Bengal Circle vide letter no. Rectt./R-100/GDS/Cycle-1/PH/2020 dated 14.12.2020 submitted that a notification for GDS online selection-cycle-I for filling up of 5778 posts of GDS MP, GDS MC & BPM was issued under no.Rectt./R-100/Online/GDS/Vol.VI dated 05.04.2018, out of which 220 posts were reserved for PH candidates. The permissible disability in respect of 'PH' candidate for GDS Mail Carrier post was OL (One leg affected), LV (Low vision) and HH (Hearing impaired). In spite of declaration of eligibility criteria in respect of 'PH' candidate for the post of GDSMC in the notification dated 05.04.2018, the complainant submitted online application for the

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post of GDS-MC which was reserved for 'Low Vision', though he is 100% blind and not eligible for the post. It seems that the complainant knowingly submitted online application though he was not eligible for the post of GDSMC as per notification. The Respondent further submitted that GDS is not a Government employee and do not get salary like a Government Servant. GDS are appointed as extra departmental agents and they get allowances for 3 hours or 5 hours for the service in a day. Moreover the duty of Mail Carrier is to carry mailbag containing registered articles, parcels, Insured articles, other valuable documents and cash upto certain limit from one Post Office to another Post Office. The said work is not suitable / fit for a 100% blind candidate as decided by the competent authority.

3. **Hearing** : The case was heard through video conferencing by the Commissioner for Persons with Disabilities on 05.01.2021.

4. The following persons were present during the hearing ;

- 1) Shri Pranjit Das, the complainant.
- 2) Ms. Neetu, Director, Postal Services, for Respondent.

#### **OBSERVATIONS & RECOMMENDATIONS**

5. These batch of complaints is filed by 3 Divyangjans who suffer from 100% Visual Impairment. Common grievance expressed in the complaints is non appointment of the Complainants despite of being selected in the recruitment process carried out to fill vacancies of Gramin Dak Sevak.

6. Respondent has submitted in its Reply that the whole selection process was completely automatic and was carried out using computer software without intervention of human beings. Complainants were selected on the basis of marks they secured in their Class 10<sup>th</sup> examination. No interview or written examination was conducted. The post for which the recruitment was carried could not be filled with Divyangjan suffering from 100% Visual Impairment.

7. During online hearing this court was informed by the Respondents that in Murshidabad, two Divyangjans suffering from 100% Visual Impairment are already employed on the post of Gramin Dak Sewak. As per Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities, if any post is already held by a Persons with Disabilities, it shall be automatically deemed to have been identified for Divyangjans. Moreover, Respondent informed that at the stage of filling up of Application Forms, no candidate was given opportunity to mention their disability sub category. Hence, names of Divyangjans suffering from 100% Visual Impairment could not be eliminated at the initial stage itself.





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8. Right to Employment and/or being economically independent is Fundamental Right of every citizen of this country. Moreover, for better inclusion of Divyangjans in the society, employment/earning is indispensable. Hence, denial of such opportunities to any Divyangjan is equivalent to making hindrance in assimilation of Divyangjans in the society.

9. Contention on the part of the Respondent that such candidates will not be able to perform the duties of a GDS is found to be presumptuous. The complainants are fully confident of carrying out the duties and rejection on the basis of a presumption will lead to loss in confidence & dignity of a person with disability.

10. Hence, this court recommends that Respondent shall appoint the Complainants as per the test results and shall give them opportunity for at least 6 months. Further if the Complainants are able to carry out their duty efficiently then the Respondents shall revise the notification issued for appointment of Gramin Dak Sevaks and shall include the category of 100% Visual Impairment for the appointment on the post.

11. The case is disposed off.

Dated: 12.01.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities



Extra



Case No.13295/1102/2022

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

Case No. 13295/1102/2022

**Complainant:**

Shri Manish Somani,  
S/o Shri Prem Narayan Somani,  
R/o House No.188, somani Nagar,  
Airport Road, Indore,  
Sub District/District: Indore, (Madhya Pradesh),  
Pin: 452005  
Email: chikumama188@gmail.com

— R36298

**Respondent:**

ICICI Bank Ltd.  
Through: The Principal Nodal Officer,  
Bandra Kurla Complex, Mumbai-400051  
Email: headservicequality@icicibank.com;  
senior.management@icicibank.com

— R36299

Affected Person: The complainant, a person with 50% Hearing Impairment

**1. Gist of Complaint:**

The complainant filed a complaint dated 28.05.2022 for not providing zero balance facility in Saving Account and other banking facilities to the account holder persons with disabilities of ICICI Bank other than visually impaired.

**2. Submissions made by the Respondent:**

No reply has been received from the respondent despite issue of final Reminder dated 17.08.2022 and lapse of Statutory Time Limit.

**3. Hearing:** The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on **06.10.2022**. The following persons were present during the hearing:

- (1) Shri Manish Somani, the complainant in person.
- (2) Shri Ajay Yogi, Branch Manager, ICICI Bank Ltd., Bandra Kurla Complex, Mumbai

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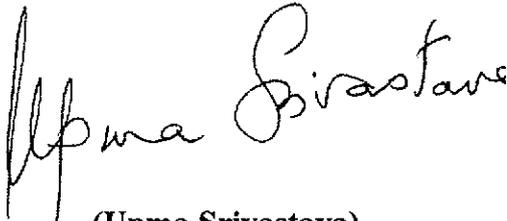
**4. Observations & Recommendations:**

4.1 Complainant submitted that Divyangjan of any category other than Visual Impairment are discriminated with because respondent is not providing 'zero balance' facility to any Divyagnjan other than those who fall under 'Visual Impairment' category. Respondent submitted that as per RBI circular, exemption from maintaining minimum balance in savings accounts is given to Divyangjan with Visual Impairment category only. Such exemption is not extended to other categories of Divyagnjan. On the basis of RBI circular, respondent also issued its internal circular whereby 'zero balance' facility is granted to Visually Impaired Divyangjan only.

4.2 Complainant has not provided any guideline or circular to establish that RBI issued guidelines to extend zero balance facility to all Divyangjan of all categories. This court concludes that complainant has not made any case of discrimination in the present complaint. Hence, intervention of this court is not warranted.

4.3 Accordingly, the case is disposed off.

**Dated: 27.12.2022**

  
(Upma Srivastava)  
Chief Commissioner  
for Persons with Disabilities

Extra

Case No.13305/1011/2022



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. 13305/1011/2022

**Complainant:**

Ms. Golden Pandey,  
D/o Shri Vishnu Dev Pandey, — R 36294  
R/o Village: Balkuwa, Deoria,  
Uttar Pradesh-274203;  
Email: goldenpandey1997@gmail.com; Phone: 6392696309

**Respondent:**

Regional Director,  
Staff Selection Commission (Central Region) — R 36295  
KendriyaSadan, 34A, M.G. Road,  
Prayagraj-211002;  
Email: rdcrrsc@gmail.com

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

**1. Gist of Complaint:**

The complainant filed a complaint vide email dated 31.05.2022 regarding removal of preference P26 post by SSC(CR) during document verification while she was eligible for the post. She further submitted that the priority given by her was not shown in the Score Card.

**2. Submissions made by the Respondent:**

The respondent filed their reply dated 09.09.2022 and submitted that the Staff Selection Commission Headquarters vide its letter No.3-6-2019-P&P-I (Vol.II) dated 11.03.2022 has determined suitability of posts under Combined Higher Secondary Level Examination 2019 [CHSLE-2019] for various disabilities and categories under the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016]. A candidate with 100% Visual Impairment are not suitable for the post of Postal Assistant (Code-P26) in the CHSLE-2019. Hence, Miss. Golden Pandey, Roll No.3007920026, being a 100% Visual Impairment candidate was not considered for the post code P26 in that Examination.

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**3. Submissions made in Rejoinder:**

The complainant filed a rejoinder dated 14.09.2022 and inter-alia submitted that as per SSC the persons with 100% visual impairment are not suitable for the post, if that was so this should have been mentioned in the Notification. Moreover, it was not officially declared by SSC till the examination was over. SSC could declare this fact only after she secured above the cut off marks. The complainant submitted her dissatisfaction to the reply of SSC and requested that why she should suffer for the wrongs committed by SSC.

**4. Hearing:** The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **07.11.2022**. The following persons were present during the hearing:

- (1) Ms. Golden Pandey, the complainant.
- (2) Shri V.K. Srivastava, Deputy Director, SSC.

**5. Observations & Recommendations:**

5.1 The complainant submitted that she participated and qualified Combined Higher Secondary Examination 2019. Complainant claimed that she must have been considered against the post of 'Postal Assistant', however, the Respondent did not consider her candidature for the post, despite the fact that she gave preference to the post of 'Postal Assistant' over other posts.

5.2 The respondent submitted that the Staff Selection Commission Headquarters vide its letter No.3-6-2019-P&P-I (Vol.II) dated 11.03.2022 has determined suitability of posts under Combined Higher Secondary Level Examination 2019 [CHSLE-2019] for various disabilities and categories under the Rights of Persons with Disabilities Act, 2016. A candidate with 100% Visual Impairment are not suitable for the post of Postal Assistant (Code-P26) in the CHSLE-2019. Hence, the Complainant being a 100% Visual Impairment candidate was not considered for the post of Postal Assistant.

5.3 During online hearing, Complainant further submitted that in the notification issued by the Respondent, it was clearly mentioned that the post of 'Postal Assistant' is identified suitable for 'Blind' as well as 'Low Vision' categories of divyangjan. On this issue Respondent also informed this Court that later on 11.03.2022, a



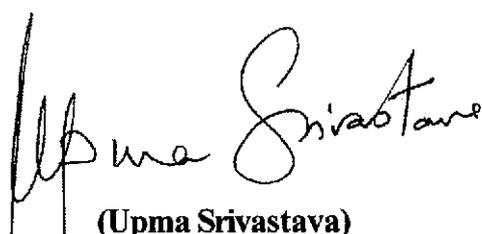
corrigendum was issued amending the original notification and hence the post of 'Postal Assistant' was identified suitable for 'Low Vision' category only excluding the 'Blind' category.

5.4 In list of posts identified suitable for divyangjan issued by Department of Empowerment of Persons with Disabilities, at Sr. No. 1269 post of 'Postal Assistant' is identified suitable for 'Low Vision' category but not identified suitable for 'Blind' category.

5.5 Considering the fact that the post is not identified suitable for 'Blind' category in the list of posts identified suitable, this Court concludes that the Complainant has not made any case of discrimination against divyangjan. Intervention of this Court in the present Complaint is not warranted.

5.6 Accordingly the case is disposed off.

**Dated: 27.12.2022**

  
**(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. 12946/1011/2021

**Complainant:**

Shri Jhatothu Rahul  
 S/o Shri Jhatothu Rajaram,  
 R/o 2-19-82/1, Kalyanpuri Colony,  
 Uppal, Hyderabad-500039 (Telangana)  
 Email: [rahuljhatothu@gmail.com](mailto:rahuljhatothu@gmail.com)

- R36287

**Respondents:**

(1) The Director & Member Secretary,  
 Institute of Banking Personnel Selection,  
 90, IBPS House, 90 Feet DP Road,  
 Near Thakur Polytechnic,  
 Western Express Highway,  
 Kandiwali (East), Mumbai-400001  
 Email: [director@ibps.in](mailto:director@ibps.in)

- R36278

(2) The General Manager-I  
 Andhra Pradesh Grameen Vikas Bank,  
 Door No.2-5-8/1, Ram Nagar,  
 Hanmakonda, Warangal (City & District),  
 Telangana – 506001  
 Email: [headoffice@apgvbank.in](mailto:headoffice@apgvbank.in)

- R36289

Affected Person: The complainant, a person with 66% to 70% Blood Disorder (Thalassemia)

**1. Gist of Complaint:**

1.1 The complainant filed a complaint dated 08.10.2021 regarding denial of appointment to the posts of Officer Scale-1 and Probationary Officer in Andhra Pradesh Grameena Vikas Bank by the respondents.

1.2 The complainant submitted that he applied for the 02 posts notified by IBPS, vide Notification No.CRP RRBs IX for the post of Officer Scale 1 and vide Notification No.CRP PO/MT-X for the post of Probationary Officer. Both the notifications stated that the benefit of Persons with Benchmark Disabilities (PWBD) reservation is covered under Sec. 34 of the RPwD Act, 2016.

However while filling the online application for both the posts there was a question listed as “Are you a person with benchmark disability of 40% and above” and he

answered it as “Yes” as it was specifically questioning about disability. Another question was listed as “**Type of Disability**” for which the options were given as under:

- HI
- VI
- OC/Locomotor disability
- ID and Others.

The complainant had selected “**ID and Others**” as he is a person with Blood Disorder disability (Thalassemia).

**Facts regarding RRB Officer Scale 1**

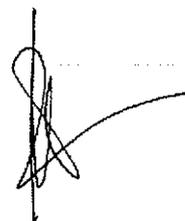
1.3 He cleared the exam and interview for Officer Scale 1 under ST-ID and Others categories, but he was in non-possession of the Disability Certificate for Thalassemia as Telangana Government had not been issuing disability certificates to newly added disabilities under RPWD Act, 2016 due to software upgrade. The document verification was scheduled on 08-07-2021. During document verification, the complainant submitted the Order dated 06.04.2021 passed by the Hon’ble High Court of Telangana, and requested that he would submit his Disability Certificate as and when it is granted from Govt. of Telangana. The respondents had accepted the same.

1.4 Upon receiving the disability certificate (DC) for Thalassemia on 20.09.2021, he mailed to the respondent bank a copy of the DC. The respondent bank after receiving the email replied to the complainant that Thalassemia does not fall under Sec. 34 of RPwD Act, 2016, therefore his appointment stands Cancelled.

**Facts regarding IBPS Probationary Officer**

1.5 He cleared the written exam for the post of Probationary Officer and shortlisted for interview under ST and ID and Others categories. The Interview was scheduled on 08.03.2021. The respondents did not allow him for interview as he did not possess the DC due to non-upgradation of software for the newly added disabilities by Govt. of Telangana.

1.6 The complainant also intimated that there was another candidate with the name Ms Spandana Katam who appeared for the IBPS PO/MT-X interview bearing Roll # 2731000904, who had sickle cell anemia disability and her percentage was above 40%. She had got the disability certificate from the medical authority in Chennai from Rajiv Gandhi Govt. General Hospital. She was allowed to the interview and was selected for the Post of Probationary Officer under IBPS PO/MT-X. She had been allotted Canara Bank and she had gone through document verification done by Canara Bank authorities after IBPS allotment. Canara Bank had accepted the disability certificate and provided appointment in the Bank.



**2. Submissions made by the Respondents:**

2.1 The Respondent No.1 – IBPS filed their reply dated 29.10.2021 and submitted that they merely conduct the examinations and facilitate the Interviews, publish the result containing list of successful candidates and their provisional allotments. The final appointments are made by the participating banks and as such the Respondent No.1 has no role in the final appointments.

2.2 The Respondent No.2 – APGVB, in their reply dated 18.11.2021 submitted that on submission of the disability certificate on 20.09.2021, the same was examined in the light of provisions of Section 34(1) of the RPwD Act, 2016 and it was understood that “Thalassemia” disability is not eligible for reservation for appointment under the category of PwBD under Clauses (a) to (e) mentioned in Section 34(1) of the RPwD Act, 2016. The complainant was accordingly advised vide letter dated 05.10.2021.

**3. Submissions made in Rejoinder:**

The complainant reiterated his complaint in the rejoinder which was received on 02.12.2021.

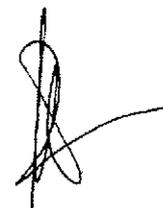
**4. Hearing:** The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on **11.10.2022**. The following persons were present during the hearing:

- (1) Shri Jhatothu Rahul, the complainant.
- (2) Shri Mohan Nair, DGM, IBPS, for the Respondent No.1.
- (3) Shri Kiran Kumar, Andhra Pradesh Grameen Vikas Bank for Respondent No.2.

**5. Observations & Recommendations:**

5.1 During online hearing complainant clarified that he is not seeking reservation for Divyangjan having blood disorder, e.g. Thelesemia etc. The Complainant accepted the fact that he is not eligible for reservation because Rights of Persons with Disabilities Act, 2016 does not extend reservation to Divyangjan with blood disorder. The issue which was pressed by the complainant was that he was able to qualify the examination on his own merits without taking benefit of reservation or any other relaxation, however, he was not appointed by the respondent.

5.2 Respondent No. 2 - APGVB submitted during online hearing that the examination was conducted by Respondent No.1. The Respondent No.2 further submitted that they are ready to appoint the complainant subject to the fact that the complainant is declared passed successfully by the Respondent No.1 which conducted the examination and declared the result. Respondent No.1 Institute of Banking Personal Selection (IBPS) submitted that the complainant got marks more than the cut off of Non-PwD ST category. However, he was not selected because he had applied under PwD category and he was given compensatory time of 20 minutes per hour which is given to divyangjan only. Respondent No.1 further, submitted that



since, the complainant was given relaxation of compensatory time, therefore, he could not be considered under non-PwD ST category. During online hearing this Court made enquiry that why the complainant was allowed to mention his category as PwD when RPwD Act, 2016 does not extend reservation for PwD category with blood disorder. Respondent replied that it happened because of software problem which can be attributed to Respondent No.1 only and does not have any connection with the complainant.

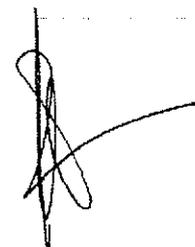
5.3 The only issue which needs consideration of this Court is whether compensatory time can be considered as 'relaxation' and if any candidate has obtained compensatory time would he seize to be eligible for being considered against vacancies which are reserved for Divyangjan.

5.4 This Court accepts the fact that as per legally established principles, if any divyangjan has obtained any 'relaxation' he cannot be considered against the post not reserved for divyangjan. Therefore, it is important to interpret the terms relaxation. This Court does not agree with the interpretation provided by Respondent No.1. The concept of giving compensatory time to Divyangjan appearing in any examination is part of 'reasonable accommodation' defined in the RPwD Act, 2016. The compensatory time is given to Divyangjan so that they can overcome the barriers which they face because of their disability and which are not faced by non-divyang candidates. Giving compensatory time is a kind of infrastructure support which is given to Divyangjan.

5.5 Recently DoPT clarified the same in its O.M. No. 36035/02/2017 dated 27.09.2022. By virtue of this O.M., DoPT clarified that giving compensatory time to Divyangjan or using of scribe facility do not fall under the definition of relaxation. Hence, if any divyang candidate who is given compensatory time and he is able to get more marks than the cut off marks of non-PwD category then such divyang candidates does not lose his right to be considered against the vacancy which is not reserved for Divyangjan. For the convenience, relevant paragraph of recent DoPT O.M. dated 27.09.2022 is reproduced below –

“In accordance with Para 3 of the OM No.29-6/2019-DD-III, dated 10.8.2022, issued by the Department of Empowerment of Persons with Disabilities, the facility of scribe, along with compensatory time shall not be treated as relaxed standard. DoPT, in agreement with this provision, reiterates that the facility of scribe taken by a PwBD candidate, along with compensatory time shall not be treated as relaxed standard.”

5.6 In the present complaint, Respondent No.1 submitted that the complainant got more marks than non-PwD ST category. Further, Respondent No.1 submitted that the complainant belongs to ST category. Hence, this Court concludes that Respondent No.1 has violated complainant's right to be considered against the post which were reserved for ST category and not reserved for divyangjan category. This Court recommends that Respondent No.1 shall examine the issue in accordance with DoPT O.M. No.36035/02/2017 dated 27.09.2022 and shall declare the complainant as

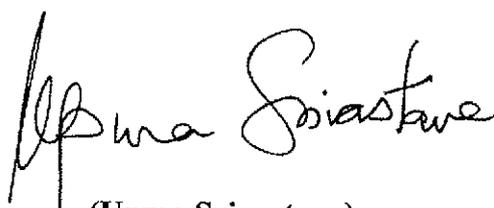


qualified if he has got more marks than the cut off marks of non-PwD-ST category, subject to production of necessary documents.

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: 27.12.2022**

  
**(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. 13349/1011/2022

**Complainant:**

Dr. Hardhan Maity,  
R/o 84/B/10, Dum Dum Cossipore Road, -R36419  
AikatanAbasan, Kolkata-700074 (WB);  
Email: hmaity.maths@gmail.com;  
Mobile: 9903450958, 9874310123

**Respondent:**

The Director,  
Indian Institute of Technology Palakkad (IIT Palakkad),  
Ahalia Integrated Campus,  
Kozhippara, -R36420  
Palakkad, Kerala, Pin: 678557  
Email: director@iitpkd.ac.in; sunil@iitpkd.ac.in

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

**1. Gist of Complaint:**

1.1 The complainant filed a complaint dated 29.06.2022 against the arbitrary, illegal, mala-fide, biased, and whimsical recruitment process of IIT Palakkad, and demanded for separate recruitment for the persons with Disabilities category.

1.2 The complainant submitted that he made an application under PwD category for the post of Assistant Professor in Mathematics on 16.10.2021 under the Special Recruitment Drive for reserved category candidates (SC/ST/OBC/EWS/PWD) at IIT Palakkad [Application No.RF032021APMA-924-3074]. The complainant alleged that till 28.06.2022, he had not received any interview call from the respondent whereas he fulfilled all the recruitment criteria according to the recruitment rules of IIT Palakkad. When he contacted the concerned authority for knowing the status of his application, he received an ambiguous reply informing him that the short-listing process for the applications under the Special Recruitment Drive is now completed and the shortlisted candidates had already been informed through email. He was not aware whether his application was rejected or was in process.

## 2. Submissions made by the Respondent:

2.1 The respondent filed their reply dated 18.08.2022 and submitted that the complainant had requested for the status of his application vide email dated 08.06.2022 and a clear reply to his query was provided to the complainant on 09.06.2022 mentioning that all shortlisted applicants had been informed over email. The status of applications after the short-listing process was also duly reflected in the Institutes' website on March 22, 2022. It was evident that those candidates not receiving the intimation mail were not shortlisted. As a large number of applications were received against the recruitment notification, it was not possible to provide status updates after completion of short-listing individually to each candidate and therefore it is a standard practice to intimate only the shortlisted candidates by email.

2.2 Dr. Maity's application was considered as it satisfied all necessary eligibility criteria, but unfortunately this did not automatically imply short-listing. In fact, the advertisement clearly states "The institute reserves the right to restrict the number of candidates for interview to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the advertisement and other academic achievements. Short-listing of candidates called for interview will be done by the selection committee area-wise/discipline-wise".

2.3 All eligible applications were scrutinized by the External Selection Committee appointed by the Board of Governors and consist of experts in the field. The applications were evaluated on the basis of the quality and quantity of research output, experience and research profiles of the candidates. Unfortunately, the Selection Committee did not recommend Dr. Maity's application for the research seminar and interview based on their evaluation.

2.4 A total of 5 candidates with disabilities were shortlisted for the position of Assistant Professor (across nine departments) in this recruitment process, out of which one is in the Department of Mathematics. Since the Institute followed a flexible cadre approach for faculty positions across departments, there was no specific number of vacancies in each department, and rather the number of PwBD positions was decided at cadre level.

## 3. Submissions made in Rejoinder:

The reply of the respondent was forwarded to the complainant on 25.08.2022. No rejoinder has been received from the complainant so far.

4. **Hearing:** The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **18.10.2022**. The following persons were present during the hearing:

- (1) Dr. Haradhan Maity, the complainant in person.
- (2) Shri Dinesh, Dean (Administration), IIT Palakkad for the Respondent.



**5. Observations & Recommendations:**

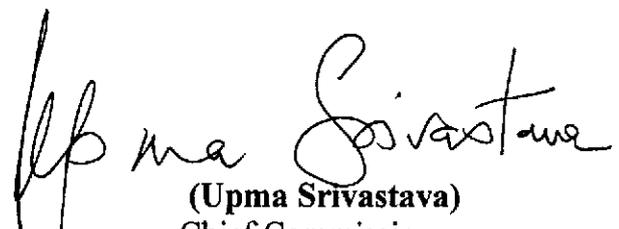
5.1 The complainant submitted that the Respondent conducted Special Recruitment Drive for Divyangjan. He applied for the post of Assistant Professor in Mathematics under Divyagnjan category. Complainant claimed that he fulfilled all the recruitment criteria, however, he never got any interview call. Later, when he made inquiry from the respondent establishment, he was informed that suitable candidate had been shortlisted and complainant's application was rejected.

5.2 Respondent submitted that the complainant was duly informed about the inquiry made by him relating to his application. Status of all the applicants who were shortlisted was duly notified on the respondent website on 22.03.2022. Since a large number of applications were received, therefore, it was not possible to inform non-shortlisted candidates individually about the status of their applications. Complainant's application was also considered, however, fulfilment of eligibility criteria did not automatically amount to short-listing and selection. All the applicants were scrutinized by the Selection Committee. Applications were evaluated on the basis of quality and quantity of research output, experience and research profiles of the candidates. Total 5 Divyangjan candidates were shortlisted for the post of Assistant Professor out of which 01 candidate was in the Department of Mathematics.

5.3 This court concludes that complainant's right is limited to being considered against the post advertised. There is no right to be shortlisted or appointed against the post. The fact that the complainant's application was rejected because more eligible candidates were shortlisted including Divyang candidates, proves that discrimination on the basis of disability did not exist in short-listing of the applications. The reply of the respondent is satisfactory, hence, intervention of this court is not warranted in the matter.

5.4 Accordingly, the case is disposed off.

**Dated: 28.12.2022**

  
(Upma Srivastava)  
Chief Commissioner  
for Persons with Disabilities



Extra

Case No.13352/1011/2022

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

Case No. 13352/1011/2022

**Complainant:**

Shri Swarnim,  
S/o Shri Ravindra Kumar Kashyap, — R36416  
R/o L 3/487, Vineet Khand 3,  
Gomti Nagar, Lucknow, Uttar Pradesh-226010;  
Email: ravindrakashyap40@gmail.com;  
Mobile: 9559130333

**Respondent:**

Director General,  
Sports Authority of India, — R36417  
Jawaharlal Nehru Stadium, Lodhi Road,  
New Delhi-110003;  
Email: dg-sai@gov.in; Phone: 011-24372720/24362722

Dy. Director (Personnel),  
Sports Authority of India, — R36418  
Jawahar Lal Nehru Stadium,  
Lodhi Road, New Delhi-110003

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

**1. Gist of Complaint:**

1.1 The complainant filed a complaint dated 12.06.2022 submitting that he appeared in the interview conducted by the UPSC CSE 2019 and 2021 under person with disability (BL) category. As per him, in the year 2021 he applied and appeared in the interview for the post of Assistant Director, Sports Authority of India against the advertisement No. SAI/Pers/1889/2021 dated 17.09.2021. He also submitted regarding deprivation of reservation for the post of Assistant Director to the Persons with Locomotor Disabilities (Both Legs) in Sports Authority of India and violation of Sections 3, 20, and 34 of the Rights of Persons with Disabilities Act, 2016 in the recruitment - Advertisement No.SAI/Pers/1889/2021 dated 12.06.2022. The complainant submitted that there was no option for the persons with Both Leg disabilities in the application form of the said advertisement.

1 | Page

1.2 The complainant further submitted that last year also he had applied for the said post of Assistant Director under the Advt. No.SAI/Pers/1889/2021 dated 17.09.2021 and appeared for the interview, but he was not selected. The complainant alleged that although the reservation had been given for all the categories of disabilities, the selection were made only from (a) and (b) categories of disabilities i.e. Blindness & Low Vision; and Hearing and Hard of Hearing.

1.3 The complainant prayed that since the selection had been made from (a) and (b) categories of disabilities in the last year i.e. 2021, this year i.e. 2022, priority would be given to the (c), (d), and (e) categories of disabilities on merit.

**2. Submissions made by the Respondent:**

2.1 The respondent filed their reply dated 10.08.2022 and submitted that SAI had implemented the reservation for PwBD granted under the RPwD Act, 2016 for the first time for the post of Assistant Director vide Advertisement F.No.SAI/Pers/1889/2021 dated 17.09.2021. As per the requirements, two candidates were selected for the Assistant Director under category (a) i.e. Blindness and Low Vision; and Category (b) i.e. Deaf and Hard of Hearing. Thereafter, an advertisement dated 02.06.2022 was issued by SAI, wherein 02 posts were reserved for PwBD category (horizontally) on presuming that the existing PwBD candidates would submit their resignation as they were selected in the final merit list of UPSC Civil Service Examination, 2021. Since the existing PwBD candidates did not submit their resignation, no vacancy arose under PwBD category. Hence, the vacancies advertised on 02.06.2022 were withdrawn.

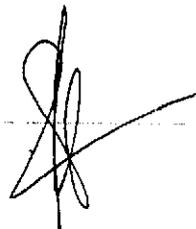
2.2 The respondent further submitted that as and when the vacancy arises in the PwBD category due to the resignation of the existing PwBD candidates, the posts would be filled by giving equal opportunity to other categories mentioned in Section 34 of the RPwD Act, 2016.

**3. Submissions made in Rejoinder:**

The complainant filed his rejoinder dated 23.08.2022 and reiterated his complaint. However, he added that the act of the respondent is against the provision of Section 34(1) of the Rights of Persons with Disabilities Act, 2016.

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

- (1) Shri Swarnim, the complainant in person.
- (2) Shri Shiv Sharma, Executive Director; Shri Dandapani, Deputy Director (Pers.) for the Respondent



## 5. Observations & Recommendations:

5.1 The complainant submitted that the Respondent notified two posts of Assistant Director vide recruitment advertisement dated 02.06.2022. The allegation of the complainant is that the post of Assistant Director is identified for Divyangjan with locomotor disability. However, vacancies were not reserved for Divyangjan locomotor disability. Complainant submitted that recruitments for the same posts were also conducted in 2021. In that recruitment process too, divyang candidates were appointed who belonged to 'low vision' category and 'deaf & hearing impairment' category. Complainant alleges that since last year Divyangjan with 'blindness' and 'hard of hearing' category were appointed hence in this year vacancy should have been reserved for locomotor disability category.

5.2 Respondent submitted that reservation for Divyangjan for the post of Assistant Director was implemented for the first time in 2021. Respondent admitted the fact that in 2021 recruitment process two Divyangjan were appointed who belonged to 'low vision' category and 'hearing impairment' category. Respondent claimed that decision to reserve vacancies for digvyangjan and thereafter appointment of Divyangjan of 'low vision' and 'hearing impairment' category was taken in accordance with reservation roaster prepared by the respondent establishment. Respondent's representatives also appeared physically before the Court along with the copy of reservation roaster to support his claims. Further, respondent submits that in 2022, two vacancies were notified for the post of Assistant Director in anticipation of the posts becoming vacant in near future. Respondent further submitted that these two posts were reserved for Divyangjan with 'low vision category' and 'hearing impairment' category because it was anticipated that two divyang who were appointed in 2021 may resign in future. However, the two appointed employees did not resign and hence recruitment process was cancelled.

5.3 The cause of the complaint is that in recruitment process initiated in 2022, the respondent wrongly reserved vacancies for Divyangjan with 'low vision' and 'hearing impairment'. Since, the respondent has now cancelled the recruitment process therefore, no issue remains to be adjudicated by this Court. However, for future reference the attention of the respondent is invited to Section 34 of Rights of Persons with Disabilities Act, 2016 and DoPT OM dated 15.01.2018. As per these provisions vacancies for divyagnjan have to be reserved in following order of priority:-

- (a) Blindness and low vision;
- (b) Deaf and hard of hearing;
- (c) Locomotor disability;
- (d) Autism intellectual disability, specific learning disability and medical allowance; and
- (e) Multiple disability from amongst person under clause (a) to (d).



5.4 As per the provisions if the vacancies have been reserved for categories (a) & (b) then in next recruitment process, vacancies have to be reserved for category (c) and onwards, irrespective of the fact that Divyangjan who were appointed in previous recruitment cycle have resigned from other posts. This court recommends that in future whenever vacancies will arise in respondent establishment, reservation shall be extended as per RPwD Act 2016 and DoPT OM dated 15.01.2018.

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

5.6 Accordingly the case is disposed off.

**Dated: 28.12.2022**

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



सत्यमेव जयते

*Exha*

Case No.13345/1102/2022

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)  
दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)  
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment  
भारत सरकार / Government of India

Case No. 13345/1102/2022

### Complainant:

Shri Pardeep Kumar Arora, — R 36414  
R/o C-12/511, Yamuna Vihar,  
Delhi-110053, Email: pardeeparora4759@yahoo.com;

### Respondent:

Chief Manager,  
Punjab National Bank, — R 36415  
D Block Market, Anand Vihar,  
Delhi-110092; Email: bo6666@pnb.co.in

Affected Person: The complainant, a person with 59% Hearing Impairment

### 1. Gist of Complaint:

1.1 The complainant filed a complaint dated 03.05.2022 praying for taking cognizance to avoid harassment & financial losses to disabled person against home loan with violation of terms & conditions and banking policy by the Punjab National Bank, Anand Vihar Branch, Delhi.

1.2 The complainant was sanctioned a home loan on floating rate of interest by the respondent bank on 29.06.2013. He submitted that bank has to reduce rate of interest as & when reduced by RBI or other banks like nationalized / private bank, from time to time whereas the respondent bank has reduced w.e.f. 07.05.2015. As per complainant, the Bank had made error on repeated occasion. The bank can charge interest only after withdrawal by the encashment of loan amount by the concerned party from the respondent but not on the date of issue of order. As per the complainant the 1<sup>st</sup> installment was withdrawn by the concerned party in September, 2013 whereas interest was charged for August, 2013 and added in principle amount illegally. As per the sanctioned letter, it was not mentioned that compound interest was chargeable on day to day basis whereas bank has charged compound interest through adding in principle amount without withdrawing from a bank as mentioned in statement of account.

1.3 The complainant prayed for (i) removal of all illegal and unwanted charges; (ii) considering floating rate basis reduced rate of interest as and when reduced by another banks, SBI and RBI/Government of India etc; (iii) charge simple interest on principle amount and compounding interest after moratorium period yearly basis only with removal of illegal interest on interest i.e. adding in principle amount on day

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basis; (iv) grant woman concession @ 0.01% on one third loan amount as per policy of Government of India, due to woman shareholder in captioned loan; (v) correct statement of accounts accordingly on the basis as mentioned in prayer para (i) to (iv); and (vi) pass any other order as deem fit in interest of social justice to disabled person.

## 2. Submissions made by the Respondent:

2.1 The respondent filed a reply dated 07.09.2022 and inter-alia submitted that a Housing Loan of Rs.50.00 Lakh was sanctioned to the complainant on 29.06.2013 at the interest rate 10.25% (on the basis Base Rate). On 11.04.2015 the complainant requested to reduce the rate of interest and the rate of interest was reduced to 9.60%. Due to floating rate as per sanction, the rate of interest was charged to 8.50% on 01.01.2017; 8.45% on 01.01.2018; 8.80% on 01.01.2019; 8.35% on 01.01.2020. On 07.07.2022, the complainant again submitted to reduce the rate of interest and link with repo rate. The rate of interest was reduced to 7.35% as per customer request and was linked with RLLR. In June 2022, the repo rate was increased by RBI, hence the rate of interest was also increased from 7.35% to 8.25%. The change in applicable rates is automatic as and when RBI amends the repo rate, it does not require any separate communication to the customers from Bank.

## 3. Submissions made in Rejoinder:

The complainant filed 02 rejoinders vide email dated 29.09.2022 and 01.10.2022 and denied the reply filed by the respondent. He submitted that it is the duty of respondent to reduce & charge rate of interest as and when reduced by other Banks like SBI and RBI/reduce in rate of interest in market. The RBI had reduced the rate of interest (as per the table given below) whereas the Bank had not reduced as on the date when loan was sanctioned i.e. on 29.06.2013. The rate of Repo was 8% and loan was sanctioned at the rate of 10.25%, it shows that the Bank profit/margin was 2.25%. Further, the Bank did not reduce the rate of interest till 11.04.2015. Accordingly, the applicant/complainant was compelled to move application to reduce the rate of interest as reduced by the RBI. The bank reduced some minor rate of interest as per own will to eye wash with violating terms and conditions of the agreement and not reduced as and when reduced by RBI, SBI or other Banks working under the policy of RBI. The Bank has to reduce the rate of interest as per Repo rate plus keeping his margin 2.25% whereas not reduced and charged as per below mentioned statement:-

S. No.	Date of Repo Rate of RBI	Rate of Repo	Bank Margin	Chargeable rate of interest	Charged by PNB(Based on annex F p. no. 31-35)
1	29/6/13 to 28/1/14	8.00 %	2.25 %	10.25 %	10.25 %

2	15/1/15	7.75 %	2.25 %	10.00%	10.25 %
3	4/3/15	7.50 %	2.25 %	9.75%	10.25 %
4	2/6/15	7.25 %	2.25 %	9.50%	10.25 %
5	9/9/15	6.75 %	2.25 %	9.00%	10.00 %
6	5/4/16	6.5 %	2.25 %	8.75%	9.60 %
7	4/10/16	6.25 %	2.25 %	8.50%	9.60 %(till 31/12/16)
8	2/8/17	6.00 %	2.25 %	8.25%	8.50 %(till 1/12/17)
9	6/6/18	6.25 %	2.25 %	8.50%	8.45 %
10	1/8/18	6.5 %	2.25 %	8.75%	8.45 %(till 31/12/18)
11	7/2/19	6.25 %	2.25 %	8.50%	8.80 %
12	4/4/19	6.00 %	2.25 %	8.25%	8.80 %
13	6/6/19	5.75 %	2.25 %	8.00%	8.80 %
14	7/8/19	5.40 %	2.25 %	7.65%	8.80 %
15	4/10/19	5.15 %	2.25 %	7.40%	8.80 %(till 1/1/20)
16	7/3/20	4.40 %	2.25 %	6.65%	8.35 %
17	22/5/20	4.00 %	2.25 %	6.25%	8.35 %

**4. Hearing:** The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **24.11.2022**. The following persons were present during the hearing:

- (1) Shri Pardeep Kumar Arora, the complainant.
- (2) Shri Surender Singh

**5. Observation/Recommendations:**

5.1 Complainant submitted that he received home loan on floating rates from the Respondent establishment. Respondent is bound to reduce rate of interest in accordance with the rates decided by RBI but the Respondent has not done the same. As per complainant, the Bank had made error on repeated occasions. The bank can charge interest only after withdrawal by the encashment of loan amount by the



concerned party from the respondent but not on the date of issue of order. As per the complainant, the 1st installment was withdrawn by the concerned party in September, 2013 whereas interest was charged for August, 2013 and added in principle amount illegally. As per the sanctioned letter, it was not mentioned that compound interest was chargeable on day to day basis whereas bank has charged compound interest through adding in principle amount without withdraw from a bank as mentioned in statement of account.

5.2 The respondent submitted that a Housing Loan of Rs.50.00 Lakh was sanctioned to the complainant on 29.06.2013 at the interest rate 10.25% (on the basis Base Rate). On 11.04.2015 the complainant requested to reduce the rate of interest and the rate of interest was reduced to 9.60%. Due to floating rate as per sanction, the rate of interest was reduced on number of occasions in accordance with the guidelines of RBI. The change in applicable rates is automatic as and when RBI amends the repo rate, it does not require any separate communication to the customers from Bank.

5.3 During online hearing, the Complainant reiterated the issues raised by him in the Complaint with focus on following three points -:

- a. Adjustment of interest rate in accordance with the Repo rates of RBI;
- b. Extension of concessions which are given to women; and
- c. Reimbursement of 'unwanted charges' which were allegedly charged from the Complainant.

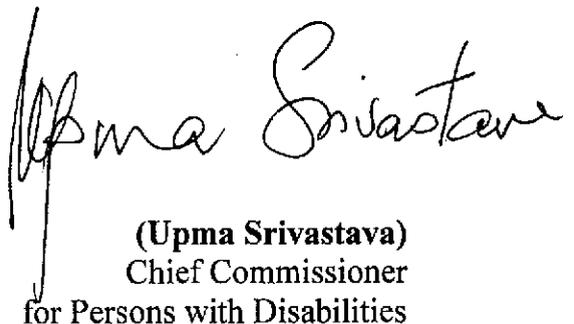
5.4 The Respondent agreed to resolve the same subject with the condition that the Complainant provides details in writing. The Respondent also agreed to meet the Complainant on 29.11.2022 (Tuesday).

5.5 This Court recommends that both the parties will meet on the agreed date and the Respondent shall give clarification on all three points mentioned above, in writing, with a copy marked to this Court.

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

5.7 Accordingly the case is disposed off.

**Dated: 28.12.2022**

  
(Upma Srivastava)  
Chief Commissioner  
for Persons with Disabilities



सत्यमेव जयते

Extra

Case No.12960/1011/2021

**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. 12960/1011/2021

**Complainant:**

Shri Arjun Gaur,  
S/o Shri Rajender Kumar, -R 36412  
R/o H.No.36, Street No.11, Block-C,  
Shantikunj Part-2, Bondsi-122102 (Haryana)  
Email: [arjungaur592@gmail.com](mailto:arjungaur592@gmail.com)

**Respondent:**

The Chairman,  
Sarva Haryana Gramin Bank, -R 36413  
SHGB House, Plot No.1, Sector-3,  
Rohtak-124001 (Haryana)

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

**1. Gist of Complaint:**

1.1 The complainant filed a complaint dated 24.10.2021 regarding no vacancy notification for Visually Impaired category by the respondent Sarva Haryana Gramin Bank, Rohtak.

1.2 The complainant submitted that he has been working as Assistant Manager in the respondent bank since April 2017. Since last 5-6 years the respondent bank notified the vacancies for the post of General Banking Officer (GBO) Scale 2 and Officer Scale 3 to be filled up only by OH and HI. He furnished a joining list of newly recruited candidates and intimated that these vacancies were not completely filled by their respective candidates. The ratio of vacancies and joined candidates is very odd. There is no vacancy notified to be filled up through the process of internal promotion for any PwD categories.

1.3 The complainant stated to be eligible for GBO Scale 2 in 2019 as he has been working in this bank since April 2017, but the respondent has not notified any vacancy for VI category till 2021.

**2. Submissions made by the Respondent:**

2.1 The respondent filed their reply 01.12.2021 and refuted the allegations made by the complainant. The respondent submitted that they maintain a separate reservations roster for each identified post filled through direct

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recruitment in Group 'A' and 'B' posts and also stated to follow the procedure for effecting reservation as mentioned in Para 07 of DOP&T OM dated 15.01.2018. There was no reservation during the process of internal promotion for Persons with Disabilities. Out of total 77 recruitments, 13 VI candidates have been recruited against HI of only 01.

2.2 The respondent also submitted that General Manager (HRDD) has already been acting as Grievance Redressal Officer to redress the grievances, if any.

### 3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 25.12.2021 and denied the reply filed by the Respondent. He reiterated that there is no vacancy notified for VI category. He added that there is no response from the Grievance Redressal Officer in the last 15 months on his request for transfer to home town. He stated to do travelling daily 80 km for joining his duties and coming back to home.

### 4. Hearing:

4.1 The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 12.05.2022. The following persons were present during the hearing:

- (1) Shri Arjun Gaur, the complainant in person.
- (2) Respondent: Sarva Haryana Grameen Bank - Absent

4.2 After hearing both the parties, the respondent was directed to provide the following information to this Court –

- a) Post of 'General Banking Officer' belongs to which Group of posts, i.e. Group A, Group B, Group C or Group D?
- b) Since 2017 till 2022 how many times vacancies of this Group of Posts (Group in which post of 'General Banking Officer' falls) were advertised and how many posts were reserved for divyangjan in each recruitment cycle?
- c) Since 2017 till 2022, in each recruitment cycle of this Group of Posts (Group in which post of 'General Banking Officer' falls) how many divyang candidates were appointed and what were their sub-categories?

4.3 Second hearing online was conducted on 23.08.2022. The following persons were present during the hearing:

- (1) Shri Arjun Gaur, the complainant in person.
- (2) Shri R.S. Salaria for the respondent .

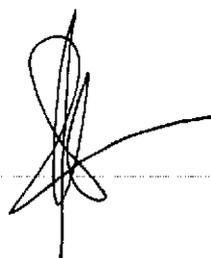
4.4 Since the respondent failed to provide necessary documents, it was not possible to make any conclusion in absence of documentary proof. The Respondent was again asked to submit the following information with supporting documents by 10.09.2022:-

- a. From 2017 till 2022 how many times vacancies of group A posts were advertised? The same question was asked in previous hearing also, thereafter respondent provided answer with respect to post of General Banking Officer only. Respondent is directed to provide answer to this question with respect of all the Group A posts which were advertised during this period, including not limited to the post of General Banking Officer.
- b. From 2017 till 2022 how many divyang candidates were appointed in each recruitment cycle which was conducted for all the group 'A' posts and not just General Banking Officer Post?
- c. From 2017 till 2022, in which recruitment cycle how many total group A posts were advertised in each recruitment cycle and how many of such posts were reserved for Divyangjan in each recruitment cycle. Respondent is also directed to providing disability categories of Divyangjan who were appointed and disability category for which of the posts were reserved during each recruitment cycle. Respondent is directed to provide answer to this question with respect of all the Group A posts which were advertised during this period, including but not limited to the post of General Banking Officer.

4.5 Third hearing online was conducted on **11.10.2022**. The following persons were present during the hearing:-

- (1) Shri Arjun Gaur, the complainant in person.
- (2) Shri C.J. Khurana, Chief Manager, SHGB, for the respondent.

4.6 On going through the Record of Proceedings dated 23.08.2022 and the reply filed thereon by the respondent, this Court observed that the respondent had not advertised the vacancies as per Section 34 of the Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016). This Court observed that in the recruitment process since 2017 to 2022 for Group 'A' posts, the respondent has advertised less than 4% reservation of seats in the total vacancies for PwBD and there is a shortage/backlog of 02 to 03 reserved vacancies every year which are as under:-



Year of Recruitment process	Total No. of vacancy advertised	@ 4% No. of seats for PwBD should be atleast	Reservation advertised for PwBD				Total advertised	Shortage/ Backlog found @ 4% Reservation for PwBD
			HI	PD	VI	ID		
CRP-VI (2017-18)	271	11	03	03	02	01	09	02
CRP-VII (2018-19)	105	05	-	03	-	-	-	02
CRP-VIII (2019-20)	136	06	02	02	-	-	04	02
CRP-IX (2020-21)	126	06	02	02	-	-	04	02
CRP-X (2021-22)	157	07	01	02	01	01	05	02

4.7. During online hearing, the representative of the respondent could not satisfy to the queries of this Court. Similarly, the Reservation Roster attached with the reply was also not found in line with the DoP&T instructions.

4.8 The parties were, therefore, directed to appear in person for hearing before this Court on **15.11.2022 at 04.00 PM** for physical/personal hearing along with the Reservation Roster and the documents related to this case.

4.9. On request of the respondent, the hearing scheduled on 15.11.2022 was rescheduled to **01.12.2022**

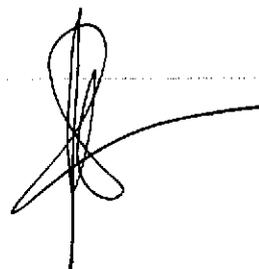
4.10. The fourth hearing was conducted on **01.12.2022**. The following persons were appeared in person for physical hearing:-

- (1) Shri Arjun Gaur, the complainant.
- (2) Shri Mithlesh Jha, General Manager; Shri Charanjit Khurana, Chief Manager; and Shri Jagmender Singh, Manager for the respondent.

## 5. Observations & Recommendations:

5.1 During the hearing the representative of the respondent submitted a copy of letter dated 30.11.2022 along with the papers showing PwDs reservations for the vacancies under CRP/RRB VI-X.

5.2 On going through the papers, it was observed that the reservation roster had not been prepared as per the DoPT guidelines and the format w.e.f. 01.01.1996. The representative of the respondent bank was showing the papers regarding the posts advertised and filled during the period 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22. There were shortfall of vacancies as per the table given below:-



Sl. No.	Year of Recruitment process	Total No. of vacancy advertised	Total No. of vacancy to be reserved @ 4% for PwBD	Total Vacancy were filled up in Reserved Categories of PwBD				Total No. of vacancy were filled up (5+6+7+8)	Shortfall (4-9)
				VI	HI	OC	ID		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	CRP-VI (2017-18)	271	11	02	03	03	01	09	02
2.	CRP-VII (2018-19)	105	05	00	00	03	00	03	02
3.	CRP-VIII (2019-20)	136	06	00	02	02	00	04	02
4.	CRP-IX (2020-21)	126	06	00	02	02	00	04	02
5.	CRP-X (2021-22)	157	07	01	01	02	01	05	02

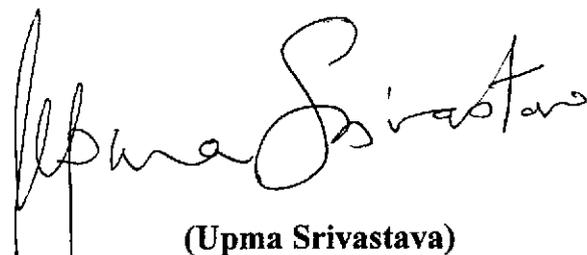
5.3 The representative of the respondent also submitted that the Rights of Persons with Disabilities Act, 2016 came into force from 19.04.2017 and accordingly they implemented the reservation @ 4% on the vacancies created / advertised. The vacancies for direct recruitment (Grade 'A') in different Officer Cadre were published through the recruitment agency viz. IBPS, Mumbai.

5.4 This Court concludes that the reservation roster prepared by the respondent is not as per the DoPT guidelines. The respondent is directed to prepare a reservation roster register as per the guidelines and get it signed by the Liaison Officer. As regards the shortfall in filling up the vacancies reserved for Persons with Benchmark Disabilities (PwBD), the respondent is directed to publish Special Recruitment Drive for Persons with Benchmark Disabilities to fill up the backlog vacancies.

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

5.6 Accordingly the case is disposed off.

**Dated: 28.12.2022**

  
**(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. 13354/1011/2022

**Complainant:**

Shri Harendra Singh, - R36410  
S/o Niranjan Singh,  
Village + Post: Nainana Jat, Agra-282001  
Email: harendrarawat63@gmail.com

**Respondent:**

The commissioner,  
Navodaya Vidyalaya Samiti,  
Navodaya Vidyalaya Samiti, - R36411  
B-15, Institutional Area, Sector 62,  
Noida, Uttar Pradesh 201307  
Email: commissioner.nvs@gov.in

Affected Person: Persons with Disabilities

**1. Gist of Complaint:**

The complainant filed a complaint dated 01.07.2022 regarding non-inclusion of Both Leg (BL) sub-category under OH category of Persons with Disabilities in the NVS-Teaching-Recruitment-2022-Notification-Emp-News. As per him, according to the list of posts identified for the persons with disabilities, which can be found from www.disabilityaffairs.gov.in, OH (BL) is eligible for the post of TGT and PGT. He requested to look into the matter and do the needful otherwise thousands of candidates may lose the occasion.

**2. Submissions made by the Respondent:**

2.1 The respondent filed a reply dated 03.08.2022 and submitted that NVS had published recruitment notification for the recruitment of 397 posts of PGTs and 1026 post of TGTs (including 3<sup>rd</sup> Lang) in the Employment News dated 02-08 July, 2022. Also, a notification for Special Recruitment Drive 2022-23 for JNVs in the NE Region to fill up 294 posts of PGTs and 136 posts of TGTs was published in the Employment News dated 09-15 July, 2022.

2.2 The contention of the complainant is that among the OH sub-category, NVS has not included the BL in OH sub category, while the posts of PGTs and TGTs have been identified suitable for BL (Both Legs) as per Ministry of Social Justice and Empowerment latest Notification dated 04.01.2021. In the Notification dated 04.01.2021, it may be seen that the nature of work performed for the said post are mainly to conduct classes for the students, checking of examination copy, etc. In the working conditions for the said posts it is mentioned that work is performed mostly inside in well-lighted rooms. JNVs being co-educational and residential schools, the teachers are required to reside in campus, perform round-the-clock duties, mandatorily perform duties of housemasters and act as legal guardians for students in addition to performing their regular duties as teachers. All teachers in JNVs are frequently required to move inside the campus typically spanning across 30 acres to discharge their residential duties effectively. Residential duties of teachers include Housemastership (looking after the hostel students), Duties of Master on Duty (MoD) that includes taking care of all the activities of the Vidyalaya beginning from morning PT at 5:30 AM to night roll call at 10:00 PM and other related activities. Keeping in view the nature of duties of teachers in JNVS as above, NVS is of the opinion that a BL (Both Legs) disability candidate, may not be suitable for effectively discharging the duties and responsibilities attached with the post of TGT /PGT in JNVs.

**3. Submissions made in Rejoinder:**

The complainant filed a rejoinder vide email dated 26.08.2022 and inquired how did NVS decide that a person with BL (both legs) sub-category is not suitable for PGT in JNV whereas the functional requirements are also mentioned clearly in the list of posts identified for PWDs. Did NVS constitute an expert committee to exclude the BL (OH) category? The complainant intended to know if a person has adequate movability then why he is not able to be a House Master or local guardian for children in JNV. He said that a person with disability can use the aids to increase mobility in a 30 acre campus of JNV as the Rights of Persons with Disabilities Act, 2016 instructs provide the necessary aids. NVS has no authority to exclude the post which has been identified by an Expert Committee constituted by the Central Government of India.



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

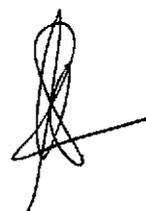
- (1) Shri Harendra Singh, the complainant in person.
- (2) Shri S.K. Kaur, Asst. Commissioner for the Respondent.

**5. Observations & Recommendations:**

5.1 The complainant submitted that the Respondent had issued notification for recruitment of PGTs (Post Graduate Teachers) and TGTs (Trained Graduate Teachers). As per him, according to the list of posts identified for the persons with disabilities, OH (BL) is eligible for the post of TGT and PGT. He requested to look into the matter and do the needful otherwise thousands of candidates might lose the opportunity.

5.2 The respondent submitted that NVS had published recruitment notification for the recruitment of 397 posts of PGTs and 1026 post of TGTs in the Employment News dated 02-08 July, 2022. Also, a notification for Special Recruitment Drive 2022-23 for JNVs in the NE Region to fill up 294 posts of PGTs and 136 posts of TGTs was published in the Employment News dated 09-15 July, 2022. 09-15 July, 2022.

5.3 The contention of the complainant is that among the OH sub-category, NVS had not included the BL in OH sub-category, while the posts of PGTs and TGTs have been identified suitable for BL (Both Legs) as per Ministry of Social Justice and Empowerment latest Notification dated 04.01.2021. In the Notification dated 04.01.2021, it may be seen that the nature of work performed for the said post are mainly to conduct classes for the students, checking of examination copy, etc. In the working conditions for the said posts it is mentioned that work is performed mostly inside in well-lighted rooms. JNVs being co-educational and residential schools, the teachers are required to reside in campus, perform round-the-clock duties, mandatorily perform duties of housemasters and act as legal guardians for students in addition to performing their regular duties as teachers. All teachers in JNVs are frequently required to move inside the campus typically spanning across 30 acres to discharge their residential duties effectively. Residential duties of teachers include House-mastership (looking after the hostel students), Duties of Master on Duty



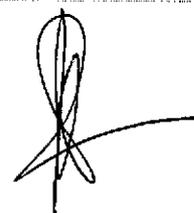
(MoD) that includes taking care of all the activities of the Vidyalaya beginning from morning PT at 5:30 AM to night roll call at 10:00 PM and other related activities. Keeping in view the nature of duties of teachers in JNVS as above, NVS is of the opinion that a BL (Both Legs) disability candidate, may not be suitable for effectively discharging the duties and responsibilities attached with the post of TGT /PGT in JNVs.

5.4 Both the posts, PGT and TGT are identified suitable for divyangjan of 'Both Legs' categories in DEPwD list of identified posts, dated 04.01.2021. Even Respondent has accepted this fact. However, Respondent claims that the work performed by PGTs and TGTs in the Respondent establishment is different from the nature of duties mentioned in the list of identified posts dated 04.01.2021. Therefore, Respondent decided to exclude divyangjan with 'Both Legs' category from the recruitment process.

5.5 During online hearing the Respondent reiterated the submissions made in written reply. Further the Respondent submitted that the recruitment process has matured into advance stage and amendment in number or structure of vacancies reserved shall result into indispensable loss to other candidates who applied for the post.

5.6 This Court concludes that the Respondent has committed violation of DEPwD list of posts identified suitable for divyangjan. Even the Respondent accepted the fact both in the written reply and also during online hearing. However, there is another fact which should also be taken into consideration, i.e. the Respondent reserved 4% vacancies for divyangjan which is in accordance with Section 34 of Rights of Persons with Disabilities Act, 2016. At this stage when the examination process has matured into advance stage, any change in structure of vacancies reserved for divyangjan shall result into injustice with other divyangjan candidates who have applied for the post. Hence this Court shall avoid intervention in the present Complaint.

5.7 Since the Respondent claimed that the nature of duties performed by PGTs and TGTs in the Respondent establishment is different from what is mentioned in DEPwD list of posts identified suitable for divyangjan, dated 04.01.2021, this Court recommends that the Respondent shall apply for exemption before the appropriate authority. Till such exemption is obtained, the Respondent shall stick to the DEPwD list strictly in all its future advertisements for filling the posts in their organisation.



5.8. 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.

5.9 Accordingly the case is disposed off.

**Dated: 28.12.2022**

  
(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: 13454/1022/2022

### Complainant:

Smt. Shakuntala Devi  
Mother of Shri Devender Kumar Sharma  
Assistant Manager (Emp. No. 089734)  
Central Bank of India  
A2A-239, Janakpuri, Delhi-110058  
Email: shakuntala.devi1111945@gmail.com  
Contact No: 08368602038

Vs

### 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

### GIST OF COMPLAINT

The complainant Smt. Shakuntala Devi, a person with 47% Locomotor Disability filed a complaint dated 07.09.2022, regarding cancellation of transfer order of her son Shri Devender Kumar Sharma from Keshavpuram Branch, Delhi to Gorakhpur Region vide transfer order dated 21.04.2022.

2. The complainant has submitted that due to her disability she is unable to walk and eat herself. Her son Shri Devender Kumar Sharma is only care giver to her and is in depression that in his absence who will take care of his mother. She had appeared before the Medical Board formed by the Bank Administration at Delhi on 04.08.2022 and the Board had submitted the report to Head Office (HR), Mumbai. She had given many representations to the Head Office (HR) but nothing has been communicated to her. She has requested for cancellation of transfer order of her son.

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

4. In response, Deputy General Manager-HRD, Central Bank of India, Mumbai, vide his letter dated 26.09.2022, has submitted that the complainant's son (Shri Devender Kumar Sharma), has been posted in Delhi Zone 06.10.2008. The officer has completed over 13 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 which inter alia provide for periodical rotation on 3 years. The said Central Vigilance Commission Guidelines are implemented uniformly for all officers. Therefore, the transfer of the complainant's son is in keeping with the CVC 's guidelines. It is noteworthy that the complainant's son has completed 13 years at a stretch and he along with other similarly placed officers have been transferred out of zone. The Bank is following the guidelines issued by the Government of India on the physically disabled persons from time to time. The transfer of complainant's son has been made considering administrative exigencies and availability of vacancies.

5. The complainant filed her rejoinder reply vide email dated 31.10.2022 and inter-alia submitted that the CVC's guidelines are pertained to the sensitive posts and in routine banking system there are very meagre chances of a post which can be defined as sensitive. Moreover, the track record of an officer clearly shows if there is any fault on his part. The Bank had issued guidelines based on 'Equal Opportunity Policy' which is self-explanatory and the same is very much related to the "Caregiver" category of Bank Employees. She has requested for considering her request.

6. **Hearing:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 20.12.2022. The following were present:

- i) Smt. Shakuntla Devi and Shri Devender Kumar, son of the Complainant: **Complainant**
- ii) Ms. Manisha Kaushik, AGM, Central Bank of India: **Respondent**

**Observations /Recommendations:**

7. 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.

8. 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

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

- a) respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- b) non-discrimination;
- c) full and effective participation and inclusion in society;



- d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) equality of opportunity;
- f) accessibility;
- g) equality between men and women;
- h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

10. 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.

11. 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.

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

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

#### STATUTORY PROVISIONS AND GUIDELINES

13. 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

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

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

16. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee



to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

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

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

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

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

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

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

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

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

24. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his

transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

#### PRESENT CASE

35. The complainant Smt. Shakuntala Devi, a person with 47% Locomotor Disability filed a complaint dated 07.09.2022, regarding cancellation of transfer order of her son Shri Devender Kumar Sharma from Keshavpuram Branch, Delhi to Gorakhpur Region vide transfer order dated 21.04.2022. Complainant submits that her son who is the employee in the Respondent establishment is the sole care taker of the Complainant hence his transfer must be cancelled.

36. Respondent submits that the Complainant has been posted in Delhi zone since 2008. He was never transferred out of the zone. Transfer was done as per CVC guidelines which were implemented uniformly upon all the employees.

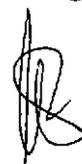
37. During online hearing, Complainant's son namely Sri Devender Kumar appeared and further submitted that the Complainant is completely bed-ridden because her bones have become completely fragile. Her condition is almost same since 1998 when she got paralysis attack.

38. During online hearing Respondent submitted that the 'disability certificate' submitted by the employee namely Sri Devender Kumar was made after his transfer orders were issued. He never informed about her mother's medical condition or disability at any time before transfer orders were issued. Therefore, the ground taken by the Complainant is not genuine and his Complaint must be treated as 'after thought'.

39. Complainant's representative refuted the argument and submitted that he never needed disability certificate hence he never applied for the same.

40. This Court cannot accept the 'after thought' argument of the Respondent. Even if the disability certificate was issued after the employee was transferred, it does not prove the fact that the Complainant was not Divyangjan before the disability certificate was issued. Case of the Complainant squarely falls within the scope of DoPT O.M. No. 42011/3/2014, dated 06.06.2014 and O.M. No. 42011/3/2014, dated 08.10.2018, explained in detail in preceding paragraphs. The intention of these guidelines is to provide a conducive environment to the government employee who is serving as main care-giver of divyang dependant. Even if the disability certificate is issued after transfer of the employee, it proves that the employee's mother is Divyangjan and requires care and attention.

41. Respondent also submitted in its written argument that the employee lives along with his wife hence he is not the sole care giver and his wife can take care of divyang mother. Attention of the Respondent is attracted to DoPT OM No. 42011/3/2014. This OM talks about the employee who is serving as 'main care

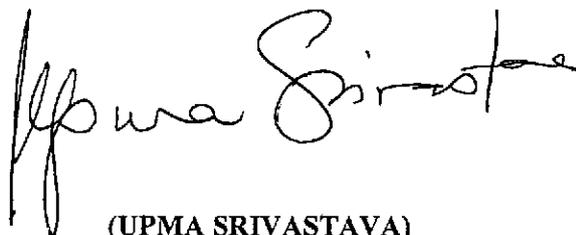


giver', it does not talk about 'sole care giver'. Furthermore this arguments also needs to be rejected because if accepted it will amount to a forceful division of a family.

42. This Court recommends that the Respondent shall cancel the transfer of the employee namely Sri Devender Kumar from Delhi to Gorakhpur. However, the Respondent is at liberty to transfer the employee to any branch situated in Delhi/NCR so that relevant CVC guidelines can be implemented and the employee does not need to change his station and can take care of his mother.

43. **Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.**

44. This case is disposed off.



**(UPMA SRIVASTAVA)**  
Chief Commissioner for  
Persons with Disabilities

Dated: 28.12.2022