

**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. 13500/1041/2022/155926

Complainant:

Shri Aditya Arvind Vichare

S/o Shri Arvind Vichare

R/o House No.1/303, Discovery Bldg,

Dattapada Road, Borivali East,

Mumbai - 400066 (MH);

Phone: 9920280787

Email: adityavichare11@gmail.com

Respondent:

Regional Director,

Staff Selection Commission Western Region (Mumbai)

1st Floor, South Wing, Pratishtha Bhawan

101, Maharshi Karve Road, Mumbai

Maharashtra - 400020

Email: examinqurysscwr@gmail.com; sscwr@yahoo.com

Affected Person: The complainant, a person with 82% Multiple Disability

1. Gist of Complaint:

1.1 Shri G.R. Dube, MLC, Maharashtra Vidhan Parishad vide letter dated 29.08.2022 has forwarded the complaint of Shri Aditya Arvind Vichare, a person with 82% multiple disability regarding denial of the use of a scribe during a Staff Selection Commission Examination.

1.2 As per the mother of Shri Aditya Arvind Vichare, her son lost 3 opportunities because of the lackadaisical approach of the supervisors and examiners who are not aware of the Rules and Regulations regarding the use of scribes by candidates with disabilities in spite of the candidate with disability mentioning the same in the online application form. As per the rules laid down by the Department of Empowerment of Persons with Disabilities, a candidate with disability whose writing speed is adversely affected permanently by cerebral palsy with locomotor disability may use the services of a scribe whereas the examiner at the examination centre did not take it seriously due to which Shri Aditya Arvind Vichare lost the opportunity to appear for the Examination and thereby secure employment.

2. Submissions made by the Respondent:

2.1 The Respondent submitted that the candidate has applied for CGL Exam 2021, CHSL Exam 2021 and Selection Post Phase X Exam 2022. His exam

was scheduled on 13.04.2022, 07.06.2022 and 02.08.2022 respectively. The candidate applied under the category of PwD-others. He has further submitted that as per para 7.1 of CGL 2021 and Para 8.1 of CHSL and Selection Post Phase X Exam 2022 notice states that "in case of persons with benchmark disabilities in the category of blindness, locomotor disability (both arms affected BA) and cerebral palsy the facility of scribe is provided if desired by the candidate". The notice further states that "in case of remaining categories of persons with benchmark disabilities, the provision of scribe will be provided on production of a certificate at the time of examination to the effect that the person concerned has physical limitation to write and scribe is essential to write examination on his behalf, from the Chief Medical Officer/Civil Surgeon/Medical Superintendent of a Government Health Care Institution as per proforma."

2.2 In the instant case, the candidate has attached his disability certificate and it is shown that the candidate is not both arms affected person therefore he does not come under para 7.1 of locomotor disability. The candidate is a case of Multiple Disability with— (i) Intellectual Disability; and (ii) Locomotor Disability (OAL-One Arm and Leg Affected) therefore, para 7.2 of the notice will be applicable and the candidate has to produce a certificate regarding physical limitation to write given in the notice from the prescribed Medical Authority which the candidate did not produce.

3. Submissions made in Rejoinder:

The respondent's reply was forwarded to the Complainant vide letter dated 29.11.2022 for submission of rejoinder. However, no response has been received from the Complainant.

4. **Hearing:** The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on 25.04.2023. The following persons were present during the hearing:


1. **Complainant:** Shri Aditya Vichare
2. **Respondent:** Ms. Ruchika, ASO, SSC, Western Region

5. Record of Proceedings:

5.1 After hearing the Respondent was directed to ensure that on the next date of hearing a Group 'A' Officer/Class-I Officer who is well versed with the case will present for hearing.

5.2 Next hearing through Video Conferencing was scheduled on 22.05.2023. The following persons were present during the hearing:

1. **Complainant:** Shri Aditya Vichare
2. **Respondent:** Ms. Chintha, Regional Director, SSC, Western Region (Mumbai)



6. Observations & Recommendations:

6.1 As per DEPwD guidelines issued on 29.08.2018 vide O.M. No. 34-02/2015-DD-III, (Para IV) divyangjan with 'blindness', 'Both Arms affected or with 'Cerebral Palsy' need not to produce 'limitation in writing' certificate. However, other category candidates need to produce 'limitation in writing' certificate in order to avail scribe facility. From the perusal of Disability Certificate of the Complainant, it is certain that the disability of the Complainant is 'one arm affected', hence, it was imperative for the Complainant to produce 'limitation in writing' certificate.

6.2 However, during online hearing, Complainant claimed that when he visited CMO's Office for getting the 'limitation in writing' certificate the Office denied to issue any such certificate. This fact is new and was mentioned for the first time during online hearing. However, the claim if true needs intervention.

6.3 It is imperative to mention that in Para IV of DEPwD O.M. dated 29.08.2018, it is categorically mentioned that the candidates who are Persons with Benchmark Disabilities having any disability other than blindness, Both Arms affected or cerebral palsy shall obtain the limitation in writing certificate from Chief Medical Officer/Civil Surgeon/Medical Superintendent of Government Health Care Institution as per Performa at Appendix - I of the O.M.

6.4 This Court recommends that the Respondent shall forward the copy of DEPwD O.M. No. 34-02/2015-DD-III, dated 29.08.2018 to Chief Medical Officer ('CMO') concerned along with annotation that it is duty of the CMO to issue the certificate in accordance with the O.M. and Appendix attached. It is also recommended that the Respondent shall also forward the copy of this Order to the concerned CMO.

6.5 Copy of DEPwD O.M. No. 34-02/2015-DD-III, dated 29.08.2018 is attached along with this Order.

6.6 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.

6.7 Accordingly, the case is disposed of.

Dated: 01.06.2023

Encl.: As above


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

F. No. 34-02/2015-DD-III
Government of India
Ministry of Social Justice & Empowerment
Department of Empowerment of of Persons with Disabilities (Divyangjan)

Pt. Deendayal Antyodaya Bhawan,
C.G.O. Complex, New Delhi - 110003
Dated: the 29th August, 2018

Office Memorandum

Subject: Guidelines for conducting written examination for Persons with Benchmark Disabilities

The undersigned is directed to say that this Department had issued the guidelines for conducting written examination for persons with disabilities defined in terms of erstwhile Persons with Disabilities (Equal Opportunities, Protection for Rights and Full Participation) Act, 1995 vide OM No. 16-110/2003-DD.III dated 26/02/2013. The Department had constituted a Committee under the Chairmanship of Secretary, DEPwD in March, 2015 to review the said guidelines based on the issues raised by Union Public Service Commission and others. Meanwhile the Central Government enacted the Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016) which came into force from 19.04.2017. The Act provides for reservation in Government jobs for persons with benchmark disabilities as defined under section 2 (r) of the said Act.

Based on the findings of the Committee, the Central Government hereby lays down the revised guidelines for conducting written examination for persons with benchmark disabilities in supersession of the earlier guidelines issued vide OM No. 16-110/2003-DD.III dated 26/02/2013 as under:

- I. These guidelines may be called as "Guidelines for conducting written examination for persons with benchmark disabilities 2018".
- II. There should be a uniform and comprehensive policy across the country for persons with benchmark disabilities for written examination taking into account improvement in technology and new avenues opened to the persons with benchmark disabilities providing a level playing field. Policy should also have flexibility to accommodate the specific needs on case-to-case basis.
- III. There is no need for fixing separate criteria for regular and competitive examinations.

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IV. The facility of Scribe/Reader/Lab Assistant should be allowed to any person with benchmark disability as defined under section 2(r) of the RPwD Act, 2016 and has limitation in writing including that of speed if so desired by him/her.

In case of persons with benchmark disabilities in the category of blindness, locomotor disability (both arm affected-BA) and cerebral palsy, the facility of scribe/reader/lab assistant shall be given, if so desired by the person.

In case of other category of persons with benchmark disabilities, the provision of scribe/reader/lab assistant can be allowed on production of a certificate to the effect that the person concerned has physical limitation to write, and scribe is essential to write examination on his behalf, from the Chief Medical Officer/Civil Surgeon/Medical Superintendent of a Government health care institution as per proforma at APPENDIX-I.

V. The candidate should have the discretion of opting for his own scribe/reader/lab assistant or request the Examination Body for the same. The examining body may also identify the scribe/reader/lab assistant to make panels at the District/Division/ State level as per the requirements of the examination. In such instances the candidates should be allowed to meet the scribe two days before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not.

VI. In case the examining body provides the scribe/reader/lab assistant, it shall be ensured that qualification of the scribe should not be more than the minimum qualification criteria of the examination. However, the qualification of the scribe/reader should always be matriculate or above.

In case the candidate is allowed to bring his own scribe, the qualification of the scribe should be one step below the qualification of the candidate taking examination. The persons with benchmark disabilities opting for own scribe/reader should submit details of the own scribe as per proforma at APPENDIX-II

VII. There should also be flexibility in accommodating any change in scribe/reader/lab assistant in case of emergency. The candidates should also be allowed to take more than one scribe/reader for writing different papers especially for languages. However, there can be only one scribe per subject.

VIII. Persons with benchmark disabilities should be given, as far as possible, the option of choosing the mode for taking the examinations i.e. in Braille or in the computer or in large print or even by recording the answers as the examining bodies

can easily make use of technology to convert question paper in large prints, e-text, or Braille and can also convert Braille text in English or regional languages.

- IX. In case, the persons with benchmark disabilities are allowed to take examination on computer system, they should be allowed to check the computer system one day in advance so that the problems, if any in the software/system could be rectified. Use of own computer/laptop should not be allowed for taking examination. However, enabling accessories for the computer based examinations such as keyboard, customized mouse etc should be allowed.
- X. The procedure of availing the facility of scribe should be simplified and the necessary details should be recorded at the time of filling up of the forms. Thereafter, the examining body should ensure availability of question papers in the format opted by the candidate as well as suitable seating arrangement for giving examination.
- XI. The disability certificate issued by the competent medical authority at any place should be accepted across the country.
- XII. The word "extra time or additional time" that is being currently used should be changed to "compensatory time" and the same should not be less than 20 minutes per hour of examination for persons who are allowed use of scribe/reader/lab assistant. All the candidates with benchmark disability not availing the facility of scribe may be allowed additional time of minimum of one hour for examination of 3 hours duration. In case the duration of the examination is less than an hour, then the duration of additional time should be allowed on pro-rata basis. Additional time should not be less than 5 minutes and should be in the multiple of 5.
- XIII. The candidates should be allowed to use assistive devices like talking calculator (in cases where calculators are allowed for giving exams), tailor frame, Braille slate, abacus, geometry kit, Braille measuring tape and augmentative communication devices like communication chart and electronic devices.
- XIV. Proper seating arrangement (preferably on the ground floor) should be made prior to the commencement of examination to avoid confusion or distraction during the day of the exam. The time of giving the question papers should be marked accurately and timely supply of supplementary papers should be ensured.
- XV. As far as possible, the examining body should also provide reading material in Braille or E-Text or on computers having suitable screen reading software for open book examination. Similarly online examination should be in accessible format i.e. websites, question papers and all other study material should be accessible as per the international standards laid down in this regard.

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XVI. Alternative objective questions in lieu of descriptive questions should be provided for Hearing-Impaired persons, in addition to the existing policy of giving alternative questions in lieu of questions requiring visual inputs. for persons with Visual Impairment.

XVII. As far as possible the examination for persons with disabilities should be held at the ground floor. The examination centres should be accessible for persons with disabilities.

2. It is requested to ensure that the above guidelines are scrupulously followed while conducting examination for persons with benchmark disabilities. All the recruitment agencies, Academics/Examination Bodies etc. under the administrative control of each Ministry/Deapartment may be advised appropriately to ensure compliance of implementing these guidelines. Action taken in this regard may be intimated to this office.

3. The above guidelines are issued with the approval of Hon`ble Minister (Social Justice & Empowerment).

Yours faithfully,


(D.K. Pandita)

Under Secretary to the Government of India
Tele. No. 24369059

To

1. Secretary of all Ministries/Department.
2. Secretary, UPSC, Shahjahan Road, New Delhi.
3. Chairman, SSC, Block No.12, CGO Complex, Lodhi Road, New Delhi-110003.
4. Chairman, University Grants Commission with a request to issue necessary instructions to all universities including Deemed Universities for compliance.
5. Chairman, Railway Board
6. All National Institutes and RCI under administrative control of Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of SJ&E, New Delhi

Copy for information to: CCPD, Sarojini Bhawan, Bhagwan Dass Road, New Delhi

APPENDIX- I

Certificate regarding physical limitation in an examinee to write

This is to certify that, I have examined Mr/Ms/Mrs _____ (name of the candidate with disability), a person with _____ (nature and percentage of disability as mentioned in the certificate of disability), S/o/D/o _____, a resident of _____ (Village/District/State) and to state that he/she has physical limitation which hampers his/her writing capabilities owing to his/her disability.

Signature

Chief Medical Officer/Civil Surgeon/ Medical Superintendent of a
Government health care institution

Name & Designation.

Name of Government Hospital/Health Care Centre with Seal

Place:

Date:

Note:

Certificate should be given by a specialist of the relevant stream/disability (eg. Visual impairment - Ophthalmologist, Locomotor disability - Orthopaedic specialist/PMR).

Letter of Undertaking for Using Own Scribe

I _____, a candidate with _____ (name of the disability) appearing for the _____ (name of the examination) bearing Roll No. _____ at _____ (name of the centre) in the District _____ (name of the State). My qualification is _____.

I do hereby state that _____ (name of the scribe) will provide the service of scribe/reader/lab assistant for the undersigned for taking the aforesaid examination.

I do hereby undertake that his qualification is _____. In case, subsequently it is found that his qualification is not as declared by the undersigned and is beyond my qualification, I shall forfeit my right to the post and claims relating thereto.

(Signature of the candidate with Disability)

Place:

Date:



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. 13577/1024/2022/166600

Complainant:

Shri Kishan Makhecha

Email: makhechakishan@gmail.com

1240835

Respondent:

The Managing Director & CEO

ICICI Bank

ICICI Bank Towers, Bandra Kurla Complex

Mumbai- 400051

1240836

1. Gist of Complaint:

1.1 Shri Kishan Makhecha, a person with 50% locomotor disability, filed his complaint dated 28.10.2022 alleging that the ICICI Bank has transferred him to his hometown Junagadh but the work allocated to him is not suitable according to his health. He had reported this matter to the Regional Head of ICICI Bank through mail on 21.08.2022 but has not received any reply from respondent.

2. Submissions made by the respondent:

2.1 In response, Jinan R, Asst. General Manager stated that since Mr. Makhecha, has 50% permanent disability, they had allotted him a suitable role and he is comfortable with the same. They also submit that there is no discrimination, whatsoever, on the grounds of disability. They also assure that Mr. Makhecha, will always be given similar roles in their organisation.

2.2 Respondent submitted that Mr. Makhecha, is being well supported by his colleagues at the branch. Mr. Makhecha duly confirmed the same during a recent discussion with him. The Respondent also submitted a copy of an e-mail sent in confirmation to the Complainant. The Respondent further assured that the Complainant can reach out to them for any support required by him at any point of time.

2.3 He stated that there is no violation of any of the provisions of Rights of Persons with Disabilities Act, 2016, in the instant case.

3. Submissions made in Rejoinder

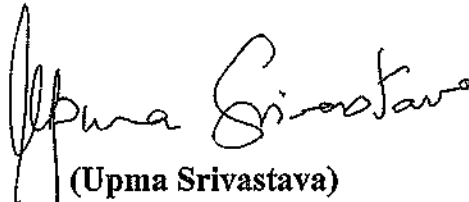
3.1 The Complainant filed rejoinder dated 02.02.2023 and submitted that he had been posted in Junagadh (0308) branch and is assigned duties at a cash window, which is not suitable for his health because he has to sit for 8 hours in the cash counters. For any leave, he has to take permission from his boss. So he requested to help him to get some counter work like customer services or credit customer services which will help him to relax his spinal cord.

4. Observations and Recommendations

4.1 This Court is of the opinion that the jobs assigned with Teller Counter or Cash Window is not unsuitable for a person with 50% locomotor disability such as the Complainant. However, in order to get optimal output by the Complainant, it is recommended to the Respondent to consider the request sympathetically within the norms of the Bank.

4.2. The case is accordingly disposed of.

Dated: 01.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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

Case No. 13582/1024/2022/167590

Complainant:

Shri Vinod Kumar Agarwal
 R/o A-348, Divider Road,
 Ganga Nagar Mawana Road,
 Meerut- 250001
 Email: agarwal.vinod86@gmail.com

Respondent:

The Commissioner,
 (By name: Shri Govind Krishna Dixit),
 Directorate of Data Management,
 Department of Revenue, Ministry of Finance
 A-Wing, 3rd Floor,
 Pushpa Bhawan, Madangir Road, New Delhi- 110062

.....Respondent No. 1

The Joint Commissioner,
 (By Name: Smt. Samrita Kaur Gill),
 Directorate of Data Management,
 Department of Revenue, Ministry of Finance
 A Wing, 3rd Floor, Pushpa Bhavan,
 Madangir Road, New Delhi- 110062

.....Respondent No. 2

1. Gist of Complaint:

1.1 Shri Vinod Kumar Agarwal, father of Shri Rajat Agarwal, a person with 60% hearing impairment, filed a complaint dated 03.11.2022 and submitted that his son Rajat Agarwal who is currently posted as Tax Assistant in Directorate of Data Management, CBIC, New Delhi, has been selected for the post of Tax Assistant through SSC CGLE-2019.

1.2 The Complainant further submitted that in order to join his new appointment, the candidate needed a 'No Objection Certificate' from current employer and resign on technical grounds. The same was applied for by him in his respective office i.e. to Smt. Samrita Kaur Gill, Joint Commissioner, DDM on 15.09.2022. Upon verbal denial of the same by the Joint Commissioner on 15.09.2022, he requested Sh. Govind Dixit, Commissioner, DDM to issue an NOC.

1.3 The Complainant submitted that DDM wrote a letter to Directorate General of Performance Management, CBIC (DGPM) to clarify- "Why should we give the NOC?" To this the DGPM, Smt. Samrita Kaur Gill, Joint Commissioner, DDM denied to give the same.

1.4 He further stated that a colleague of his son, namely, Sh. Bhuvnesh Bhunwal, who was also selected for another post in CBIC department, was given NOC by Sh. Govind Dixit along with Technical Resignation. But his son has been denied the same without any reason.

2. Submissions made by the respondent:

2.1 In response, Smt. Samrita Kaur Gill, Additional Commissioner, Central Board of Indirect Taxes & Customs, replied vide letter dated 03.02.2023 and furnished a copy of letter dated 21.12.2022 received from Central Board of Indirect Taxes & Customs, where it has been stated that the complainant is presently posted at Directorate General of Systems & Data Management, CBIC. His resignation from the post to join another appointment with prior intimation to this department has been accepted.

3. Submissions made in Rejoinder

3.1 In his rejoinder dated 05.03.2023, the Complainant stated that the respondents in their reply have not submitted para-wise defence against his allegations in the original complaint, providing the fact that there is no defence available with them for the said allegations. He stated that the respondents have simply submitted that since Rajat Agarwal has been relieved from the Office and joined the new place of posting, the complaint becomes null and void. But mere acceptance of the resignation doesn't absolve the respondents from the acts committed by them.

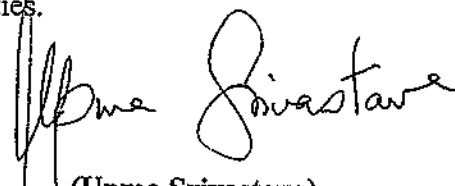
3.2 The Complainant submitted that no positive response was received from respondents, his son Rajat Agarwal sought extension from his joining in the Income Tax Department from 14.10.2022 to 02.12.2022. They were kind enough to grant the final extension of his joining for 2nd January 2023 but they also added that failing the said joining, the candidature of his son was liable to be cancelled by the Income Tax Department.

4. Observations and Recommendations

4.1 The main grievance of the Complainant has been redressed by the Respondent. His other prayers such as departmental inquiry against the officers who allegedly harassed his son or levying fine, imprisonment etc. are beyond the mandate and jurisdiction of this Court. However, it is recommended that the officers in the Respondent Organisation be trained and sensitised to examine such cases with due sensitivity in future so as to avoid such incidences with Persons with Disabilities.

4.2. The case is accordingly disposed of.

Dated: 01.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 13673/1021/2023

Complainant:

Shri M. Ramaiah
SDE NOC 1 NGC
BSNL, Nagercoil - 629001
Email - ramaiahbsnl@bsnl.co.in

[Handwritten signature]

Respondent:

The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Janpath Rd, HC Mathur Lane,
New Delhi - 110001
Email - cmdbsnl@bsnl.co.in; scticcbsnl@gmail.com

[Handwritten signature]

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

1. Gist of Complaint:

1.1 The Department of Empowerment of Persons with Disabilities vide email dated 30.08.2022 has forwarded the emails dated 30.08.2022, 29.08.2022 and 27.08.2022 regarding reservation in promotion for person with disability.

1.2 The Complainant, in his email dated 27.08.2022 has submitted that presently he is working as SDE at Nagercoil Business Area. He was recruited as Junior Telecom Officer (Executive Cadre) at Nagercoil SSA on 04.07.2003 under PwD quota. The JTO to SDE residency period is 03 years. But LDCE was not conducted upto 2012. On 26.10.2010 BSNL had notified the LDCE on 04.07.2010, but due to court case the LDCE notification was cancelled. Another LDCE notification was called on 03.01.2012 and exam was conducted on 04.03.2012. The result was announced on 28.06.2013. He joined as Sub Divisional Engineer on 04.07.2013 and got selected as SDE for the vacancy year 2006-07 under general category and the seniority was fixed as per general category.

1.3 He also submitted that AGM DPC is in advanced stage to issue promotion orders for total 2100 vacancies with DPC crucial date is 01.02.2020. The previous AGM promotions DPC date is taken as cutoff date. The previous AGM DPC was conducted on 27.07.2018 with cutoff date as 30.06.2018. He has requested that horizontal reservation should be considered on cadre vacancies. He is eligible for getting promotion in the above said DPC vide DOPT's guidelines dated 17.05.2022. The VC was not called for till date though he had completed 9 years' service as SDE. The eligibility period for SDE to AGM is only 07 years.

1.4 As per D/o P&T's O.M. dated 17.05.2022, 4% of vacancies are to be reserved for persons with disabilities from 19.04.2017. The DPC process is going on for 2100 vacancies and 84 vacancies (4%) are for persons with disabilities candidates.

2. Submissions made by the Respondent:

2.1 Assistant General Manager (Pers II), BSNL filed their reply dated 28.03.2023 and inter-alia submitted that BSNL has already notified the policy for reservation in promotion to PwBD employees of BSNL vide letter dated 05.01.2023, which is in accordance with DoPT's O.M. dated 17.05.2022. Para 2 (i) of the aforesaid policy states that DoPT's OM may be implemented in BSNL w.e.f. 17.05.2022 i.e., it will be implemented for the vacancies arising on or after 17.05.2022 i.e., date of notification of DoPT's O.M. dated 17.05.2022. Accordingly, claim of any executive implying retrospective implementation of DoP&T's OM dated 17.05.2022 is not in consonance of the aforesaid policy on reservation in promotion to PwBD and is not tenable. The Complainant is requesting for provision of PwBD quota from 19-04-2017 i.e., a date prior to 17-05-2022 and therefore, the same cannot be acceded to.

2.2 The Respondent further submitted that the matter of reservation on promotion to PwBD employees with regard to SDE(T) to AGM(T) promotion is sub judice in OA No. 1657/2022(Delhi) and Hon'ble PB-CAT has issued an interim order dated 07-09-2022. In accordance with the above order of Hon'ble PB-CAT Delhi the DPC has been conducted for the vacancy years 2020 & 2021 but the recommendations of DPC have not been given effect to because the said OA is yet to be disposed off by the Hon'ble PB-CAT Delhi.

3. Submissions made in Rejoinder:

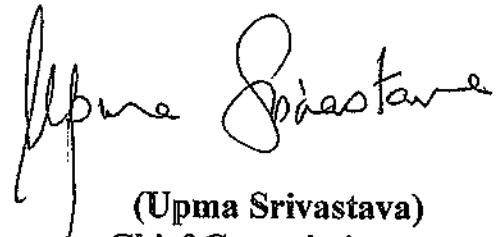
The respondent's reply was forwarded to the complainant vide letter dated 31.03.2023 for submission of rejoinder. However, no response has been received from the complainant.

4. Observations & Recommendations:

4.1 The reply filed by the Respondent found satisfactory. Since the subject matter is sub-judice before the Hon'ble PB-CAT Delhi the intervention of this Court is not warranted.

4.2 Accordingly, the case is disposed of.

Dated: 01.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार

Case No. 13480/1014/2022/155699

In the matter of—

Shri Sunny Kacher,
Ward No. 15, Gali No. 02,
In front of Sardar Petrol Pump,
Bansagar Road, District- Rewa,
Madhya Pradesh,
Mobile No. 9755478592 (SMS);
Email: Sunny.kacher88@gmail.com

.... Complainant

Versus

The Registrar,
National Institute of Design (NID)
Madhya Pradesh, Acharpura,
Eint Khedi, Post Arwaliya,
Bhopal-462038;
Email: registrar@nidmp.ac.in

.... Respondent

Affected Person: The Complainant, 80% Speech & Hearing Impairment

1. Gist of Complaint:

1.1 Shri Sunny Kacher, a person with 80% Speech & Hearing Impairment filed a complaint dated 24.08.2022 regarding inaccessible practices in examination conducted by National Institute of Design, MP for recruitment to the post of Superintendent under PwD quota.

1.2 The Complainant submitted that in the advertisement published by NID MP vide Notification No.NIDMP/Rectt./Admin/2021/01 dated 23.08.2021, one post was reserved from the persons with disabilities for which deaf, blind and other kinds of disabled persons were eligible. The Complainant had applied for the post of Superintendent and after document verification he was shortlisted for written and skill tests.

1.3 The Complainant further submitted that National Institute of Design also issued notification No./NIDMP/1-70/Rectt./Admin/2021/02/2022-23 dated 28.05.2022. Resolution of Tie cases and minimum qualifying marks in Written Examination for the administrative positions were UR Category 30%, OBC, EWS 25% and other categories including persons with disabilities 20%. One more notification was issued vide NIDMP/Rectt./ Admin/2021/01/2022-23 dated 11.05.2022-Schedule of Written Examination and Skill Test for various administrative positions at NID, MP.

1.4 The Complainant submitted that the written examination for the post of Superintendent was conducted on 11.07.2022 and skill test was conducted on 12.07.2022.

1.5 The Complainant alleged that during the written exam the instructions were given orally by the invigilator and no facility of a Sign Language Interpreter was provided. He missed the instructions and due to which he could not qualify. The examination was totally inaccessible. No person was selected from disability quota and the post is still vacant.

2. Submissions made by the Respondent:

2.1 The Respondent filed its reply dated 03.11.2022 and inter-alia submitted that the examinations/tests for the post of Superintendent were conducted in accordance with the provisions of the notification published. As regards, the allegations made by the Complainant, in the examination hall, the invigilator had personally asked the Complainant, if he was facing any problems. In reply, the Complainant had said that he had no problem. The Complainant never had communicated with the Respondent for providing Sign Language Interpreter during examination.

2.2 The Respondent also submitted that the recruitment process has now been completed.

3. Submissions made in Rejoinder:

The Complainant filed his rejoinder dated 30.11.2022 and reiterated his complaint. However, he added that he had not been allowed to appear in skill test on the very next day. He prayed that he would be given an opportunity to appear in the test.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 27.04.2023. The following persons were present during the hearing:

- (1) Shri Sunny Kacher, the Complainant
- (2) Shri Yogesh Bhatnagar, Legal Advisor for the Respondent

5. Observations & Recommendations:

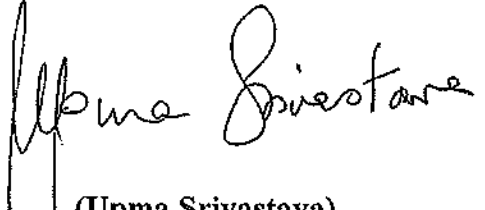
5.1 The complaint is related to inaccessible practices in examination conducted by the Respondent for recruitment to the post of Superintendent under PwD quota.

5.2 During online hearing, Respondent submitted that written instructions in English as well as in Hindi were given to the Complainant.

5.3 This Court concludes that there is no merit in the case. Reply filed by the Respondent is satisfactory. Intervention of this Court in the present complaint is not warranted.

5.4 Accordingly, the case is disposed of.

Dated: 02.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

परिवाद संख्या 13601/1011/2022/168846

के मामले में —

सुश्री गुड़िया,
पुत्री - श्री खेमपाल सिंह,
निवासी - ग्राम झांझर,
थाना - ककोड़,
जिला - बुलन्दशहर -203203 (उत्तर प्रदेश)
ईमेल — lodhigudia499@gmail.com

... परिवादी

बनाम

मुख्य प्रबन्धक,
पंजाब नेशनल बैंक,
मानव संसाधन विकास विभाग, मंडल कार्यालय,
पी.एन.बी. हाउस, यमुनापुरम,
बुलंदशहर-203001, ईमेल care@pnb.co.in

... प्रतिवादी

पीड़ित लाभार्थी / — परिवादी, 75% चलन दिव्यांगजन

1. शिकायत का सार—

1.1 पंजाब नेशनल बैंक, मानव संसाधन विभाग, मंडल कार्यालय, पी.एन.बी. हाउस, यमुनापुरम, बुलंदशहर (उत्तर प्रदेश) द्वारा चपरासी की भर्ती 2021-22 में दिव्यांगजन हेतु आरक्षित पद पर भर्ती न करने से सम्बन्धित एक वाद दिनांक 10.11.2022 इस न्यायालय में प्रस्तुत किया।

1.2 परिवादी का कहना था कि प्रतिवादी द्वारा दिनांक 11.03.2022 को प्रकाशित भर्ती के विज्ञापन में कुल 25 रिक्तियों में से एक पद दिव्यांग व्यक्ति के लिए आरक्षित किया गया था जिसके लिए परिवादी ने आवेदन किया था। प्रतिवादी द्वारा निकाली गई चयनित उम्मीदवारों की सूची में परिवादी का नाम नहीं था। यहाँ तक की उस सूची में किसी भी दिव्यांग व्यक्ति का चयन आरक्षित सीट पर नहीं किया गया था और यह भी नहीं लिखा था कि कोई योग्य दिव्यांग उम्मीदवार नहीं मिला था।

2. प्रतिवादी द्वारा प्रस्तुत उत्तर—

प्रतिवादी ने अपना उत्तर / शपथ-पत्र दिनांक 01.02.2023 प्रस्तुत किया और कहा कि कथित भर्ती के विज्ञापन में यह स्पष्ट रूप से उल्लिखित है कि आरक्षित चपरासी का पद केवल श्रवण दिव्यांग व्यक्ति के लिए ही आरक्षित है। तदनुसार, उसके अतिरिक्त अन्य कोई भी दिव्यांग अभ्यर्थी उस पद के लिए योग्य नहीं है। परिवादी सुश्री गुड़िया एक चलन दिव्यांग व्यक्ति हैं इसलिए वे इस पद के लिए योग्य उम्मीदवार नहीं हैं। दिव्यांग अभ्यर्थियों में से जिन्होंने चपरासी के पद के लिए आवेदन किया था उनमें से कोई भी श्रवण दिव्यांग अभ्यर्थी नहीं था, अतः इस रिक्ति के लिए किसी का चयन नहीं किया जा सका।

3. परिवादी द्वारा प्रस्तुत प्रत्युत्तर—

प्रतिवादी के उत्तर पर परिवादी की ओर से कोई प्रत्युत्तर प्राप्त नहीं हुआ है।

4. - अनुशंसाएँ/अवलोकन

4.1 प्रतिवादी ने कथित भर्ती के विज्ञापन में यह स्पष्ट रूप से उल्लिखित कर दिया था कि आरक्षित चपरासी का पद केवल श्रवण दिव्यांग व्यक्ति के लिए ही आरक्षित है और उसके अतिरिक्त अन्य कोई भी दिव्यांग अभ्यर्थी उस पद के लिए योग्य नहीं है। परिवादी सुश्री गुड़िया एक चलन दिव्यांग व्यक्ति हैं इसलिए वे इस पद के लिए योग्य उम्मीदवार नहीं थीं इसलिए इस रिक्ति के लिए उनका चयन नहीं किया जा सका। प्रतिवादी का उत्तर संतोषजनक है। अतः इस मामले में इस न्यायालय द्वारा अग्रिम किसी कार्यवाही की आवश्यकता नहीं है।

4.2 तदनुसार इस वाद का निपटारा किया जाता है।

उपमा श्रीवास्तव

दिनांक -- 05.06.2023

(उपमा श्रीवास्तव)
मुख्य आयुक्त दिव्यांगजन



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 – 13680/1141/2023

Complainant:

Shri R N Bhaskar

Email – bhaskar.rn@gmail.com

Mobile No – 9820097256

Respondent:

(1) The Director

Directorate General of Civil Aviation

Technical Centre, Opposite Safdarjung Airport

Aurobindo Marg, New Delhi – 110003

(2) CEO, Vistara

Tata SIA Airlines Ltd

Intellion Edge, Tower A, 9th and 10th Floor

South Peripheral Road, Sector – 72

Gurugram, Haryana – 122101

Affected Person: The complainant, a person with 45% muscular dystrophy

1. Gist of Complaint:

Shri R N Bhaskar vide e-mail dated 24.12.2022 has submitted that he is a senior journalist and on 5th December 2022, he flew by Vistara from Hyderabad to Mumbai. Initially, the airline refused to register his request for wheelchair and aisle seat facility. Then, almost grudgingly, airline gave him the wheelchair and finally gave him a seat on row 28.

2. Submissions made by the Respondent:

2.1 Respondent No. 01 vide e-mail dated 27.04.2023 has submitted that with a view to safeguard the interest of persons with disability/reduced mobility without affecting the safety aspects of aircraft operation, DGCA, has issued CAR Series M, Part-I on, "Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility". The regulation has been revised from time to time based on the feedback received from stakeholders. The latest Revision 7 of the above said CAR was amended on 21.07.2022 and is available in public domain on DGCA website.

2.2 As per para 4.1.13 of the CAR, the airlines shall provide convenient seats that are designated as accessible for persons with disabilities with adequate leg space free of charge, which should remain blocked until close to the time of departure. Airlines shall not allocate those seats to persons with disability or reduced mobility where their presence would impede the crew in performing their

duties, obstruct access to emergency equipment or impede the emergency evacuation path of the aircraft.

2.3 Respondent further submitted that DGCA is a regulatory body to oversee the safety of aircraft operations as per provisions of Aircraft Act, 1934. Further, reply of M/s Vistara also may be considered.

3. Submissions made in Rejoinder:

3.1 Complainant vide rejoinder dated 03.05.2023 has submitted that airline has almost taken two months' time from the date of the incident and submitted the following stipulated points:

- *"We have shared very strong feedback with the team regarding this incident as we totally understand that this might have resulted in great disappointment, discomfort, and inconvenience for you.*
- *We acknowledge that the staff at the airport and our cabin crew team could have been more cognizant and should have taken more initiative to assist. When we endeavour to provide a seamless experience, these are opportunities for us to delight our customers and win them for life. We take this as a missed opportunity.*
- *With reference to your concern regarding the preferred seat not provided to you, we wish to mention here that at Vistara consider safety of our passengers to be of paramount importance to us and we have taken up this matter for close review.*
- *Please be assured that we have made a note of your complaint and have highlighted this to the highest management and department heads. Necessary reiterations shall be done and the staff has been sensitized and counselled to avoid any such occurrences in future.*
- *Mr. Bhaskar, we understand that the experience cannot be undone however, we assure you that we shall take all possible steps to ensure that such is not repeated.*
- *We once again apologize for the unpleasant experience and look forward to serving you better on a future Vistara flight."*

3.2 He further submitted that except for this communication, there is no other categorical assurance (it has been made elliptically, though) that an aisle near the gates would be provided to him. Nor does there appear to be any attempt to make amends for this terrible lapse on its part and a violation of procedures. He is still scared to travel by Vistara after that episode.

4. Observations & Recommendations:

4.1 The issues raised by the Complainant relate to availability of wheelchair and allocation of seat. It is pertinent to note that Director General of Civil Aviation (hereinafter called 'DGCA') issued Civil Aviation Requirements Section 3 – Air Transport Series 'M' Part I Issue III, dated 28 February 2014 as amended on 21.07.2022 (hereinafter called 'the guidelines'). These guidelines are framed to prioritize the inclusivity and ensure that all individuals regardless of their abilities can travel through airplanes comfortably and safely.

4.2 It is pertinent to mention some Paras of the guidelines which are relevant for the present Complaint. Para 4.1.1 and Para 4.1.4 of the guidelines are related to



information and communication. These paras contain guidelines for providing details about the process of requesting accommodations and the availability of specialized equipment or services. The Paras are mentioned below: -

Para 4.1.1 No airline shall refuse to carry persons with disability or reduced mobility and their assistive aids/devices, escorts and guide dogs including their presence in the cabin, provided such persons or their representatives, at the time of booking, inform the airline of their requirement(s). The airlines shall incorporate appropriate provisions on their website within three months from the date of issue of this CAR, so that while making bookings, passengers with disability have the option to select the required facilities, which he/she will require during the journey.

Para 4.1.4 To facilitate the carriage of persons with disability or reduced mobility, airlines shall obtain necessary information about the specific requirements of such persons at the time of ticketing/online booking process or through the call centers. Once the ticket is confirmed no further enquires shall be made.

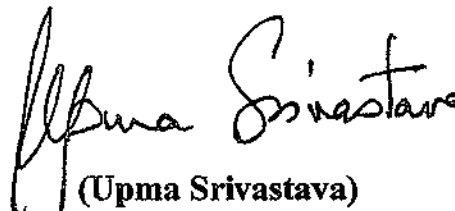
4.3 Further, Para 4.1.13 provides for accommodation of Persons with Disabilities, i.e., accessible seating option and comfortable leg room. The Para is mentioned below: -

4.1.13 Airlines shall provide convenient seats that are designated as accessible for persons with disabilities (Divyangjan) with adequate leg space free of charge, which should remain blocked until close to the time of departure. Airlines shall not allocate those seats to persons with disability (Divyangjan) or reduced mobility where their presence would impede the crew in performing their duties, obstruct access to emergency equipment or impede the emergency evacuation path of the aircraft.

4.4 The guidelines are mandatory for all airlines which are operating in India. Providing accommodation to PwD passengers is not merely an ethical obligation but also legal necessity. This Court recommends that the Respondent shall implement the guidelines delineated above in letter and spirit. Furthermore, the Respondent is also recommended to train its staff so as to sensitize them with respect to needs and rights of Persons with Disabilities so as to reduce the possibility of recurrence of similar instances.

4.5 Accordingly, the case is disposed of.

Dated: 05.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No – 13737/1141/2023

Complainant:


Shri Mandeep Singh Dhody

Mobile: 9041426598

E-mail: mandy4952@gmail.com **Respondent:**

National Highways Authority of India

Through the Chairman

G 5 & 6, Sector – 10, Dwarka 

New Delhi - 110075

Tel: 011-25074200/25074100


E-mail: suniljindal@nhai.org; umeshtaneja@nhai.org

Affected Person: Shri Arvinder Singh Dhody, a person with 60% mental illness**1. Gist of Complaint:**

The Complainant, a legal guardian of Shri Arvinder Dhody has submitted that as per the National Highways Authority of India, all divyangjan owned vehicles are exempted from paying toll charges but in the case of Shri Arvinder Dhody, the vehicle cannot be registered under his name due to the nature of disability. Therefore, complainant has requested to get the exemption based on the disability certificate when Shri Arvinder Dhody is travelling in some other vehicle.

2. Submissions made by the Respondent:

2.1 The General Manager (Commercial Operation), National Highways Authority of India vide letter dated 21.02.2023 has inter-alia submitted that complainant Shri Mandeep Singh Dhody is requesting for exemption for his vehicle as the mentally disabled person is also travelling in the same vehicle but complainant is not eligible for the exemption from the payment of user fee at NH Free



plazas since neither the class of vehicle is “adapted/invalid carriage” nor the ownership type should be “DIVYANGJAN”.

3. Submission made in Rejoinder:

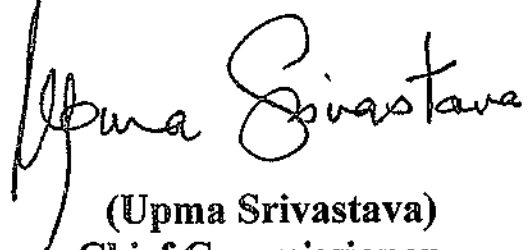
The respondent reply was forwarded to the complainant vide letter dated 27.02.2023 with a direction to submit his rejoinder. However, no response was received from the complainant.

4. Observations & Recommendations:

4.1 From perusal of reply of the respondent, it is seen that the reply of the respondent is satisfactory and there is no violations of rules/instructions issued in this regard.

4.2 Accordingly, the case is disposed of.

Dated: 05.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



Case No – 13598/1141/2022

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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 – 13598/1141/2022

Complainant:

Ms. Sarika Dabral
Flat No 479, 3rd Floor
DDA MIG L&T Flats
Sector – 18 B MIG, Phase – 2
Dwarka, New Delhi – 110078
Mobile No - 9899257717
Email – sarika05dabral@gmail.com

Respondent:

The Commissioner (Personnel)
Delhi Development Authority
Vikash Sadan, INA
New Delhi – 110023
Mobile No - 9899522998
Email – kc.gandhi1998@dda.gov.in; personnelbranch1@ddaorg.in

Affected Person: Both Children of the Complainant are persons with 100% intellectual disability

1. Gist of Complaint:

1.1 Ms. Sarika Dabral, Complainant filed a complaint dated 25.11.2022 requesting for re-allotment/re-location of DDA MIG Flat from 3rd Floor to Ground Floor on the grounds of mental/physical disabilities (100%) of her both children.

1.2 She submitted that during 2006, she and her husband Shri Rajesh Dabral were jointly allotted Flat no. 479, 3rd Floor, DDA MIG L&T Flats, Sector 18-B, MIG, Phase-2, Dwarka, New Delhi -110078 under DDA MIG Flats Housing scheme 2006. Accordingly, on 06.09.2007, they got the possession of the above said flat situated at the third floor i.e., the top floor, with stairs facilities. On 26.08.2008, her elder son Master Swaraj Dabral, at an age of three and a half years, met with a fatal road accident and since then he is 100% mentally retarded (as on date he is almost 18 years of age). Moreover, her younger son Master Rudra Dabral diagnosed with neurological genetic disorder i.e., infantile Neuroaxonal Dystrophy 1, and he too is a 100% mentally challenged and is also bed ridden (as on date he is 8 years old).

1.3 The Complainant requested for intervention of this Court to help her in re-allotment a flat on the ground floor or installation of lift/elevator. She also

submitted that the building in which her current DDA flat is situated is having staircase entrance from three sides. So DDA has an option to install a lift/an elevator to any one side of the building.

2. Submissions made by the Respondent:

2.1 Dy. Director (MIG)H, DDA vide letter dated 09.02.2023 filed their comments in the matter. He submitted that DDA offered different categories of flat at various locations with all the terms and conditions mentioned in DDA Housing Scheme brochure 2006. As per clause 3 (iv) of brochure, 1% of the flats offered in that scheme was reserved for physically handicapped persons and as per clause 4 (ii) no preference for sector/pocket/floor can be exercised by the applicant and no request for change of sector/pocket/floor shall be entertained by the DDA. The allotment was subject to terms and conditions given in brochure of the scheme and DDA (Management and Disposal of Housing Estate) Regulations 1968. The same was mentioned in Demand cum Allotment letter dated 19.01.2007 issued to the Complainant.

2.2 The Respondent further submitted that the Complainant belonged to General category at the time of allotment of the flat and the flats are reserved based on category of the allottee and not based on category of dependents. There is no policy of DDA for accepting requests for change of floor after taking over possession of the flat. Further, the flat has also been converted into freehold on 19.02.2008. Therefore, the request of the Complainant cannot be acceded to.

3. Submissions made in Rejoinder:

The copy of Respondent's reply was forwarded to the Complainant vide this court's letter dated 17.02.2023 but no rejoinder has been filed by the Complainant.

4. Hearing:

After considering the documents on record it was decided to hold a personal hearing in the matter and accordingly, the case was listed for personal hearing on **09.05.2023**. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **09.05.2023**. The following were present:

- Ms. Sarika Dabral with Shri Rajesh Dabral for Complainant
- Shri Harish Kumar, Director (Housing) with Shri Akshay Kumar, Asst. Director (Pers.) Branch – I on behalf of the Respondent

5. Observations & Recommendations:

5.1 The Complaint is related to allotment of flat on ground floor. Complainant submitted that she applied for flat under DDA MIG Flats Housing Scheme 2006. She was allotted Flat in Sector 18, Dwarka and got possession in 2007 on 3rd Floor. In 2008 her son acquired disability, i.e., Mental Illness – 100%. Later her younger son was also diagnosed with genetic disorder which resulted into



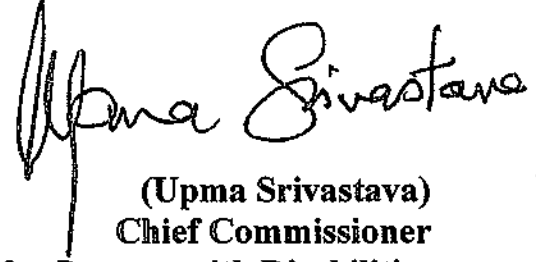
Mental Illness – 100%. She requested that she may be allotted flat on the ground floor or lift may be installed in her residential facility.

5.2 The Respondent submitted that DDA offered different categories of flats at various locations with the terms and conditions mentioned in DDA Housing Scheme brochure 2006. It was mentioned in clause 3 (iv) of brochure, and also in allotment letter that no request for change of sector/pocket/floor shall be entertained by the DDA. There is no policy of DDA for accepting requests for change of floor after taking over possession of the flat. Further, the flat has also been converted into freehold on 19.02.2008. Therefore, the request of the Complainant cannot be acceded to.

5.3 It is understood that no intervention is possible for changing the flat in view of the flat being owned by private individuals. However, taking into consideration the specific and genuine needs of the Complainant this Court recommends that the Respondent may take up the issue with its site engineer and explore the possibility of providing lift in the same building in terms of such functions which allow the Respondent establishment to make intervention towards the cause of especially abled persons.

5.4 Accordingly, the case is disposed of.

Dated: 05.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No – 13552/1121/2022/159130

Complainant:

Shri Amit Kumar Das
S/o Shri Tripti Dulal Das
R/o 37A/1, Gobinda Auddy Road
Kolkata – 700027 (West Bengal)
Mobile No – 9123726446
Email – amitkumards04@rediffmail.com

24/10/22

Respondent:

(01) Major General
(By Name: Shri NR Indurkar)
SM MD (ECHS) Army Headquarters
AG's Branch Maude Lines, Delhi Cantt
New Delhi – 110010

24/10/22

(02) Major General
(By Name: Dr SR Ghosh)
Command Hospital Eastern Command
Pin – 900285 C/O 99APO
Email – karansc@rediffmail.com; singhddrk@yahoo.com

24/10/22

(03) Medical Superintendent
(By Name: Col. S K Singh)
Command Hospital Eastern Command
Pin – 900285, C/o 99APO
Email – sksingh2468@gmail.com

24/10/22

1. Gist of Complaint:

Shri Amit Kumar Das vide complaint dated 14.09.2022 has inter-alia submitted that respondents are not issuing disability certificate to his father Shri Tripti Dulal Das and his mother Smt. Putul Das.

2. Submissions made by the Respondent:

2.1 Answering for Respondent No 01, Col. AC Nishil, Dir (Med), Central Organization ECHS, Adjutant General Branch, Integrated Headquarters, Delhi vide letter dated 05.01.2023 submitted that ESM, Shri

24/10/22

Trupti Dulal Das, was enrolled into Army (Rajput Regt) on 08.12.1971 and prematurely retired on 16.03.1974. Hence, total service of the ESM is 02 years 03 months & 08 days only. Since the ESM is a non-pensioner, a one time subscription is mandatory to get ECHS benefits as per policy in vogue. The esteemed ESM has completed his application and paid the requisite amount for membership. As per ECHS guidelines, there is no such provision for PMR/Non pensioner to continue ECHS med facility 'Free of cost' which ESM is claiming frequently and asked for disability certificate from CH EC. Apropos, presently they are no ECHS members. CO ECHS has previously on 19.10.2022 very clearly advised the ESM that only competent med authority can issue disability cert and ECHS one time contribution via MRO at the time of online ECHS application is required to get ECHS medical benefits.

2.2 He further submitted that the ESM has now become disabled due to old age and is asking for disability certificate from Army Authority. As the ESM claimed that he is a disabled soldier, he was sent to Command Hospital, Eastern Command for a disability certificate for self and his wife and they were assessed by the Orthopedic and Medical Specialist of Command Hospital, Eastern Command. After the assessment the Command Hosp, Eastern Command refused to issue disability certificate as they did not conform to the requisite criteria as per PwD Act 2016 and GOI Gazette notification.

2.3 On behalf of respondents 02 & 03, Brig VK Patra, Brig I/C Adm & Cdr Tps Command Hospital (EC) vide letter dated 06.12.2022 has inter-alia submitted that after assessment of their disabilities, it was found that Shri Trupti Dulal Das suffers from Osteoarthritis of both knees and assessed disability percentage of less than 40% hence does not merit disability certification. Smt. Putul Das suffers from COPD and high Blood Pressure as per evaluation by the department of Medicine. Both the disabilities are not amongst the 21 listed disabilities meriting disability certification as per the Rights of Persons with Disability Act, 2016. Hence disabilities of Shri Trupti Dulal Das, Ex-serviceman and his wife Smt. Putul Das are not within the ambit of disorders listed in the Rights of Persons with Disability Act, 2016.

3. Hearing:

After considering the respondent's replies & complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 26.05.2023. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 26.05.2023. The following were present:

- Shri Amit Kumar Das - Complainant
- Respondent No 01: Maj General (By Name: Shri NR Indurkar),



- Respondent No. 2: Major General (By Name: Dr SR Ghosh), Command Hospital Eastern
- Respondent No. 3: Medical Superintendent, (By Name: Col.S K Singh), Command Hospital Eastern Command - Col. Dr. Sampath Kumar (on behalf of all the Respondents)

4. Observations & Recommendations:

4.1 During online hearing the Complainant vehemently explained his case, however he fell short of proving discrimination on the basis of disability. Respondent conducted medical examination and evaluated the disability of the Complainant's parents hence this Court cannot conclude that the Respondent has discriminated against the Complainant's parents. This Court is satisfied with the Reply of the Respondent. Intervention of this Court in the present Complaint is not warranted.

4.2 Accordingly, the case is disposed of.

Dated: 05.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No – 13596/1141/2022/160352

Complainant:

Adv. Jayesh A Mudaliyar

Mobile No - 9819757594

Email – advjayeshmudaliyar@gmail.com

12/10/17

Respondent:

(01) The Commissioner of Police

Mumbai Railway

Wadi Bander, 4th Floor, Area Manager Building

P. D. Mello Road, Sandhurst Road

Near Central Railway, Godown Mazgoan

Mumbai – 400010

Email – cp.railway.mumbai@mahapolice.gov.in

12/10/18

(02) Sr. PI Smita Valmik Dhakhe

Dadar Railway Police Station

Platform No. 04, Dadar, Mumbai

Email – dadar-mumrly@mahapolice.gov.in

12/10/19

Affected Person: The complainant, a person with 67% locomotor disability**1. Gist of Complaint:**

Adv. Jayesh A Mudaliyar vide complaint dated 16.09.2022 has inter-alia submitted that on 11.09.2022, he got a call from one of his friends Shri Mangesh Shinde, who asked him to help one of their mutual friends named Shri Adinath Dhende whose son was found dead at Railway track. Shri Mangesh Shinde requested the Complainant to look into this matter. When the Complainant visited the office of the Mumbai Railway Police, he faced misbehaviour and harassment at the hands of the police personnel.

2. Submissions made by the Respondent:

2.1 The Assistant Commissioner of Police, O/o the Commissioner of Police, Mumbai Railways filed an Affidavit reply dated 05.04.2023 and submitted that the present reply is filed on behalf of all the respondents. He also submitted that the Complainant had not approached this Court with

clean hands. The Complainant misbehaved with a public servant with intent to provoke breach of peace. An NCR No. 0165 of 2022 dated 16.09.2022 was registered against the Complainant at Dadar Railway Police Station U/s 112, 117 of Maharashtra Police Act, 1951. On the alleged day of the incident as mentioned in the Complaint, the Complainant not only tried to exercise undue influence upon the police personnel but also tried to elicit third party public information under investigation by using provocative language and indecent conduct. The Complainant made video recording in the Police Station without seeking any permission from the concerned authorities.

2.2 He further submitted that the Complainant accompanied with one Shri Adinath Dhende to inquire into the progress of investigation into death of his deceased son Shri Abhijeet Adinath Dhende, and made baseless allegations that he was ill treated by the concerned police officers at Dadar Railway Police Station, Mumbai. The said investigation is pending vide Accidental Death Report No. 72/2022 registered at Dadar Railway Police Station. He also submitted that PSI Koshti informed the Complainant that he has no relation with the said deceased son and therefore, Complainant cannot seek public information and documents under investigation.

2.3 The recording contains the arrogant and provoking conduct of the Complainant and he himself doesn't want the Hon'ble Commissioner to see it, therefore, the Complainant alleged that the concerned police officers deleted the said video recording. The Respondent no. 1 ordered an enquiry by ACP rank Officer after receipt of complaint dated 16/11/2022 from the Complainant. The said video recording was perused by the concerned inquiry officer and on perusal of the said video recording, it was revealed that the concerned officers at Dadar Railway Police station informed the Complainant that he has no locus standi in the aforesaid case, after which the Complainant was furious and began to use provocative language. The Complainant was made to leave the police station, therefore in retaliation the Complainant is making false and malafide allegations against them.

3. Submission made in Rejoinder:

Complainant vide rejoinder dated 28.04.2023 reiterated his grievance and has inter-alia submitted the following prays:

- Respondent be directed to produce the said Video Recording before this Court,
- To produce the CCTV footage from the Police Station for the date of incident i.e., 13.09.2022
- To provide details of the unknown Police Officer who physically abused and assaulted the Complainant



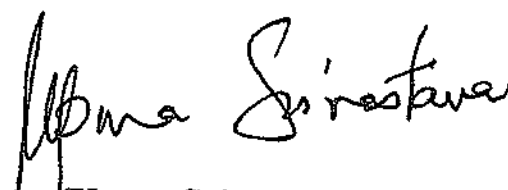
4. Observations & Recommendations:

4.1 This Court observed that the premise of the case is investigation/inquiry related to a homicide within the jurisdiction of Railway Police. The complaint is about harassment by police authorities, but it doesn't appear to be on the grounds of disability.

4.2 In view of the above, no further intervention of this Court is required in the matter.

4.3 Accordingly, the case is disposed of.

Dated: 05.06.2023



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



Case No – 13709/1141/2023

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

Case No – 13709/1141/2023

Complainant:

श्री ओम प्रकाश
 डी. एम. एस. बूथ नं. 77/78
 लक्ष्मीबाई नगर, नई दिल्ली – 110023
 मोबाइल नं - 8826663748

Respondent:

महाप्रबंधक
 दिल्ली दुग्ध योजना
 (डी. एम. एस.)
 पश्चिमी पटेल नगर
 दिल्ली – 110008
 ईमेल – nsp19101966@gmail.com

पीड़ित व्यक्ति – परिवादी, 56% चलन दिव्यांग

1. Gist of Complaint:

प्रार्थी का अपनी शिकायत दिनांक 31.10.2022 में कहना है कि दिनांक 08.10.2022 से डी. एम. एस. ने दुग्ध वितरण का कार्य प्राइवेट डिस्ट्रीब्यूटर को दे दिया है तथा पहले ही दिन प्रार्थी को शाम की सप्लाई के लिए, सुबह से शाम तक बार – बार फ़ोन करना पड़ता है और रात तक कोई सप्लाई नहीं आई अगले दिन सुबह ड्राइवर डबल दूध देने की जिद्द कर रहा था। प्रार्थी का आगे कहना है कि लगातार चार दिनों से ड्राइवर प्रार्थी को बार – बार परेशान किया जा रहा है तथा उसका कहना है कि डी. एम. एस. प्राइवेट हो गयी है। जब सप्लाई देनी होगी तब देंगे, तुम्हारे कहने से दूध की सप्लाई नहीं आएगी। प्रार्थी का आगे कहना है कि डिस्ट्रीब्यूटर एवं ड्राइवर उनकी बात बिलकुल नहीं सुनते हैं और दिनांक 14.10.2022 को दुग्ध की सप्लाई रुकवा दी एवं बदतमीजी से बात करते हैं।

2. Submissions made by the Respondent:

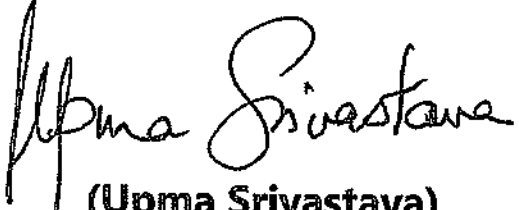
महाप्रबंधक, दिल्ली दुग्ध योजना, पश्चिमी पटेल नगर, नई दिल्ली दिनांक 03.03.2023 का कहना है कि वितरक मेसर्स वानी लोजिस्टिक के द्वारा शिकायतकर्ता श्री ओम प्रकाश की शिकायत पर तत्काल प्रभाव से सम्बंधित मार्ग से उपरोक्त ड्राइवर को हटा दिया गया है और दूसरे ड्राइवर को तैनात कर दिया गया है तथा शिकायतकर्ता भी ड्राइवर को हटाने से संतुष्ट है।

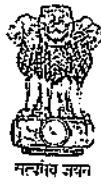
3. Observations & Recommendations:

3.1 In light of the facts and material available on record, the reply of the respondent was found satisfactory, no further intervention is required.

3.2 Accordingly, the case is disposed of.

Dated: 05.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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

Case No: 13568/1022/2022

Complainant:

Shri Chandraveer,
 W-703, Eden Tower,
 Godrej Garden City,
 Ahmedabad-382470 ,
 Email: chandraveermalik@gmail.com
 Mobile No:9015265905

240951

Respondent :

1. The Chairman,
 Central Board of Indirect Taxes and Customs,
 North Block, New Delhi-110001
 Email: cbic@nic.in
2. The Chief Commissioner,
 Central Goods and Services Tax and Central Excise,
 GST Bhavan, Revenue Marg,
 Near Polytechnic College,
 Behind Panjarapole,
 Ambawadi, Ahmedabad,
 Gujarat-380015
 Email: gstce@nic.in
3. The Chief Commissioner,
 Central Goods and Services Tax and Central Excise,
 Mangal Pandey Nagar,
 Meerut, Uttar Pradesh-250004
 Email - gstce@nic.in
4. The Chief Commissioner,
 Central Goods and Services Tax and Central Excise,
 2nd Floor, Central Excise Building,
 Race Course Circle,
 Vadodara, Gujarat -390007

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GIST OF COMPLAINT

Shri Chandraveer, a person with 40% locomotor disability, working as Intelligence Officer, Directorate General of Good and Service Tax Intelligence, Ahmedabad filed his complaint 22.11.2022 stating that despite several representations to the respondents, his requests for Inter Commissionerate transfer to his native place. i.e. Meerut, Uttar Pradesh, has not been acceded to.

2. The Complainant stated that due to his disability related issues he requested many times for inter-Commissionerate transfer and deputation to his native place. He joined the service of Respondent department on 27.05.2016. Under the Recruitment Rules, 2002, ICT was permissible, but the department has been insisting that ICT is not available for the Inspectors. On 20.09.2018, Board had issued a Circular holding that no ICT application can be considered after coming into force of the RR of 2016. Further he stated that his 62 years old age mother is diagnosed with cancer. She needs special care and support both mentally as well as physically.

3. Replying on behalf of the respondents, the Asst. Commissioner vide his letter dated 03.01.2023, submitted that no application for transfer on Inter Commissionerate basis of the Complainant was received before the receipt of the complaint dated 22.11.2022. The complaint addressed to the CCPD was received in Meerut Zone from the Complainant vide email dated 23.11.2022. It was immediately forwarded to the CCA, Lucknow for further necessary action, since all Inter Commissionerate Transfer (ICT) matters of this Zone are being dealt by Cadre Controlling Authority Lucknow only. Vide establishment Order No. 86/2022 dated 26.12.2022 CCA, Ahmedabad zone has issued the order for transfer and posting of the Complainant to Meerut Zone on loan basis for 2 years.

4. The Complainant submitted his rejoinder vide affidavit dated 07.02.2023 reiterating his earlier submission and denying the assertions of the respondents. He stated that his transfer to Meerut on loan basis for 2 years is not a permanent solution. He requested for an ICT to Meerut Zone.



5. **Hearing:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 22.05.2023. The following were present:

Complainant

- i) Shri Chanderveer

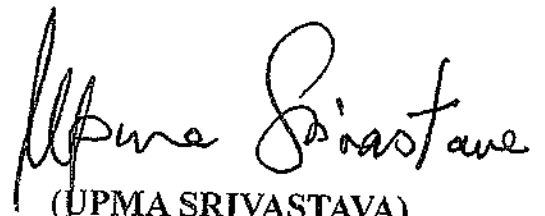
Respondents

- ii) Shri Manish Kumar Sahai Dy. Commissioner,
Dept. of revenue CBIC Respondent No.1
- iii) Shri Prasad Varwantkar
Dy. Commissioner, CBIC, Ahmedabad Respondent No. 2
- iv) Shri Rajiv Kishor
Asst. Commissioner, CCO Meerut Respondent No. 3
- v) Shri Satish Kumar
Asst. Commissioner, CCO Lucknow Respondent No. 4

6. OBSERVATIONS /RECOMMENDATIONS:

6.1 During online hearing the Complainant confirmed that he has been transferred to his native place on loan basis, hence further intervention of this Court in the present Complaint is not warranted.

7. The case is disposed of.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13569/1022/2022

Complainant:

Shri Ajit Kumar,
Office Superintendent,
Tola Badlu Vigaha,
Post Arkdivariya, Thana Tikri,
District Gaya, Bihar 824236
Email: kajit10011990@gmail.com

140956

Respondent

The Secretary,
Ministry of Railway,
Rail Bhawan, 256-A,
Raisina Road,
New Delhi-110001.
Email:

140957

Respondent....1

General Manager (P),
Southern Railway Headquarters,
Personnel Branch,
Chennai, Park Town,
Chennai, Tamil Nadu-600003

140958

Respondent....2

GIST OF COMPLAINT

शिकायतकर्ता श्री अजीत कुमार जो कि 70 प्रतिशत श्रवण दिव्यांग व्यक्ति हैं और दक्षिण रेलवे में कार्यालय अधीक्षक के पद पर कार्यरत हैं, का अपनी शिकायत पत्र दिनांक 18/11/2022 के बारे में कहना है कि उन्होंने दिनांक 11/10/2021 को कार्यालय पत्रांक संख्या P(S)676/III/IRT/IDT दिनांक 16/12/2021 के द्वारा एकतरफा स्थानांतरण आवेदन दक्षिण रेलवे में दिया था। लेकिन कोई जवाब नहीं मिलने पर शिकायतकर्ता ने दिनांक 13/08/2022 को एक आवेदन आर.टी.आई. अधिनियम के अंतर्गत दिया था जिसका जवाब शिकायतकर्ता को दिनांक 31/08/2022 को प्राप्त हुआ कि सीधी भर्ती कोटा की रिक्ति अनुपलब्धता के कारण आपके आवेदन पर स्वीकृति प्रदान नहीं की गई है। अंत में दिनांक 12/10/2022 का कार्यालयी पत्र भेजकर वही जवाब दिया है।

शिकायतकर्ता का कहना है कि श्री मनोज कुमार चौधरी सहायक कार्मिक अधिकारी के द्वारा दिनांक 15/11/2022 को दो व्यक्तियों को एकतरफा आवेदन किस आधार पर स्वीकार किया गया जिसका प्रति भी शिकायतकर्ता संलग्न ने अपनी शिकायत में दी है। शिकायतकर्ता का एकतरफा स्थानान्तरण आवेदन करने का मुख्य कारण यह है कि शिकायतकर्ता का परिवार सभी गांव में रहते हैं और शिकायतकर्ता यहां अकेले रहते हैं।

REPLY OF THE RESPONDENT

2. The Dy. Chief Personnel Officer, Southern Railway submitted reply dated 21.12.2022 on behalf of Respondent No. 2 and stated that the Complainant was appointed as Office Peon in Level-1 on 11/06/2013 after being selected through Railway Recruitment Cell/Chennai. He was later promoted as Junior Clerk in Level-2, Senior Clerk in Level-5 and as Office Superintendent in Level-6 with effect from 26.12.2016, 03.01.2019 and 12.01.2021 respectively. As per para 312 of Indian Railway Establishment Manual, Inter Railway Transfers are permissible only in grades/posts where there is an element of Direct Recruitment Quota. Element of direct recruitment exists only in the grade of Senior Clerk in Level-5 and not in the present working grade of the applicant, viz. office superintendent in Level-6. The complainant submitted his application dated 11/10/2021 for One Way Inter Railway Transfer to East Central Railway (ECR) at Hajipur, Bihar in the lower grade of Senior Clerk in Level - 5.

3. The Respondent further submitted that the Railway Board issued a Comprehensive Transfer Policy on Inter Railway Transfer on 31/08/2015, whereby the minimum service of 5 years was stipulated for Inter Railway Transfer requests. In modification to the said policy in the year 2022, General Manager of Zonal Railways was given the powers to increase this minimum service required for submission of application for Inter Railway Transfer from 5 years to 10 years. Accordingly, the request was forwarded to the GM (Pers) of ECR at Hajipur, Bihar. The ECR responded by saying that no DR quota vacancy existed in the grade of Senior Clerk in Level- 5. This was informed to the applicant

4. The Respondent also submitted that the complainant had not approached his office for redressal of his grievance prior of filling this complaint with this Hon'ble Commission.



REJOINDER OF THE COMPLAINANT

5. अपने प्रत्युत्तर में शिकायतकर्ता ने पूछा कि दिनांक 15.11.2022 को दो व्यक्तियों और दिनांक 19.12.2022 को तीन व्यक्तियों का एकतरफा आवेदन किस आधार पर स्वीकार किया गया।

6. **Hearing:** The case was fixed for hearing 26.05.2023. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities. The following were present:

Complainant

- i. Shri Ajit Kumar

Respondent

- i. Shri D. Joseph, Director (Estt.);
- ii. Shri Sanjay Kumar, Dy Director (Estt.)
- iii. Senthil Kumar, Dy. CPO; Shri Indusekar, Asst. Personal Officer

7. Observations /Recommendations:


7.1 During online hearing, the Respondent No. 2 reiterated the rule position that the Complainant can be adjusted in Eastern Railways only when there would be a vacancy under the 'Direct Recruitment' vacancy in clerk cadre. Further Respondent No. 2 submitted that they are ready to relieve the Complainant and his transfer application was also forwarded to Eastern Railways, where Hajipur station is located. Eastern Railways expressed their inability to adjust the Complainant because of non-availability of a Direct Recruitment vacancy in clerical cadre. Respondent further submitted that the Complainant is always given promotions on time and currently he is working as 'Office Superintendent'. Respondent No. 2 further requested to delete the name of Secretary, Railway Board from the array of parties because it does not have any role to play in the present Complaint.

7.2 Considering the fact that the Respondent No. 2 has promoted the Complainant on time and is ready to relieve the Complainant subject to the condition that the Eastern Railways are ready to adjust when vacancy arises, this Court concludes that discrimination on the basis of disability is not made out in the present Complaint. This Court recommends that whenever there is Direct Recruitment



vacancy in clerical cadre in Eastern Railways, the Complainant shall be transferred near to his hometown situated in region which falls under Eastern Railways.

8. The case is disposed of.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023



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

Case No. 13623/1014/2023/174322

In the matter of—

Mr. Souvik Manna,
 22/D Avenue South Sontoshpur,
 Kolkata- 700075 (WB)
 Mob: 8617229768; Email: souvikmanna496@gmail.com
 Through Counsel:
 Advocate Subhash Vashishth,
 Email: subhashcvashishth@gmail.com

... Complainant

Versus

(1) The General Manager, State Bank of India,
 Central Recruitment & Promotion Department,
 Corporate Centre, State Bank Bhawan,
 6th Floor, Madame Cama Road,
 Mumbai - 400 021
 Email: crpd@sbi.co.in

... Respondent No.1

(2) The Chairman,
 State Bank of India
 Corporate Centre, State Bank Bhavan,
 Madame Cama Road, Nariman Point,
 Mumbai - 400021
 Email: chairman@sbi.co.in

... Respondent No.2

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

1. Gist of Complaint:

1.1 Mr. Souvik Manna, a person with 50% visual impairment filed a complaint dated 07.12.2022 through Advocate Subhash Chandra Vashishtha regarding ambiguity in language of the vacancy notification by the State Bank of India as well as against non-selection of the Complainant to the post of Probationary Officer despite his securing more marks than the last candidate from the EWS vertical parent category by the Respondent in its Advertisement No. CRPD/PO/2021-22/18 published on 05.10.2021.

1.2 The Complainant submitted that he is from Economically Weaker Section (EWS) category and a person with benchmark visual disability namely, low vision. The aforesaid post of Probationary Officer is identified for persons with visual impairment. He cleared the written examinations and interview and got a final score of 48.60 (Total Normalized to 100]. As per the advertisement, the Cut

Off Marks for Final Selection for EWS category is 47.94; and for VI is 49.93 (the Final Normalized Score out of 100). The SBI denied him the post on the ground that he used PwD benefits compensatory time and fee exemption, so he would be treated as a PwD (with a higher cut-off) and not EWS (with lower cut-off), despite the fact that EWS is vertical and PwD is horizontal reservation.

1.3 The complainant further submitted that on declaration of result and not finding his name, he wrote a representation to the Central Recruitment and Promotion Department (CRPD), of State Bank of India at Mumbai concerning this matter and received the reply dated 16 March 2022 as under:-

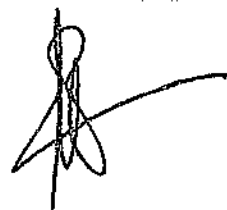
"The final result is processed by considering the own merit in the exam i.e., if a PWD candidate has not availed any relaxation/concession, he/she will be considered for selection in general category/ parent category. Since you have availed the concessions/relaxations available, you have been considered under the VI category."

1.4 The complainant did not claim any age relaxation or qualifying marks relaxation. At the time of examination, the age of the petitioner was 24, while the maximum age for taking this exam is 30 years.

1.5 The complainant has alleged that the language of the notification is misleading as under:-

Sl. No.	Provision in Notification	Comments / Objections of the Petitioner
1.	(B) Age Limit: (As on 01.04.2021): Not below 21 years and not above 30 years as on 01.04.2021 i.e. candidates must have been born not later than 01.04.2000 and not earlier than 02.04.1991 (both days inclusive). Relaxation in Upper age limit shall be as below: Persons with Benchmark Disabilities(PWD) – PWD(SC/ST) 15 Years PWD (OBC) 13 Years PWD (Gen/ EWS) 10 Year	The petitioner did not claim any relaxation in upper age limit.
2.	RESERVATION FOR PERSONS WITH DISABILITY (PWD): Note: A person who wants to avail benefit of reservation will have to submit a disability certificate issued by a Competent Authority as per Government of India guidelines. Such certificate will be subject to verification/ re-verification as may be decided by	The language of notification is misleading. Merely submitting a disability certificate should not force the person to reservation quota of PwD. This leaves no opportunity for disabled candidates to be selected on their own merit in their respective categories and they are forced into disability quota. Also, if the disabled candidate also belongs to a vertical category of

	the competent authority. The certificate should be dated on or before last date of registration of application.	vulnerability, she/he should be selected on the lower threshold cut-offs whichever is more beneficial. The concept of separate disability cut-off was brought in to accommodate those who do not make it to the higher cut offs for jobs in their vertical categories, but this cannot be used to limit their opportunities.
3.	Use of Scribe & compensatory time: The facility of scribe would bellowed to a person who has disability of 40% or more if so desired by the person and is meant for only those persons with disability who have physical limitation to write including that of speed. In all such cases where a scribe is used, the following rules will apply.	This is against the recent Supreme Court judgment in Vikas Kumar Vs. Union Public Service Commission & Others dated 11 Feb 2021, wherein scribe facility is to be treated as a reasonable accommodation which is need based and not linked to percentage of disability or benchmark disability. Future Notification should refer to DEPWD OM on Guidelines for Conducting Written examination for Persons with specified disabilities covered under the definition of Section 2(s) of the RPwD Act, 2016 but not covered under the definition of Section 2(r) of the said Act, i.e., persons having less than 40% disability and having difficulty in writing, issued vide DEPwD OM Number F. No. 29-6/2019-DD-III Dated 10 Aug 2022.
4.	8. APPLICATION FEE AND INTIMATION CHARGE (Non-Refundable): Application Fee will be 750/- for General/ EWS/ OBC candidates and 'Nil' for SC/ ST/ PWD candidates. Application Fee once paid will NOT be refunded on any account nor can it be held in reserve for any other examination or selection.	The language of section 8 of the notification is misleading and is a trap which is used by respondent to disallow them to be considered for post even when they clear the cut-off of their vertical category. It simply says 'NIL' fee for SC/ST/PWD candidates. So it is not a relaxation of standards. It simply guides and advised people from SC/ST/PwD categories that no fee is to be paid by them. It doesn't say that they will be forced into disability quota or will not be considered under their parent vertical category they don't pay. Hence, it can't be used against the petitioner at this stage to disallow him, his selection. If the payment of Rs.750/- is the only catch, the petitioner is ready to pay it any time. However, it should not be used by respondent like a trap to discredit their efforts.



5.	10. NUMBER OF CHANCES: Category Max. Permissible Number of Chances – General / EWS 4, General (PWD) / EWS (PWD) 7	Petitioner has not used any relaxation in number of chances. This was his first attempt at the Examination.
6.	Annexure II- Guidelines for scanning and Upload of Photograph, Signature, Left-Hand Thumb Impression & Hand Written Declaration Before applying online, a candidate will be required to keep ready a scanned (digital) image of his/ her photograph, signature, left-hand thumb impression and hand-written declaration as per the specifications given below. a. The text for the hand-written declaration is as follows: “I _____ (Name of the candidate), _____ (Date of Birth) hereby declare that all the information submitted by me in the application form is correct, true and valid. I will present the supporting documents as and when required. The signature, photograph and left-hand thumb impression is of mine”.	This is a huge barrier for blind candidates as they do not write with their hand but type on their computers. The advertisement does not provide a reasonable accommodation to this condition. Handwritten declaration should not be forced upon the blind candidate and a printed or audio option with a tick mark or an alternate accessible option must be allowed.

2. Submissions made by the Respondents:

2.1 The Respondent No.1 filed their reply dated 31.01.2023 and submitted that Shri Souvik Manna applied under PwD-VI category and availed relaxation applicable to him. He scored 95.33 in Main exam, which is below his PwD-VI category cut off Marks of 97.72 but higher than parent category (EWS) cut off Marks of 90.01. Accordingly, he was called for interview.

2.2 Shri Manna scored 48.60 in the final merit list. The cut-off score for PwD-VI was 49.93 and his parent EWS category cut-off was 47.94.

As regards GOI OM No 36035/022017-Estt. (RES) dated 15.01.2018, a PWD candidate selected without relaxed standards along with other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with benchmark disabilities which will thus comprise of candidates with benchmark disabilities



who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary, by relaxed standard.

As the applicant Shri Manna availed relaxation available to the PWD category both in Preliminary and Main examination, he was not considered under his parent category and considered under his PwD-VI category while processing of final result. Further, there were 21 vacancies reserved for persons with visually impaired category and all vacancies have been filled up by candidates belonging to visually impaired category scoring marks equal or more than the cut-off marks for PwD-VI category.

2.3 Shri Souvik Mana did not score the cut-off marks to qualify under PWD category, as such he cannot allege that he has been discriminated under Person with Disabilities Act, 2016. It is humbly submitted that this Honorable Court is not the competent to adjudicate the grievance of Shri Souvik Mana.

2.4 No reply was received from the Respondent No.3.

3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 14.03.2023 and refuting the reply filed by the respondent, reiterated his complaint.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.05.2023**. The following persons were present during the hearing:-

- (1) Shri Souvik Manna, the complainant; and Shri S.C. Vashishtha, Advocate for the complainant
- (2) Shri S.T. Rama, General Manager, SBI on behalf of Respondents

5. Observations & Recommendations:

5.1 The main cause in the present Complaint is appointment of Complainant against vacancy reserved for 'EWS' category. However, the Complaint warrants limited intervention of this, by virtue of S.3(3) of Rights of Persons with Disabilities Act, 2016 (hereinafter referred as 'the Act') because the appointment is denied on the basis of mis-interpretation of guidelines relating to disability. Section 3(3) of the Act is mentioned below for perusal –

“Section 3: Equality and non-discrimination - (3) No person with disability shall be discriminated on the ground of disability, unless it is



shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.”

5.2 The fact from which the issue emerges is that the candidature of the Complainant was rejected by the Respondent establishment giving reason that the Complainant obtained relaxations available for Persons with Benchmark Disabilities. The two kinds of relaxations obtained by the Complainant, as claimed by the Respondent, are – a) compensatory time; and b) fee exemption.

5.3 The issue which requires contemplation of this is whether the Respondent has correctly considered ‘compensatory time’ and ‘fee exemption’ as relaxations.

5.4 As far as compensatory time, the attention of the Respondent is attracted to DoPT O.M. No. 36035/02/2017 Estt(Res.) dated 27.09.2022. In Para 4(ii) of the O.M. it is clarified that the compensatory time along with scribe shall not be considered as related standards. Para 4(ii) is mentioned below –

“In accordance with Para 3 of the OM No.29-6/2019-DDIII, 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.”

5.5 It is absolutely clear from the plain reading of the guideline that ‘compensatory time’ shall not be treated as relaxed standards. On this point this concludes that considering ‘compensatory time’ as ‘relaxed standards’ is in direct conflict with DoPT O.M. dated 27.09.2022.

5.6 Furthermore, on the issue of ‘fee exemption’, it is pertinent to note that the fee is exempted for all the candidates with Benchmark Disabilities irrespective of EWS status and also irrespective of caste. If ‘fee exemption’ will also be considered as ‘relaxation’ and candidature is rejected on this basis, then in such case Persons with Benchmark Disabilities shall never be adjusted against unreserved vacancies or against vacancies which are reserved on the basis of caste, economic status or any other criterion. Hence, this concludes that rejection of candidature against EWS category because of ‘fee exemption’ is against the tenets of equality as enshrined in Constitution and given effect by various guidelines issued by DoPT on issues of recruitment and promotion of Persons with Benchmark Disabilities.

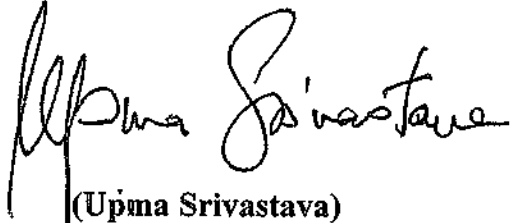


5.7 This Court recommends that the Respondent shall consider the candidature without considering 'compensatory time' and 'fee exemption' as relaxed standards for Persons with Disabilities.

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 of.

Dated: 06.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 13621/1012/2023/177810

In the matter of—

Shri Korra Pradeep Naik
R/o H.No.8-20/12,
SAI Nagar Colony
Balapur,
Hyderabad (Telangana); Pin - 500069
Email: pradeepnaik102@gmail.com

... Complainant

Versus

The Director/CEO,
M/s Software Technology Parks of India (SPTL),
Cyber Park, 6th Floor, No.76 & 77,
Electronic City, Hosur Road,
Bengaluru 560100
Email: gnr.info@stpi.in; blr.career@stpi.in
Cell Phone: 9490775826/9848304372

... Respondent

Affected Person/Beneficiary: The complainant, a person with 100% Hearing Impairment

1. Gist of Complaint:

Shri Korra Pradeep Naik, a person with 100% hearing impairment, filed a complaint dated 27.12.2022 challenging his disqualification for appointment to the post of MTTs (ES-4) by the Software Technology Parks of India despite getting 44 marks in the recruitment examination conducted on 5th November, 2022. The Complainant alleged that the respondent is not considering a 100% deaf candidate eligible for job.

2. Submissions made by the Respondent:

2.1 The respondent vide their reply on affidavit dated 02.02.2023 submitted inter-alia that the recruitment exam was conducted on 05.11.2022 for a total of 150 marks. As per the Standing Operating Procedures of STPI, the qualifying marks for a General candidate are 50%. The candidates belonging to SC/ST and OBC are given 10% and 5% relaxation respectively. The candidates belonging to disabled category are given additional 5% relaxation in their respective categories.

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2.2 The Complainant, Shri Korra Pradeep Naik who belongs to ST category was given 15% relaxation in qualifying marks i.e. 10% + 5%, meaning thereby he should have obtained more than 52.5 marks out of the total 150 marks to qualify for selection to the post of MTSS (ES-IV). However, he failed to score more than 52.5 marks. And thus, he was not eligible for further consideration by the STPI.

3. Submissions made in Rejoinder:

Reply of the Respondent was forwarded on 24.02.2023 to Complainant for filing rejoinder. However, no response was received from the Complainant so far.

4. Observations & Recommendations:

4.1 The Complainant raised the issue of being disqualified for appointment to the post of MTSS despite securing 44 marks. The Respondent vide their reply dated 2nd February, 2023 submitted that the complainant was allowed relaxations of qualifying marks both as an ST candidates (10%) as well as a PwBD (5%). While the cut off for General candidates was 50%, the Complainant required 35% to qualify. He, however, secured only 44 out of a total of 150 marks, i.e. 29.33%. Accordingly, he was declared as not qualified.

4.2 Since, the Respondent has allowed relaxation of 5% to the PwBD candidates over and above the relaxation allowed to the vertical categories of backward class and as a result, the overall relaxation is more than the SC and ST candidates, there does not appear to be any cause for intervention of this court.

4.3 Accordingly the case is disposed of.

Dated: 06.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



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

Case No. 13578/1011/2022

In the matter of—

Shri M. Naga Prasad,
 President, VPT Disabled Employees Association,
 Door No.19-230/1, Sector-2,
 4th Street, Sri Sai Madhava Nagar,
 Naiduthota,
 Visakhapatnam-530047 (Andhra Pradesh);
 Email: vptdea2020@gmail.com;
 Phone: 7981268541; 9703839363

... Complainant

Versus

The Chairman,
 Visakhapatnam Port Trust,
 Port Area,
 Visakhapatnam - 530035
 Email: chairman.vpt@gov.in

... Respondent

Affected Person / Beneficiary: Persons with Disabilities

1. Gist of Complaint:

1.1 Shri M. Naga Prasad, President, VPT Disabled Employees Association, Visakhapatnam (Andhra Pradesh) filed a representation vide email dated 14.09.2022 regarding non-implementation of 4% reservation for Persons with Benchmark Disabilities in Direct Recruitment (DR) as well as in Promotion at all Groups; non filling up of all backlog posts of 4% reservation in Direct Recruitment as well as in Promotions.

1.2 The Complainant has submitted that he is requesting the Chairman, Visakhapatnam Port Trust (VPT) for implementation of 4% reservation in DR as well as in Promotion, but no information has been received by their Association till filing of the Complaint. He has also requested the Chairman to stop and not to regularize all categories of posts (A, B, C and D) till all backlog posts for persons with disabilities filled up but they have not been stopped to recruit/regularize the posts and all despite several requests made by their Association. The Respondent is continuing to make the promotions/regularization in all the posts.

1.3 The Complainant further alleged that the Respondent is going to fill up ATM (Class-I)(Group A post) which came under identified post for persons with

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disabilities without arriving backlog @ 4% reservation for persons with disabilities and the said post supposed to be filled up with persons with disabilities as backlog post.

1.4 This Court in Case No.11453/1011/2019 had recommended as under:-

"6. After hearing both the parties, this Court apprised the respondent that they are obliged to implement all provisions of the Rights of Persons with Disabilities Act, 2016 both in letter and spirit, they have to maintain a roster and reserve 4% of the vacancies for persons with benchmark disabilities; they also need to identify the backlog vacancies and undertake a Special Recruitment Drive to fill all the vacancies reserved for persons with benchmark disabilities.

7. The respondent requested for a period of three months in which all the aforesaid necessary action shall be complied with.

8. This Court directs that a compliance report in this matter may be sent within 90 days of receipt of these orders along with details of action taken with a copy to the complainant.

9. The case is disposed off.

Sd/-
(Upma Srivastva)
Commissioner
for Persons with Disabilities"

1.5 Since no compliance report was received from the Respondent within the stipulated time in terms of Section 76 of the RPwD Act, 2016 despite assurance made by the Respondent during the hearing, the matter was taken afresh again with the Respondent.

2. Submissions made by the Respondent:

2.1 The Respondent filed their reply dated 28.12.2022 and inter-alia submitted that an earnest effort was made to implement 3% reservation in promotional posts to VPA employees with Benchmark Disabilities and finalized the number of Group C&D posts to be filled up in all departments. The Complainant was one of the beneficiaries, as he was promoted to the post of Head Assistant (Class-III) from the post of Junior Assistant (Class-III) under 3% Reservation.

2.2 The Respondent further submitted that the Ministry of Ports, Shipping and Waterways vide letter dated 04.07.2022 has forwarded the copy of D/o P&T's O.M. dated 17.05.2022 duly directing to implement 4% reservation for employees with disabilities of VPA. The same was forwarded to all the Departments of VPA for compliance and accordingly all the Departments are in the process of recasting the rosters in line with the DoP&T's OM dated



17.05.2022 for implementation of 4% reservations for employees with disabilities. In this connection, a meeting was conducted on 09.11.2022 with the Establishment Officers and the Complainant was also present in that meeting. During the meeting, the Departments have informed that the existing Rosters of PwD would be continued without any break, duly adjusting the backlog points identified for Employees with Disabilities with effect from 19.04.2017 as mentioned in the OM 17.05.2022.

2.3 The Complainant has stated that Rosters maintained so far had to be stopped along with all the recruitments/regularizations immediately, till the posts under 4% reservation for PwDs are identified and filled to avoid further loss of vacancies identified for candidates with disabilities. The Respondent has clarified to the Complainant that the issue of stoppage of promotions/regularizations might cause certain posts to be abolished on the two years abolition concept and the Complainant was assured that identification of vacancies of PwDs would be finalized as early as possible. The Complainant has also been informed that the promotions/recruitments to be filled involved many aspects such as subject to availability of vacancy and its continuation. A time line had also been fixed as 30.12.2022 to identify the 4% backlog vacancies reserved for persons with disabilities and submit the Rosters, duly completing in all respects. A majority of the Departments have completed its process for identification of posts.

2.4 To update the status a meeting with all the Departments was again conducted on 23.12.2022 to evaluate the progress in recasting the Roster for the PwDs with 4% reservation in which the Complainant has expressed satisfaction over the exercise made by the Departments for implementation of 4% reservations.

3. Submissions made in Rejoinder:

The Complainant filed his rejoinder dated 03.01.2023 and has partially affirmed the action taken for complying of the aforesaid recommendations of this Court. The Complainant has further submitted that with regard to reservation of 4% seats in DR, the matter is pending with the Ministry of Ports, Shipping and Port Waterways, and hence, the Ministry may be made one of the parties in this case.

4. Hearing:

The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on 18.04.2023. The following persons were present during the hearing:

- (1) Shri M. Naga Prasad, the complainant
- (2) Shri B. Sam Murti, Sr. Personnel Officer, for the Respondent



5. Observations & Recommendations:

5.1 Complaint is related to not extending 4% reservation in Direct Recruitment as well as in promotion. The Complainant submitted that in past this Court had recommended the Respondent to extend 4% reservation in Direct Recruitment and in promotion, however, the Respondent failed to perform his duties. Complainant prayed before this Court to direct the Respondent not to conduct any recruitment unless reservation roster is prepared as per DoPT O.M. dated 17.05.2022.

5.2 Respondent submitted that the Ministry of Ports, Shipping and Waterways vide their letter dated 04.07.2022 had forwarded a copy of the DoP&T's O.M. dated 17.05.2022 directing the VPT to implement 4% reservation for employees with disabilities of VPA. The same was forwarded to all the Departments for compliance and accordingly all the Departments are in the process of recasting the rosters in line with the DoP&T's OM dated 17.05.2022 for implementation of 4% reservations for employees with disabilities. In this connection, a meeting was conducted on 09.11.2022 with the Establishment Officers and the Complainant was also present in that meeting. During that meeting, the Departments were informed that the existing Rosters of PwD would be continued without any break, duly adjusting the backlog points identified for Employees with Disabilities with effect from 19.04.2017 as mentioned in the O.M. dated 17.05.2022.

5.3 Complaint is not related to any particular recruitment process. Furthermore, the Complainant has sought relief from this Court to stop the Respondent from making any recruitment till the reservation roster is made. On this point, it must be noted that the Rights of Persons with Disabilities Act, 2016 does not empower this Court to grant prohibitory injunctions or other interim directions.

5.4 This Court shall not grant the prayer sought by the Complainant. However, this Court recommends that the Respondent shall extend 4% reservation in all appointments, whether by Direct Recruitment or Promotion, in accordance with O.Ms. dated 15.01.2018 and 17.05.2022 issued by DoP&T.

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 of.

Dated: 06.06.2023


(Upma Srivastava)
Chief Commissioner
For Persons with Disabilities



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

Case No. 13593/1011/2022

In the matter of—

Dr. Umesh Kumar Vates (Master Ji)
 House no 425 Near Church, Gali No 03,
 Panchsheel Part 2
 Ismailpur, Sec 91, Faridabad,
 Haryana, 121013
 Email: u.k.vates@gmail.com;
 Phone: 9718924655

... Complainant

Versus

The Registrar,
 National Institute of Technology Kurukshetra,
 Haryana 136119
 Email: registrar@nitkkr.ac.in

Affected Person: The complainant, a person with 64% Locomotor Disability

1. Gist of Complaint:

1.1 Dr. Umesh Kumar Vates, a person with 64% locomotor disability filed a complaint dated 26.10.2022 regarding Non-selection to the post of Assistant Professor-I under disability quota in NIT Kurukshetra under Advertisement No.08/2022.

1.2 The complainant submitted that he had applied for the post of Assistant Professor-I in Production / Mechanical Engineering at NIT Kurukshetra, appeared and successfully defended his interview on 21.10.2022. As per the notification details, 07 seats were reserved for PWBD like him. He did his Ph.D. from National importance and world class institute IIT (ISM) Dhanbad, Published more than 70 research articles and 16 years teaching experience. As per the Notification 20 API were required and he got 78 API. After successfully defending his interview he was very sure that his academic profile and interview performances were very good. But he was not selected as per the result declared.

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2. Submissions made by the Respondent:

2.1 Respondent filed their reply on Affidavit dated 14.03.2023 and inter-alia submitted that they had invited online applications for the recruitment of 99 number of Assistant Professors Grade-I including 07 posts reserved for Persons with Benchmark Disability (PwBD) on horizontal basis vide advertisement no. 08/2022 for various departments. The reservation of posts in Teachers' Cadre was as per Gazette notification [The Gazette of India, No.29; The CEI (Reservation in Teachers' Cadre) Act, 2019 dated 9th July, 2019; The Gazette of Indian No.2289, dated 12th July, 2019] and further direction of HRD vide notification F.No.33-3/2018-TS.III dated 5th November, 2019. Total 1714 number of applications were received upto the last date 05.09.2022 and the last date of receipt of hard copy of application along with requisite documents was 10.09.2022.

2.2 The applications were scrutinized by the respective Department Level Scrutiny Committee and their recommendations were placed before the Advisory Committee on Faculty Recruitment (ACoFAR) constituted as per Recruitment Rule, 2017. A final list of shortlisted candidates to appear for interview before the Selection Committee was prepared by the ACoFAR. The Selection Committee meetings for the recruitment of Assistant Professors Grade-I were held on 11.10.2022 to 21.10.2022. Based on his educational qualification, research and teaching experience the complainant was shortlisted provisionally and called for interview. The Selection Committee did not recommend the name of the Complainant for the post of Assistant Professor Grade-I.

3. Submissions made in Rejoinder:

The Complainant filed Rejoinder reiterating his complaint. He also submitted that the final result of selected candidates was not appropriate and was not published on the website. He, however, sought the following clarifications—

- (1) How many PWD candidates appeared in 499 called candidates (department wise)?
- (2) How many PWD candidates were finally selected (department wise)?
- (3) How many PWD candidates finally joined?
- (4) What were the selection criteria (marks division for each event)?

- (5) What was his position in the whole recruitment process?
- (6) Reservation roster for PWD candidates had been followed or not?

4. Hearing:

The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **18.04.2023**. The following persons were present during the hearing:

- (1) Dr. Umesh Kumar Vates, Complainant
- (2) Shri G.R. Samantaray, Registrar, NIT, Kurukshetra for Respondent

5. Observations & Recommendations:

5.1 Complaint is related to non-selection of the Complainant against the post of Assistant Professor-I. Complainant submits that the Respondent establishment issued advertisement No.08/2022 for the post of Assistant Professor in Production/ Mechanical Engineering. 7 vacancies were reserved for divyangjan. Complainant applied for the post. He was called for interview. He claims that he performed well in his interview and his qualification was much more than the minimum eligibility criterion, however he was not selected.

5.2 During online hearing, this Court made inquiry from the Respondent relating to appointment of persons with disabilities against the posts reserved for them. The Respondent informed that no person with disabilities was appointed, all 7 reserved vacancies are lying vacant which will be readvertised again.

5.3 This Court does not agree with the Complainant's contention. The Complainant failed to provide any evidence of discrimination on the basis of disability. However, the issue of not selecting any divyangjan is serious and needed to be addressed.

5.4 To resolve the issue assistance of concept of 'Reasonable Accommodation' is indispensable. Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable



Accommodation' and appropriate barrier free and conducive environment to divyang employee.

SECTION 2(y) - "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others

SECTION 20(2) -Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

5.5 This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyang persons, affirmative conditions have to be created for facilitating the development of Divyangjan. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjan hence the state is bound to provide these facilities to its Divyangjan. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

"54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others."



Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016.”

5.6 This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to divyang employee in comparison with enabled employee. In addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of divyang employee, pre-promotion training, providing assistive aids and devices etc.

5.7 In the present circumstances ‘Reasonable Accommodation’ can be applied by relaxing the criterion adopted for recruitment. Since the Respondent found no one suitable hence qualifying marks can further be relaxed to accommodate any candidate who qualified all the stages of recruitment process despite of challenges she/he might have faced because of his disabilities.

5.8 Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates is not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.

5.9 Further, a plethora of Complaints are filed before this Court relating to the issue of recruitment. This Court had an opportunity to delineate laws and guidelines related to various aspects of recruitment process in Order dated 15.06.2021, issued in Complaint No. 12678/1011/2021, titled as NEHA NEMA v. CENTRAL UNIVERSITY OF HIMACHAL PRADESH, copy of which is attached herewith.

5.10 Hence this Court recommends that Respondent shall pursue the Copy of the Order attached along with and shall follow all the guidelines delineated while conducting recruitment in future. Further, it is recommended that the Respondent shall carry forward the vacancies in next recruitment cycle and in place of keeping the vacancies unfilled, Respondent shall relax the criterion and appoint divyangjan against the vacancy reserved.



5.11 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.

5.12 Accordingly the case is disposed off.

Encl.: As above

Dated: 06.06.2023


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



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12678/1011/2021

Complainant:

Dr. Neha Nema,
H. No.254/255, Gandhi Vihar,
Near Mukherjee Nagar,
New Delhi – 110 009.

Versus

Respondent :

Central University of Himachal Pradesh
(Through the Registrar)
Camp Office, Near HPCA Cricket Stadium,
Dharamshala,
Dist. Kangra,
Himachal Pradesh – 176 215.

Disability : 50% locomotor

Gist of Complaint:

Dr. Neha Nema, the complainant, a person with 50% locomotor disability vide her complaint dated 26.03.2021 submitted that the Central University of Himachal Pradesh had advertised for recruitment to the post of Assistant Professors in their University. The complainant submitted that she also applied to the post of Assistant Professor but she has not being selected under PwD quota. She also belongs to backward community.

2. The Registrar, Central University of Himachal Pradesh vide letter dated 20.04.2021 submitted that their University had started direct recruitment of Assistant Professors during the year 2011-12. Initially 80 Professors were recruited. The 3% reservation were given at that time to candidates with disabilities and the following candidates were appointed under PH quota.

Upma Srastava
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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.ccd disabilities.nic.in

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

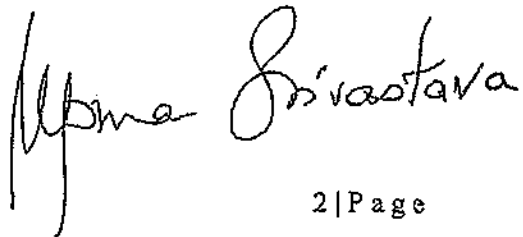
(Please quote the above file/case number in future correspondence)

- 1) Dr. Muhammad Atif, Assistant Professor – VH
- 2) Dr. Saima Banu, Assistant Professor -- VH
- 3) Dr. Prakrati Bhargav, Assistant Professor - VH

In the year 2019, the University had advertised for filling up of 128 teaching posts under direct recruitment. Out of the total of 128 posts five posts were reserved for persons with disabilities as per 4% reservation quota. Out of 5 posts, 02 posts were reserved for persons with visual impairment and the remaining 03 posts were reserved for persons with locomotor disabilities because in the earlier recruitment the University had utilized the two posts of OH category along with posts of VH category. Hence, the advertisement was given showing reservation of 05 posts of OH category. In the meantime, a case was filed with the Commissioner for Persons with Disabilities, Govt. of Himachal Pradesh by the National Platform for Disabilities Rights and Duties, Chandigarh against the reservation of persons with disabilities in the employment advertisement issued by the Central University of Himachal Pradesh. The Commissioner for Persons with Disabilities, Govt. of Himachal Pradesh vide an order dated 03.06.2019 recommended Central University of Himachal Pradesh to reserve one post for VH candidate out of 05 posts reserved for locomotor disabilities. Thereafter, their University accordingly revised the reservation in posts in the employment advertisement.

OBSERVATIONS & RECOMMENDATIONS

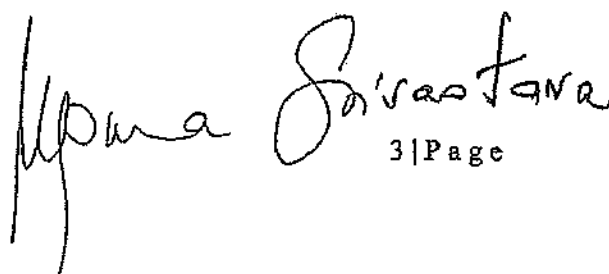
3. Plethora of Complaints are filed in this court pointing out irregularities in recruitment of PwD candidates on different types of posts. Therefore, this court is compelled to attract the kind attention of the Respondent towards legal provisions which regulate recruitment of Persons with Disabilities.



4. Whole recruitment cycle can be divided into following parts –
- a) Identification of Posts suitable for PwD candidates.
 - b) Reservation given to Persons with Disabilities
 - c) Issuance of Notification
 - d) Examination Fees
 - e) Examination Process – Facilities provided during examination and Examination Centres.
 - f) Relaxed minimum criterion for PwD candidates
 - g) Selection and Non selection

5. Before proceeding further, it is important to elicit objective of Rights of Persons with Disabilities Act, 2016. Basic aim of the legislation is to implement the principles adopted in United Nations Convention on Rights of Persons with Disabilities. The basic essence of these principles is same as that of Fundamental Rights as enshrined in Part - III of Indian Constitution. These principles focus on ensuring equal and equitable rights to Persons with Disabilities, for example respect for inherent dignity, individual autonomy including freedom to make one's own choice; full and effective participation and inclusion in society; equality of opportunity; non-discrimination; accessibility. Keeping these principles in consideration, Parliament enacted Rights of Persons with Disabilities Act, 2016, whereby provisions are laid down to ensure that Persons suffering from one or more types of disabilities are able to lead their lives with dignity and without discrimination.

6. For the present complaint whole summary of the statute is unwarranted, hence, relevant provisions for relevant portions are hereafter identified and mentioned.


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IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

7. In an organisation there may be number of posts which can not be filled with person suffering from any specific disability. Hence identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Thereafter, on the recommendations of expert committee, Ministry of Social Justice and Empowerment vide Notification No. 38-16/2020-DD-III dated 04.01.2021 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

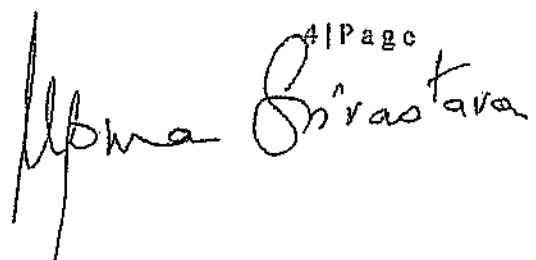
<http://disabilityaffairs.gov.in/content/upload/uploadfiles/files/224370.pdf>

8. Addition of any post from this list –

a) DoPT OM No 36035/2/2012-Estt.(Res) dated 08.01.2014 lays down that this list is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements. The same is mentioned in Note 2 of Notification dated 29.07.2013 issued by Department of Empowerment of Persons with Disabilities (DoEPwD) which can be accessed on the following link –

<http://disabilityaffairs.gov.in/upload/uploadfiles/files/Notification%20-%202013.pdf>

b) Further, it is also pertinent to mention that as per DoEPwD Notification dated 29.07.2013, NOTE 3, if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such

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Pooja Srivastava

post, then such post is automatically identified suitable for the person suffering from such kind of disability with which the person holding the post is suffering.

- c) Point 4 of the notification dated 29.07.2013 is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.

RESERVATION FOR PERSONS WITH DISABILITIES

9. This category can be divided into following 6 sub categories –

- a) Quantum of reservation
- b) Exemption
- c) How vacancies shall be computed
- d) Maintenance of Roster
- e) When not filled – Inter se exchange and carry forward
- f) Nature – horizontal

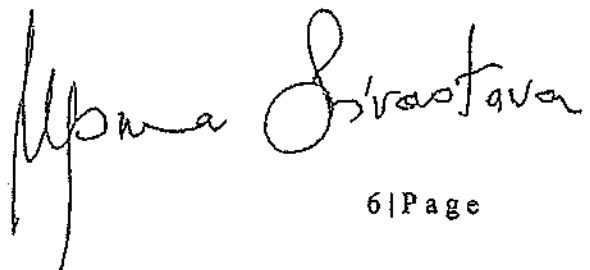
10. Quantum of Reservation – Section 34 of RPwD Act, 2016 is the guiding principle on this issue. As per the provision it is duty of every government establishment to reserve minimum 4% of the total number of vacancies in the cadre strength in each group of posts. On the same line DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down that 4 percent of the total number of vacancies to be filled by the direct recruitment in the cadre strength in each group of posts i.e. Groups A, B and C shall be reserved for persons with benchmark disabilities.

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11. Hence, from the combined reading of Section 34 and DoPT OM it is certain position of law that government establishments are bound to reserve minimum 4 percent of vacancies for persons belonging to PwD category.

12. Exemption – A government establishment may be exempted from reservation for PwDs. The exemption cannot be arbitrary, nor an establishment can exempt itself from reservation for PwDs. Para 3 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 establishes procedure for exemption of any establishment from reservation for PwDs. As per the procedure established in the OM, exemption can only be granted by Department of Empowerment of Persons with Disabilities. As per the procedure if any ministry or department seeks exemption from reservation for PwDs then a reference along with full justification is given by such ministry/department to Department of Empowerment of Persons with Disabilities ('DEPwD' in short). DEPwD then considering the type of work carried out in such establishment and after consultation with Chief Commissioner of Persons with Disabilities may exempt such establishment either fully or partially.

13. How Vacancies can be Computed – The number of vacancies to be reserved with persons with disabilities shall be computed by taking into account the total number of vacancies arising both in the identified and non-identified category of posts under the establishment. It is to be taken care of that the recruitment of the persons with disabilities would only be against the categories of posts identified suitable for them but while computing number of vacancies to be reserved, both identified and non-identified category of posts are taken into consideration. Method is same for recruitment to group A, B and C posts. (DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018)



14. Maintenance of roster – Para 7 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 lays down detailed method of maintaining roster. As per the OM every government establishment has to maintain group wise vacancy based Reservation Roster Register. Detailed method of maintaining and ear marking vacancies is laid down in Para 7.1 to 7.8 of the OM.

15. When vacancies cannot be filled - It may happen that in recruitment year some or all vacancies may not be filled up due to non-availability of suitable person with disability or for any sufficient reason. Under such circumstances, government establishment cannot convert such vacancies to unreserved category. Detailed procedure for conversion of such unfilled vacancies is laid down in

Para 8 of DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018. As per the instructions mentioned in the OM, following steps have to be followed by government establishment –

- a) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.
- b) Even if in subsequent recruitment year no suitable persons with disability is available then in next recruitment year, It may first be filled up by interchange among 5 categories, i.e. blindness and low vision; deaf and hard hearing; locomotor disability, intellectual disability or any specific learning disability and mental illness; multiple disability from amongst persons above mentioned for disabilities.
- c) Even when there is no persons with disabilities available for the post in that year the employer may fill up the vacancy by appointment by a person other than up the persons with disabilities.

Alpna Srivastava

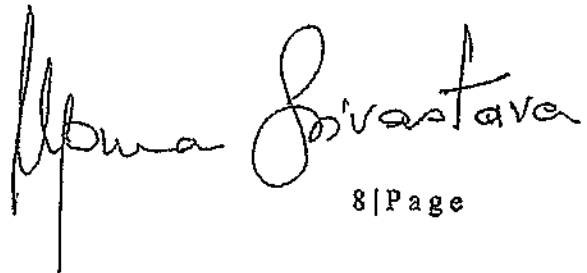
It is to be noted that when such unfilled vacancy is filled by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation.

16. Nature of reservation - It is settled position of law that reservation for PwBD is horizontal and vacancy based, unlike reservation for SC/ST and OBC which is post based and vertical in nature. Therefore, specific method for earmarking selected PwBD candidates has to be adopted. Reference can be made to Para 9 to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018 and DoPT OM No. 36035/2/2017-Estt.(Res) dated 25.03.2019.

ISSUING OF NOTIFICATION

17. DoPT OM No 36035/2/2012-Estt.(Res) dated 26.11.2012 lays down certain points which are to be kept in mind while advertising the vacancies. Summary of the point is as follows.

- a) Number of vacancies reserved for different categories of disability should be indicated clearly.
- b) If any post is identified suitable for any particular kind of disability then it shall be indicated clearly.
- c) Persons with disability belonging to such category for which the post is identified shall be allowed to apply even if no vacancies are reserved for them. If such candidate qualifies examination on his merit then he will be considered for selection for appointment against unreserved post.
- d) It shall also be indicated that persons suffering from not less than 40% of disability shall alone be eligible for the benefits of reservation.


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EXAMINATION FEES

18. DoPT OM 36035/2/2017-Estt.(Res) dated 23.08.2019 clearly lays down that persons with disability shall be exempted from payment of examination fee prescribed in respect of competitive exams conducted by various agencies.

EXAMINATION PROCESS

19. Objective of RPwD Act 2016 as mentioned above is to bring persons with disabilities at par with those who don't suffer from any kind of disability. Therefore, equality of opportunity is the most fundamental element which has to be ensured.

Hence, while conducting examination government establishment has to ensure that test centers as well as rooms, seating facilities, question papers and medium of answering the question asked are accessible for PwBDs.

20. Reference can also be made to Ministry of Social Justice & Empowerment OM No. 34-02/2015-DD-III, dated 29.08.2018. Para I to XVII of the OM lays down detailed provisions related to facilities which shall be provided to PwBDs during examination.

21. Scribe -- Para IV, V and VI of the OM lays down detailed guidelines related to Scribe/Reader/Lab Assistant. In these paragraphs exhaustive guidelines are provided as to when it is mandatory and when discretionary to provide for Scribe/Reader/Lab Assistant. Similarly, Para VIII contains guidelines with respect to mode of answering the questions asked.

22. Para X, XIV, and XVII of the OM relate to accessibility. These paragraphs deal with suitable seating arrangement and accessibility of examination centres. Other Paras of the OM are also to be considered.

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23. At this point relevant provisions related to 'Reasonable Accommodation' need to be mentioned. Section 3 of RPwD Act, 2016 lays down that appropriate government shall ensure reasonable accommodation for persons with disabilities. Reasonable Accommodation is defined in Section 2(y) of RPwD Act, 2016. As per the provision 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

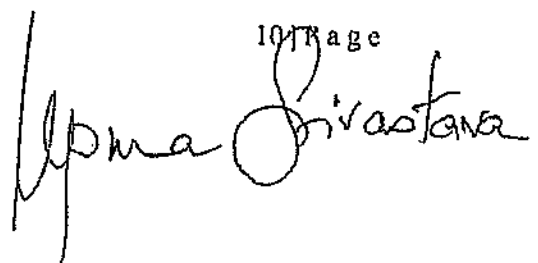
24. MoSJE OM dated 29.08.2018 and concept of 'Reasonable Accommodation' go hand in hand. Hence, every government establishment is bound to follow guidelines laid down in MoSJE OM in letter and in spirit.

RELAXED MINIMUM CRITERIA

25. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.

SELECTION ON MERITS

26. It is settled position of law that person with benchmark disability cannot be denied the right to compete against unreserved vacancy. Therefore, a person with benchmark disability can also be appointed against vacancy not specifically reserved for PwBDs. Under such circumstances if any persons with bench mark disability is selected on merits without relaxed standards along with

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Upma Srivastava

other candidates. He will not be adjusted against the reserved shared the vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability

IRREGULARITIES IN THIS MATTER :

27. In the present complaint it is stated that the Respondent Establishment issued advertisement for recruiting various teaching positions in their University. However, the Respondent University did not give reservation for visually impaired persons for the post of Professors and Associate Professors.

28. As stated above, as per DoPT OM dated 15.01.2018, it is positive obligation of government establishments to make 100 points reservation roster. Further, as per Section 34 of RPwD Act, 2016, it is mandatory for government establishment to reserve minimum 4 percent of total number of vacancies for PwBDs.

29. This court concludes that Respondent has failed to fulfill the statutory duties and follow DoPT guidelines with respect to maintenance of reservation roster and reserving vacancies for PwBDs. Therefore, the Court reiterate its earlier recommendation issued in the Case No.11877/1011/2020 dated 18.01.2021 in the matter of Ms. Geetayani Mishra and Central University of Himachal Pradesh. Respondent establishment is recommended to re notify the whole advertisement after calculation of reservation in accordance with Section 34 of RPwD Act 2016 and concerned OMs issued by DoPT.

30. Accordingly the case is disposed off.

Dated: 15.06.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities



Case No – 13553/1092/2022

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: 13553/1092/2022

Complainant:

श्री संजय पोद्दार

पुत्र - स्व० जय प्रकाश पोद्दार

पता - मोहल्ला-साहेबगंज, लोअर चम्पानगर रोड

पोस्ट - चम्पानगर, जिला - भागलपुर

बिहार - 812004

ईमेल - kumarsom4444@gmail.com

मोबाइल नं - 9431871351, 8797737076

Respondent:

(1) वरीय मंडल वाणिज्य प्रबन्धक

मालदा रेल मंडल, पूर्व रेलवे

मालदा, पश्चिमी बंगाल

ईमेल -srdcmmltd@gmail.com;

(2) मंडल रेल प्रबन्धक

मालदा रेल मंडल, पूर्व रेलवे

मालदा, पश्चिमी बंगाल

ईमेल - drn@mldt.railnet.gov.in

(3) अध्यक्ष

रेलवे बोर्ड, रेल मंत्रालय

रेल भवन, नई दिल्ली - 110001

ईमेल - crb@rb.railnet.gov.in

पीडित व्यक्ति - परिवादी, 50% चलन दिव्यांग

1. Gist of Complaint:

1.1 प्रार्थी का अपनी शिकायत दिनांक 16.09.2022 में कहना है कि रेलवे बोर्ड ने अपने वाणिज्यिक परिपत्र 2015 की संख्या 18 के द्वारा सभी प्रकार के दिव्यांगजनों के लिए रियायती ऑनलाइन रेल टिकट खरीदने हेतु विशेष संख्या युक्त आई कार्ड निर्गत करने का निर्णय लिया था तथा बाद में रेलवे बोर्ड ने दिव्यांगजनों के सहूलियत के लिए अपने वाणिज्यिक परिपत्र 2016 का सं 28 तथा वाणिज्यिक परिपत्र 2017 का सं 64 के द्वारा इस प्रक्रिया में कुछ बदलाव किया। प्रार्थी का कहना है कि मालदा रेल मंडल को

उन्होंने जुलाई 2019 में आई कार्ड को निर्गत करवाने हेतु सभी वांछित दस्तावेजों के साथ एक नया आवेदन दिया था। उनके अनुसार जब उन्होंने अप्रैल 2022 में माननीय रेल मंत्री जी को ईमेल किया तो 4-5 दिनों के पश्चात मालदा रेल मंडल कार्यालय से उन्हें फ़ोन आया कि उनका आई कार्ड बन गया है यहाँ आकर अपना आई कार्ड ले जाए।

1.2 उनका कहना है कि जब वह अपना आई कार्ड लेने के लिए गए तो कार्यालय कर्मियों ने उनके मूल रेल रियायत प्रमाण पत्र को निरस्त कर दिया एवं नया आई कार्ड सं. ERMLDT 005509 को उन्हें देते हुए उनसे कहा कि वह किसी रेल आरक्षण केंद्र पर जाकर इस नये आई कार्ड को देकर इसे एक्टिवेट करने को कहेंगे तो वो इस आई कार्ड को एक्टिवेट कर देंगे। नये आई कार्ड का अवलोकन करने पर उन्होंने पाया कि नया आई कार्ड उन्हें जून 2020 में निर्गत किया हुआ था एवं उसमें दो त्रुटियाँ हैं (i) कार्ड की वैधता सिर्फ पांच वर्ष के लिए है जो रेलवे बोर्ड के वाणिज्यिक परिपत्र 2017 का सं. 64 के पारा III का उल्लंघन है; (ii) नए आई कार्ड के अनुसार रेल यात्रा में प्रार्थी अपने साथ एक अनुरक्षक को ले जाने के लिए पात्र नहीं है।

1.3 प्रार्थी का कहना है कि जब वह रेलवे बोर्ड के वाणिज्यिक परिपत्र को कार्यालय कर्मियों को दिखाकर इस सम्बन्ध में पूछताछ की तो उनका जवाब था कि यहाँ का जो नियम है उसी अनुसार काम होगा। जब वह नये त्रुटीपूर्ण आई कार्ड को ही सक्रिय करवाने हेतु भागलपुर के दोनों रेल आरक्षण केंद्र पर गए तो दोनों जगहों पर उन्हें बताया गया कि इस कार्ड को मालदा रेल मंडल में ही सक्रिय किया जाता है, इसलिए आप मालदा रेल मंडल जाकर इसे सक्रिय करवाने का प्रयास करें।

1.4 प्रार्थी ने निवेदन किया है कि:

- रेलवे बोर्ड के अधिकारियों को यह आदेश/निर्देश दिया जाए कि वो जितना जल्दी संभव हो सके उनके पहले निर्गत किया हुआ त्रुटीपूर्ण आई कार्ड के बदले उन्हें नया दोषरहित आई कार्ड को जारी करें जिसमें वह रेल यात्रा में पहले की तरह अपने साथ एक अनुरक्षक को साथ ले जाने के लिए पात्र माना जाए।
- जबतक नया आई कार्ड निर्गत नहीं कर दिया जाता है तबतक अस्थायी तौर पर पुराना वाला आई कार्ड को ही सक्रिय किया जाए।
- आई कार्ड को बनाने के लिए रेलवे बोर्ड नियमों को आसान बनाए जिसमें सभी मंडल कार्यालय एवं प्रमुख रेल जंक्शन के अपने सूचना पट्ट पर रेलवे बोर्ड द्वारा जारी नियमावली को हूबहू लगाए तथा अपनी तरफ से कोई जोड़ घटाव नहीं करें।
- रेल मंडल के सभी प्रमुख रेल जंक्शन पर आई कार्ड के आवेदन को जमा करने एवं वहीं से निर्गत करने की व्यवस्था होनी चाहिए क्योंकि सूचना प्राप्ति का कोई तंत्र नहीं होने के कारण किसी भी तरह का पूछताछ करने के लिए एक दिव्यांग व्यक्ति को रेल मंडल के कई बार चक्कर लगाने पड़ते हैं।
- आवेदन जमा करने की तिथि के बाद आवेदन को स्वीकृत/अस्वीकृत करने की एक निश्चित समय सीमा होनी चाहिए।
- समय सीमा समाप्त होने के समय आवेदन की स्थिति की अद्यतन जानकारी के लिए कोई विशेष स्थायी टेलीफोन नंबर की सुविधा होनी चाहिए।
- आई कार्ड को निर्गत करने के समय पर आई कार्ड को सक्रिय किया हुआ होना चाहिए।
- रेलवे आई कार्ड का साईज पैन कार्ड की तरह निर्गत करे ताकि उसे पॉकेट में रखा जा सके।



- रेलवे विभाग द्वारा उन्हें प्रतिउत्तर हिंदी अनुवाद में उपलब्ध हो।

2. The matter was taken up with the Respondent vide letter dated 18.11.2022 under Section 75 of the RPwD Act, 2016 followed by Reminder dated 30.01.2023 but till date no response has been received. Therefore, hearing scheduled on 07.03.2023, but due to administrative exigency, the scheduled hearing re-scheduled on 10.03.2023.

3. During online hearing the Respondent has informed that as per the disability certificate/Concession Certificate, the Complainant is able to travel without escort. The Complainant countered the Respondent's stands. The Respondent failed to give concrete reply to the queries raised by the Court. The respondent was directed to file a detailed reply along with the copies of all the concession certificates issued to the Complainant within 7 days from date of receipt of the Record of Proceedings. The Complainant was also advised to file all the copies of disability certificates, concession certificates and letter dated 22.12.2022 of the Railway Ministry referred by him during the hearing.

4. After receipt of the Record of Proceedings, Senior Divisional Commercial Manager, Eastern Railway, Malda vide letter dated 17.04.2023 filed a reply and submitted that the Complainant is not eligible for Railway Concession as per the guidelines/provisions of IRCA coaching tariff No. 26 (part-I, Vol. ii) which stated that the Railway Concession shall be issued to only those handicapped persons who cannot travel without the assistance of an escort. He also enclosed the copies of the following documents: -

- (i) Concession Certificate issued on 01.07.2019 by Dr. Dilip Kumar Singh, M.S. Ortho, JLNMC Hospital, Bhagalpur;
- (ii) The verification report issued on 28.02.2020 by Dr. D.K. Singh, M.S. Ortho, JLNMC Hospital, Bhagalpur stating that the Complainant can travel without the assistance of an escort; and
- (iii) The Railway Id-Card (Card No. ERMLDT005509) was erroneously issued on 08.06.2020 by their Office.

5. **Observation & Recommendations:**

5.1 Grievance of the Complainant is related to non-issuing of Concession Certificate of permanent nature. Hearing was conducted on 10.03.2023 during which the Respondent refuted the claims of the Complainant. The Respondent was directed by this Court to file relevant documents to support its contentions.



5.2 The Respondent filed its documents by email dated 17.04.2023 along with written arguments. The Respondent claims that Concession Certificate of permanent nature cannot be issued to the Complainant because as per IRCA Coaching Tariff Rules, Railway Concession Certificate is issued only to those Persons with Disabilities having Locomotor Disability, who are not able to travel without escort. Further the Respondent submitted that the Complainant was referred to JLNMC Hospital (hereinafter called 'Hospital'), Bhagalpur for determining the ability of the Complainant to travel without escort. The Hospital certified that the Complainant can travel without escort. Considering the report of the Hospital, the Complainant was considered as ineligible for Concession Certificate. The Respondent has submitted relevant documents in support of the submissions. The documents were perused and found to be in consonance with the written submissions made by the Respondent.

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

5.4 Accordingly, the case is disposed of.

Dated: 06.06.2023


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

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No: 13540/1022/2022**Complainant:**

Shri Amzad Alam,
Employee: 003738,
North Eastern Electric Power Cor. Ltd.,
NEEPCO Bhawan, RGB Road, Sunderpur,
Guwahati, Assam -781005

*Amzad Alam***Respondent**

The General Manager (HR),
North Eastern Electric Power Corporation Limited,
Brookland Compound, Lower New Colony,
Shillong, Meghalaya-3793003

*Amzad Alam***GIST OF COMPLAINT**

The Complainant, Shri Amzad Alam, working in the North Eastern Electric Power Corporation Limited, has requested for cancellation of his transfer order from Guwahati to Arunachal Pradesh as he is care giver to his son Master Anjum Sayeed, a person with 85% Thalassemia disability.

1.2 He has submitted that he was posted at Guwahati. His only son Master Anjum Sayeed is suffering from "Thalassemia Major" since October, 2003. As a course of treatment, he has been receiving 2 Units of Packed Red Blood Cells (PRBC) transfusion at a regular interval of 3-4 weeks along with oral medication. He requires utmost medical care and constant support of a care giver to prevent him from infection/sepsis as he is a post Splenectomy patient. After his transfer from the Guwahati to Tawang HE Project, Arunachal Pradesh, he submitted a representation to the Competent Authority of NEEPCO for retention of his service at Guwahati for continuing of his son's regular treatments at Guwahati, but, NEEPCO rejected his prayer and released him from present place of posting even without releasing his due salary for the month of June, 2022.

[Signature]

2. REPLY OF THE RESPONDENT

2.1 General Manager, The North Eastern Electric Power Corporation filed reply vide letter dated 27.12.2022 and inter-alia submitted that the Corporation had formulated the NEEPCO Transfer Policy and the said policy shall be applicable to all the regular employees of NEEPCO in all three categories viz Workmen, Supervisors and Executives and shall also include work charged category and deputations. The said policy makes provisions for special cases. The Corporation after knowing the Complainant's son's condition transferred and posted the Complainant at the O/o the Executive Director (P), NEEPCO Limited, Guwahati and thereafter the Complainant was a long being posted at Guwahati during the last 18 years.

2.2 The Complainant was transferred from O/o the Executive Director (Hydro), Guwahati to Tawang Hydro Electric Project, Arunachal Pradesh, in order to meet the urgent organizational requirements and in the interest of works of the Corporation and the same by no means can be construed as a regular rotational transfer. The said project is a new project and a time bound project located in the District of Tawang. He further submitted that the Competent Authority after considering the Complainant's representations has retained his services at the O/o the Executive Director, Project (Hydro), Guwahati.

2.3 As regards non releasing of salary, the Respondent submitted that as the Complainant did not join his new place of posting and remained unauthorizedly absent w.e.f. 04.07.2022 to 30.10.2022, the Complainant was not entitled for salary during the said unauthorized period of absence, till regularization.

2.4 He also informed that the Complainant also filed a WP before the Hon'ble High Court of Guwahati on 19.10.2022 in the matter and the Hon'ble High Court passed an interim order dated 26.10.2022 directing that the transfer order in so far as it relates to Complainant shall not be acted upon. Thereafter, the Complainant filed an application before the Hon'ble High Court for withdrawing the said WP which was allowed by the Hon'ble High Court vide order dated 21.12.2022.



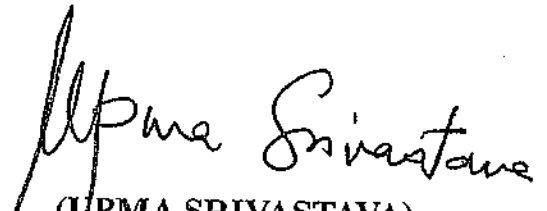
3. REJOINDER OF THE COMPLAINANT

3.1 The Complainant has not filed the rejoinder. However, the Complainant vide letter dated 03.01.2023 has informed that his complaint has been redressed and he has no further complaint against the Respondent. He has requested for withdrawing his complaint.

4. OBSERVATIONS /RECOMMENDATIONS: -

4.1 On going through the record of the case and the request of the Complainant for withdrawing the complaint, this Court has decided to close the case as withdrawn.

4.2 The case is disposed of accordingly.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No.13536/1024/2022

Complainant:

Shri N. Suresh

E-2, Jauhari Nagar,

Type-4, OCF Estate,

Avadi Chennai 600054,

Tamil Nadu

Email: nsnv2010@gmail.com

Respondent:

The Director

Directorate of Ordnance (C&S)

(Gr. 'B' Division),

10-A, S.K. Bose Road

Kolkata- 700001

Email: perng@ord.gov.in

perpolicy@ord.gov.in

1. Gist of Complaint:

1.1 Shri N.Suresh, Complainant, a person with 50% locomotor disability filed a complainant dated 17.10.2022, regarding reservation in promotion.

1.2 The Complainant submitted that the Rights of Persons with Disabilities Act, 2016 came into effect from 19.04.2017 and 4% of reservation in promotion to PwBD category was not implemented. Though D/oP&T vide O.M. dated 17.05.2022 issued consolidated instructions regarding reservation in promotion yet the same was not implemented. Directorate of Ordnance (C&S) vide letter dated 14.10.2022 has sought the Data for holding DPC for promotion to JWM (SG) (Tech/Non-Tech) from JWM (Tech/Non-Tech) for the Vacancy Year 2023 and it is evident that APAR, along with Disciplinary Clearance and Vigilance Status for incumbent from JWM (Clothing) was sought in respect of Gen/SC/ST categories only, but the APAR, along with Disciplinary Clearance and

Vigilance Status has not been sought from PwBD even though the eligible candidate is available as per SRO in PwBD category of JWM (Clothing).

2. Submissions made by the Respondent

2.1 On behalf of the Respondent, Deputy Director/G.B., vide letter dated 12.12.2022 has filed the reply and inter-alia submitted that the instructions contained in the DOPT's O.M. dated 17.05.2022 can only be given effect prospectively and prior to the said O.M, there was no provision/order for providing reservation for PwBDs in case of promotion within Group B. He further submitted that the DPCs which are mentioned in the paras 1-3 of the Complaint were conducted before issuance of the above referred O.M. As such, the promotion from Junior Works Manager (Tech and Non-Tech) to the post of Junior Works Manager (Selection Grade)/(Tech and Non-Tech) being within the Group B and hence, the question of reservation for PwBDs did not arise at that point of time.

2.2 As regards para 5 of the Complaint, the Respondent submitted that the DPC for the promotion order referred by the Complainant was held on 17.02.2022 i.e. prior to issue of DOP&T's O.M. dated 17.05.2022.

2.3 As regards para 6 and 7 of the Complaint, the Respondent submitted that as per available vacancy for promotion to the post of JWM (SG)/Clothing discipline the name of the Complainant does not come within the extended zone of consideration. Hence, the relevant details required for DPC in respect of the Complainant were not sought for from the concerned Unit. Nevertheless, the DOP&T's O.M. dated 17.05.2022 for grant of reservation in promotion to PwBDs will be taken into account while conducting DPC for promotion against the vacancy year 2023.

2.4 As regards para 13 of the Complaint the Respondent submitted that DPCs for promotion to the posts of JWM (SG) to be held for the current vacancy year i.e. 2023 which is under process will be conducted providing reservation for persons with disabilities in accordance with DOP&T's O.M.



dated 17.05.2022 provided the post is identified as suitable for Persons with Benchmark Disability of the relevant category.

3. Submissions made in Rejoinder

3.1 The Complainant filed rejoinder dated 30.12.2022, and reiterating his Complaint refuted the reply filed by the Respondent. He submitted that the original Complaint was filed on 17.10.2022 and the statistical data indicated therein has been slightly changed in the light of RTI reply and the promotion order dated 01.12.2022 as well as the promotion orders dated 19.09.2022. He also filed additional information.

4. Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 09.05.2023. The following were present in the hearing:

- Shri N Suresh – Complainant
- Shri P.K Kar, Deputy Director - Respondent

5. Observations & Recommendations:

5.1 The Complaint is related to reservation in promotion from the post of 'Junior Work Manager' to Junior Work Manager (Selection Grade), [JWM to JWM (SG) in short]. The Complainant submitted that in 2020 total 41 employees were promoted and reservation in promotion was not extended. Similarly, in 2022 promotion process no reservation in promotion was extended. Complainant further submitted that in 2023 also, Respondent is going to promote certain employees, and employees with disabilities have been left out deliberately.

5.2 The Respondent submitted that the instructions contained in the DOPT's O.M. dated 17.05.2022 can only be given effect prospectively and prior to the said O.M there was no provision/order for providing reservation for PwBDs in case of promotion from Group B to Group B. It is further submitted that the DPCs which were conducted in 2020 and 2022 were conducted before issuance of the above referred O.M. As such the promotion from Junior Works Manager (Tech and Non-Tech) to the post of Junior

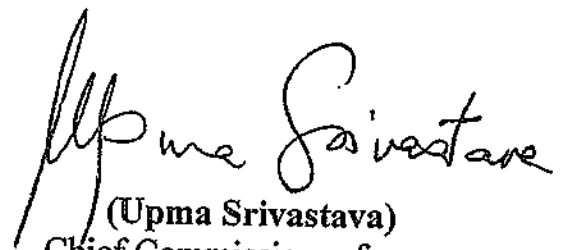


Works Manager (Selection Grade)/(Tech and Non-Tech) being within the Group B and hence, the question of reservation for PwBDs did not arise at that point of time.

5.3 Further, the Respondent submitted that as per available vacancy for promotion to the post of JWM (SG)/Clothing discipline, the name of the Complainant does not come within the extended zone of consideration. Hence, the relevant details required for DPC in respect of the Complainant were not sought for from concerned Unit. Nevertheless, the DOP&T's O.M. dated 17.05.2022 for grant of reservation in promotion to PwBDs will be taken into account while conducting DPC for promotion against the vacancy year 2023.

5.4 The Court is satisfied with the Reply of the Respondent. Further intervention of this Court is not warranted.

5.5 The case is disposed of accordingly.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No: 13529/1022/2022**Complainant**

Shri Gulshan Manchanda,
34, N.E.B. Subhash Nagar
Near Agrasen Circle, Alwar,
Rajasthan – 301001
Mobile No. 9828591594
Email : manchanda.gulshan@gmail.com

140978

Respondents

1. The Chief Commissioner,
Central Goods and Service Tax & Central Excise,
New Central revenue Building,
Statue Circle 'C' Jaipur – 302005
Email : ccpd@nic.in Respondent...1

140979

2. The Chief Commissioner,
Central Goods and Service Tax & Central Excise,
2nd Floor, Central Excise Building,
Race Course Circle,
Vadodara – 390007 Respondent...2

140980

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

GIST OF COMPLAINT

1.1 Shri Gulshan Manchanda, a person with 40% Locomotor Disability filed a Complaint dated 10.10.2022 praying for the following:-

- (i) To stay his relieving till the Respondent frames a fresh Inter Commissionerate Transfer (ICT) Policy;
- (ii) To consider the representation on humanitarian ground ensuring that the rights under Articles 14, 15 and 16 and 21 of the Constitution are duly protected;

- (iii) To prevent the Department from taking any harsh action which may negatively impact his personal, professional and family life and enable him to be considered for being posted at his native place i.e. Alwar on absorption basis under ICT as a special ground.

1.2 The Complainant submitted that he is working as an Inspector at Central Goods and Service Tax (CGST) Audit Commissionerate, Jaipur and presently posted at CGST Audit Circle D, Alwar. He joined the CBEC now CBIC under Physically Handicapped Quota and posted at Central Excise Commissionerate, Daman under the Cadre Controlling of Vadodara Zone, Gujarat. As per the erstwhile Recruitment Rules, 2002, ICT was permissible. Prior to joining CBIC, he was in Income Tax Department (CBDT) and posted at Alwar, Rajasthan i.e. his home town and he had joined the CBEC at Gujarat Zone tendering technical resignation after serving the Income Tax Department for 2 years considering the fact that Inter Commissionerate Transfer were opened in the Central Excise Department.

1.3 The Complainant further submitted that due to his disability his leg's strength is not so much that he can do all the daily works and most of the time requires support for the basic works of daily life. He made a request application for ICT from Vadodara Zone Gujarat to Jaipur Zone, Rajasthan on 28.03.2016 which was duly considered and forwarded by the Chief Commissioner, Vadodara Zone for consideration by the Chief Commissioner, Jaipur Zone as per the provisions of ICT in the cadre of Inspectors. Accordingly, he joined Jaipur Zone on 01.02.2017 consequent upon which his name was absorbed in the seniority list of Zonal CCA Cadre of Jaipur Zone and subsequently, vide Order dated 13.02.2017, he was posted in Central Excise Commissionerate, Alwar.

1.4 The Board issued a circular dated 20.09.2018 stating that Recruitment Rules, 2016, do not have provisions for recruitment through absorption and all past orders of transfer/absorption issued on or after 26.12.2016 were in contravention of Recruitment Rules, 2016 and invalidated such absorption/transfer orders w.e.f. 26.12.2016. All such absorbed/transferred



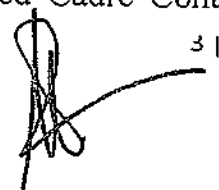
inspectors were converted into deemed loan/deputation without providing any opportunity either to the Jurisdictional Chief Commissioners to justify their actions or to such absorbed/transferred inspectors to rule out any violation of Recruitment Rules in their cases of 'absorption/transfer'.

1.5 Aggrieved by the above circular, the Complainant along with other affected Inspectors have filed representations before the Hon'ble Central Administrative Tribunal (CAT). The CAT relying upon the order passed by its Bench at Bangalore by which the circular dated 20.09.2018 was quashed, had passed order in favour of the petitioners. The Respondent filed Appeals before the Hon'ble High Court of Rajasthan against the order passed by the Tribunal vide various Writ Petitions. The Hon'ble High Court vide its Judgement dated 18.08.2022, had decided the case in the matter of 54 respondents, out of 69 relying upon the Apex Court Judgement in the case of S K Nausad Rahman & Ors. Vs Union of India and Ors. and issued the instructions for the Department to consider the representations of affected Inspectors.

1.6 He further submitted that the policy for ICT for the employees working in the grade of Inspectors has not been consistent and the same has been subjected to revisions from time to time. The above is evident from the fact that ICT was permissible prior to the year 2004 and the ICT of Officers/Staff belonging to Group B, C and D was banned vide order dated 19.02.2004. Further, there was no provision for ICT in the Recruitment Rules of Inspector, 2016.

2. SUBMISSIONS MADE BY THE RESPONDENT

2.1 Additional Commissioner (CCU), CGST & CE, Jaipur, Respondent No. 1 filed reply vide letter dated 30.11.2022 and inter-alia submitted that the CGST and Central Excise, Jaipur Zone, Jaipur is the Subordinate Office of the CBIC under Ministry of Finance, Department of Revenue. There are several zones of Customs, CGST and Central Excise in all over India and the Cadre Controlling Authorities upto Group B Officers are separate in each Zone. The position of sanctioned posts and working strength in respect of Group B and C posts is maintained by the concerned Cadre Controlling



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Authority of Zone. The Seniority List of Group B and C Officers are prepared Zonal wise. The Appointing Authority is separate for Group B and C posts in each Zone. The functions related to promotions, appointments etc. up to Group 'B' posts in respect of Jaipur Zone are done by the CCA. The CBIC issues Recruitment Rules of different posts and instructions in the service matters from time to time for implementation.

2.2 He further submitted that the Complainant has already been relieved vide Speaking Order dated 15.11.2022 for his parent zone. They have no objection to grant a similar benefit as granted to Shri Braj Lal, Inspector and to post the Complainant on loan basis in their zone provided application for posting on loan basis along with NOC is received through proper channel from his parent Zone i.e. CGST and CE Vadodara Zone.

2.3 Further, the Review Petition in the case of Shri S.K. Nausad Rehman and Ors. vs UOI and Ors. filed by the similarly situated ICT Inspectors like ICT Inspectors of Jaipur Zone who were already transferred after 26.12.2016 has also been dismissed by the Hon'ble Supreme Court vide Order dated 18.10.2022 on merit after carefully gone through the Review Petition and the connected papers. In view of the above, the Complainant is not entitled for grant of any relief whatsoever and the complaint may be dismissed.

2.4 In the meantime Joint Commissioner (CCU), CGST, Jaipur vide letter dated 16.12.2022 informed that though in his Complaint dated 10.10.2022 the Complainant has given an undertaking that the matter is not sub-judice in any other Court of Law within the territory of India, but the Complainant along with other 9 ICT Inspectors have filed an OA No. 291/530/2022 before the Hon'ble CAT Bench, Jaipur against the Establishment Order dated 15.11.2022 in which the Complainant's name is mentioned at Sl. No. 2 in the list of the applicants. The Hon'ble CAT Bench, Jaipur has granted interim relief at the time of the admission stage.

2.5 Assistant Commissioner (CCO), CGST & CE, Vadodara, Respondent No. 2 filed a para wise reply vide letter dated 08.12.2022 and inter- alia submitted that ICT is a policy matter and decided by the CBIC with

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consultation of DOP&T and other Ministry/Department as per extant Recruitment Rules. As per existing policy and guidelines issued by CBIC, ICT in the grade of Inspectors is banned. He has requested that the submissions of the Department may be considered at the time of hearing and passing of decision in the matter.

3. SUBMISSIONS MADE IN REJOINDER

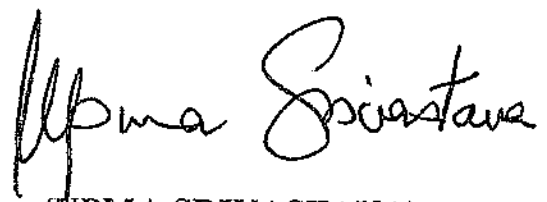
3.1 The copies of replies received from the Respondents were forwarded to the Complainant vide letter dated 13.12.2022 and 13.01.2023 respectively for filing the comments but no rejoinder was filed by the Complainant.

4. OBSERVATIONS /RECOMMENDATIONS:

4.1 The Complainant filed a complaint dated 10.10.2022 regarding Inter Commissionerate Transfer. The Respondent No. 1 informed that the Complainant was relieved vide Speaking Order dated 15.11.2022 for his parent zone. In response to Speaking Order dated 15.11.2022, the Complainant filed an OA before the Hon'ble CAT Bench, Jaipur. The Hon'ble Tribunal granted interim relief at the time of the admission stage. The Respondent No. 2 replied that this is a policy matter.

4.2 In view of the above, since the matter is pending before Hon'ble CAT, Jaipur Bench, intervention of this Court is not warranted.

4.3 Accordingly, the case is disposed of.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13527/1022/2022

Complainant:

Shri Sanjay Kumar Chaudhary

Inspector of Income Tax,

ReFAC (AU) Ward-1(4)(4)

Karnal Station at Faridabad.

Haryana.

Mobile No: 07289071948

Email:

140981

Respondent :

The Additional Commissioner of Income Tax (HQ and Admn)

Aayakar Bhawan,

Sector-17E, Chandigarh-160017

Email: ajc@income-tax.gov.in

140982

Complainant : 50% Locomotor Disability

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत दिनांक 15/09/2022 में कहना है कि वह 50 प्रतिशत लोकोमोटर दिव्यांगजन कर्मचारी हैं। उनकी नियुक्ति 22 फरवरी 2013 को बठिंडा में हुई थी। तदोपरान्त आदेश सं 106 दिनांक 30.12.2015 को उनका ट्रांसफर फरीदाबाद कर दिया गया जहां पर उन्होंने दिनांक 05 जनवरी 2016 को कर सहायक के तौर पर अपना योगदान दिया। शिकायतकर्ता का कहना है कि फरीदाबाद स्टेशन के अंदर 10 बार उनका ट्रांसफर किया गया। शिकायतकर्ता ने दिनांक 05 अगस्त 2019 को माननीय प्रधान आयकर आयुक्त फरीदाबाद को पत्र लिखा जिसके बाद उनका 8 से 10 महीनों में उनका ट्रांसफर नहीं होता था।

1.2 शिकायतकर्ता का कहना है कि प्रधान मुख्य आयकर आयुक्त कार्यालय के आदेश सं 83 दिनांक 24/08/2022 के अनुसार उनका स्थानांतरण फरीदाबाद से लुधियाना कर दिया गया है जबकि शिकायतकर्ता ने किसी भी वार्षिक सामान्य स्थानांतरण का विकल्प नहीं चुना था। उक्त आदेश के सम्बन्ध में शिकायतकर्ता ने अपना आवेदन प्रधान मुख्य आयकर

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आयुक्त/अपर आयकर आयुक्त (प्रशा०) (मुख्या०)/उप आयकर आयुक्त (प्रशा०) (मुख्या०)/प्रधान आयकर आयुक्त (TPS)/अपर आयकर आयुक्त (PwD), Liaison Officer/Ombudsman, आयकर भवन, चंडीगढ़ को दिनांक 25.08.2022 को उचित माध्यम के द्वारा भेजा था। अपने उपरोक्त आवेदन में उनका कहना है कि उनकी माँ जिनकी उम्र 92 साल है उनके साथ रहती हैं और उनकी देखभाल करने वाले वह ही हैं। उनका कहना है कि उन्हें Depression and Anxiety Disorder की बीमारी है एवं उनका ईलाज 2019 से नियमित रूप से Asian Institute of Medical Science, Faridabad, Psychiatry Department से चल रहा है जोकि CGHS Empanelled हॉस्पिटल है।

1.3 प्रार्थी का कहना है कि उनकी विकलांगता एवं उनकी पारिवारिक स्थिति को ध्यान में रखते हुए उनका स्थानान्तरण रद्द कर फरीदाबाद में ही बनाये रखा जाने की कृपा करें।

2. SUBMISSIONS OF THE RESPONDENT :

2.1 In response, Sh. Robin Bansal (IRS), Deputy Commissioner of Income Tax vide letter and affidavit dated 01.12.2022 has inter-alia submitted that the contention of the Complainant is accepted being a matter of fact. The Complainant was transferred to Faridabad after spending 3 years at Bathinda Station. The officials are rotated internally within the Station as per administrative requirements. There is no hardship faced by the officials, since all offices in Faridabad are located in the same building. However, he has been transferred since he had already spent 6 years and 10 months at Faridabad whereas the normal tenure of this station is 4 years. As regards the representation against order number 83 of 2022 dated 25.08.2022 he has submitted that the same was disposed off on 14.09.2022. The guidelines of the DoPT and CBDT have been followed while making the transfers.

2.2 He submitted that the fact is that the prescribed tenure for Faridabad Station for transfer is 4 years whereas the Complainant was posted at Faridabad station from 08.01.2016 till passing of AGT Order, 2022 issued vide order Number 83 of 2022 dated 24.08.2022, thus, the official has spent more than 06 years at a station whose prescribed station tenure is 4 years for all other employees. Therefore, the official was granted exemption from transfer as per DoPT's OM dated 31.03.2014 for past 3 years. Further, the



Faridabad Station is a demanding station as 58 officials demanded the same during AGT 2022, but only 14 officials were given Faridabad Station in AGT 2022 against the officials who were due from the Station which included the Complainant as well.

2.3 The officials who were posted were those also having extreme pressing and compassionate grounds, officials who had already spent tenure at Hard Station or officials who have joined this region on loan basis only for a period of 3 years in their entire career. Since, the Complainant had already completed prescribed station tenure of 4 years and had maximum tenure (i.e., more than 6 years) his further retention at the station was not possible due to above mentioned constraints. Further, the Complainant has a disability in his left arm which does not in any way restrict his movement from one place to another.

3. SUBMISSIONS MADE IN REJOINDER:

3.1 The copy of the Respondent's reply was forwarded to the Complainant vide letter dated 07.12.2022 for filing the rejoinder. The Complainant in his rejoinder dated 04.12.2022 has prayed that paras 5-6 of the guidelines issued by the Chandigarh Office may be read, as there is no mention of employees with disabilities. He has requested for cancellation of his transfer order from Ludhiana to Faridabad.

4. **Hearing:** The case was heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on 27.04.2023. The following were present:

- | | | |
|---|---|-------------|
| (i) Shri Sanjay Kumar Chaudhary | : | Complainant |
| (ii) Sh. Robin Bansal, Dy. Commissioner of Income Tax | : | Respondent |

5. OBSERVATIONS /RECOMMENDATIONS:

5.1 The Complainant was appointed in February 2013 and was posted in Bhatinda. Thereafter in December 2015, he was transferred to Faridabad. Thereafter by Order dated 24 August 2022, he was transferred to Ludhiana. He further submitted that within Faridabad Station he has been transferred 10 times. He requests that his transfer must be cancelled and he must be retained in Faridabad.

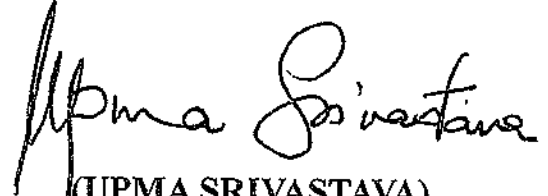


5.2 Respondent submitted that the Complainant was posted in Faridabad for more than 6 years. Normal tenure of posting in Faridabad is 4 years. Moreover, Faridabad Station is a demanding Station and hence, Complainant cannot be posted at same place.

5.3 During online hearing, Respondent assured this Court that the Complainant shall be transferred to some station near to Faridabad during next transfer cycle.

5.4 At this stage further intervention of this Court in the present Complaint is not warranted. The present Complaint is disposed of with liberty granted to the Complainant to approach this Court again in case the Respondent does not execute the assurance made during online hearing.

6. The case is disposed of accordingly.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No: 13523/1022/2022

Complainant:

Shri Ashish Bansal,
 Manager, R/o C-50, Mahavir Suncity,
 Near D-Mart Maal, Distt.: Rajnandgaon,
 Chhattisgarh-491441
 Email: asshishbansalcse@gmail.com
 Mobile: 8721092691

Respondent

The Chief Manager,
 State Bank of India,
 Main Branch Rajnandgaon,
 Shridevi Shukla Apartment,
 Kamptee Line, Rajnandgaon-491441,
 Distt- Rajnandgaon, Chhattisgarh

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 31.08.2022 में कहना है कि वह 100 दृष्टि बाधित दिव्यांगजन कर्मचारी है जो कि भारतीय स्टेट बैंक में प्रबंधक के पद पर दिनांक 24.06.2019 से अपने गृह स्थान से निकट राजनंदगांव छत्तीसगढ़ के मुख्य शाखा में कार्यरत हैं, शिकायतकर्ता का कहना है कि दिनांक 14.06.2022 को उनका स्थानांतरण भिलाई मुख्य शाखा से छत्तीसगढ़ में किया गया जो कि शिकायतकर्ता के घर से 50 किलो मीटर की दूरी पर है जोकि भारत सरकार एवं भारतीय स्टेट बैंक द्वारा दिव्यांगजन हेतु बनाए गए नियमों के विरुद्ध है, तथा उनका कहना है कि -

- स्थानांतरण निरस्त कराने हेतु लिखे गए आवेदन पत्रों का संबंधित अधिकारियों द्वारा कोई लिखित जवाब नहीं देना
- बार-बार दूरभाष के माध्यम से भिलाई मुख्य शाखा में प्रभार सम्भालने हेतु मानसिक दबाव बनाना
- दिव्यांग-जन अधिकार कानून के निर्देशानुसार भारतीय स्टेट बैंक में नियुक्त शिकायत निवारण अधिकारी द्वारा शिकायतकर्ता की शिकायत को दर्ज न करना
- शिकायतकर्ता का कहना है कि दिव्यांग-जनों के अधिकार कानून-2016 को सुरक्षित रखने हेतु शिकायतकर्ता के स्थानान्तरण को निरस्त करने की कृपा करें।

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

3. प्रतिवादी की ओर से शाखा प्रबंधक द्वारा दिए गए पत्र दिनांक 02.02.2023 में कहना है कि श्री आशीष बंसल, मैनेजर, भारतीय स्टेट बैंक का ट्रांसफर बैंक द्वारा किया गया था, जिसे निरस्त करके उसी शाखा में कर दिया गया है, जोकि पहले श्री आशीष बंसल मुख्य शाखा राजनंदगांव में पदस्थ थे, अब वर्तमान में उनकी पदस्थापना राजनंदगांव में एसएमई शाखा में कर दी गई है।

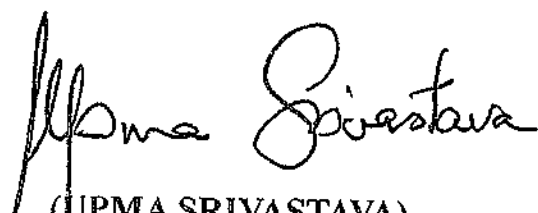
4. A copy of the respondent's reply was forwarded to the Complainant vide email dated 17.03.2023 for filing the rejoinder. Respondent filed their reply on dated 02.05.2023.

OBSERVATIONS /RECOMMENDATIONS:

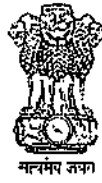
5. The grievance of the complainant has been redressed by the bank by posting him back to Rajnandgaon Branch. However, the respondent is advised to ensure that the instructions of DOP&T vide OM No. 36035/3/2023 Estt.(Res.) dt. 31.03.2014 circulated to all banks by the Department of Financial Services vide their circular No. F.No. 3/13/2014 Dt 18.11.2014 and statutory guidelines under section 20(5) of the RPwD Act, 2016 are followed in the establishment.

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.

7. Accordingly, the case is disposed of.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated:06.06.2023

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No.13495/1024/2022**Complainant:**

Shri Visakh S.

Kizhakke veedu Tc 48/964(18/1292)

Aramada, Trikkannapuram, Thirumala

Thiruvananthapuram,

Kerala State

Post Office: Aramada, Pin code: 695032

Tel: 9567447263, 8921759908

Email: sreevisakh.s.7@gmail.com

Respondents:

The General Manager

Southern Railway (HQ)

Park Town, Chennai,

Tamil Nadu State

Pin Code: 600003

Email: gm@sr.railnet.gov.in

Tel: 044-25332157

.....Respondent No.1

The Divisional Railway Manager

Thiruvannathapuram Railway Division

Southern Railway

Thycaud Thiruvananthapuram,

Kerala -695014

Email: drm@tvc.railnet.gov.in

Tel: 0471-2325828

.....Respondent No.2

1. Gist of Complaint:

1.1 Shri Visakh S., Complainant, a person with 40% locomotor disability filed a Complaint dated 23.09.2022, regarding engagement of contract staff on paramedical categories (Safaiwala).

1.2 He submitted that he qualified the examination conducted by Railway Recruitment Cell Chennai held on 07/10/2018, as per the notification. After successfully completing the document verification and clearing medical examination on 14.11.2018, he joined Thiruvananthapuram Railway Division in Medical Department under Southern Railway Chennai Zone near to his home on 23/01/2019. Thereafter, he performed his job assigned to him. He fell ill from

October 2021 onwards and recovered from his illness in January, 2022. He applied to join duty with proper medical certificate, but his application was rejected by the Thiruvananthapuram Railway Division Office. When he joined in June, 2022 he was asked to join at Alappuzha Railway Station which is 300 Kms away from his home. His disability and penury prevent him from joining at such a far place from his home. He has requested for justice and to ask the authorities concerned to transfer him back to his native town Thiruvananthapuram. He has also requested the commission to help him to make his job a permanent one.

2. Submissions made by the Respondent

2.1 Shri M.P Lipin Raj (IRPS), Sr. Divisional Personnel Officer, Southern Railway, Trivandrum Division, filed the reply affidavit dated 09.11.2022 on behalf of both the respondents. He has submitted that the Complainant was recruited through Railway Recruitment Cell, Chennai, in continuation of the notification for "Engagement of contract staff on Paramedical Categories (Safaiwala)". He was recruited for the post of full time contract Safaiwala, on 23/01/2019 and had been working as House Keeping Assistant/Colony/Trivandrum from 23/01/2019. From, 18/10/2021, he was on unauthorised absence and as per the existing norms, in such cases, his employment gets terminated automatically after 3 days. He had submitted a representation, requesting to take him back for duty, on 29/11/2021, duly producing a medical certificate from Dr. Suresh S (retired Major), Ex Servicemen Contributory Health Scheme Poly Clinic, Trivandrum. As per the certificate, he was suffering from chronic Back pain. His case was recommended by the Chief Medical Superintendent and considering his physical condition even though he was terminated later he was taken back, as a special case. His disability was duly considered by Railway administration and his period of unauthorised absence was regularized.

2.2 The Respondent further submitted that the work of Sanitation of TVC Colony was outsourced from 01/01/2022 and the staff working under Chief Health Inspector was proposed to be redeployed. The Complainant was contacted for his preferred place of redeployment. He gave a reply that he was selected and shortlisted for State Govt. Services and he is awaiting a posting order. The senior

most regular employees, who were due for retirement in one year or 2 years were posted in the available vacancies at Nagercoil and Railway Hospital /TVP, which are nearest to their home town during the redeployment.

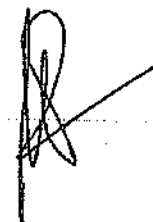
2.3 The Complainant gave a representation on 28/04/2022, to the Chief Medical Superintendent that he may be considered for rejoining back for duty. His representation was duly considered by the Chief Medical Superintendent and he was also given a personal hearing. As there was no vacancy available at Railway Hospital/Pettah, Health Unit/Nagercoil/ and Health Unit/Quilon, he was advised to join at the nearest vacant post, which was at Alleppey Colony, which he agreed. He was also assured that he will be given posting to his home town as soon as a vacancy arises.

2.4 Accordingly, he was posted at Alleppey, vide order Sr. DPO/TVC O.O No. 41/2022/MD dated 14/07/2022, but he failed to join at Alleppey colony and the post is still remaining vacant. He was not ready even to communicate the reason for his non-joining. From the time of inception in service till his redeployment, he has not given any representation regarding his difficulty in working as Safaiwala. He can rejoin duty any time duly submitting a request. At present there is no vacant post at Trivandrum, Nagercoil and Quilon colonies for accommodating him.

3. Submissions made in Rejoinder

3.1 The Complainant filed rejoinder dated 04.12.2022 submitting that he is not satisfied with the reply of Respondent. He also submitted that the Southern Railway Administration has done things to get rid of him as a person with disability from the post of House Keeping Assistant in the Southern Railway. He alleged that in the next two months after he was transferred from Thiruvananthapuram, the Home Town where he was working, to Alappuzha, there was a vacancy in Thiruvananthapuram Railway Hospital and Nagercoil Health Unit but other people were appointed instead of allotting him that vacancy.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 16.05.2023. The following were present in the hearing:



- Shri Visakh S- Complainant
- Shri Rahul, Divisional Personnel Officer, Southern Railway – Respondent

5. Observations & Recommendations:

5.1 The Complainant submitted that he qualified the examination conducted by Railway Recruitment Cell, Chennai held on 07.10.2018. He joined Thiruvananthapuram Railway Division in Medical Department on 23.01.2019. Thereafter he fell ill in October 2021 and could not attend his office.

5.2 Thereafter when he applied again in the month of June 2022, he was asked to join at Alappuzha Railway Station, 300 kms away from his home. He also submitted that because of his disability, he cannot join his Alappuzha office as it is situated 300 kms away from his home.

5.3 The Respondent submitted that the Complainant was recruited for the post of full time contract Safaiwala, on 23.01.2019. He was working as House Keeping Assistant/Colony/ Trivandrum from 23.01.2019. From, 18.10.2021, he was on unauthorised absence and as per the existing norms, in such cases, his employment gets terminated automatically after 3 days. The Complainant submitted his representation, requesting to take him back for duty, on 29.11.2021. Considering the physical condition of the Complainant even though he was terminated later he was takenback, as a special case.

5.4 His disability was duly considered by Railway administration and his period of unauthorised absence was regularized. The Complainant was contacted for his preferred place of redeployment. But he gave a reply that he was selected and shortlisted for State Govt. Services and he is awaiting a posting order. The senior most regular employees, who were due for retirement in one year and 2 years were posted in the available vacancies at Nagercoil- and Railway Hospital/TVP, which are nearest to their home town during the redeployment.

5.5 The Complainant gave a representation on 28.04.2022, to the Chief Medical Superintendent that he may be considered for rejoining back for duty. He was posted at Alleppey, vide order Sr. DPO/TVC O.O No. 41/2022/MD dated

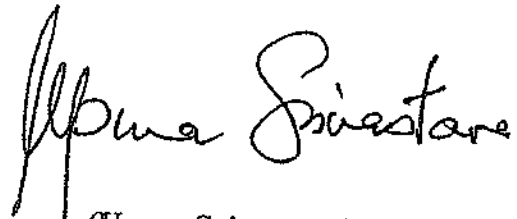


14/07/2022. But he failed to join at Alleppey Colony and the post is still remaining vacant. He was not ready even to communicate the reason for his non-joining. From the time of inception in service till his redeployment, he has not given any representation regarding his difficulty in working as Safaiwala. He can rejoin duty any time duly submitting a request. At present there is no vacant post at Trivandrum, Nagercoil and Quilon colonies to accommodate him.

5.6 After hearing both the parties, this Court concludes that the Complainant was engaged on contractual basis and, hence, the rules related to termination of service of regular employee does not apply on him. Moreover, it is also noted that the Respondent has already adopted humanitarian approach by not terminating his services, despite of his unauthorized absence for long time.

5.7 In the light of above, further intervention of this Court is not warranted and the case is disposed of.

5.8 The case is disposed of accordingly.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13491/1024/2022

Complainant:

Shri Ashok Kumar Gupta
H.No.1/954, Ruchi Khand-2
Sharda Nagar Yojna
Raibareli Road, Lucknow- 226012
E-mail: <samratashok1965@gmail.com>
Mob: 9415446880

1240988

Respondent:

The Chief Executive OfficerRespondent No.1
Prasar Bharati, Prasar Bharati Secretariat
Tower 'C', Copernicus Marg, New Delhi – 110001
E-mail: ceo@prasarbharati.gov.in
Tel: 011-23118803

1240989

The Director GeneralRespondent No. 2
All India Radio,
Akashvani Bhawan,
Parliament Street
New Delhi – 110001
E-mail: dgair@air.org.in
Tel: 011-23421300

1240990

The Dy. Director General (E)Respondent No. 3
(UP & Uttarakhand Zonal Office)
All India Radio,
Akashvani Bhawan
18, Vidhansabha Marg,
Lucknow – 260012
E-mail: lucknow@prasarbharati.gov.in
Tel: 0522-2237476

1240991

1. GIST of the Complaint:

1.1 प्रार्थी का अपनी शिकायत दिनांक 26.09.2022 में कहना है कि उन्होंने दिनांक 05.07.1988 को दिव्यांग आरक्षण के अनुमन्य कोटे में एलडीसी के पद पर

1240992

एसएससी परीक्षा 1986 के माध्यम से सूचना एवं प्रसारण मंत्रालय/दूरदर्शन महानिदेशालय, नई दिल्ली में नियुक्ति प्राप्त की। प्रार्थी ने उक्त कार्यालय से तकनीकी त्यागपत्र देकर दिनांक 02.09.1989 को एलडीसी के पद पर दूरदर्शन केन्द्र, लखनऊ (Central Subordinate Service) में कार्यभार ग्रहण किया था। प्रार्थी को सीनियारिटी कम फिटनेस सामान्य पदोन्नति दिनांक 13.04.2007 से यूडीसी के पद पर पदोन्नति दी गयी थी। आकाशवाणी, ज़ोनल कार्यालय, लखनऊ द्वारा दिव्यांग प्रमोशन रिजर्वेशन रोस्टर रजिस्टर में दूरदर्शन, लखनऊ के ग्रुप 'सी' में कार्यरत ग्रेड-1 एवं ग्रेड-2 ड्राइवरों को नहीं लिया गया है।

1.2. उनका कहना है कि आकाशवाणी ज़ोनल कार्यालय लखनऊ द्वारा दिव्यांग प्रार्थी को विधिक दिव्यांग आरक्षण के तहत 30.06.2022 तक किसी भी पद पर कोई पदोन्नति नहीं देकर अन्याय किया गया। आकाशवाणी ज़ोनल कार्यालय लखनऊ द्वारा प्रसार भारती दिल्ली के आर्डर दिनांक 14.12.2016 के अनुसार रोस्टर में 1995 में साइकिल बिंदु को बंद कर दिनांक 01.01.1996 से पुनः रोस्टर में दिव्यांग आरक्षण गणना बिंदु संख्या 1, 33 और 67 नियत नहीं किये गए। प्रार्थी द्वारा 3 - 4 वर्षों में मौखिक लिखित एक नहीं अनेक प्रार्थना पत्र देने पर आकाशवाणी ज़ोनल ऑफिस लखनऊ द्वारा 32 वर्षों के लम्बे समय बाद एक अलग से दिव्यांग आरक्षण रोस्टर रजिस्टर तैयार किया गया तत्पश्चात दिव्यांग आरक्षण पदोन्नति रोस्टर रजिस्टर/ Review DPC में Manipulation कर आदेश दिनांक 05.07.2022, यूडीसी में पदोन्नति का आदेश रिसीव करा कर प्रार्थी के साथ भेदभाव कर अन्याय किया गया क्योंकि उचित समय पर दिव्यांग आरक्षण रोस्टर रजिस्टर में उचित स्थान पर दिव्यांग प्रार्थी को विधिक आरक्षण के तहत नियमानुसार नोशनल पदोन्नति नहीं दिया गया।

1.3. प्रार्थी का आगे कहना है कि Review DPC Promotion order में दिनांक 31.12.1991 से दिनांक 28.11.2001 तक लगभग 10 वर्षों तक आकाशवाणी, लखनऊ द्वारा किसी भी दिव्यांग को कोई भी पदोन्नति नहीं दी गयी जबकि प्रार्थी की नियुक्ति दिनांक 05.07.1988/02.09.1989 से उनकी पदोन्नति 1993-1994 में नियमानुसार देय है।

1.4. प्रार्थी ने निम्नलिखित निवेदन किया है:

- एलडीसी से यूडीसी के पद पर पदोन्नति हेतु 05 वर्ष की qualifying (Eligible) Service पूर्ण होते ही DOPT Order 22011/7/86 – Estt (D) dated 19.07.1989 के

पैरों में इंगित तथ्य के अनुसार दिव्यांग प्रार्थी को विधिक आरक्षण परिणामी जेष्ठता के अनुसार अक्टूबर 1994 से प्रथम नोशनल पदोन्नति यूडीसी पद पर एवं ग्रुप 'सी' में ही यूडीसी से Head Clark के पद पर 05 वर्ष की qualifying (Eligible) Service (year) पूर्ण होने ही दूसरी नोशनल पदोन्नति अक्टूबर 1999 से Head Clark के पद पर और इसी तरह से क्रमशः अग्रेतर पदों (प्रशासनिक अधिकारी, वरिष्ठ प्रशासनिक अधिकारी, उप निदेशक (प्रशासन)) पर लखनऊ में ही पदोन्नति दिलाने का संयुक्त स्पष्ट आदेश जारी करें।

- प्रार्थी की पत्नी सहायक अध्यापिका के पद पर शिक्षा विभाग, लखनऊ में ही कार्यरत है एवं दिव्यांगता की वजह से, प्रार्थी को लखनऊ में ही पदोन्नति दिलावाए जिससे प्रार्थी अपनी 82 वर्षीय वृद्धा माँ की देखरेख भी कर सकेगा।
- वेतन निर्धारण कर अवशेष एरियर इत्यादि का ब्याज सहित भुगतान एक निश्चित समयबद्ध अवधि में करवाए।

2. The matter was taken up with the Respondent vide letter dated 19.10.2022 under Section 75 of the RPwD Act, 2016.

3. प्रतिवादी द्वारा प्रस्तुत किया गया

3.1 उप महानिदेशक/केन्द्राध्यक्ष, आकाशवाणी, लखनऊ का अपने पत्र दिनांक 17.11.2022 में कहना है कि आकाशवाणी के मोटर ड्राइवर और दूरदर्शन के मोटर ड्राइवर का संवर्ग अलग-अलग है एवं दूरदर्शन, लखनऊ के मोटर ड्राइवर का संवर्ग नियंत्रण आकाशवाणी, लखनऊ के पास नहीं है, अतः इस कार्यालय द्वारा पीडब्लूडी आरक्षण हेतु तैयार किये गए रोस्टर में दूरदर्शन, लखनऊ के ड्राइवर को सम्मिलित नहीं किया गया है। विपक्षी का आगे कहना है कि माननीय न्यायालय द्वारा पहले ही केस नं॰: 12541/1021/2021 दिनांक 15.03.2021 में दिए गए आदेश के अनुपालन में रिज्यु डी.पी.सी. की संस्तुतियों के आधार पर श्री गुप्ता को दिनांक 28.11.2001 से यु.डी.सी. के पद पर पदोन्नति प्रदान की जा चुकी है।

3.2 विपक्षी का कहना है कि उनके कार्यालय द्वारा दिव्यांगजनों के आरक्षण हेतु रिज्यु डी.पी.सी. की गई है। रिज्यु डी.पी.सी. उसी डी.पी.सी. की जा सकती है जो डी.पी.सी. पहले की जा चुकी हो। अतः नियमानुसार ही रिज्यु डी.पी.सी. की बैठक की गई है एवं तदनुसार रोस्टर रजिस्टर तैयार किया गया है जिसमें नियमानुसार आरक्षण बिंदु निर्धारित किये गए हैं। उनका कहना है कि सूचित तथ्यों पर कोर्ट द्वारा पहले ही केस नं॰ 12541/1021/2021 में सुनवाई की जा चुकी है एवं माननीय न्यायालय के आदेशानुसार उनके कार्यालय द्वारा कार्यवाई की जा रही है एवं आगे



पदों पर पदोन्नति देने हेतु आकाशवाणी लखनऊ एवं महानिदेशालय स्तर पर कार्यवाही भी कि जा रही हैं। प्रार्थी द्वारा लगाये गए आरोप कि रिव्यू डीपीसी में Manipulation किया गया है, तथ्यहीन एवं बेबुनियाद है। प्रार्थी के साथ कार्यालय द्वारा कोई भेदभाव या अन्याय नहीं किया गया है। कार्यालय द्वारा तैयार रोस्टर रजिस्टर समय-समय पर डीओपीटी द्वारा जारी नियमों के अनुसार ही तैयार किया गया है और पदोन्नति भी नियमों के अनुसार दी गई है।

प्रार्थी द्वारा की गयी प्रार्थना पर टिप्पणी:

• प्रार्थी द्वारा एलडीसी से यूडीसी पद पर पदोन्नति 05 वर्ष पूरे होने पर करने की मांग उचित नहीं है क्योंकि पदोन्नति के लिए सिर्फ न्यूनतम eligibility ही आवश्यक नहीं है बल्कि इसके लिए रोस्टर के अनुसार पद की उपलब्धता, कर्मचारी की उपयुक्तता भी आवश्यक है। दिव्यांगजनों की पदोन्नति के लिए review डीपीसी की गई है। नियमानुसार review डीपीसी सिर्फ उन्ही की डीपीसी की जा सकती है जो डीपीसी पहले हो चुकी हों। आगे पदों पर पदोन्नति हेतु प्राथमिकता के आधार पर कार्यवाही की जा रही है। अतः दावा उचित नहीं है एवं इनकी ये प्रार्थना स्वीकार योग्य नहीं है;

• इस बिंदु पर की गई प्रार्थना इस स्तर पर करना ठीक नहीं है। वर्तमान में प्रार्थी यु डी सी पद पर आकाशवाणी लखनऊ में ही तैनात है। दिव्यांगजनों की पोस्टिंग के सम्बन्ध में जो भी नियम निर्धारित हैं उसी के अनुरूप कार्यवाही की जायगी। समय से पूर्व ऐसी मांग करना उचित नहीं है।

• ऐसे मामलों में माननीय उच्चतम न्यायालय द्वारा जारी आदेशों एवं उच्चाधिकारियों की संस्तुतियों के आधार पर ही कार्यवाही की जा सकती है। अतः मांग उचित नहीं है।

4. प्रार्थी ने अपने प्रत्युत्तर दिनांक 09.12.2022 में कहा है कि प्रतिवादी स० 1 एवं 2 ने अपना उत्तर नहीं दिया है। प्रतिवादी स० 3 ने भी मामले की सत्यता को न रखकर कोर्ट को भ्रमित ही किया है। उनका कहना है कि वह महानिदेशालय से दिनांक 01.09.1999 को तकनीकी इस्तीफा दे कर आये थे एवं दिनांक 02.09.1999 को दूरदर्शन केंद्र लखनऊ में कार्यभार ग्रहण कर लिया था, अतः प्रार्थी ने किसी भी सर्विस को ब्रेक नहीं किया है। प्रार्थी की नियमित सेवा दिनांक 05.07.1988 से गिनी जानी चाहिए जैसे कि ACP/MACP/Gratuity हेतु नियमित नियत सेवाएँ काउंट कि जाती हैं। उन्होंने अन्य बातों के साथ अपनी शिकायत को दोहराया है।



5. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 18.04.2023. The following were present:

- Adv. Sachin Kr Pandey - on behalf of the Complainant
- Shri K.M. Rasatogi, Sr. Administration Manager- on behalf of the Dy. Director General (E), (UP & Uttarakhand Zonal Office) All India Radio- Respondent No.3

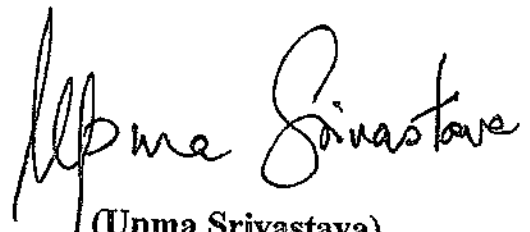
6. **Observations & Recommendations:**

6.1 The Complainant submits that he was appointed in 1989 on the post of LDC. He claims that the Respondent establishment failed to give reservation in promotion from 1991 to 2001. He has sought relief from this Court to direct the Respondent to give him promotion w.e.f 1994 onwards.

6.2 The Respondent submits that the Complainant has already been given promotion w.e.f. 28.11.2001. His claim of promotion to UDC post w.e.f. year 1994 cannot be agreed to since apart from minimum eligibility criterion there are other factors which are considered while giving promotion.

6.3 The Complainant has raised a cause of which arose in 1994. The Complainant has not explained any reason for such inordinate delay. This Court is satisfied with the Reply of the Respondent. Further intervention of this Court in the present Complaint is not warranted.

6.4 The Case is disposed of accordingly.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023



Case No. 13521/1024/2022

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.13521/1024/2022

Complainant:

Shri Bhavnesh Kumar
S/o Later Sh. Kewal Krishan,
R/o H.No. 130, Street No. 4,
Near Gopal Bhawan,
Ahmedgarh, District Malerkotla 148021,
Punjab
Email: bahvnesh1965@gmail.com

Respondent:

The Principal Commissioner,
Central Goods & Service Tax Commissionerate
Rishi Nagar, F Block,
Ludhiana, Punjab

1. Gist of Complaint:

1.1 Shri Bhavnesh Kumar, a person with 40% mental illness suffering from depression (OCD/General Anxiety Disorder) filed a complaint dated 02.10.2022 alleging non-sanction of half pay leave by his department despite recommendation of his controlling officer.

1.2 The Complainant submitted that his daughter, aged 25 years, is suffering from mental illness having 50% permanent disability for the last 10 years & she requires round the clock care & supervision. His wife is working in a Govt. aided school at his native place Ahmedgarh, Distt. Malerkotla. Moreover, she alone is unable to take care of her daughter. Due to prolonged illness of his daughter his wife has also developed many diseases.

1.3 He further submitted that due to compelling domestic circumstances, he had to apply for half pay leave on 13/07/2021 for the period 01/09/2021 to 31/03/2023 and this leave was duly recommended 3 times by his immediate supervisory officer for sanction to the competent authority, but the action on the same is still pending. No action on his leave by the competent authority led to defeat the purpose for which the said leave was sought. At one stage, it was intimated by his Hqrs. Office vide letter dated 25.05.2022 that his leave application has not been received in the Hqrs. Office.

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1.4 He had to again apply for leave preparatory to retirement on 27.06.2022 from 05/09/2022 to 02.01.2025 (half pay leave & earned leave) with an option of VRS from 02.01.2025 under Rule 38 of CCS (Leave) Rules, 1972. A reply was given vide email dated 02.09.2022 informing him to apply for leave and VRS separately. Accordingly, he again applied for Half Pay Leave on 07.09.2022 which was also rejected by the Competent Authority on 14.09.2022 with the remarks that Leave cannot be claimed as a matter of right.

1.5 He brought the above facts to the notice of the Chief Commissioner, Central Goods and Service Tax Commissionerate, Chandigarh vide email dated 21.09.2022 requesting for sanction of Half Pay Leave from 03.10.2022 to 05.05.2023 but no response has been received from the O/o Chief Commissioner, Chandigarh Zone

2. Submissions made by the Respondent

2.1 Joint Commissioner (P&V), CGST Commissionerate Ludhiana filed reply dated 17.11.2022 and submitted inter alia that keeping in view the disability of the daughter of the Complainant, he was posted at Ludhiana which is nearest to his hometown. As regards the illness and disability of the Complainant, the respondent submitted that this is new fact which was not mentioned in the previous leave applications. Further, as per the medical certificate submitted by the Complainant, his condition has been marked as temporary for two years which is likely to improve and this is non-progressive in nature. The medical certificate needs to be verified from the issuing authority. This office will examine his leave case considering this new fact of 40% mental illness once verified and then decide subject to availability of staff so as to ensure smooth functioning of office.

2.2 The Respondent further submitted that the Half Pay Leave application of the Complainant from 01.09.2021 to 31.03.2023 (577 days) was sent to the Competent Authority i.e. Principal Commissioner, CGST Commissionerate, Ludhiana. The complainant joined Ludhiana Hqs on 17.05.2022 and had made a request for grant of leave preparatory to retirement under Rule 38 of CCS Leave Rules 1972 vide letter dated 07.06.2022 whereby he applied for Half Pay Leave from 05.09.2022 to 12.05.2024 (616 days) under Rule 29 (4) read with Rule 38 ibid, Earned Leave from 13.05.2024 to 02.01.2025 (235 days) and Voluntary Retirement from 02.01.2025 under Rule 43 (1) read with Rule 43 (4) (a) of CCS (Pension) Rules, 2021. The total leave applied are 851 days (616 half pay leave +235 Earned Leave) which is beyond the purview of Rules 38 of CCS Leave



Rules, 1972. The leave of the Complainant was not recommended by his Controlling Officer and as per Rule 7 of FRSR Leave Rules - Leave cannot be claimed as of Right. The leave of the Complainant was rejected in view of acute shortage of staff.

2.3 The Complainant again requested for Half Pay Leave from 20.09.2022 to 05.05.2023 vide letter dated 27.06.2022 mentioning Request for granting leave preparatory to retirement under Rule 38 of CCS (Leave) Rules 1972. The Competent Authority due to administrative reasons has rejected the request for leave made by the Complainant. In view of the above, the Complainant is not entitled to any relief and there is no violation of the provision of the RPwD Act, 2016.

3. Submissions made in Rejoinder

3.1 The complainant filed rejoinder dated 11.12.2022 reiterating his complaint and refuting the reply filed by the respondent. He has requested that (i) directions be issued to the Respondent to sanction half pay leave instead of earned leave as applied by the Complainant vide his application dated 30.11.2022 for the period 05.12.2022 to 05.05.2023; (ii) He may be considered for posting at Malerkotla which is the nearest place to his home town from where he could perform his official duties and also take care of the disabled child; and (iii) any other relief as deemed fit by this Court in the facts and circumstances of the case.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 26.05.2023. The following were present in the hearing:

- (1) Kumar Bhavnesh –Complainant
- (2) Sri Baljeet Singh, Asst. Commissioner - Respondent

5. Observations & Recommendations:

5.1 During online hearing Respondent apprised this Court about latest developments in the case. Respondent submitted that the Complainant was granted 6 months leave from 05.12.2022 till 05.05.2023. Respondent further submitted that the Complainant has now been transferred to Custom Commissionerate, Ludhiana which is in the vicinity of his hometown. Respondent further submitted that leave for further period can be granted by Custom Commissionerate, Ludhiana.

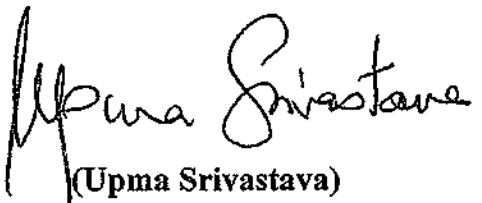


5.2 Complainant made claims during online hearing that some officers in Respondent establishment are threatening to initiate proceedings under FR 56(J). Respondent also confirmed that proceedings under FR 56(J) have been initiated against the Complainant. Respondent reasoned that the Complainant himself submitted Disability Certificate claiming to be person with mental illness hence, he is not fit for the job.

5.3 On the issue of proceedings under FR 56 (J), this Court would like to attract attention of the Respondent towards Section 20 (4) of Rights of Persons with Disabilities Act, 2016 which lays down that no government establishment shall reduce in rank or dispense with the employee who acquires disability during service. Hence, it is against the provision of Rights of Persons with Disabilities Act, 2016 to invoke FR 56 (J) against an employee only on the ground that he has acquired disability.

5.4 On the issue of leave, this Court recommends that whatever leaves are admissible shall be granted to the Complainant as per the extant rules. A copy of this Order shall also be forwarded to Custom Commissionerate, Ludhiana where the Complainant has now been transferred.

5.5. The case is disposed of accordingly.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No. 13489/1024/2022

Complainant:

Shri Prosenjit Chakraborty

Email: eboxprosenjit@gmail.com

Respondent:

The Chief Executive Officer

Prasar Bharati, Prasar Bharati Secretariat

Tower 'C', Copernicus Marg,

New Delhi-110001

Email: ceo@prasarbharati.gov.in

.....Respondent No. 1

The Dy. Director General

All India Radio, Akashvani Bhawan,

Parliament Street,

New Delhi-110001

.....Respondent No. 2

The Dy. Director General (E)

All India Radio, O/o SD,

AIR Kolkata at Dist. Kolkata, West Bengal

.....Respondent No. 3

1. Gist of Complaint:

1.1 Shri Prosenjit Chakraborty a person with 40% locomotor disability, filed a complainant dated 26.09.2022 alleging non-implementation of reservation in promotion for persons with disabilities category.

1.2 The complainant submitted that he has selected for under physically handicapped (O) quota, he joined as clerk Grade-II on 15.03.1991 in the office of Respondent No.3. The post of Clerk Grade-I were re-designated as LDC and UDC respectively with effect from 12.06.1995. The applicant became eligible under disability quota.

1.3 He submitted that he was illegally always treated under General Category not under PWD category to cunningly deny/deprive him of the benefits of Reservation under PwD Quota.

1.4 He further submitted that Prasar Bharati and DG: AIR on the directions of the Chief Commissioner for Persons with Disabilities have issued strict guidelines vide their No.1/51/2015-PPC(Vol.II) dt. 14.12.2016, copies of which are Annexure A/.... Series to this application.

1.5 He stated that the promotion orders issued since 1995 against the vacancies are required to be recomputed retrospectively earmarking the PH roster points so as to do justice not only to the applicant but also to other PH candidates eligible for promotion.

2. Submissions made by the respondent

2.1 On behalf of the Respondent, Shri Partha Pratim Pal, Deputy. Director General (E), All India Radio, Kolkata vide letter dated 23.11.2022 submitted affidavit dated 22.11.2022 and stated that as per DOPT's guidelines dated 29/12/2005 the office maintains the mandatory 100 point Reservation Roster for PWD from both AIR and Doordarshan and seniority of which is being maintained within the state of West Bengal & Sikkim. Whereas no promotion was denied in respect of the applicant. As stated that separate Reservation Roster for PH/PWD for promotion to the post of UDC from 1996 to 2020 is being maintained. There was 05 members of PWD candidates were in seniority list of LDC at AIR & Doordarshan at West Bengal & Sikkim. But all are locomotive disable candidates including the petitioner.

2.2 Respondent further submitted that DPC held on 25-6-2013 & 23-06-2015 respectively where name of Shri Prosenjit Chakraborty , LDC, AIR, Kolkata was considered as per the prevailing roster under PH Quota and promotion order issued on 29.06.2015. Both Shri B.P. Roy Chowdhury and Shri Tushar Kanti Sarder including the petitioner are all in 'Locomotive disable candidates/physically disable candidates', not blind or else group disable.

2.3 The respondent stated that the DPC of 2015 overlooked the proposition and direction of Hon'ble Apex Court while giving promotion to the complainant/ petitioner as actually that promotion should be given to the lees category of disable candidates like (i) blindness or low vision, (ii) hearing impairment.

3. Submissions made in Rejoinder

3.1 The complainant filed rejoinder dated 28.03.2022 and reiterating his complaint and complainant not satisfied with the reply of respondent.



4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 15.05.2023. The following were present in the hearing:

- Shri Prosenjit Chakraborty V. – Complainant
- Advocate. Rajorshi Halder -Respondent

5. **Observations & Recommendations:**

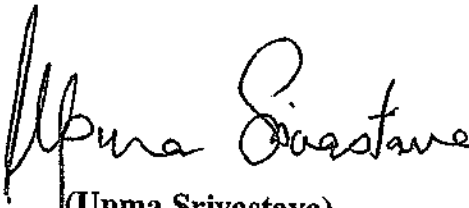
5.1 During online hearing the Respondent reiterated the submissions made in the written Reply. Respondent also submitted that in 2015 the Complainant was duly promoted and since then he has not been denied promotion even once.

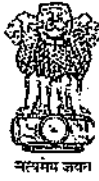
5.2 In written Reply the Respondent relied upon judgment of Supreme Court and the Respondent claims that in the judgment Hon'ble Court held that reservation should be given to more deprived categories of Person with Disability such as Person with Disabilities having blindness or Low Vision. The submission made by the Respondent is based upon wrong interpretation of the judgment and hence this Court does not agree with this point raised in the Respondent's reply.

5.3 On other points, which are relating to the promotion of the Complainant, this Court is satisfied with the Respondent's Reply. Further this Court observes that the claim of the Complainant to seek promotion since 1996 is time barred. Complainant cannot keep sleeping for more than 25 years over his claims. Hence intervention of this Court in the present Complaint is not warranted.

5.4 Accordingly, the case is disposed of.

Dated: 06.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No.13470/1024/2022

Complainant:

Shri Shish Pal

CPWD Quarter No. 669,

Ground Floor, Sector 46 A,

Chandigarh-160047

Email: bhura1980@gmail.com

Respondent:

The Secretary

National Council for Cooperative Training

3, Siri Institutional Area, August Kranti Marg

Hauz Khas, New Delhi -110016

The Director

Regional Institute of Cooperative Management

Sector-32-C, Chandigarh-160030

Accountant

Regional Institute of Cooperative Management

Sector-32-C, Chandigarh -160030

...Respondent No.1

...Respondent No.2

...Respondent No.3

1. Gist of Complaint:

1.1 Shri Shish Pal, Complainant, a person with 80% locomotor disability filed a complaint dated 15.09.2022 regarding harassment by officers.

1.2 The complainant submitted that the Director, Regional Institute of Cooperative Management (RICM), Chandigarh has intentionally continuously mentally harassed, humiliated, treated him inhumanly and exploited from re-joining the Institute on 25.11.2020 to the post of Stenographer (English). He has not been given any work from 25.11.2020 to 31.08.2021 without any order from the Head Office and Hon'ble High Court in spite of verbal and written communication sent by him.

1.3 He further submitted that he had not been given Computer, Printer and Landline telephone from 25.11.2020 to 31.08.2021. The printer had been given to him on 09.05.2022 whereas all the Clerks and the other staff had already having separate Printer. This clearly shows that Director RCM, Chandigarh intentionally discriminated him and violated the human rights of an employee with disability. He also submitted that though all the staff working in the Institute have separate landline telephone but he has been provided a parallel telephone on 13.05.2022.

1.4 The Complainant has prayed to take action against the erring officer/official under Sections 6 and 92 of the RPwD Act, 2016 and to stay the Office Order No. 3-1/1/2020-Pers dated 21.07.2022 received on 22.07.2022 for inquiry in violation of D/o P&T instructions mentioned in O.M No. 36035/3/2013-Estt. (Res) dated 31.03.2014 till the final decision of this Court.

2. Submissions made by the Respondent

2.1 Director, Regional Institute of Co-Operative Management, Chandigarh, Respondent No. 2 filed the reply affidavit dated 02.11.2022 and submitted that he denies all the allegations levied upon by the Complainant as the same are completely wrong, baseless and backed without documentary evidence whatsoever. He further submitted that the Complainant has been continuously given work and salary as per law and in compliance of the orders of the Hon'ble Punjab & Haryana High Court. Moreover, the issue regarding the appointment of the Complainant is pending before the Hon'ble Punjab & Haryana High Court in CWP-19807-2020 titled as Shish Pal Vs Union of India and Anr. He also submitted that an internal inquiry was initiated by the National Council for Cooperative Training and reply of the proceedings of the same is awaited. The same will be forwarded on receipt of the same from their Head Office.

2.2 Shri Pradeep Mukherjee, Accountant (Office Superintendent I/c since 2016), Regional Institute of Co-Operative, Chandigarh, Respondent No. 3 filed his reply affidavit dated 02.11.2022 and submitted that he denies all the



allegations levied upon by the Complainant as the same are completely wrong, baseless and backed without documentary evidence whatsoever. He further submitted that the Complainant has been continuously given work and salary as per law and in compliance of the orders of the Hon'ble Punjab & Haryana High Court. Moreover, the issue regarding the appointment of the complainant is pending before the Hon'ble Punjab & Haryana High Court in CWP-19807-2020 titled as Shish Pal Vs Union of India and Anr. He also submitted that an internal inquiry was initiated by the National Council for Cooperative Training and reply of the proceedings of the same is awaited. The same will be forwarded on receipt of the same from their Head Office.

2.3 Director, Regional Institute of Co-operative Management, Chandigarh filed a detailed reply on behalf of all the Respondents vide letter dated 18.11.2022 and inter- alia submitted that on the complaint of the Complainant over the same issue a One Member Fact Finding Inquiry was got conducted by the Secretary, NCCT. The recommendations of the Committee is as under:-

- (i) As it is already pointed out there is serious doubt on the percentage of disability of Shri Shish Pal, Complainant which is certified to be 80% there is an urgent need to refer the case of Complainant to a higher Medical Board for review/second opinion in order to ascertain if the percentage of physical disability is 80% or not. If, it is less than 80% then the Board may be asked to determine and certify accordingly, the actual percentage of his disability. Further action may be taken as deemed fit as per the findings of the Higher Medical Board;
- (ii) Since all the grievances of the Complainant including ones which are apparently "perceived" have been addressed and resolved by the present Director, RICM, Chandigarh no further action is recommended;
- (iii) Since the appointment of Shri Shish Pal as Stenographer (English) as contractual or regular is subjudice, no comments/recommendations are offered; and
- (iv) With regard to alleged irregularities in the appointment of Stenographer (English) the competent authority may take further action as



deemed fit after the Civil Writ which is pending before Hon'ble High Court of Chandigarh is finally disposed of.

3. Submissions made in Rejoinder

3.1 The complainant filed rejoinder dated 25.01.2023 and reiterating his complaint refuted the reply filed by the respondent. He has requested to take action against the erring officer/official under Sections 6 and 92 of the RPwD Act, 2016 in the interest of justice

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 11.04.2023. The following were present in the hearing:

(1) Shri Shish Pal – **Complainant** in person

(2) Shri Puran Chand, Advocate with Shri R.K. Sharma, Director and Shri Manish Bhatia, Administrative Officer for
Respondents

5. Observations & Recommendations:

5.1 The Complainant submitted that the Director, Regional Institute of Cooperative Management (RICM), Chandigarh has intentionally and continuously mentally harassed, humiliated, treated him inhumanly and prevented him from joining the post of Stenographer (English). He claims that he has not been given any work from 25.11.2020 to 31.08.2021 without any order from the Head Office and High Court in spite of verbal and written communication sent by him. He further submitted that he has not been given Computer, Printer and Landline telephone from 25.11.2020 to 31.08.2021. The printer had been given to him on 09.05.2022 whereas all the Clerks and other staff have already a separate Printer. Complainant has prayed to take penal action against the Respondent.

5.2 Respondents submitted that they denied all the allegations levied by the Complainant are baseless and lack documentary evidence. He further submitted that the Complainant has been continuously given work and salary



as per law and in compliance of the orders of the Hon'ble Punjab & Haryana High Court.

5.3 Moreover, the issue regarding the appointment of the Complainant is pending before the Hon'ble Punjab & Haryana High Court in CWP-19807-2020 titled as Shish Pal Vs Union of India and Anr.

5.4 It is further submitted that on the complaint of the Complainant over the same issue a One Member Fact Finding Inquiry was got conducted by the Secretary, NCCT. The Committee recommended that Medical Board shall ascertain the percentage of Complainant's disability. Further, on the issue of appointment the Committee did not make any recommendations because the issue is subjudice before the Hon'ble High Court.

5.5 The issue of appointment has already been inquired into by this Court as per Section 75 of Rights of Persons with Disabilities Act, 2016. It is also to be noted that the issue is now pending before the Hon'ble Punjab & Haryana High Court as both the Complainant as well as the Respondent have approached the Hon'ble High Court, therefore, this Court shall not intervene on this issue.

5.6 Another issue raised by the Complainant is related to harassment. The Complainant has alleged that the work is not assigned to him and derogatory words referring his disability are used.

5.7 Respondent countered the claim and submitted that the work is assigned to the Complainant but every time he refuses to perform the assigned work. His output is also very less as compared to other employees. Respondent claimed that the Complainant did only 4 programs whereas other employees did 10-25 programs in a year.

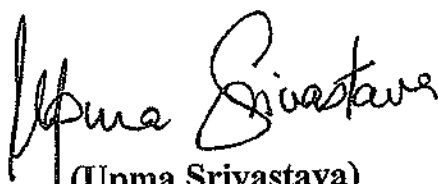
5.8 The Complainant has not given any proof to support the allegation of using of derogatory terms or other allegations relating to harassment. However, it is evident that there is complete absence of cordial relationship between the Complainant and the Respondent. Reference may be made to Section 20 (2) of the Rights of Persons with Disabilities Act, 2016. The

provision provides that government establishment is bound to provide conducive environment to employees with disabilities. The intent behind the provision is that employees with disabilities can make the best use of the cordial environment and produce optimum output of their performance.

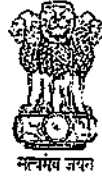
5.9 This Court concludes that the Respondent is bound to provide conducive environment to the Complainant. Therefore, this Court recommends that the Respondent No. 2 shall conduct sensitization and training program of all the employees so as to train them about appropriate terms and sensitive approach.

5.10 Further, this Court disposes of the present Complaint with liberty granted to the Complainant to approach this Court again along with evidence, if the Respondent is not able to adopt disability sensitive approach even after 3 months of the date of this Order.

6. The Case is disposed of.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No. 13485/1032/2022

Complainant:

Shri Saiyed Daud Rizvi,
Ph.D. Candidate,
Department of Hindi,
The English and Foreign Languages University,
Hyderabad-500007;
Mobile: 9701042118;
Email: daudrizvi05@gmail.com

Respondent:

The Registrar,
The English and Foreign Languages University,
Administrative Block,
Near Tarnaka, Ravindra Nagar,
Hyderabad-500007 (Telangana);
Phone: 27689483;
Email: registrar@efluniversity.ac.in

Affected Person: The complainant, a person with 60% Locomotor Disability**1. Gist of Complaint:**

1.1 Shri Saiyed Daud Rizvi, a person with 60% Locomotor Disability, filed a complaint dated 05.09.2022 against the English and Foreign Languages University [EFL University], Hyderabad regarding denial of additional time of 2 years over and above the normal stipulation of 6 years for submission of thesis of his Ph.D. as applicable to a person with disability made available at clause 4.4, of Notification of the UGC dated 05.05.2016 published in the Gazette of India on 05.07.2016.

1.2 The Complainant has submitted that he got enrolled in the Ph.D. programme in the Department of Hindi at the EFL University in August, 2016 having Roll No. HOPHDHIN20160003. He could not complete his Ph.D. thesis because of not having access to physical classes and library during Covid-19 from March, 2020. He was forced to stay back at home. The University has denied him the additional time. He also submitted that in terms of another UGC Notification No. F1-10/2021 (CPP-II) dated 17.05.2022 extension upto 06 months beyond 30 June, 2022 was also allowed due to Covid-19 pandemic. Hence, he is entitled for the extensions.

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1.3 The Complainant prayed for extension of at least one year to complete his thesis and also, to direct the EFL University to ensure that his scholarship be issued on time as he has no money from the past one year and he is borrowing from friends in order to survive.

2. Submissions made by the Respondent:

The matter was taken up with the respondent vide Notice dated 14.10.2022 followed by reminders dated 01.11.2022 and 17.11.2022. However, no response has been received from the respondent.

3. Hearing: The case was heard via video Conferencing by the Chief Commissioner for Persons with Disabilities on 07.02.2023. The following persons were present during the hearing:

1. **Complainant:** Shri Saiyed Daud Rizvi
2. **Respondent:** Prof. Narasimha Rao, Registrar

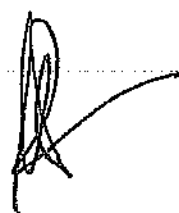
4. Record of Proceedings:

4.1 Complainant submits that he got enrolled in the Ph.D. program in the Department of Hindi at the EFL University in August, 2016 having Roll No. HOPHDHIN20160003. He could not complete his Ph.D. thesis because of not having access to physical classes and library during Covid-19 from March, 2020. He was forced to stay back at home. In terms of Clause 4.4 of the University Grants Commission Notification dated 05.05.2016 published in the Gazette of India on 05.07.2016, a person having more than 40% of disability is entitled to get extension of 02 years in addition to maximum 06 years prescribed for the Ph.D. course. As per him, by default he is entitled to submit the thesis within 08 years of enrollment. In terms of another UGC Notification No. F1-10/2021 (CPP-II) dated 17.05.2022 extension has been given up to 06 months beyond 30 June, 2022 due to Covid-19 pandemic. Hence, he is entitled automatically for an extension of 06 months.

4.2 The complainant prayed for extension of at least one year to complete his thesis; and also, to direct the EFL University to ensure that his scholarship be issued on time as he has no money from the past one year and he is borrowing from friends in order to survive.

4.3 During online hearing Respondent refuted the claims of the Complainant and submitted that the Respondent establishment asked the Complainant to forward application but he failed to file the same and misbehaved instead. Complainant claimed that he forwarded the application but no action was taken by the Respondent.

4.4 This Court asked the Complainant to forward the copy of application forwarded by him seeking extension. However, till date no documents have been submitted by the Complainant.



4.5 This Court granted opportunity to the Complainant to file the copy of the application which he forwarded to the Respondent establishment to seek extension.

5. Observations & Recommendations:

5.1 Complainant's grievance is related to extension of time for completing Ph.D. thesis. The complainant prayed for extension of at least one year to complete his thesis and also to direct the EFL University to ensure that his scholarship be issued on time as he has no money from the past one year and he is borrowing from friends in order to survive.

5.2 During online hearing Respondent submitted that the Respondent establishment asked the Complainant to forward application seeking extension of time but he failed to file the same and misbehaved instead. Complainant claimed that he forwarded the application but no action was taken by the Respondent.

5.3 Thereafter, this Court granted opportunity to the Complainant to file the copy of the application which he forwarded to the Respondent establishment to seek extension. Complainant filed a document which is dated 07.02.2023. The document was perused. The document does not contain any 'receiving' mark or any other form of signature/mark which can prove that it was submitted with the Respondent establishment.

5.4 However, considering the fact that the Respondent is proactive and is ready to consider the application of the Complainant, this Court recommends that the Complainant shall file an application seeking extension of time. Further this Court recommends that if the Complainant will file such application, the Respondent shall examine the same leniently considering the hardships the Complainant had faced during Covid pandemic.

5.5 Accordingly, the case is disposed of.

Dated: 06.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No. 13817/1041/2023/185722**Complainant:**

Km Reema

A-23/D Gali No-1, Shashi Garden,
Mayur Vihar Ph-1 Delhi – 110091

Contact No. – 8979340044

Email – garg.reema777@gmail.com

Respondent:

Registrar (Admin),

National Centre for Disability Studies,
Indira Gandhi National Open University

Zakir Hussain Block (Ground Floor)

Maidan Garhi, Delhi - 110068

Email – registrar@ignou.ac.in; registrar@ignou.ac.in

Affected Person: The complainant, a person with 100% Visual Impairment**1. Gist of Complaint:**

Km Reema, a person with 100% visual impairment, filed a complaint dated 03.01.2023 and submitted that she is student of course BA in Indira Gandhi National Open University (IGNOU). IGNOU did not conduct the exam for the first year. On asking about the first-year result, she was informed that the result for the first year will be published with that of the second year. She further alleged that her marks were reduced and she has been failed in two papers.

2. Submissions made by the Respondent:

2.1 The Deputy Registrar (Exam-III) filed reply dated 21.04.2023 on behalf of the Respondent and inter-alia submitted that the Complainant is registered for BA Programme of the University from the July 2020 (wrongly mentioned as 2022 in the reply) session. The maximum validity of the programme is up to June 2026.

2.2 As per the notification dated 28.10.2021, all candidates who are enrolled for the July 2020 session and eligible to give their first-time exam in 2021 are exempted from appearing the Term-End-Examination (TEE) of first year in view of the COVID pandemic. However, their marks/grade of the Term-End-Examination of first year will be assigned based on the average marks/ grades obtained by them in the Term-End-Examination of the second-year courses. The result/marks in the Term-End-Examination of first year, covered under the exemption scheme, will be updated by the University only after the completion of the Term-End-Examination of all the courses of second year.

2.3 As per grade card record of the Complainant, Ms. Reema has not successfully completed the following two courses of second year, for which she has appeared in the June 2022 Term-End-Examination i.e., (i) BEGLA-137 and (ii) BEGS-183. The Complainant has applied for re-evaluation for the BEGS-183, however she did not pass this course. The mark obtained by her is 12 out of 50 in re-evaluation.

2.4 On scrutiny/cross checking of the answer script for the above mentioned two courses, there is no evidence that marks have been deducted because of writing.

3. Submissions made in Rejoinder:

The respondent reply was forwarded to the complainant vide letter dated 01.05.2023 for submission of rejoinder. However, no response has been received from the complainant.

4. Observation & Recommendations:

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

4.2 Accordingly, the case is disposed of.

Dated: 06.06.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

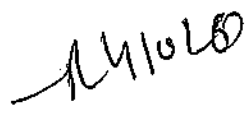
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment

भारत सरकार / Government of India

Case No: 13393/1022/2022**Complainant:**

Smt. Snehalata Das

W/o Shri Jyotiprakash Das

Email:  14/10/20


Mobile No: 08768537826

Respondent:

The Sr. Superintendent of Post Offices

Asansol Division, Asansol-713301

Dist. West Burdwan, West Bengal

Email:  14/10/21

Contact No: 03412303661

GIST OF COMPLAINT

The Complainant Smt. Snehalata Das W/o Shri Jyoti Prakash Das, a person with 85% locomotor disability filed a complaint dated 23.6.2022 regarding cancellation of transfer order of her husband and posting him near their home town.

1.2 The Complainant submitted that her husband is an employee of the Postal Department. He was posted at Asansol, West Burdwan and recently been transferred to a distant office. She further submitted that her husband would not attend to his duties at the new posting due to amputation of his right leg from above the knee joint after an accident. He appealed to his Divisional Superintendent for cancellation of posting. But all his efforts went in vain. She is very much anxious for her husband, as it is not possible for him to travel there in such a grave condition. The Complainant has requested this Court to get posting of her husband to a near place of his residence.

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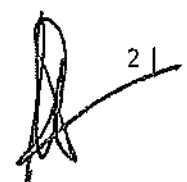
2. The matter was taken up with the Respondent vide letter dated 23.08.2022 under Section 75 of the RPwD Act, 2016.

REPLY OF RESPONDENT

3. In response, Sr. Supdt. of Post Office, Asansol Division, Asansol, Vide their letter dated 08.09.2022 submitted that there is a policy of rotational transfer of officials working in LSG/Postal Assistant Cadres in Department of Posts, for every three years. The Competent Authority has constituted a Board of Transfer & Posting Committee consisting three members to do the task. The Board meets every year and after observing due formalities takes a unanimous decision to transfer such officials who have completed three years in same office and need to transfer to other office. An option from all the officials who have completed their tenure of three years, is called before the meeting.

3.1 The Board met on 24.05.2022 and after observing due formalities as per departmental rules, took unanimous decision to transfer 42 officials who have completed three years of service (as on 30.09.2022) in same post/office. Before holding the meeting an option call from all the officials who completes their tenure of three years was made. The officials were allowed give three choices of posting. Shri Jyoti Prakash Das, Complainant's husband had completed three years of service in Sepco Sub Post Office as SPM. He is needed to be transferred to other office. Shri Das has given only one option i.e. Amrabati SO. However, Amrabati SO is a single-handed Post office and as per the Directorate's Guidelines dated 17.01.2019, the officials who are due for retirement within two years shall not be posted as sub Postmaster/Postal Assistants in a single Handed or Double Handed Post office. Shri Jyoti Prakash Das is on the verge of retirement (Date of Retirement 31.12.2024) and hence, he has been transferred to Durgapur Head Post Office as CC-1 vide memo dated 27.05.2022. Besides, a female official Smt. Archana Chakraborty was given posting at Amrabati SO.

3.2 The Respondent further submitted that Complainant's husband had given a representation dated 28.05.2022 for change of his place of posting from Durgapur HO to Amrabati SO. He cannot change the decision at his own,



21

because it is the unanimous decision of the Board Members consisting three Members. Hence, the representation of Shri Das was duly forwarded to Regional Office, South Bengal Region, Kolkata vide this office letter dated 27.06.2022 with recommendation. Later a clarification letter dated 08.07.2022 was received from the Regional Office. The reply of the same has already been sent vide letter dated 21.07.2022. Once, the instruction from the Regional Office received the necessary action will be taken accordingly.

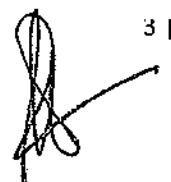
3.3 The Respondent also submitted that the Complainant's indifferent attitude shown by the under-signed is fully biased, derogatory and most unfortunate. The place of posting of her husband is well within 7.3 Kms of his residence at Sepco and he has not been given any harsh place where he finds trouble to commute everyday.

4. The Complainant vide email dated 28.10.2022 filed rejoinder and submitted that the Postmaster General, South Bengal Region and Sr. Supdt. Of Post Offices', Asansol Division, Asansol have been pleased to consider the case of her husband as per their letters dated 14/09/2022 and 23/09/2022 respectively. Sr. Supdt. of Post Offices', Asansol Division, Asansol asked her husband to submit an option of alternative office of posting other than single hand and double handed office and accordingly her husband submitted fresh option on 30/09/2022. So far as the Complainant know that the case is under process on sympathetically ground and she will in for the development of the case to this court.

5. OBSERVATIONS /RECOMMENDATIONS:

5.1 The Complainant submits that her husband, namely Shri Jyoti Prakash Das is employed in the Respondent establishment. She submits that the employee was transferred to Durgapur Head Office. She claims that because of the employee's disability he faces problem in commuting between his home and office.

5.2 Respondent submits that the employee completed 3 years of posting at his old location. Hence a committee which was formed to decide the transfers of similarly placed employees was constituted. Before the committee decided

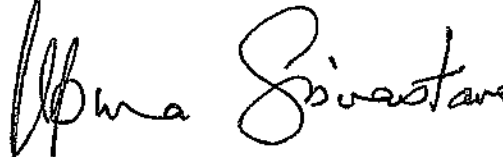
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the issue of transfers, all such employees were given option to file choice of their posting. Employee Shri Jyoti Prakash Das filed Amrabati as his option. He could not be posted there because it is Single-Handed Post Office. Therefore, he was transferred to Durgapur Post Office.

5.3 The Complainant apprised this Court by email dated 25.04.2023 that the issue has been resolved by virtue of Memo No. B2/National Promotion/ LSG/ 2023 dated 17.04.2023.

5.4 Further intervention of this Court in the present complaint is not warranted.

6. The case is disposed of accordingly.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 06.06.2023



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13626/1022/2023

Complainant:

Shri Vipin Chander,
Ec No.112460, Officer (JMG-I)
Bank of Baroda,
Email: vipin.chander@bankofbaroda.com

1241363

Respondent:

The General Manager,
Head office: Bank of Baroda,
Baroda Bhawan, 7th Floor, R.C. Dutt Road,
Vadodara-390007
Email: dgm.sgzs@bankofbaroda.com

1241364

The General Manager,
Bank of Baroda, Zonal office
Building No.2, Overbridge Sector 17B Chandigarh-160017
Email: zm.chandigarh@bankofbaroda.com

1241365

GIST OF CASE

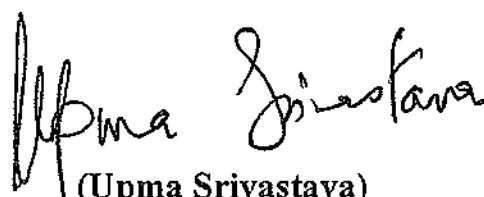
Shri Vipin Chander, a person with 45% locomotor disability, filed a complaint dated 02.12.2022, working in the Bank of Baroda requesting to retain him in any branch of the Bank at Amritsar.

2. The matter was taken up with the respondents under Sections 75 and 77 of the RPwD Act, 2016 vide letter dated 16.01.2023 .

3. In response, the GM & Zonal Head, Bank of Baroda, Chandigarh, vide their letter dated 07.02.2023, submitted that Shri Vipin Chander E.C. No. 112460, presently working Jandiala Guru Branch, Amritsar Region, Bank of Baroda and informed that the representation of Shri Vipin Chander has been considered favourably and transferred him to Jandiala Guru Branch, Amritsar Region. Also enclosed a copy of their letter dated 31.01.2023 with an

endorsement by the Complainant dated 07.02.2023 stating that "his grievance has been resolved".

4. Considering that the grievance of the Complainant has been redressed, no further intervention is required in this matter. The case is disposed of accordingly.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 19.06.2023

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

In the matter of -:**Case No.: 13518/1021/2022****Complainant:**

Shri Ritesh Kumar Khare
S-1182, Near Police Public School,
Nehru Nagar, Bhopal – 462003
Email - rkkharedms@gmail.com

R41359

Respondent:

The Director
National Council of Educational Research & Training,
Sri Aurobindo Marg,
New Delhi – 110016

R41360

Corrigendum:

1. Shri Ritesh Kumar Khare filed Complaint dated 02.10.2022, whereby issue relating to transfer of the Complainant was raised. This Court by virtue of Section 75(1)(b) of Rights of Persons with Disabilities Act, 2016 took cognizance of the issue raised and inquired into the Complaint. Reply was sought from the Respondent and thereafter hearing was conducted on 10.03.2023. after hearing both the parties and perusing the documents submitted by the parties, this Court issued Order dated 03.05.2023.

2. Thereafter the Complainant filed an application for clarification/modification of Order dated 03.05.2023 contending that certain factual error has crept in Order dated 03.05.2023. Two factual errors pointed out are in Para. 5.10 and 5.11.

3. Order is re-examined and it is observed that in Para 5.10, error is caused as term 'qualifying marks' is mentioned instead of 'transfer'. Further in Para 5.11, term 'Primary teacher' is mentioned instead of 'TGT (Mathematics)'.

4. It is apparent that clerical error is caused which is not touching the merits of the case. Moreover, Hon'ble Supreme Court in the matter of RAM CHANDRA SINGH v. SAVITRI DEVI; Civil Appeal No. 8217 of 2003 decided on 29 July 2004 held that in appropriate case Court can pass an order ex debito justitiae by correcting mistakes in the judgment. Clerical or arithmetical mistake or an error arising from an accidental slip or omission may happen and to vary its judgment so as to give effect to its meaning and intention is permissible. The Hon'ble Apex Court relied upon earlier judgment of Hon'ble Supreme Court in Samarendra Nath Sinha (1967) 2 SCR 18.

5. Hence, this Court modifies the Order dated 03.05.2023 to certain extent and therefore Para 5.10 and 5.11 are hereby modified. Para 5.10 of Order dated 03.05.2023 may be read as under -:

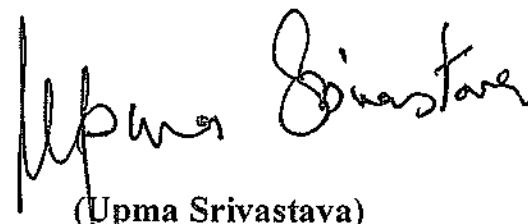
"5.10 - In the present case Respondent can opt to apply the concept of Reasonable Accommodation and make some changes to accommodate the Complainant. In the present circumstances 'Reasonable Accommodation' can be applied and the Complainant can be posted to his native place as per DoP&T guidelines laid down in O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T which provides that the government employee must be posted near to their native place. Further, the Respondent is recommended to examine and resolve the issue of T.A./D.A. in accordance with extant rules."

6. Para 5.11 of Order dated 03.05.2023 may be read as under -:

"5.11 - Considering the fact that the post of TGT (Mathematics) is vacant in Bhopal, this Court recommends that the Respondent shall post the Complainant to Bhopal, which is his native place."

7. Accordingly, the Order dated 03.05.2023 issued in the Complaint No. 13518/1021/2022 stands modified.

Dated: 19.06.2023



(Upma Srivastava)
Chief Commissioner

For Persons with Disabilities

**न्यायालय मुख्य आयुक्त दिव्यांगजन****COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

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

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

भारत सरकार / Government of India

Case No: 13603/1022/2022

Complainant:

Smt. Gopika Dinkar Gaikwad
 Manager Agri, Loni Kalbhor Branch
 Bank of Maharashtra
 Pune East Zone, Hadapsar, Tal Haveli
 Distt. Pune, Maharashtra
 Email : gaikwadgopika@gmail.com
 Mobile No. 09975439645

R41357

Respondent:

The Assistant General Manager,
 HRM Department
 Bank of Maharashtra Head Office
 4th Floor, Lokmangal Building,
 1501, Shivajinagar, Pune – 410005
 Email : agmhrm2@mahabak.co.in
 Contact No. 020-25614280

R41358

GIST OF CASE :

Smt. Gopika Dinkar Gaikwad has filed her complaint dated 10.12.2022 working in the Bank of Maharashtra, requesting cancellation of her transfer as she is a care-giver of her daughter who is a child with 87% multiple disability, on the ground that her daughter's rehabilitation process is going on in KEM Hospital and Jellybean Child and Development Centre Pune for Nephrotic Syndrome & ASD.

2 The matter was taken up with the Respondent vide letter dated 30.12.2022 under Section 75 of the RPwD Act, 2016. In response, the Asst. General Manger HRM, Bank of Maharashtra, vide email dated 21.01.2023 has submitted that Smt. Gopika Dinkar Gaikwad joined the services on the Bank

on 08.02.2010 and she is working in Pune City Agglomeration from the date of her joining. The Complainant was promoted as Manager on 30.06.2012, but Bank has retained her in Pune City Agglomeration, ever though she was liable to be transferred on promotion, as per Clause 9 of Bank's Transfer Policy.

3. The Respondent further submitted that in the year 2022, even though she was transferred to Kolhapur Zone, taking a lenient view Bank has allowed her to continue in Pune City Agglomeration till 31.03.2023. Accordingly, she will be completing 13 years of service in Pune City Agglomeration on 07.02.2023. It is pertinent to note that maximum period of stay of an officer employee in a zone is 6 years. Further, as per Regulation 47 of Bank of Maharashtra Officers' Service Regulations, 1979, says that "Every officer is liable for transfer to any office or branch of the Bank or to any place in India".

4. The Respondent also submitted that since the Bank is committed to the well-being and welfare of its employees and also considering her request on Sympathetic grounds, Mrs. Gopika Dinkar Gaikwad is once again allowed to be continued in Pune City Agglomeration till 31.03.2024. The Bank requested to CCPD office to advise Mrs. Goipka Dinkar Gaikwad that the said retention given by Bank in Pune City Agglomeration cannot be claimed as matter of right.

5 The Complainant in her rejoinder dated 20.03.2023 has submitted that in the year 2022 she was transferred to Kolhapur Zone. Then she have submitted his representation to HR department through post. She have also met 2-3 times personally to AGM, HR with officers union lady representative also. But HR department was only saying that they will think over it. She was on leave during that stressful situation and Kolhapur Zone was continuously taking follow-up with her for joining.

5.1 She submitted that she had sent medical certificate of her daughter to Kolhapur Zone also. After some days, Bank issued her show cause letter for further disciplinary action. HR department has not credited her salary of June 2022 because she did not join the Kolhapur Zone. Bank has deducted her PF, Union Fee, Housing loan instalment, Income Tax etc. from her gross salary

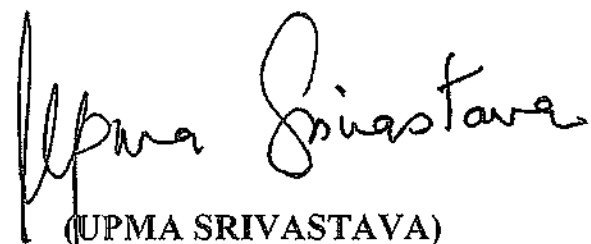


but till date her net salary of Rs.76000/- of June 2022 has not been credited to her account. Though one of the bosses of her department took the medical history of her daughter and suggested to the HR to modify their order. But HR department has done her retention in Pune upto 31.03.2023 only. Meanwhile, she registered her complaint with CCPD in Dec.2022 and then again Bank has allowed her to continue in Pune till 31.03.2024. Finally, she got justice from CCPD but every year she will have to face this issue and due to her transfer issue, her daughter's treatment, her rehabilitation process will stop which is injustice for her daughter. As a mother, she is main caregiver of her daughter and providing High Support to her. As per Home and Family concept of RPWD Act, 2016, no child with disability shall be separated from his or her parents on the ground of disabilities except on an order of competent court, if required, in the best interest of child.

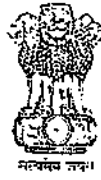
6. Observations /Recommendations:

The matter has been examined and after taking into consideration all relevant provisions regarding grant of relief to the caregiver of a child with disabilities, such as O.M. No. 42011/3/2014 dated 08.10.2018 issued by DoP&T, it is recommended to consider the posting of the Complainant at the desired place in the overall interest of the child with disabilities.

7. In view of the above, the case is disposed of.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 19.06.2023



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

Case No: 13554/1022/2022

Complainant

Shri Ved Prakash,
 Tax Assistant
 PO 2ML, 4 E Chhoti SSB Road,
 Distt: Sriganganagar, Rajasthan-335001
 Email: prakashved935@gmail.com

141529

Respondent

The Chief Commissioner,
 CGST and Central Excise,
 Jaipur Zone, NCRB, C-Scheme,
 Statue Circle, Jaipur,
 Rajasthan-302005

141530

Respondent....1

The Commissioner,
 CGST Commissionerate,
 G-105, New Jodhpur Industrial Area,
 Basani, Jodhpur,
 Rajasthan-342003.

141531

Respondent....2

1. GIST OF COMPLAINT

1.1 Shri Ved Prakash, a person with 50% locomotor disability has filed a complaint for being transferred in routine manner and being treated at par with his non-disabled colleagues. He joined the Central Excise and Customs Department, Jaipur Zone, Jaipur as a Tax Assistant on 02.01.2012 as a PwD and then transferred to Sri Ganganagar (native place of the Complainant) on 25.05.2012. The Complainant stated that the Respondent transferred him to Jodhpur vide Establishment Order No 09/2021 dated 17.08.2021 and relieved him on 20.08.2021 to join his duty at Jodhpur, which is 600 Kms away from his native place in contravention of the guidelines by the DoPT, New Delhi vide Memorandum Nos. dated 31.03.2014, 10.05.1990 and 13.03.2002.

A

1.2. The Complainant further stated that this transfer order is not in accordance with the transfer policy which was set by themselves with consent of staff associations. Therefore, he made various representations in person and also by letter mentioning his problems. He also stated that he has no family support and facing various challenges to cover frequent distances about 600 Km. to reach new posting station (Jodhpur) from his native place (Sri Ganganagar) but respondents did not give any attention towards it.

1.3 The Complainant also stated that there are adequate officers (18) in the cadre under the jurisdictions of the respondents and he is the only PwD, still he was singled out for transfer to Jodhpur in non-conformity with the above said guidelines of the DoPT. They are of the opinion that in the present situation of the Complainant, he is not fit for considering the exemption because it is available to only such PH candidates who walk with the help of a stick. This understanding of them is sufficient to know the knowledge and the sensitivity of the Department about the candidates under PH category. Hence, his appeal is to restore his rights to serve at native place given by the Government of India by way of the aforesaid guidelines in respect of PH Candidate.

2. SUBMISSIONS OF THE RESPONDENTS:

2.1 Vide e-mail dated 09.01.2023, Shri Mahipal Singh, Additional Commissioner (P&V), CGST and Central Excise, Jodhpur submitted on affidavit a common Reply on behalf of the Respondents. The Respondent stated that the Complainant joined the Department on 02.01.2012 at Jaipur on the post of Tax Assistant. Further, after considering his request for posting at his Home Town i.e., Sri Ganganagar, vide order dated 24.05.2012 from Jaipur, he joined at Sri Ganganagar on 28.05.2012 and remained posted at Sri Ganganagar during the period from 28.05.2012 to 20.08.2021 which is more than 9 years out of his total service tenure of 10 years. Further, due to acute shortage of staff at Hqrs. Level and high work load, he was transferred to Jodhpur. As per Transfer Policy 2018 dated 06.04.2018 (as amended on 15.04.2019) issued by Chief Commissioner, Jaipur Zone. Normally, before



completion of four year tenure, the officer will not be transferred back to his/her previous station/Commissionerate from where he/she was transferred.

3. SUBMISSIONS MADE UNDER REJOINDER:

3.1 The complainant file the rejoinder dated 09.02.2023 against the letter issued by the Court of Chief Commissioner for Persons with Disabilities vide email letter dated 27.01.2023. Besides, reiterating his request for posting to his native place, i.e. Shri Ganganagar, he made further imputations of discrimination such as assigning duties during Covid period, not getting the lift in the office building operational, non-availability of disabled friendly toilet, hostility in the form of recording video to create evidence of the degree of his disability and making joke of his disability, etc.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 15.05.2023. The following were present:

- (i) Shri Ved Prakash : **Complainant**
- (ii) Ms. Shashi Pawar, Addl. Commissioner, O/o the Chief Commissioner
CGST and Central Excise, Jaipur Zone : **Respondent No. 1**
- (ii) Shri Mahipal Singh, Addl. Commissioner,
CGSTCommissionerate, Jodhpur : **Respondent No. 2**

5 Observations /Recommendations:

5.1 The Complainant submitted that he joined the Central Excise and Customs Department, Jaipur Zone, Jaipur as a Tax Assistant on 02.01.2012 as a PwD then transferred to Sri Ganga Nagar (Native place of Complainant) on 25.05.2012. The Complainant stated that the Respondent transferred him to Jodhpur vide their Establishment Order No 09/2021 dated 17.08.2021 and relieved him on 20.08.2021 to join his duty at Jodhpur, which is 600 Kms away from his native place in contravention of the guidelines by the DoPT. He further submitted that he has no family support and facing various challenges to cover frequent distances about 600 Km. to reach new posting station




(Jodhpur) from his native place (Sri Ganganagar) but respondents did not give any attention towards it.

5.2 The Respondent stated that the Complainant joined the Department on 02.01.2012 at Jaipur on the post of Tax Assistant. Further, after considering his request for posting at his Home Town i.e., Sri Ganganagar, vide order dated 24.05.2012 from Jaipur, he joined at Sri Ganganagar on 28.05.2012 and remained posted at Sri Ganganagar during the period from 28.05.2012 to 20.08.2021 which is more than 9 years out of his total service tenure of 10 years. Further, due to acute shortage of staff at Headquarter Level and high work load, he was transferred to Jodhpur. As per Transfer Policy 2018 dated 06.04.2018 issued by Chief Commissioner, Jaipur Zone, "Normally, before completion of four year tenure, the officer will not be transferred back to his/her previous station/Commissionerate from where he/she was transferred".

5.3 During online hearing Respondent informed this Court that family accommodation is available in Jodhpur. Complainant has been allotted the same. Distance between the accommodation allotted and the office is also less. Further it was informed and confirmed by the Respondent that he can drive 2-wheeler. Considering the factual matrix of the case this Court concludes that the Complainant has not been able to prove any violation of guidelines with respect to divyang employees. Further intervention of this Court is not warranted.

5.4 This case is disposed of.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 30.06.2023



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No: 13714/1144/2023

Complainant:

Shri Amit Kumar Sadh

R/o B – 72, Friends Tower, Sector -09

Rohini, Delhi – 110085

E-mail - amitkumarsadh1974@gmail.com

Mobile: 8800331369

Respondent:

The Dy. Commissioner of Police

A-127, Rohini Institutional Area

Sector 5, Rohini, Delhi-110085

E-mail - dcp-rohini-dl@delhipolice.gov.in

Affected Person: The Complainant, a person with 56% locomotor disability

1. Gist of Complaint:

1.1 Shri Amit Kumar Sadh, the Complainant in this case, filed a complaint against the Delhi Police vide e-mail dated 08.11.2022 regarding no action taken by the Police Station of Sector-7, Rohini on his complaints dated 22.08.2022 and 21.10.2022.

1.2 He has inter-alia submitted that he presented all the evidences to the I. O. showing that FIR lodged by his partners Ms. Bhavana Mehrotra and Ms. Komal Bisht is just a counter action to his complaint dated 22.08.2022 filed in PS Rohini Sector 7. He also submitted that the Complaint filed by them is false and was filed by them to pressurise him to withdraw his Complaint because he has been asking them to settle the funds and dissolve the partnership in the Company for the last 5 months as they are not able to work together anymore. He has requested for intervention of this Court in the matter.

2. Submissions made by the Respondent:

2.1 Addl. Dy. Commissioner of Police –I, Rohini District vide letter dated 19.04.2023 submitted that an enquiry into the matter has been conducted through ACP/Rohini. During the course of enquiry, it has come to the light that the Complainant Shri Amit Sadh and alleged persons were jointly running an online business i.e., 'Book Bargain Buy'. A dispute arose amongst the Complainant and alleged persons. One of the alleged person Ms. Bhavana Mehrotra alongwith her brother namely Mr. Arpit Gupta & Ms. Komal Bisht went to the office of Complainant to resolve the dispute with regard to their

business monetary as the Complainant has not been paying the pending dues since long when they jointly started the business. When the alleged persons asked for the details of business accounts etc., the Complainant neither explained nor gave any details of accounts etc. and called the police to avoid the remaining payment. The alleged Ms. Komal Bisht has further stated that the Complainant became aggressive and stated that he would file false complaints against them to harass a physical disabled person. During course of enquiry, both the complaints i.e., dated 22.08.2022 and 02.10.2022 were filed as the matter was found to be of civil nature. Both the parties are partners in business i.e., 'Book Bargain Buy'. Moreover, a civil dispute is sub-judice in the Hon'ble Court in this regard.

2.2 The Respondent also submitted that a case vide FIR No. 755/22 dated 18.10.2022 u/s 354/354-A/506/509 IPC PS Okhla has been found registered against the Complainant. The Complainant neither made any PCR call nor gave any other relevant information to PS North Rohini at the time of incident. There is no evidence i.e., CCTV footage or any witness to prove the allegations.

2.3 The Respondent further submitted that allegations made by the Complainant against police official are false, fabricated, vague, baseless, afterthought with no iota of truth. After considering all the facts and circumstances, no cognizable offence has been made out as the matter is purely civil in nature. The allegations leveled against ASI Ravinder could not be substantiated. The Complainant has filed the present Complaint in order to pressurize police officials. Hence, the present Complaint may be filed.

3. Submission made in Rejoinder:

3.1 Complainant vide rejoinder dated 14.05.2023 inter-alia submitted that it seems like the Police haven't taken any cognizance of his Complaint seriously and are now trying to suppress the matter. At prima facie, it is clearly evident from the vetting of reply submitted by the DCP that it was specially prepared after thorough discussion with the attorney of Ms. Bhavana Mehrotra & Ms. Komal Bisht. Beyond doubt, there are ample oddities in the reply which indicates that IO Ravinder is conceited and is trying to apprehend him because he consistently cautioned him to investigate the Complaint scrupulously.

3.2 He further submitted that IO Shri Ravinder never called him or conducted an on-site investigation (200 mts from PS Rohini Sector-7) where the incidents happened twice and never provided him any follow-up on his complaints despite several visits to PS Rohini, Sector-7. He has intentionally tried to dispose of the criminal complaint referring to a civil dispute and IO Akash (Okhla PS) has contently registered a criminal FIR against him without knowing the facts.

3.3 The Complainant also said that after 6 months, the DCP Rohini has submitted a mock-up report stating that the matter is subjudice in court, which means that he is not aware even after 180 days as to why IO Akash couldn't file a chargesheet in CRN DLSE010102402022 referred to FIR No

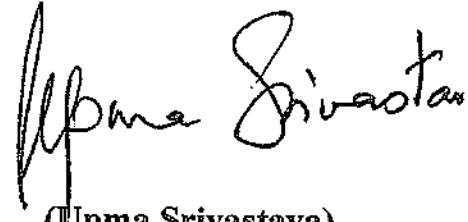
755/2022 lodged in Okhla industrial area PS on 18-10-2022. And he doesn't know what is the status of this FIR till date.

3.4 He has requested to take immediate action by assigning a Mediation Officer who can call him, Ms. Bhavana Mehrotra and Ms. Komal Bisht for a direct confrontation on this matter with all evidence, so that the matter is resolved once and for all. By doing so it will save time involved in the legal course.

4. Observation & Recommendations:

4.1 This Court observes that the issues raised by the Complainant does not amount to discrimination on the ground of his disability. Since the matter has been investigated by the Police and another related matter is also under investigation/inquiry for filing a charge sheet before a Court of appropriate jurisdiction, it is felt that intervention of this Court is not warranted in the matter.

4.2. The case is disposed of accordingly.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 16.06.2023