

Case No: 10586/1021/2018

Dated : 27.09.2019

Dispatch No.

In the matter of :

Shri K.S. Viswanathan,
Senior Branch Manager,
United India Insurance Company Ltd.,
Branch Office : Ottapalam,
Palakkad Division,
Kerala – 679 101

.....Complainant

Versus

United India Insurance Co.Ltd,
(Through Chairman cum Managing Director)
24, Whites Road,
Chennai – 600 014

.....Respondent

Date of Hearings : 28.08.2019 and 25.06.2019

28.08.2019

Present :

1. Shri K.S. Viswanathan, Complainant.
2. Shri R. Govindarajan, Manager and Shri P. Sridhar, Dy. Manager, On behalf of Respondent

ORDER

The above named complainant, a person with 50% locomotor disability has filed a complaint dated 05.11.2018 under the Rights of Persons with Disabilities Act, 2016 against denial of promotion to the post of Scale IV Manager by United India Insurance Company Limited.

2. Shri K.S. Viswanathan, Complainant has submitted that he is presently working as Senior Branch Manager under Scale III in United India Insurance Co. Ltd at Palakkad, Kerala. He had applied for the post of Manger Scale IV as he is eligible for the post. He has fulfilled all the criteria as per the promotion policy of his establishment but his name was found left out in the Selection List. He made representations vide letters dated 29.08.2018 and 15.10.2018 to the Chairman but no fruitful action has been taken in the matter so far. He joined the company as Development Officer Grade II in the year 1988 under PH quota. He is retiring from the service on 31.12.2019. He had cleared the competitive examination related to the promotion in the cadre of Scale IV held on 02.06.2018 by scoring 36.18% as against the required pass percentage of 35% (Exbt.4). Before the commencement of examination first time in his career, he had sent a mail to his

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establishment on 10.05.2018 seeking information whether he is eligible for the grace period (Exbt.5) and no reply was received till the date of examination and accordingly he appeared in the examination as a general candidate. Once the examination started, it was displaced in the monitor that the benefit of scribe and extra hour were eligible for the disabled persons. Therefore, he showed his disability certificate to the concerned invigilator and an assurance was given to him that extra time will be allowed after the normal time but it was not materialized. In the final list of result declared, his name was found missing. He submitted that 21 officers were promoted from his batch during 2014/2015, and two officers were shortlisted from his batch in the contingency list (Exbt.8) and (Exbt.9). In addition to that, 8 officers in the main list were junior to him in the seniority list published by the company (Exbt. 10). He was eligible for promotion under the reservation category. The complainant has requested this Court to include him in the promotion main list in the cadre of Scale IV in the current promotion exercise by giving all the benefits as applicable for the officers promoted to the Cadre Scale IV under the current promotion Exercise 2018-2019.

3. The matter was taken up under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 13.12.2018.

4. The Dy. General Manager vide letter no. UIC:HO:HR:151:2019 dated 18.01.2019 submitted that Shri K.S. Viswanathan is working as Senior Branch Manager at Branch Office Ottapalam, Kerala and had applied for promotion to the cadre of Scale-4 during the promotion exercise 2018-19. He appeared for the pre-promotion examination at Ernakulam Centre on 02.06.2018 and scored 36.68 marks out of 100. As per the Promotion Policy of Officer, promotion to various cadres is considered by the promoting authority based on weightage of various parameters like seniority, written test marks, confidential report and interview performance. After reckoning all parameters, the complainant has secured total marks of 56.826 in List A-Merit channel as against the cut off marks of 68.674. His total marks under List-B (Seniority Channel, i.e. without weightage of Exam marks) is 49.49 and the cut-off marks for List-B is 58.995. As per the Report of the CVRO (Chief Venue Representative Officer) of Ernakulam Exam Centre, Shri K.S. Viswanathan did not request for any extra time/scribe at the centre. TCS Representative of the Venue also reported that no such request was received from the said officer. It is also ascertained that he has attempted 90 questions and scored 36.68 marks finally which was confirmed by the independent examining body. The Respondent submitted that the complainant joined as a Development Officer during July 1988 and got promotion to the cadre of Administration Officer (Scale-1) during March 2000. He was promoted to the cadre of Asst. Manager (Scale-2) in the year 2008 and was elevated to the cadre of Deputy Manager (Scale-III) during 2014.

5. The complainant vide his rejoinder dated 10.03.2019 has submitted that the reasons given in the letter dated 18.01.2019 for not considering him for promotion to the cadre Scale IV-Promotion Exercise 2018-2019 is totally baseless, far from reality and actual truth. Regarding extension of the facility for extra time / scribe at the exam centre can only be considered as an attempt to cover up the lapses that had happened on their part in following such guidelines in the light of the provisions contained and various directions given by the Ministry of Social Justice. He submitted that in the letter it is stated that he has been promoted to scale I cadre in March 2000 Scale II cadre during 2008 and Scale III cadre during 2014. He submitted that it would be appropriate to mention that these promotions are given after undergoing all normal merit channel procedures and considering the weightage of various parameters that was prevalent during each promotional exercise and no weightage on disability aspect was considered or given during any of these promotions. Had the company followed the guidelines given by the ministry and various courts with respect to promotion to Group A, he would have got his cadre promotions much earlier and would have been placed in a better position. The long gap between each promotion (8years in scale I, 6 years in Scale II & 5 years in Scale III, itself is self speaking. He submitted that under the above circumstances, he is of the opinion that fair justice has not been done in giving promotion to him.

6. After considering Respondent's reply dated 18.01.2019 and complainant's rejoinders dated 30.01.2019 and 10.03.2019, a personal hearing has been scheduled on 25.06.2019.

7. The hearing scheduled on 25.06.2019 could not be held due to unavoidable circumstances and hence the next date of hearing was fixed for 28.08.2019 at 11:00 a.m.

8. During the hearing the Complainant reiterated that he is a person with 50% locomotor disability and hence is entitled to all the relaxations and reservations available to a person with disability. He is presently working as Senior Branch Manager under Scale III in United India Insurance Co. Ltd at Palakkad, Kerala. He is eligible for consideration for appointment as Scale IV officer by promotion. The minimum qualifying mark of 35 is necessary for consideration for promotion. He attended the selection process. He obtained 36.68 marks out of hundred and is thus eligible for consideration. In the written examination he was not given any compensatory time despite his request. By virtue of refusal to grant compensatory time, he was not able to perform to his maximum ability. He further submitted that during the said promotional exercise 120 candidates were promoted as against the declared vacancies of 114 and 8 candidates who were promoted in the promotion exercise 2018-2019 were juniors to him in the seniority list published by

the HRM Deptt. as on 01.04.2018. The representation dated 10.05.2019 made by him in this regard was not considered properly by his establishment which is a clear violation of guidelines for conducting the written examination for the person with disability. His establishment has not made any reservation for appointment by promotion to the category of Scale IV officials till date. The complainant has requested to consider him for promotion to Scale IV by extending all benefits with retrospective effect.

9. During the hearing the Respondent reiterated that during the promotion exercise 2018-19, the Complainant appeared for the pre-promotion examination for promotion to the cadre of Scale-4 at Ernakulam Centre on 02.06.2018. He scored 36.68 marks out of 100. He secured total marks of 56.826 in List A-Merit channel as against the cut off marks of 68.674. His total marks under List-B (Seniority Channel, i.e. without weightage of Exam marks) is 49.49 and the cut-off marks for List-B is 58.995. As per the Report of the Chief Venue Representative Officer of Ernakulam Exam Centre, Shri K.S. Viswanathan did not request for any extra time/scribe at the centre. The Respondent submitted that the complainant joined as a Development Officer during July 1988. He got promotion to the cadre of Administration Officer (Scale-1) during March 2000. He was then promoted to the cadre of Asst. Manager (Scale-2) in the year 2008 and to the cadre of Deputy Manager (Scale-III) during 2014. He submitted that the above facts shows that promotions were not denied to the complainant on the ground of his disability. He further submitted that no reservation is applicable for promotion within Class-I category to various cadres (among Group – A).

10. The reply of the respondent was found satisfactory.

11. The case is accordingly disposed of.

(Shakuntala Doley Gamlin)
Chief Commissioner
for Persons with Disabilities

Case No: 10720/1022/2018

Dated : 27.09.2019
Dispatch No.

In the matter of :

Shri Rajesh Kumar,
217-A/1, Pailan Park,
Housing Project,
P.S. : Bishnupur,
P.O. : Pailan Hat,
Dist. : 24 Paragnas (South),
Kolkata – 700 104

.....Complainant

Versus

Employees" State Insurance Corporation,
(Through Director General)
Panchdeep Bhawan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi – 110 002

.....Respondent

Dates of Hearing : 28.08.2019 and 19.06.2019

28.08.2019

Present :

1. Shri Rajesh Kumar, Complainant.
2. Shri Manish Gupta, Deputy Director, On behalf of Respondent.

19.06.2019

Present :

1. Shri Rajesh Kumar, Complainant.
2. Shri Manish Gupta, Deputy Director, On behalf of Respondent.

ORDER

The above named complainant, has filed a complaint dated 18.12.2018 under the Rights of Persons with Disabilities Act, 2016 regarding exemption from routine / rotational transfer by ESIC Hospital, Kolkata being a caregiver to his daughter Ms. Twinkle Kumari, a child with 50% Intellectual Disability.

2. Shri Rajesh Kumar, the complainant and father of Ms. Twinkle Kumari, a child with 50% Intellectual Disability submitted that he is working as PS to MS in ESIC Hospital, ODC EZ, JOKA at

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Kolkata. He has already requested his head quarters, New Delhi for exemption from rotational transfer but no action has been taken yet. Being a caregiver to his daughter, he requested his establishment for his retention at Kolkata to take of medical needs and rehabilitation of his daughter.

3. The matter was taken up under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 10.01.2019 and reminders dated 12.02.2019 and 11.03.2019;

4. The Deputy Director, ESIC vide letter no. A-12/16/8/10/E.I dated 01.03.2019 has submitted that the complainant has been promoted from PS to PPS on 27.12.2018 whereby a total of 14 PS including the complainant were promoted to the post of Principal Private Secretary (PPS) on regular basis and posted as per availability of vacancy / sanctioned strength in the cadre of PPS at various offices of ESIC. Two PS have been promoted from West Bengal to the post of PPS. Shri Vijay Kumar, PS has been posted at MC & PGIMSR, Joka being senior to Shri Rajesh Kumar. Accordingly Shri Rajesh Kumar has been posted at Headquarter, New Delhi on his promotion to the post of PPS which is the nearest place to Kolkata as the posting on promotion need to be considered where post of PPS was available. Hence, it is not a case of routine transfer/rotational transfer but a transfer on promotion due to non availability of vacancy at the current station. He submitted that the Private Secretaries promoted were retained at the same station to the extent of sanctioned post in the respective locations and wherever the post of Principal Private Secretary do not exist the PS's have been promoted and posted to the nearest unit where the post of PPS are available.

5. The complainant vide his rejoinder dated 10.04.2019 has submitted that the health concern of his child is being neglected by his department. In 2017, he was promoted as ad-hoc PPS. One post of PPS at ESI-PGIMSR Joka was vacant but at that time it was not given to him on ad-hoc basis although he was posted in the same building (ESICH Joka) rather the same vacant post was filled with other PS who was posted at ESIC SSMC Office, Kolkata on the reason that he is senior to him. ESIC Hqrs did not respond on his numerous representations. He was forced to forego the ad-hoc promotion of PPS. One PPS has been posted at ESIC Hospital Jaipur where no sanctioned post of PPS is available. He submitted that his child has been suffering from Epilepsy, Mitochondrial Disorder and MR for years and the same has been informed to the Hqrs. Office from time to time. She has been under continuous medical observation. He submitted that it is not true that ESIC Hqrs office has considered his transfer to New Delhi as routine or rotational one and but rejected his representation for posting at Kolkata as PPS. He submitted that the health care and well being of his child is of utmost importance for him.

6. After considering Respondent's reply dated 01.03.2019 and complainant's rejoinder dated 10.04.2019, a personal hearing has been scheduled on 19.06.2019 vide letter dated 28.05.2019.

7. The hearing scheduled on 19.06.2019 has been cancelled due to unavoidable circumstances and a new date of hearing has been fixed on 28.08.2019 at 11:00 Hrs. vide letter dated 16.07.2019.

8. During the hearing, the complainant reiterated that his daughter has been suffering from Epilepsy, Mitochondrial Disorder and Intellectual Disability for years. She has been under continuous medical observation. He submitted that the health care and well being of his child is of utmost importance for him. He submitted that it is highly objectionable that ESIC Hqrs. Office's contention that his transfer to New Delhi is neither a routine nor a rotational transfer. ESIC rejected his representation for his retention at Kolkata as PPS.

9. During the hearing, the Respondent submitted that two PS have been promoted from West Bengal to the post of PPS. Shri Vijay Kumar, PS, being senior to the complainant, has been posted at MC & PGIMSR, Joka and the Shri Rajesh Kumar has been posted at Headquarter, New Delhi on his promotion to the post of PPS. He submitted that the posting on promotion needs to be considered where post of PPS was available and the complainant was posted at Delhi, being the nearest place to Kolkata. The Respondent submitted that it is not a case of routine transfer/rotational transfer but a transfer on promotion. He submitted that the Private Secretaries promoted were retained at the same station to the extent of sanctioned post in the respective locations and wherever the post of Principal Private Secretary do not exist the PS's have been promoted and posted to the nearest unit where the post of PPS are available.

10. On hearing both the complainant and the Respondent, the Court observed that complainant being a care giver of child with disability, has to secure the development of his daughter with intellectual disability and associated condition. However, department has its own limitation in terms of transfer based on promotion. Eventhough there is no violation on the part of respondent, Court recommends to revisit the transfer order of the complainant keeping in view the therapeutic and medical need of the child, and explore the possibility to adjust Shri Rajesh Kumar at the same place.

11. The case is disposed of.

(Shakuntala Doley Gamlin)
Chief Commissioner
for Persons with Disabilities

Case No: 9624/1023/2018

Dated : 27.09.2019
Dispatch No.

In the matter of :

Shri Anil Kumar Sharma,
61, Anekand Apartment,
Vasundara Enclave,
Delhi – 110 096

.....Complainant

Versus

The Legal Department,
Optum Global Solutions (India) Private Limited,
12th Floor, Tower 'B',
Unitech Cyber Park,
Sector 39,
Gurugram,
Haryana – 122 001

.....Respondent

Dates of Hearing : 19.06.2019 and 28.08.2019

28.08.2019

1. Shri Anil Kumar Sharma, Complainant.
2. Shri Gaurav Sapra, Advocate for Respondent.

19.06.2019

Present :

1. Shri Anil Kumar Sharma, Complainant.
2. Shri Gaurav Sapra, Advocate for Respondent.

ORDER

The above named complainant, a person with 40% locomotor disability has filed a complaint dated 02.03.2018 under the Rights of Persons with Disabilities Act, 2016 against harassment and misbehaviour by the management and reinstatement in service.

2. Shri Anil Kumar Sharma, Complainant has submitted that he has been harassed and misbehaved at the workplace. He was compelled by the management to resign and he resigned under pressure.

3. The matter was taken up under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 10.05.2018 and thereafter reminders dated 31.07.2018, 18.09.2018 and 08.11.2018.

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4. The Respondent vide letter dated 13.12.2018 has submitted that Shri Anil Kumar Sharma joined the employment of their Company on 11.01.2016 as a regular candidate. Neither was he appointed under any 'Disability/Differently abled' quota nor did his job description posed any challenge for any disability. The Complainant did not inform the Company of additional disability during his tenure nor did he raised any issue that he was not able to perform his job due to his disability. There was no nexus between his disability and employment. He submitted that the complainant was a poor performer and he was unable to meet the required standards of efficiency. He therefore, opted to resign from service. It is incorrect to state that the complainant was coerced or forced to tender his resignation. Even after tendering his resignation which was accepted by the management as per process of law and policy, the complainant did not at any point of time raised any grievance to the management objecting or protesting about the same. He did not at any point of time put it on record that he was forced to resign. He raised the issue of the alleged forcible resignation for the first time on 15.01.2018 stating that he had resigned under duress.

5. The Complainant vide his rejoinder dated 13.02.2019 has submitted that the following officials have harassed him.

- (i). Shri Rakha, HR
- (ii). Shrance Sinha, Jr. HR
- (iii). Shri Joseph,
- (iv). Shri Uday Kumar, DM
- (v). Shri Santosh and
- (vi). Shri Rahu Kumar.

6. After considering Respondent's reply dated 13.12.2018 and Complainant's rejoinder dated 13.02.2019 a personal hearing was scheduled on 19.06.2019 which could not be held due to unavoidable circumstances.

7. The next date of hearing was scheduled on 28.08.2019.

8. During the hearing the complainant reiterated that he has been harassed at his workplace and he was made to resign under pressure by the management of the Company. He has requested for his reinstatement in the Company.

9. During the hearing the Learned Counsel for the Respondent reiterated that the Complainant was not appointed through any Differently abled' quota. He never raised any issue about non ability to perform his job due to his disability. He submitted that the complainant was a poor performer and he was unable to meet the required standards of efficiency. He therefore,

resigned from service. It is incorrect to state that the complainant was forced to tender his resignation. Even after tendering his resignation, the complainant did not at any point of time raised any objection/protest to the management about the same. He did not at any point of time put it on record that he was forced to resign.

10. After hearing the Complainant and Respondent, the Court directed the Respondent to consider reinstating the Complainant in the Company under the same post. The compliance report to be submitted to this Court within 60 days from the date of issuance of this Order.

11. The case is disposed of.

(Shakuntala Doley Gamlin)
Chief Commissioner
for Persons with Disabilities

Case No: 10063/1021/2018

Dated : 25.09.2019
Dispatch No.

In the matter of :

Shri Awani Kumar,
Quarter No. 1955,
Laxmibai Nagar,
New Delhi – 110 023

.....Complainant

Versus

Ministry of Health & Family Welfare,
(Through Director General)
Room No.244 A,
Nirman Bhawan,
Maulana Azad Road,
New Delhi – 110 001

.....Respondent

Date of Hearing : 28.08.2019 and 25.06.2019

28.08.2019

Present :

1. Shri Awani Kumar, Complainant.
2. Shri B.K. Pandey, Advocate for Respondent.

25.06.2019

Present :

1. Shri Awani Kumar, Complainant.
2. Shri B.K. Pandey, Advocate for Respondent.

ORDER

The above named complainant, a person with 80% locomotor disability has filed a complaint dated 13.07.2018 under the Rights of Persons with Disabilities Act, 2016 regarding his promotion to the post of U.D.C. on the basis of his disability with retrospective effect.

2. Shri Awani Kumar, Complainant has submitted that he is working in CGHS (HQ) since 20.10.1998. During the service he met with an accident on 02.04.2012 and lost his right leg. He put an Artificial Limb in his right leg. He submitted that he may be given promotion to the post of U.D.C. He made representation to his office in this regard vide letter dated 03.02.2014 followed by a eight reminders, but till date not received any communication from his office. He further submitted that clerical cadre restructuring has occurred under CGHS Delhi and on account of clerical cadre restructuring, he has been promoted to the post of UDC w.e.f. 22.01.2018 under general category but did not get the privilege under pwd category with retrospective effect.

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3. The matter was taken up under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 10.08.2018.

4. The Additional Director (HQ), CGHS vide letter no. 9-5/2018/Estt.NG/CGHS-HQ/5643-44 dated 16.11.2018 has submitted that on 03.07.2012 the complainant intimated the Additional Director (HQ), CGHS, Delhi about his disability that occurred during the service with a valid disability certificate dated 25.06.2012 for sanctioning him Transport Allowance at double the normal rate, which was later on sanctioned to him vide order dated 26.07.2012. On 02.02.2015, he made a representation to the Additional Director (HQ), CGHS, Delhi for his promotion to the post of UDC under persons with disability (pwd) quota. The representations and reminders of the complainant were put up on 20.10.2015 for promotion to the post of UDC under pwd category. A meeting of DPC was held 19.05.2016 for considering the promotion of the complainant to the post of UDC, but the DPC could not recommend his promotion and desired that the documents/clarification regarding reservation quota of pwds applicable in promotion cases to be provided along with reservation roster for pwds. Then his case was referred to the Director, CGHS on 01.06.2016. The meeting of DPC was again held several times but the complainant was not considered / recommended for promotion under pwd category. In order to implement the instructions of DoP&T on reservation of pwds in promotion, a committee consisting of four members was constituted by the Additional Director (HQ) to identify the promotion posts for reservation under pwds. He submitted that their office is not maintaining reservation roster of promotion for pwds. However, he submitted that they have taken initiative to prepare reservation roster for pwds in promotion for the vacancy year 2017-18, 2018 & 2019.

5. The complainant vide his rejoinder dated 19.12.2018 has submitted that no action has been taken regarding his promotion to the post of UDC under pwd quota.

6. After considering Respondent's reply dated 16.11.2018 and complainant's rejoinder dated 19.12.2018, a personal hearing was scheduled on 25.06.2019.

7. The hearing scheduled on 25.06.2019 could not be held due to unavoidable circumstances. The next date of hearing has been fixed on 28.08.2019 at 11:00 Hrs.

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8. During the hearing the complainant reiterated that he met with an accident on 02.04.2012 during the service and lost his right leg. He got his Disability Certificate on 25.06.2012. He made representations to CGHS for his promotion to the post of UDC w.e.f, i.e. 25.06.2012. His contention is that he should have been given promotion to the post of UDC w.e.f. 25.06.2012 under pwd category instead of 22.01.2018.

9. The Respondent reiterated that the complainant would have been given promotion with benefits in pwd category, if sanctioned strength of UDC post would have not been revised from 62 to 158 on account of cadre restructuring of Administrative staff followed by Ministry of Health and Family Welfare Order dated 23.11.2017, but he got promoted as UDC w.e.f. 22.01.2018 on his own merit due to huge increase in vacant posts of UDC. The Respondent submitted that action has been initiated to prepare Reservation Roster for pwds in promotion in the prescribed format for the vacancy year 2017-18, 2018 & 2019 since the promotion posts for pwds were identified in the meeting held on 18.04.2017.

10. After hearing both the complainant and respondent, the Court observed that the complainant has already received his promotion to the post of U.D.C. w.e.f. 22.01.2018.

11. The case is disposed of without any direction.

(Shakuntala Doley Gamlin)
Chief Commissioner
for Persons with Disabilities

Case No: 9591/1023/2018

Dated : 27.09.2019
Dispatch No.

In the matter of :

Md. Ashfaq Nagoor Meeran Rawther,
Roshan Chawl,
Near Ajmeri Masjid,
Gaondevi Dongri,
Dadabhai Cross Road,
Andheri (W),
Mumbai - 400 058

.....Complainant

Versus

State Bank of India,
(Through the Chairman),
State Bank Bhavan,
Madame Cama Road,
Nariman Point,
Mumbai - 400 021

.....Respondent

Date of Hearing : 09.08.2019

Present :

1. Md. Ashfaq Nagoor Meeran Rawther along with his father Shri Nagoor Meeran Rawther.
2. Shri Rajesh Kumar, GM-II and Shri Hemant Kumar, Deputy Manager (Law), on behalf of Respondent.

Date of Hearing : 26.02.2019

Present :

3. Md. Ashfaq Nagoor Meeran Rawther along with his Advocate Shri F.N. Mahimkar and Shri Shyam Uchel.
4. Shri Hemant, Deputy Manager (Law) and Shri Ved Prakash, DGM on behalf of Respondent.

Dates of Hearing : 21.01.2019

Present :

5. Md. Ashfaq Nagoor Meeran Rawther along with his Advocate Shri F.N. Mahimkar.
6. Shri Deepak Kumar Lalla, General Manager, SBI and Shri Hemant, Deputy Manager (Law) on behalf of Respondent.

ORDER

The above named complainant, a person with 100% visual impairment has filed a complaint dated 23.03.2018 under the Rights of Persons with Disabilities Act, 2016 against harassment and termination of his services by State Bank of India.

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2. Md. Ashfaq Nagoor Meeran Rawther, the complainant vide his complaint dated 23.03.2018 has submitted that he was selected in State Bank of Hyderabad under VH category. Since his initial days with the Bank, he had been constantly harassed by the Branch Manager, Shri Lalita of the Andheri Branch and other Co-employees. He was not given access to the attendance master. He was deputed for a training programme for visually impaired employees at Chennai and he attended the same from 21.10.2013 to 26.10.2013. The complainant thereafter reported for work after arrival in Mumbai from Chennai in the last week of October 2013. The Branch did not allow him to report for duty even though the complainant requested and kept waited for 5-6 hours in the Andheri Branch. Due to the above attitude of the Branch Manager, he went into depression. The Complainant along with his father tried to bring this incident to the AGM of SBI Dadar Branch, but the AGM did not entertain them. The Complainant was admitted to Hannah Joseph Hospital in Madurai from 17.10.2014 to 06.11.2014 for treatment. The Complainant during Dec. 2017 approached the Bank through his Advocate Shri Faisal Mahimakar for his employment and relief under RPD Act. He submitted that he had voluntarily vacated his employment w.e.f. 21.06.2013. The Complainant has requested to reinstate him with all consequential benefits.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 04.05.2018;

4. The Dy. General Manager & Circle Development Officer, State Bank of India, Local Head Office Mumbai vide letter no. HR/IR/20/1166 dated 22.10.2019 submitted that Shri Muhammad Ashfaq Nagoormeeran Rawther, was appointed in their erstwhile State Bank of Hyderabad (e-SBH) and posted at their Andheri Branch, Mumbai on 20.05.2013. After joining the Bank, he applied for leave vide his letter dated 22.06.2013 and requested the Bank that he has enrolled for 5th, 6th Semesters with St. Xavier's College for TYBA Lectures which was scheduled to commence from 24.06.2013 to 27.03.2014 for completion of graduation. In the said letter, he requested for grant in concession in time and / or special leave for examination. The complainant remained absent on 21st June, 24th June and 25th June 2013, which was conveyed by the Branch Manager to the Asst. General Manager, Region I, Zonal Office Mumbai. The complainant was conveyed that there is no provision for sanction of special leave as the employee has put in only one month of his service in the Bank. The complainant was advised to join the branch immediately failing which appropriate action will be initiated. The complainant inspite of receiving of notice, did not attend the branch for duties. The Bank then served him a second notice on 30.11.2013 advising the complainant to report for duty within 30 days failing which it will be deemed that he has voluntarily

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vacated his employment on the expiry of the period as per Clause 33 of the 8th Bipartite Settlement dated 02.06.2005. In spite of serving him two notices, the complainant did not join his duties, hence the appointing authority passed an order on 14.02.2014, treating the complainant to deemed to have voluntarily vacated his employment from 21.06.2013 as per Clause 33 of 8th Bipartite Settlement. The Bank had not issued any letter to the complainant deputing him to attend the training at Chennai from 21.10.2013 to 26.10.2013. The complainant made a representation dated 26.03.2016 after completing his degree examination praying for reinstatement in Bank's service.

5. The complainant vide his rejoinder dated 12.11.2018 has submitted that he was ill treated and removed from service without following due process of law. Because of ill treatment and removal, the complainant went into depression and his family was required to take treatment at Hannah Joseph Hospital, Madurai and spent Rs.3.50 Lakhs.

6. After considering complainant's letter dated 12.11.2018 and Respondent's reply dated 22.10.2018, a personal hearing was scheduled on 21.01.2019.

7. During the hearing the Complainant submitted that he was selected in State Bank of Hyderabad under VH category. He has been constantly harassed by the Branch Manager of the Andheri Branch and other Co-employees. After coming back from Chennai during the last week of October 2013, the Complainant was not allowed to join the Branch by the Branch Head even though he was kept waited for 4-6 hours in the Andheri Branch. The Complainant along with his father tried to bring this incident to the AGM of SBI Dadar Branch but the AGM did not entertain. The Complainant was admitted to Hannah Joseph Hospital in Madurai from 17.10.2014 to 06.11.2014 for treatment. The Complainant during December 2017 approached the Bank through his Advocate Shri Faisal Mahimakar for his employment and relief under Rights of Persons with Disabilities Act, 2016. He has requested to his reinstatement with all consequential benefits.

8. The representatives of Respondent submitted that the complainant, a visually impaired person was appointed in their erstwhile State Bank of Hyderabad (e-SBH) and posted at their Andheri Branch, Mumbai on 20.05.2013. After joining the Bank, he applied for leave vide his letter dated 22.06.2013 and requested the Bank that he was enrolled for 5th, 6th Semesters with St. Xavier's College for TYBA Lecturers which was scheduled to commence from 24.06.2013 to 27.03.2014 for completion of graduation. In the said letter the complainant requested for grant of concession in time and / or special leave for examination. The complainant remained absent on

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21st June, 24th June and 25th June 2013. The complainant was issued notices to attend the branch for duty within 30 days from the date of notice failing which it will be deemed that he has voluntarily vacated his employment on the expiry of the period as per Clause 33 of the 8th Bipartite Settlement dated 02.06.2005. The complainant inspite of serving notices did not join duties and therefore, the appointing authority passed an order on 14.02.2014 treating the complainant deemed to have voluntarily vacated his employment from 21.06.2013 as per clause 33 of 8th Bipartite settlement.

9. A copy of the reply dated 22.10.2018 received from the Respondent Bank is enclosed for submission of comments by the complainant as he did not receive the copy of the same.

10. The next date of hearing was scheduled on 26.02.2019 at 4 p.m.

11. During the hearing the Complainant submitted his written reply to Respondent Bank's letter dated 22.10.2018 vide his letter dated 12.02.2019. The Learned Counsel for the complainant submitted that the complainant was recruited in service of State Bank of Hyderabad (now merged with State Bank of India) as a visually impaired person. He was ill treated and removed from services without following due process of law. Because of ill treatment and removal of the complainant, he went into depression and his family spent Rs.3.50 lakh for his treatment at Hannah Joseph Hospital, Madurai. The Learned Counsel for the complainant requested for reinstatement of his client with all the benefits with retrospective effect.

12. During the hearing, the representatives of Respondent reiterated that the complainant was appointed as Clerk in State Bank of Hyderabad (e-SBH) and posted at the Andheri Branch, Mumbai on 20.05.2013. After joining the bank, the complainant applied for leave vide his letter dated 22.06.2013 requested the Bank that he has enrolled for 5th, 6th semesters with St. Xavier's College which was scheduled to commence from 24.06.2013 to 27.03.2014 for completion of graduation. In the said letter he requested for grant in concession in time and / or special leave for examination. The complainant remained absent on 21st June, 24th June and 25th June 2013. The controlling authority vide their letter dated 28.09.2013 advised the branch that there is no provision for sanction of special leave, as the employee has put in only one-month service in the Bank and advised to inform the employee. The Bank advised the complainant to join the branch immediately failing which appropriate action will be initiated. But the complainant did not attend the branch for duties. Hence the branch served him a second notice on 30.11.2013 advising him

....5/-

to join for duty within 30 days from the date of notice failing which it will be deemed that he has voluntarily vacated his employment. The complainant inspite of serving both the notices did not join duties, hence the appointing authority passed an order on 14.02.2014 treating the complainant deemed to have voluntarily vacated his employment from 21.06.2013 as per clause 33 of 8th Bipartite Settlement.

13. The court after hearing both the complainant and the Respondent, the complainant was advised to submit the following documents to the Court.

1. Copy of Appointment letter.
2. Copy of leave application submitted by the complainant to the Bank.
3. If leave was granted by the Bank then a copy of sanctioned letter supporting the same.
4. Whatever legal course taken by the complainant till 2018.

14. The complainant vide his letter dated 03.04.2019 has submitted a copy of his appointment letter no. ZO(M)/PAD/184 dated 20.05.2013 and copy of his leave application dated 22.06.2013 submitted by him to the Bank.

15. After considering complainant's letter dated 03.04.2019, a personal hearing was scheduled on 09.08.2019.

16. During the hearing the complainant reiterated that he has been removed from service wrongfully by the management and hence has requested to reinstate him in service.

17. The representatives of Respondent reiterated that the complainant remained absent from duty on 21st June, 24th June and 25th June 2013. They submitted that there is no provision for sanction of special leave to the complainant as he has the put in only one-month service in the Bank. The complainant did not join the branch inspite of sending him two letters, hence the appointing authority passed an order on 14.02.2014 treating the complainant deemed to have voluntarily vacated his employment from 21.06.2013 as per clause 33 of 8th Bipartite Settlement.

18. After hearing both the parties and perusal of supporting documents submitted by the parties, the Court directed the Respondent to reinstate the complainant. The Respondent may give him an extension of two years of probation period. The Respondent is required to submit the compliance report within 60 days of issuance of this Order.

19. The case is accordingly disposed of.

(Shakuntala Doley Gamlin)
Chief Commissioner
for Persons with Disabilities

Case No: 10982/1022/2019

Dated : 27.09.2019
Dispatch No.

In the matter of :

Shri Neeraj Kumar,
21, Nirman Vihar-2,
Sector - 2,
Vidyadhar Nagar,
Jaipur - 302 039

.....Complainant

Versus

Survey of India,
(Thru Surveyor General of India),
Office of the Surveyor General of India,
37, Hathibarka Estate,
Dehradun,
Uttarakhand - 248 001

.....Respondent

Date of Hearing : 21.08.2019

Present :

1. Shri Neeraj Kumar, Complainant.
2. Col Amardeep Singh, Dy. Surveyor General and Shri Nagendra Singh, Assistant.

ORDER

The above named complainant, has filed a complaint dated 21.02.2019 under the Rights of Persons with Disabilities Act, 2016 against his transfer to Kolkata and to retain him at Jaipur to take care of his 13 year old daughter Kum. Somya Srivastava, a child suffering from 40% mental retardation.

2. Shri Neeraj Kumar has submitted that his daughter Ms. Somya Srivastava, aged 13 years old is suffering from 40% mental illness. She is studying in Class VII at MGP School in Jaipur under the Government's Scheme of 'Right to Education Act-2009' for Disabled Students. She is presently under treatment at SDMH Hospital and is undergoing rehabilitative therapies at SDMH and SMS Hospital, Jaipur. He submitted that Office of the Surveyor General had sought three choices from all those officers who had completed three years or more at their present place of posting and his name has emerged in the list. He made a representation to his establishment to

....2/-

exempt him from subject to routine transfer, but his application has been rejected and his transfer w.e.f. 15.04.2019 to Kolkata has been ordered. He submitted that vacancies are available in Jaipur Office of Survey of India and proper atmosphere and circumstances have been prepared by him for his daughter.

3. The matter has been taken up under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 08.03.2019.

4. The Deputy Surveyor General vide letter no. C-1909/701 (Director) dated 19.03.2019 has submitted that the orders of transfer/posting in respect of Shri Neeraj Kumar, Deputy Surveyor General from Western Zone, Survey of India, Jaipur to Eastern Zone, Survey of India, Kolkata is done on the recommendation of the Placement Committee. The order of transfer in respect of the complainant has been issued to a metro station, i.e. Kolkata keeping in view the medical problem of his daughter as better medical facilities and rehabilitation centres for differently abled children are available there. In the Disability Certificate issued by the Medical & Health Deptt., Govt. of Rajasthan, it is nowhere mentioned that his daughter is suffering from Cerebral Palsy. Moreover, she is studying in a normal School and not in a Special School meant for children suffering from mental illness. Therefore, there will be no problem for the complainant in treatment and rehabilitation of his daughter if he is posted in Kolkata. The Respondent submitted that Shri Neeraj Kumar, Group 'A' Officer is posted in Jaipur since 14.08.2007. As per transfer policy, the tenure of a Group 'A' Officer at a particular station is 3 years which can be extended upto 5 years. In the case of the complainant, he was posted in Jaipur for more than 11 years. During the year 2014, the complainant was transferred to Lucknow station but on the request of the complainant that he may be retained at Lucknow for 2 years to take care of his daughter suffering from Cerebral Palsy, the Respondent took a considerate view, and allowed him to be retained in Jaipur. In the year 2016, the complainant was transferred to Hyderabad. He had requested to change his posting to Lucknow instead of Hyderabad and requested for 4 months of additional time to join his new place of posting. The Survey of India took a considerate view of this request, and the complainant was retained at Jaipur even at the time of his promotion to the post of Director/Deputy Surveyor General.

5. The complainant vide his rejoinder dated 08.04.2019 has submitted that his daughter is studying in a normal school under RTE and is getting promoted to the next class only under the provisions catered in the RTE. In the last class she scored only 23.68% but she has been

promoted to the next class, i.e. Class-VIII under RTE. He submitted that if he has to relocate her, no normal school will grant her admission with this percentage of marks as RTE provisions would not be applicable on transfer to other city. Apart from schooling, his daughter is undertaking various rehabilitative therapies at Jaipur since past many years and have shown remarkable improvement in her behavior. If the therapies are discontinued, it would be very difficult to start them afresh at new location. He submitted that speech therapist in Kolkata who is also expert in giving therapy of Hindi speech and also approved by CGHS is also a mammoth task. Kolkata is a region with different regional language and it would be very difficult for his daughter to understand any language other than Hindi.

6. After considering Respondent's reply dated 19.03.2019 and complainant's rejoinder dated 08.04.2019, a personal hearing in the matter has been scheduled on 21.08.2019.

7. During the hearing the complainant reiterated that his daughter Ms. Somya Srivastava is 13 years old and is suffering from 40% mental illness. Presently she is studying in Class VII at MGP School in Jaipur under the government's scheme of 'Right to Education Act-2009' for Disabled Students. His daughter is under treatment at SDMH Hospital and is also undergoing rehabilitative therapies at SDMH and SMS Hospital, Jaipur. He made a representation to his establishment to exempt him from subject of routine transfer, but his application has been rejected and he has been transferred to Kolkata on 15.04.2019. He further submitted that there are vacancies in Jaipur Office of Survey of India. He has requested this Court to give him enough time before transferring him to other cities so that his daughter completes her VII standard.

8. During the hearing the representatives of Respondent submitted that as per the information furnished by the complainant, his daughter is studying in a normal school in Jaipur and she could be promoted to VIIIth class as she just scored 23.86% in VIIIth standard due to provision of RTE in the present school. It appears that RTE provisions are applicable in all normal schools all over India irrespective of stations. Thus, it seems that she may get admission in any normal school under the provisions of RTE similarly at Chandigarh where the complainant is now been posted. The rehabilitation and speech therapies are available at Chandigarh where the complainant is now posted. The officer has now been transferred to same linguistic zone at Chandigarh on the basis of functional requirement of the Department. He further submitted that the complainant has filed an OA No.291/00207/2019 in April 2019 in the Hon'ble CAT, Jaipur Bench, Jaipur. The Hon'ble High Court disposed of the OA and passed an Order dated 11.04.2019. The complainant again filed OA No.291/00313/2019 in June 2019 in the Hon'ble CAT, Jaipur Bench, Jaipur aggrieved with the change of posting from Kolkata to Chandigarh.

9. After hearing the respondent and complainant and keeping in view the disability of the complainant's daughter, Kum. Somya Srivastava, the Court directed the Respondent to consider the request of the complainant and accommodate the complainant at Jaipur for atleast a year so that his daughter completes her VIIIth standard and the complainant can also take care of the medical/rehabilitation of his daughter.

10. The case is disposed of.

(Shakuntala Doley Gamlin)
Chief Commissioner
for Persons with Disabilities

Cash No. 9900/1102/2018

Dated: .09.2019

In the matter of:

Shri K. Palaniyappan
President
Society for Empowerment of Vision Impaired
10, Venkatachalam Street
Peelamedu Pudur, Coimbatore-641004
Kaypee1953@gmail.com

Complainant

Versus

Department of Financial Services
(through: the Director)
Banking Division
M/o Finance
Jeevan Deep Building
Sansad Marg, New Delhi

Respondent

Date of Hearing : 07/08/2019

Present: Sh. K. Palaniyappan - Complainant
Mrs. Anindita Sinha Ray, Director, DFS – on behalf of Respondent
Sh. Shailesh Kumar, AGM, RBI – on behalf of Respondent
Sh. Devesh Kumar, DGM, SBI – on behalf of Respondent
Sh. Rajesh Joshi, CM, PNB – on behalf of Respondent
Sh. Niraj Sharma, BoB- on behalf of Respondent

ORDER

The above named complainant submitted a representation dated 28.05.2018 in this Court regarding alteration in talking ATMs for better and universal use for the persons with visual impairment under the Rights of Persons with Disabilities Act, 2016.

2. The matter was taken up with the Respondent vide letter dated 16.08.2018 under Section 75 of the RPwD Act, 2016.

3. Director(FI), Ministry of Finance, Department of Financial Services vide letter No. 9/29/2018-FI(C-384889) dated 05.10.2018 has informed that Department of Banking Regulation of RBI has issued regulatory instructions to banks vide circular no. DBOD.No. Leg.BC.113/09.07.005/2013-14 dated 21.05.2014 on 'Need for bank branches/ATMs to be made accessible to persons with disabilities'. RBI has advised banks to take necessary steps to provide all existing ATMs/future ATMs with ramps so that wheel chair users/person with disabilities can easily access them. Further all new ATMs installed from July 1, 2014 as talking ATMs with Braille keypads. Banks also have been advised to lay down a road map for converting all existing ATMs as talking ATMs with Braille keypads and the same to be reviewed from time to time by the Customer Service Committee of the Board. In addition to the above, magnifying glasses should also be provided in all bank branches for the use of persons with low vision, wherever they require for carrying out banking transactions with ease. The branches

should display at a prominent place notice about the availability of magnifying glasses and other facilities available for persons with disabilities. Regarding suggestion to use finger-prints/Aadhaar number to be used as password for identity and activation of the facility. RBI informed that Department of Payment & Settlement Systems(DPSS), RBI vide its circular dated 26.11.2013 has advised banks that all new card present infrastructure has to be enabled for Aadhaar (biometric validation) acceptance. Banks were again advised vide DPSS circular dated September 29, 2016 to ensure that all new card present acceptance infrastructure deployed with effect from January 1, 2017 are enabled for processing payment transactions using Aadhaar-based biometric authentication also. This timeline was later extended to July 1, 2017.

4. Upon considering Respondent's reply dated 05.10.2018 and Complainant's rejoinder dated 20.01.2019, a personal Hearing in the matter had scheduled on 07.08.2019.

5. During the hearing both the parties have reiterated their respective submissions submitted in this Court earlier.

6. After hearing of both the parties and perusal of the record available, the Court directed the respondent to provide ATM and other financial facilities to persons with disabilities in general and persons with visual disabilities in particular with secure features. The proper training and awareness programme for staff as well persons with disabilities could be the inbuilt feature of the policies for financial inclusion of persons with disabilities, court recommended that while framing policies, persons with disabilities should be consulted for making the accessible and security feature for ATM, incorporating Aadhar based bio-metric authentication for payments and transaction.

7. The case accordingly disposed of.

(Shakuntala D. Gamlin)
Chief Commissioner
for Persons with Disabilities

Copy to:

1. Sh. Shailesh Kumar, AGM, RBI, Central Office, 12th Floor, Mumbai
2. Sh. Devesh Kumar, DGM, SBI, Corporate Center, Mumbai
3. Sh. Rajesh Joshi, CM, PNB, Corporate Office, New Delhi
4. Sh. Niraj Sharma, DGM, Bank of Baroda, Head Office, Vadodara

Cash No. 190/2103/2017/MC

Dated: 30.09.2019

In the matter of:

Shri Sh. Augustino Fernades
224, Bamnabhat, Ambanlim
Quepan, Goa

Complainant

Versus

Konkan Railway Corporation Ltd.
(through: the Chairman&Managing Director)
Registered & Corporate Office
Belapur Bhavan, Plot No. 6
Sector 11, CBD Belapur
Navi Mumbai - 400614

Respondent

Date of Hearing : 16/08/2019

Present: None appeared from the side of Complainant
Sh. Dhruv Nayar – on behalf of Respondent

ORDER

The above named complainant filed a complaint dated 23.11.2017 in this Court regarding inaccessibility at Konkan Railway Station under the Rights of Persons with Disabilities Act, 2016.

2. Section 40 & 41 of the Act is reproduced below:-

“40. Accessibility- the Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.”

“41. Access to transport-(1) The appropriate Government shall take suitable measures to provide-

- (a) Facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines;
- (b) Access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design;

(c) Accessible roads to address mobility necessary for persons with disabilities.

(2) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for-

- a) Incentives and concessions;
- b) Retrofitting of vehicles; and
- c) Personal mobility assistance."

3. The matter was taken up with the Respondent vide letter dated 05.01.2018 under Section 75 of the Act.

4. As no reply received from the Respondent therefore, a personal Hearing in the matter was held on 16.08.2019.

5. During the hearing neither anyone appeared from the side of Complainant nor made any communication with the Court.

6. The Counsel of Respondent had submitted during the hearing that they have made appropriate arrangements for easy access to commuters with disabilities at Konkan Railway Station like wheel chair, parking facility, drinking water, lifts, ramps and accessible toilets etc.

7. After hearing the version of Counsel of Respondent, it is directed that necessary steps may be taken in accordance to above said Sections 40 & 41 of the Act at Konkan Railway Station ensuring accessibility for commuters with disabilities. The Complainant has also advised to visit the said Station and intimate the Court with photographic evidence and details of the accessibility features at the Konkan Railway Station within 2 months from the date of issue of the order.

8. The Case is accordingly disposed of.

(Shakuntala D. Gamlin)
Chief Commissioner
for Persons with Disabilities

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7. On the date of hearing on 20.09.2018 representative of the respondents has apprised that they have sought reservation roster from all Divisions and Units offices and till date no response have been received. Therefore, they have requested for adjournment. Counsel for the complainant Shri Rahul Bajaj submitted the following points:

- (i) By virtue of the fact that Mr. Prajapati's rank of 1520 was within the cutoff of the vertical category to which he belongs (OBC) for which the cutoff rank was 4957, he should have been allotted a seat reserved for OBC candidates.

- (ii) The DoPT OM dated 29.12.2005 makes it clear that a disabled candidate belonging to a particular vertical caste-based category has to be adjusted against a point in the vertical category. This Hon'ble Commission has also adopted in the past the position before the Hon'ble Supreme Court that a blind candidate belonging to a particular vertical category is entitled to enjoy the benefit made available to that vertical category. As Mr. Prajapati fell within the OBC category, he should be entitled to claim the benefit of the cutoff applicable to OBC candidates. The post in question is clearly identified for OH in the list of identified jobs of Ministry of Social Justice and Empowerment issued in 2013, and it is also evident from the fact that due reservation is made for OH candidates. As such, an OH person, cannot be debarred from selection for the post even if he has not qualified based on the separate cut off for OBC OH, which itself has been wrongly fixed, but has duly qualified in vertical OBC category.
- (iii) Para 6 of DoPT OM dated 29/12/2005 clearly states as: APPOINTMENT AGAINST UNRESERVED VACANCIES: In the posts which are identified suitable for persons with disabilities, a person with disability cannot be denied the right to compete for appointment against an unreserved vacancy. Thus a person with disability can be appointed against an unreserved vacancy, provided the post is identified suitable for persons with disability of the relevant category.
- (iv) The fixation of a separate cutoff for OBC(OH) candidates is illegal, as para 7 of the OM cited above clearly states as: ADJUSTMENT OF CANDIDATES SELECTED ON THEIR OWN MERIT: Persons with disabilities selected on their own merit 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 disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary, by relaxed standards. It will apply in case of direct recruitment as well as promotion, wherever reservation for persons with disabilities is admissible. Without prejudice, assuming that the fixation of such a cutoff is permissible, it could not have been higher than the cutoff imposed for OBC category simplicitor.
- (v) Clause 7 of the DoPT OM dated 29.12.2005 makes it amply clear that the reserved list has to be started after the last candidate in the vertical list. This rule has been clearly violated in the present case, as the cutoff for OBC is 36.45% marks, with a rank of 4957 and the cutoff for OBC(OH) candidates is 69.33% marks with a rank of 68.
- (vi) Mr. Prajapati has been discriminated against only and only because he has a disability. If he were an unreserved category candidate, he would have received his posting, as his rank is within the cutoff of rank 2303 for unreserved candidates. He would have also been given the posting if he were an OBC candidate, but without his handicap, as his rank was within the cutoff rank of 4957 for OBC candidates simplicitor. In this way, despite reservation for the persons with disabilities, he was denied the job precisely because he is a disabled person.
- (vii) This denial constitutes a clear deprivation of his rights within the meaning of Section 59(A) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As a result, this Hon'ble Commission is clearly empowered to rule in his favour.

- (viii) In the past, this Hon'ble Commission has exercised its jurisdiction to set right the denial of the right to obtain employment of disabled persons owing to the noncompliance of the DoPT OM dated 29.12.2005 and the 1995 PwD Act. In W.P. (c) 7952 of 2008, judgment dated 11.11.2008,, the Hon'ble Delhi High Court upheld this Hon'ble Commission's direction that disabled candidates must be granted age relaxation as stipulated in para 16 of the DoPT OM.
- (ix) In the case of Deepak Singharay, the Complainant was denied employment as the definition of hearing impairment was not in consonance with the 1995 PwD Act. This Hon'ble Commission directed the railways to bring the definition in line with the Act, and that was done. Similarly, in this case, compliance with Section 33 of the 1995 Act can be ordered, which directs that the seats reserved for the disabled must be 'not less than' 3%. By interpreting that phrase to mean 'not more than' 3%, the Respondent has violated Section 33.
- (x) In the case of SK Rungta versus Ministry of Culture and Ors., judgment dated 22.11.2017, this Hon'ble Commission held that roster must be maintained as per the DoPT OM. In the present case, The respondents namely North eastern railways has failed to produce roster even after about two years. It goes without saying that roster must have been in existence when the recruitment has taken place and there should not be any delay in producing it and the respondents cannot be permitted to prepare it post facto. The delay clearly shows mala fide on their part or total lack of any understanding as to how the roster is prepared and recruitments done.
- (xi) In Case No. 10114001/2007 and 10114027/2007, pursuant to this Hon'ble Commission's direction, the Himalayan Forest Institute rectified its roster and gave posting to one Mr. Mahommad Nishar Alam. As a result, there is no embargo on this Hon'ble Commission directing in this case that: (A) Mr. Prajapati be given appointment; and (b) the roster be rectified to bring it in line with the 1995 Act and the DoPT OM.
- (xii) The consequential relief being sought is that, if there exists a vacancy for the identified post of a cleaner in the Respondent, Mr. Prajapati can be appointed against that vacancy. In the alternative, he should be given posting whenever a fresh vacancy arises before filling such vacancies by fresh recruitment. Finally, a supernumerary post can be created for him, in accordance with the approach suggested by the Supreme Court in the Mahesh Gupta Case (para 15).

8. On the request of the respondent, the case was adjourned to 28.12.2018, subsequently on 17.01.2019. On the date of hearing, Respondent's counsel had submitted a copy of the roster maintained by the North East Railway, the respondent was directed to submit the comments on the Record of Proceeds dated 09.10.2018 and case adjourned to 26.02.2019 and subsequent on 18-04-2019 and 09-08-2019.

9. On 09.08.2019, complainant was absent and representative of the respondent submitted para wise comments and informed that Shri Bikram Kumar Prajapati had applied as an OH (OBC)

candidate against PH quota for Group 'D' post and his rank was 1520 and cutoff rank of OH (OBC) was 68 in the written examination and there are 04 stages in recruitment process of Group 'D' posts i.e. (1) written examination (2) physical efficiency test (3) document verification & (4) medical examination. All the candidates have to pass all 04 stages whereas physically handicapped candidates are exempted from physical efficiency test. Therefore, Shri Bikram Kumar Prajapati cannot be considered against general merit.

10. In the light of the facts and material available on record, reply of the respondent is found satisfactory, therefore, case is disposed of without any direction.

(Shakuntala D. Gamlin)
Chief Commissioner for
Persons with Disabilities

Case No. 9244/1014/2018

Dated: 27.09.2019

In the matter of:-

Dr. Nitesh Kumar Tripathi
H.No. B – 241, B Block
Sant Nagar Burari, Delhi – 110084
<niteshtripathi85@gmail.com>

Complainant

Versus

National Aluminium Company Ltd
Through the General Manager (HRD)
NALCO Bhawan, Nayapalli
Bhubaneswar – 751013

Respondent

Dates of Hearing: 17.06.2019 & 30.08.2019

Present:

1. Complainant - absent
2. Shri H.S. Pradhan, AGM (HRD) & Shri S.N. Mishra, DGM (Law) on behalf of respondent

ORDER

The above named complainant Dr. Nitesh Kumar Tripathi, a person with 65% locomotor disability filed a complaint dated 03.12.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the RPwD Act, 2016 regarding willfully disintegration of persons with disabilities at NALCO;

2. The complainant has submitted that his candidature of selection as a GDMO at NALCO has been cancelled without any prior notice as per the Guidelines of DOP&T. He further submitted that he had asked- for the marks of all the candidate who had appeared in written as well as PT (Interview) but NALCO neither disclosed nor taken any initiative for providing disabled friendly examination centre to the PwD in its campus as well as nearest possible to the home town of the PwD candidates. He has requested to direct the respondent to fill up all the vacancies for PwD including the backlog.

3. The matter was taken up with the respondent vide letter dated 29. 06.2018 under Section 75 of the RPwD Act, 2016.

4. In response, General Manager (H&A), NALCO vide letter dated 24.07.2018 has inter-alia submitted that based on his performance in written test, Dr. Tripathi was allowed to appear before the selection committee for personal interview and Dr. Tripathi's name was listed in the selection panel at 2nd position out of total three numbers of PwD candidates belonging to UR category who applied for the position of GDMO. Since there was only one vacancy for the PwD category for the post of GDMO,

appointment offer was first sent to the candidate listed at 1st position but the said candidate did not join the post, the offer of the said candidate was cancelled. Thereafter, offer of appointment was issued to the Dr. Tripathi on 21.12.2017 with an advice to join the post at Hospital Smelter & Power Complex, Angul on or before 11.01.2018. Dr. Tripathi neither acknowledged the offer letter nor joined the post within the stipulated date. Moreover, no communication was received from the Dr. Tripathi. Hence, the offer of appointment made to Dr. NiteshTripathi was closed and the closure letter was issued to him on 16.01.2018. The letter was also sent through speed post and delivered on his address on 23.01.2018. Thereafter, the offer was issued to the 3rdPwD candidate and he joined the post on 02.02.2018. Further, there is no provision for verification of recruitment rosters by any person who is not authorized for the purpose. The venue where the examination was conducted in this case provided accessible facilities to the petitioner Dr. Tripathi.

5. Complainant vide rejoinder dated 12.02.2019 has inter-alia submitted that respondent has not replied as per the grievance that he had raised and respondent is neither sensitive nor aware of the RPwD Act, 2016. He has requested to fix a hearing in the matter.

6. After considering the respondent letter dated 01.02.2019 and complainant's e-mail dated 14.02.2019, it was decided to hold a personal hearing in the matter therefore, the case was listed for personal hearing on 17.06.2019 and subsequently on 30.08.2019.

7. During personal hearing on 30.08.2019 complainant was absent and representative of the respondent reiterated his written submission.

8. In the light of the facts and material available on record, the reply of the respondent found satisfactory, therefore, case is disposed of without any direction.

(Shakuntala D. Gamlin)
Chief Commissioner for
Persons with Disabilities

Case No. 8237/1011/2017

Dated: 26.09.2019

In the matter of:-
Shri Samar Chakraborty
304 – B, Kalighat Road
Kolkata – 700026

Complainant

Versus

Bharat Sanchar Nigam Ltd
Through the Chairman-cum-Managing Director
Bharat Sanchar Bhawan, Harish Chandra Mathur Lane
Janpath, New Delhi - 110001

Respondent

Dates of Hearing: 17.06.2019 & 30.08.2019

Present:

1. Complainant - absent
2. Shri Satish Kumar, AGM, Shri M.K. Singh DM, Ms. Neelam Ayri, DM & Shri P.K. Punia, DM on behalf of respondent

ORDER

The above named complainant Shri Samar Chakraborty filed a complaint dated 17.06.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the RPwD Act, 2016 regarding non implementation of Rules & Rights of Persons with Disabilities Act, 2016 by Bharat Sanchar Nigam Ltd (BSNL);

2. Complainant in his complaint submitted that he made query to the Authority of BSNL, New Delhi to get some records like reservation roster and employees with disabilities but in reply the concerned Authority admitted the non availability of such rosters for PwD cadre. Complainant had requested to provide copy of the reservation roster from the BSNL Authority and extend all consequential benefits to the concerned PwD employees as per the Govt. Orders from time to time.

3. The matter was taken up with the respondent vide letter dated 24.10.2017 under Section 75 of the RPwD Act, 2016.

4. In response, GM & Chief Liaison Officer, Bharat Sanchar Nigam Ltd vide letter dated 06.06.2018 has submitted that as per DoP&T's instructions/guidelines the reservation roster for the persons with disabilities is maintained in BSNL.

5. Complainant in his rejoinder dated 17.07.2018 has inter-alia submitted that it was unclear in the reply as to what were the plan of action and what were the execution of such plans in trying to implement the provisions of Act and fulfil the will of the legislature and it is also unclear as to whether the purported roster has found any change after the implementation of the said Act.

6. After considering the respondent letter dated 06.06.2018 and complainant's e-mail dated 17.07.2018, it was decided to hold a personal hearing in the matter therefore, the case was listed for personal hearing on 17.06.2019 and subsequently on 30.08.2019.

7. During personal hearing on 30.08.2019 complainant was absent and representative of the respondent reiterated his written submission and informed that they are providing reservation to persons with disabilities and submitted additional documents. After hearing and documents available on the record, the Court is directed to the respondent to calculate the backlog reserved vacancies as per DOP&T's instructions and maintain reservation roster for persons with disabilities according to the DOP&T's instructions.

8. The case is disposed off accordingly.

(Shakuntala D. Gamlin)
Chief Commissioner for
Persons with Disabilities

Case No. 8834/1011/2017

Dated: 26.09.2019

In the matter of:-

Dr. Nitesh Kumar Tripathi

Complainant

H.No. B – 241, B Block

Sant Nagar Burari, Delhi – 110084

<niteshtripathi85@gmail.com>

Versus

Rashtriya Chemicals & Fertilizers Ltd

Through the Executive Director (HR)

Administrative Building, Chembur

Mumbai - 400074

Respondent

Date of Hearing: 21.08.2019

Present:

1. Dr. Nitesh Kumar Tripathi - Complainant
2. Shri Vinayak D., Chief Manager HR, on behalf of respondent

ORDER

The above named complainant Dr. Nitesh Kumar Tripathi, a person with 65% locomotor disability filed a complaint dated 03.12.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the RPwD Act, 2016 regarding non implementation of the RPwD Act, 2016 by Rashtriya Chemicals & Fertilizers Ltd (R.C.F.L.);

2. The complainant namely Dr. NiteshTripathi has submitted that Rashtriya Chemicals & Fertilizers Ltd had published an advertisement for CMO and in the advertisement, respondent had not shown the reservation status means not a single number of seat for PwD candidates in the form of reservation roster according the RPwD Act,2016. He has requested to direct the respondent to provide extra time during examination and Interview, arrangement of WC toilet and pure drinking water, all the processing must be at the ground floor, arrangement for the stay at the nearest possible site from the venue of Examination & Interview, and a positive disabled friendly atmosphere, travel expenses to attend interview alongwith an escort, disabled friendly environment during the interview and to also conduct the Special Recruitment Drive for filling up the backlog vacancies for PwDs.

3. The matter was taken up with the respondent vide letter dated 11.12.2017 under Section 75 of the RPwD Act, 2016.

4. In response, Executive Director (HR), Rashtriya Chemicals & Fertilizers Ltd vide letter dated 10.01.2018 has inter-alia submitted that there is no reservation point against the post of Chief Medical Officer (Thal). The reservation for PwD in Group 'A' for the current year is proposed in the advertisement for the post of Officer (Finance), where the post is identified for PwD.

5. Complainant vide rejoinder dated 19.05.2018 has inter-alia submitted that the post of CMO is identified for PwD but respondent has not been provided reservation which is a matter of violation of provisions of RPwD Act, 2016 and after going through the reply of the respondent nothing has been answered as per the issues raised by him. He has requested to fix a hearing in the matter.

6. After considering the respondent letter dated 10.01.2018 and complainant's e-mail dated 19.05.2018, it was decided to hold a personal hearing in the matter therefore, the case was listed for personal hearing on 21.08.2019.

7. During personal hearing complainant reiterated his written submissions and representative of the respondent has submitted additional reply and stated that they have undertaken comprehensive steps for implementation of the provisions of the Persons with Disabilities Act, 2016 including (1) Grievance Redressal Officer has been appointed (2) Separate Liaison Officer has been appointed for ensuring implementation of various provisions of the RPwD Act, 2016 (3) Group wise Rosters for recruitment are maintained (4) PwD employees are encouraged to participate for awards, which are exclusively for PwD employees (5) all the provisions in respect of person with disabilities like age relaxation, concession in fees etc are extended at the time of recruitment (6) preference is given for ground floor at the time of allotment of quarters to employees (7) one hour extra time is provided to PwD candidates for online examination, if they don't avail the assistance of Scribe/Reader/Lab Assistant. He further submitted that to create an enabling and barrier free environment, ramps have been built at entrance of Company's public buildings like Administrative Building and RCF Hospital at Chembur, Mumbai and also at Corporate office, Priyadarshini, Sion, Mumbai. Thus, these buildings are made easily accessible for persons with disabilities and Senior Citizens.

8. In the light of the above and material available on record, response of the respondent found satisfactory, therefore, case is disposed of without any direction.

(Shakuntala D. Gamlin)
Chief Commissioner for
Persons with Disabilities

Case No. 7697/1011/2017

Dated: 26.09.2019

In the matter of:-

Dr. Nitesh Kumar Tripathi

Complainant

H.No. B – 241, B Block

Sant Nagar Burari, Delhi – 110084

[<niteshtripathi85@gmail.com>](mailto:niteshtripathi85@gmail.com)

Versus

National Institute of Technology

Through the Registrar

[Tiruchirappalli, Tamilnadu – 620015](https://www.nittr.ac.in)

Respondent

Dates of Hearing: 17.06.2019 & 30.08.2019

Present:

1. Complainant - absent
2. Shri A. Leo George Rozario, Advocate on behalf of respondent

ORDER

The above named complainant Dr. Nitesh Kumar Tripathi, a person with 65% locomotor disability filed a complaint dated 03.12.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the RPwD Act, 2016 regarding non implementation of the RPwD Act, 2016 by National Institute of Technology, Tiruchirappalli;

2. The complainant namely Dr. Nitesh Tripathi has submitted that National Institute of Technology has published an advertisement for Doctors, respondent has not shown the reservation status in the advertisement. He further submitted that he is an eligible candidate and have a desire to apply for the post of Medical Officer under PwD category. He has requested to direct the respondent to provide extra time during examination and interview, arrangement of WC toilet and pure drinking water, all the processing must be at the ground floor, arrangement for the stay at the nearest possible site from the venue of Examination & Interview, and a positive disabled friendly atmosphere, travel expenses to attend interview alongwith an escort, disabled friendly environment during the interview and to also conduct the Special Recruitment Drive for filling up the backlog vacancies for PwDs.

3. The matter was taken up with the respondent vide letter dated 19.06.2017 under Section 75 of the RPwD Act, 2016.
4. Registrar, National Institute of Technology, Tiruchirappalli vide letter dated 01.02.2019 has inter-alia submitted that the list of candidate shortlisted for Written Test/Interview for the post of Medical Officer was posted in the Institute website on 28.07.2017 and call letters are also sent and Dr. NiteshTripathi was one of the shortlisted candidates. The Written Test/Interview was scheduled on 18.08.2017 and call letters are sent all shortlisted candidates including Dr. NiteshTripathi. However, the candidate Dr. NiteshTripathi did not report for the written test/interview on 18.08.2017. He further submitted that Institute extends all the concessions and relaxation and concessions as per Govt. Norms to the candidates under PwD category. He further submitted that the Special Recruitment for the PwD category was done in November 2015 to January 2016 for filling Group 'A' (vacancies – 2), Group (vacancies – 5) and Group 'C' (vacancies -2). There was also a special recruitment of PwD in the year 2006 and 2008 alongwith SC/ST.
5. Complainant vide rejoinder dated 14.02.2019 has inter-alia submitted that after going through the reply of the respondent nothing has been answered as per the issues raised by him. He has requested to fix a hearing in the matter.
6. After considering the respondent letter dated 01.02.2019 and complainant's e-mail dated 14.02.2019, it was decided to hold a personal hearing in the matter therefore, the case was listed for personal hearing on 17.06.2019 and subsequently on 30.08.2019.
7. During personal hearing on 30.08.2019 complainant was absent and representative of the respondent reiterated his written submission and informed that the call letter was also sent to Dr. NiteshTripathi for written test/interview but Dr. NiteshTripathi did not report for the written test/interview on 18.08.2017.
8. In the light of the above and material available on record, response of the respondent found satisfactory, therefore, case is disposed of without any direction.

(Shakuntala D. Gamlin)
Chief Commissioner for
Persons with Disabilities

Case No. 9030/1013/2017

Dated: 26.09.2019

In the matter of:-

Shri SD Javeed
C/o Sonu Sharma
H.No. 369, Second Floor, Leela Ram Market
Masjidmoth, South Extension – 2, New Delhi

Complainant

Versus

Employees' State Insurance Corporation
(Through the Joint Director E-II)
PanchdeepBhawan, C.I.G. Marg
New Delhi – 110002

Respondent No. 01

Employees' State Insurance Corporation
(Through the Director)
Model Hospital, Nacharam, Hyderabad - 500076

Respondent No. 02

Date of Hearing: 28.08.2019

Present:

1. Shri TusharRanjanMohanty, Advocate and Shri SD Javeed
2. Shri Ashok Kumar, Dy. Director and Shri Deepak Malik, Dy. Director on behalf of respondent

ORDER

The above named complainant Shri SD Javeed, a person with 43% locomotor disability filed a complaint dated 14.12.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the RPwD Act, 2016 regarding appointment to the post of Staff Nurse in ESIC Model Hospital, Nacharam, Hyderabad;

2. Complainant in his complaint submitted that he belongs to PH category BH-STIFF BACK and HIPS with 43% disability and he completed B.Sc. Nursing Degree in 2011 and he has been working in AIIMS New Delhi as Nursing Officer (Staff Nurse) since 28.04.2014 to till date. He further submitted that he had applied for the post of Staff Nurse ESIC, Nacharam, Hyderabad and selected under UR (PWD) category. He alleged that ESIC Hospital Sanath Nagar administration kept his result withheld and referred his file to ESIC Headquarters, New Delhi but ESIC Headquarters administration is not allowing him to join for the post of staff nurse according to their administrative rules.

3. The matter was taken up with the respondent vide letter dated 19.01.2018 under Section 75 of the RPwD Act, 2016.

4. In response, Dy. Director, ESIC, Hyderabad vide letter dated 02.08.2018 had inter-alia stated that Shri SD Javeed was earlier provisionally selected for the post of Staff Nurse under PwD category (OH-OL) at ESIC, MCH, Sanathnagar. However, as per his medical disability certificate, he was suffering from "BH-Stiff Back & hips (cannot sit or stood") with 43% disability. As the stated disability of Shri SD Javeed was different from the requirement of disability (OL) published in the original notification for recruitment, his joining was kept in abeyance. Also, as per expert opinion rendered by the Medical Specialist at ESIC Hospital, Sanathnagar on 11.06.2018, it was stated the candidate is not under OL category. They further submitted that although the candidate does not meet the criteria of OL, still the office is in favour of giving him a fair chance by examining his case objectively and in totality. Therefore, to dispel such ambiguity in the certificate, medical opinion has been sought from the Dean, ESIC, Medical College, Sanathnagar, Hyderabad.

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6. After considering the both side submissions, it was decided to hold a personal hearing in the matter therefore, the case was listed for personal hearing on 28.08.2019.

7. During personal hearing counsel of the complainant has submitted that Shri Javeed belongs to (PH) physically handicapped category BHG-Stiff Back and Hips with 43% disability and he belongs to OH category of disability and he has been working in AIIMS, New Delhi as a Nursing Officer (Staff Nurse) since 28.04.2014 and he is fit for the Nursing Officer post under OH category. He further submitted that ESIC is ignoring the Note 2 of Ministry of Social Justice & Empowerment, Department of Disability Affairs

...3.....

(Now renamed Department of Empowerment of Persons with Disabilities) vide Notification No. 16-15/2010-DD-III dated 29.07.2013, the list of posts being notified is not exhaustive list and Ministries/Departments/PSUs/Autonomous Bodies etc. may therefore further supplement the list. He further submitted that ESIC, New Delhi recently appointed Dr. Nikhil Ravindranathin the Department of Psychiatry who is disabled by both limbs whereas the post of Assistant Professor which he was selected has been identified suitable for one leg (OL) as per identified list. Similarly, earlier in 2014, in the intervene of Chief Commissioner for Persons with Disabilities Court, the AIIMS, New Delhi had also appointed One Arm (OA) persons in the post of Staff Nurse. Representative of the respondent also reiterated his earlier submissions.

8. After hearing both the parties and material available on record, respondent is directed to issue an appointment letter to Shri SD Javeed as it can not be ignored, he has been working in AIIMS, New Delhi as a Nursing Officer (Staff Nurse) since 28.04.2014 and he is fit for the Nursing Officer post under OH category. Further, as per Note 2 of Ministry of Social Justice & Empowerment, Department of Disability Affairs (Now renamed Department of Empowerment of Persons with Disabilities) vide Notification No. 16-15/2010-DD-III dated 29.07.2013, the list of posts being notified is not an exhaustive list and Ministries/Departments/PSUs/Autonomous Bodies etc. may therefore further supplement the list, the compliance report to be submitted within 30 days from the receipt of this Order.

9. The Case is accordingly disposed of.

(Shakuntala D. Gamlin)
Chief Commissioner for
Persons with Disabilities