



सत्यमेव जयते

104

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: 11430/1011/2019

Complainant: Smt. Priyanka D. Sonawane
e-mail: <kajalsonawane75@gmail.com>

R-26756
S.V.National Institute of Technology
Through the Director
E-mail: <registraroffice@svnit.ac.in>
Tel: 0261-2201517

..... RESPONDENT

R-26757
Indian Institute of Technology , Goa
Through the Director
E-mail: <pstodirector@iitgoa.ac.in>
Tel: 0832-2490-896

..... RESPONDENT

R-26758
Indian Institute of Technology, Dharwad
Through the Director
E-mail: <pro@iitdh.ac.in>
Tel: 0836 - 2212839

..... RESPONDENT

R-26759
Indian Institute of Science, Bangalore
Through the Director
E-mail: <registrar@iiss.ac.in>
Tel: 080 - 22932444

..... RESPONDENT

R-26760
Goa University, Goa
Through the Registrar
E-mail: <registrar@unigoa.ac.in>
Tel: 0832-2451184

..... RESPONDENT

R-26761
Department of School Education & Literacy
Through the Secretary
E-mail: <maneesh.garg@nic.in>
Tel: 011 - 23386232

..... RESPONDENT

GIST of the Complaint:

Complainant vide letter dated **09.08.2019** inter-alia submitted that respondents are not providing reservation to PwDs candidates while in the recruitment of Group 'A' posts.

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.ccdisabilities.nic.in

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

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

...2....

2. The matter was taken up with the Respondent vide letter dated **09.10.2020** under Section 75 of the RPwD Act, 2016.

3. In response, S.V.National Institute of Technology, Surat vide letter dated **12.11.2020** inter-alia submitted that the recruitment was conducted during the year 2020 for Single Cadre post of Registrar, two posts of Dy. Registrar and three posts of Assistant Registrar in Group 'A' wherein 4% horizontal reservation for PwDs was notified by the Institute. Due to non-availability of suitable person with benchmark disability, vacancy has been carried forward to the subsequent Recruitment Cycle.

4. Complainant vide e-mail dated **25.01.2021** inter-alia submitted that she is not able to attend the hearing since she is in the family way and asked to have full bed rest. She has submitted following submissions for hearing purpose: 1. All the Institutes are not following the RPwD Act, 2016 and various orders of Supreme Court regarding fulfilling the backlog since no Institute is providing any evidence in support of their arguments like a copy of roster for PwDs. 2. No Institute has disclosed the PwD roster book on their website, which is mandatory as per the RTI Act. 3. None of the Institutes has a PwD Officer in Group 'A' & 'B' (Non-teaching). 4. Most of the Institute is claiming that they have PwD in Teaching, which comes under Group A, but the Ministry of Education or DoP&T has not issued any guideline for grouping of the Teaching and Non-Teaching Roster for Group 'A' & 'B' position etc.

5. After considering the respondent's reply dated **12.11.2020** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.01.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **29.01.2021**. The following were present:

- Shri Subhash Pandey – IIT Goa; SR Gandhi – NIT Surat; Agni Ashwini – Goa University; Sandeep Parikh on behalf of respondent

....3....

....3....

Observation/Recommendations:

6. 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.
7. 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
8. Before proceeding further, it is important ^{to list the} ~~to list the~~ 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.
9. For the present complaint whole summary of the statute is unwarranted, hence, relevant provisions for relevant portions are hereafter identified and mentioned.



...4....

IDENTIFICATION OF POSTS SUITABLE FOR PERSONS WITH DISABILITIES

10. In an organisation there may be number of posts which cannot 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. 16-15/2010-DD.III dated 29.07.2013 issued list of identified posts. The whole list can be accessed online on website of MoSJE on following link –

<http://disabilityaffairs.gov.in/content/page/notifications.php>

11. 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 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

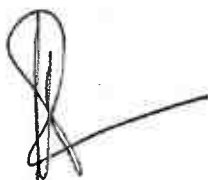
12. This category can be divided into following 6 sub categories –

- 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

13. 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.

14. 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.

15. 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.



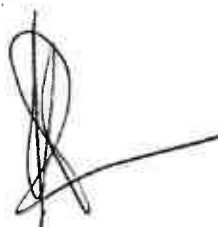
....6....

16. 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)

17. 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 100 points 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. Detailed methodology of maintaining the Roster is discussed.

18. 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 -

- b) Such unfilled vacancy shall be carried forward in the subsiding recruitment year.
- c) 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.
- d) 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.



....7....

....7....

19. 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.

20. 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

21. DoP&T 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.

EXAMINATION FEES

22. 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.



....8....

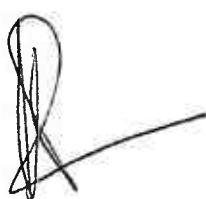
EXAMINATION PROCESS

23. 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.

24. 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.

25. 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.

- I. 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.
- II. 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.
- III. 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

26. 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.

27. AGE RELAXATION – As per DoPT OM No. 15012/1/2003-Estt.(D) dated 29.06.2015, age relaxation of minimum 10 years to PwBD-General candidates, 13 years to PwBD-OBC candidates and of 15 years to PwBD-SC/ST candidates is granted.

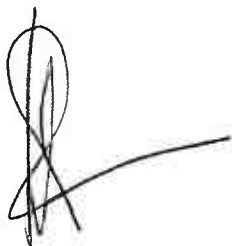
SELECTION ON MERITS

28. 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 benchmark disability is selected on merits without relaxed standards along with other candidates. He will not be interested against the reserved shared the vacancies. The reserved vacancies will be filled up separately by people with persons with benchmark disability.

DETAILED PROCEDURE FOR MAINTAINING ROSTER

29. Situation – 1 - As on 01.01.2018 or 15.01.2018, if a new cycle begins, the roster points for PwD shall be 1, 26, 51 and 76. The categories are (1% reservation for each)

- (a) Blind and Low Vision;
- (b) Deaf and hard of hearing;
- (c) Locomotor disability including Cerebral Palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) (i) autism, intellectual disability, specific learning disability and mental illness.
(ii) multiple disabilities from amongst persons under Clauses (a) to (d) including deaf-blindness;

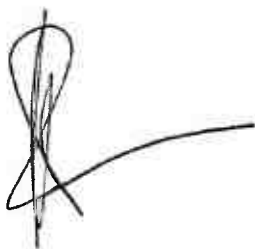


30. Situation 2 - As on 15.01.2018, the cycle has already started and only 1st point is filled in under 3% reservation. Then the roster may be modified for the remaining points i.e. 26, 51 and 76.

31. Situation 3 - As on 15.01.2018, the cycle has already started and two points are filled in i.e. 1 and 34 (under 3% reservation) still the roster can be modified to accommodate the another two points say 51 and 76. The Appointing authority should ensure how best the 4% reservation be implemented from 15.01.2018. The flexibility of filling the reserved points within the blocks i.e. 1-25, 26-50, 51-75 and 76-100 has been provided. The earliest vacancy in the block should be filled in by the PwD applicants, as per the prescribed reservation.

32. To understand more practically, the following examples may help:

- a. The new cycle started on 01.01.2018 and there are 27 vacancies in a group. The points reserved for PwD are 1 & 26. The first vacancy goes to Blind and Low vision i.e. (a) category. The 26th vacancy goes to Deaf and hard of hearing i.e. (b) category. As and when 51 vacancies arise it goes to (c) category and 76th vacancy goes to (d) category.
- b. If the cycle as on 15.01.2018 started already and the first vacancy is filled by VI category, then 26th, 51st and 76th vacancies shall be filled in by the applicants belonging to (b), (c) and (d) category.
- c. If the cycle already started as on 15.01.2018 and the first vacancy was filled in by Hearing Handicapped (HH) category then the remaining vacancies i.e. 26, 51 and 76 as and when arises shall be filled in by (a), (c) and (d) category candidates. The aim of the Appointing Authority should be to fill up the vacancies by the categories for which the points are meant. For whatever reason, the points are filled in by other categories than the one for which they are meant for, by the end of the cycle, all the 4% (points 1, 26, 51 and 76) should be filled in the (a), (b), (c) and (d) categories.
- d. If there are backlog vacancies, they are to be filled in by the categories for which they have been carried forward.



- e. For inter-change of the vacancies, the procedure is laid down in the O.M. dated 15.01.2018.
- f. The 4% is to be calculated on the number of vacancies in a particular group i.e. A/B/C.
- g. The roster is to be maintained group wise i.e. A/B/C.
- h. In Group B and C, it is 4% of total vacancies (not posts). In Group A, it is 4% of vacancies in identified posts.
- i. This is a vacancy based roster and not post based roster.
- j. This is a horizontal roster i.e. the point reserved under 1/26/51/76 may also be a point reserved for SC/ST/OBC/EWS.

33. Hence, this Court recommends that all the Respondent establishments shall comply with necessary guidelines prescribed by various government departments from time to time and mentioned above. Further this court recommends that all the Respondents shall file the compliance report within 90 days from the date of this Order.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 15.03.2021