

**In the Court of State Commissioner for Persons with Disabilities  
National Capital Territory of Delhi  
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2  
Phone-011-23216002-04, Telefax: 011-23216005, Email:  
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[Vested with powers of Civil Court under the  
Rights of Persons with Disabilities Act, 2016]

**Case No. 4/1268/2016-Wel/CD/ 3696-98**

**Dated: 02/01/18.**

**In the matter of:**

Sh. Ashwani Gupta,  
Room No. 6, FAS Branch,  
Department of Social Welfare,  
GLNS Complex, Delhi Gate,  
New Delhi-110002.

**Versus**

The Director,  
Directorate of Social Welfare  
Govt. of NCT of Delhi,  
GLNS Complex, Delhi Gate,  
New Delhi-110002.

..... **Complainant**

..... **Respondent**

### **ORDER**

The above named complainant a person with 90% locomotor disability vide his complaint dated 04.05.2016 submitted that he acquired disability in a bomb blast. He joined Social Welfare Department in June 2005 in the post of Investigator as a person with disability as per the order of Hon'ble High Court of Delhi on compensatory ground.

2. The complainant alleged that he was not considered for promotion to the post of House Father / Mother / Matron alongwith 12 investigators / Jr. Matrons who were promoted vide order dated 31.05.2013 although he was eligible and there were no other investigators with disability senior to him. As per DoP&T OM No.

**Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 1  
25-D, Mata Sundari Road, New Delhi-110002**

36035/3/2004/Estt./Res dated 29<sup>th</sup> December, 2005 the department is required to maintain a roster for effecting reservation for persons with disabilities. However, neither any roster is maintained nor the procedure is followed for making such promotions. He further submitted that the Department created 6 new posts of House Father / Mother / Matron. As he had completed five years service in 2010, he became eligible for promotion to the post of House Father / Mother and Matron and to the next post of Welfare Officer on completion of 10 years of regular service. He represented to the Department on 07.9.2015 and also submitted three reminders but had not received any response till date of his complaint. The complainant further added that the Department conducted three DPCs in 1991, 1999 and in 2013 with long gap in between whereas as per the instructions, DPC should be held every year.

3. The complainant prayed that he should be considered for promotion from the date of his eligibility at the earliest as he was suffering financial loss as well as losing seniority.

4. The complaint was taken up with the respondent vide communication dated 16.05.2016 followed by reminders dated 15.06.2016 and 30.06.2016.

5. The respondent vide letter dated 28.06.2016 informed that the tentative seniority list had been issued for circulation for promotion to the post of House Father / Mother / Matron for receiving objections, if any. Thereafter, the process for promotion would be started after finalizing the seniority list. The respondent vide letter dated 6<sup>th</sup> January, 2017 submitted a status report as per which the APARs in respect of four Investigators / Jr. Matrons including the complainant for the year 2014-

Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 1  
25-D, Mata Sundari Road, New Delhi-02



15, 2015-16, 2015-16 were not available and the concerned officers had been directed to get the APARs. The process of promotion was already under process and further action would be taken on receiving the APARs.

6. The complainant vide his rejoinder dated 27.06.2017 requested for fixing a hearing in the case so that the same is disposed of.

7. A hearing was scheduled on 24.08.2017. During the hearing the representative of the respondent submitted an action taken report dated 23.08.2017 as per which the complainant was promoted to the post of House Father vide Office order dated 04.08.2017. According to respondent, the grievance of the complainant stood redressed.

8. While the complainant confirmed that he had been promoted to the post of House Father, he submitted that his grievance still remained to be re-addressed in as much as he should have been promoted in the year 2010 when he become eligible for the post of House Father on completion of five years of regular service in the post of Investigator. According to him, as per the instructions, every year a DPC should be held. The first DPC after 2010 was held in the year 2013 and therefore, he should have been considered for promotion by the DPC held in 2013 against the reserved vacancies for persons with disabilities as Point No. 1 of the roster is to be reserved for persons with disabilities and he is the senior most Group 'C' employee with disability. He also produced a copy of roster in respect of Group 'C' posts for direct recruitment.

9. It was observed that as per Recruitment Rules notified vide Notification No. F. 21(13)/76-DSW/Estt. Dated 05.08.1988, the post of House Father / House Mother / Matron / Assistant Boarding/Supdt. in Directorate of Social Welfare are to be filled by promotion failing which

Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 13  
25-D, Mata Sundari Road, New Delhi-02

by direct recruitment 100% from amongst Matron & Investigator/Social Worker with five years regular service in the grade. The complainant completed five years regular service on 30.06.2010 and thus became eligible for consideration of promotion to the post of House Father / House Mother / Matron / Assistant Boarding / Supdt. in the year 2010. As per the copy of roster produced by the complainant, he was at Sl. No. 15 and the first person with disability amongst Group 'C' employees.

10. As per Para 2(ii) of DoP&T's OM No. 36035/3/2004-Estt.(Res) Dated 29<sup>th</sup> December 2005, reservation of three percent of the vacancies are required to be reserved for persons with disabilities in case of promotion to Group D and Group C posts in which the element of direct recruitment does not exceed 75%.

11. As per Para 15 of the said OM, reservation for persons with disabilities is to be computed based on a separate 100 points vacancy based reservation roster. In the said 100-points roster, point No. 1, 34 and 67 are to be earmarked for persons with disabilities. This would be applicable till 18.04.2017 after which the Rights of Persons with Disabilities Act, 2016 provides for reservation of 4% vacancies. It was, therefore observed that the complainant was entitled for consideration against point No. 1 of the roster for promotion by a DPC that was held after 30.06.2010.

12. The representative of the respondent stated that he would have to look into the record in order to ascertain the availability of reserved vacancy for persons with disabilities, the details of the DPCs held after 30.06.2010 for the post of House Father and whether the complainant could have been considered and promoted before 2017. The respondent was advised to examine the matter and if it was found that

Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 1  
25-D, Mata Sundari Road, New Delhi-02



the complainant was entitled to be considered for promotion to the post of House Father / House Mother / Matron etc. before 2017, the relevant DPCs may be reviewed and if he is found fit by the DPC, action to anti-date his promotion may be taken in accordance with the extant rules and the instructions of DoP&T on the subject. Respondent was directed to submit an action taken report to this Court within 60 days.

13. On the next date of hearing on 07.11.2017, the representative of the respondent sought adjournment as the concerned Dy. Director was not well.

14. The respondent vide letter dated 04.12.2017 informed that the case file of the complainant was being sent to the Services Deptt. to seek their comments / advice whether the complainant could be given promotion against the roster point reserved for persons with disabilities based on the DPC held in 2013. On 06.12.2017, the representative of the respondent added during the hearing that the case file had already been sent to the Services Deptt. on 04.12.2017 and action as per their advice would be taken at the earliest.

15. The complainant submitted that 14 Investigators were promoted to the post of House Father/ House Mother / Matron based on the DPC held in 2013. There was no other person with disability in the feeder post and none was ever promoted against the reserved vacancy. As he is the senior most person with disability, he was entitled to be promoted in 2013 against point No. 1 of the Roster. He also added that by doing so, no person would be adversely affected as a vacancy of House Father was kept unfilled on the directions of Hon'ble CAT. Therefore, his promotion should be anti-dated.

Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 1  
25-D, Mata Sundari Road, New Delhi-02

16. Though the facts thus far made available, prima facie supported the case of the complainant for his consideration in the DPC held in 2013, yet in order to be sure, the respondent was advised to submit the following information:

(i) Number of vacancies of House Father / House Mother / Matron filled year-wise by promotion since 20<sup>th</sup> November, 1989 when the reservation in promotion within Group D, from Group D to Group C and within Group C was introduced by DoP&T vide OM No. 36035/8/89/Estt. (SCT) dated 20.11.1989 till 2012.

(ii) Number of vacancies of House Father / House Mother / Matron filled by promotion based on the DPC held in the year 2013.

(iii) Whether any person with disability was ever promoted to the post of House Father / House Mother / Matron against the reserved vacancy for persons with disabilities between 20.11.1989 and 2013.

(iv) A confirmation that no DPC was held for promotion to the post of House Father / House Mother / Matron between the date the complainant became eligible for the promotion in 2010 and 2013.

17. The respondent submitted the following information vide letter dated 21<sup>st</sup> December, 2017:

(i) Information Sought	Number of vacancies of House Father / House Mother / Matron filled year-wise by promotion since 20 <sup>th</sup> November, 1989 when the reservation in promotion within Group D from Group D to Group C and within Group C was introduced by DoP&T vide OM No. 36035/8/89/Estt. (SCT) dated 20.11.1989 till 2012	
Information available as per record	From 20.11.1989	01
	1990	02
	1991	03 vacancies of 1989 (1) and 1990(2) were filled in 1991
	1992	Nil
	1993	Nil
	1994	Nil
	1995	01
	1996	Same 01 vacancy of 1995

Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 1  
25-D, Mata Sundari Road, New Delhi-02



	1997	01 vacancy of 1995-02 vacancy of 1997 Total =03
	1998	
	1999	Same 03 posts of 1995 (1) & 1997 (2)
		03 posts of 1995 (1) and 1997 (2) were filled in 1999
	2000	Nil
	2001	Nil
	2002	03
	2003	Nil
	2004	Nil
	2005	Nil
	2006	Nil
	2007	Nil
	2008	Nil
	2009	Nil
	2010	Nil
	2011	Nil
	2012	Nil
(ii)	Number of vacancies of House Father / House Mother / Matron filled by promotion based on the DPC held in the year 2013.	12
(iii)	Whether any person with disability was ever promoted to the post of House Father / House Mother / Matron against the reserved vacancy for persons with disabilities between 20.11.1989 and 2013	Nil
(iv)	A confirmation that no DPC was held for promotion to the post of House Father/ House Mother / Matron between the date the complainant became eligible for the promotion in 2010 & 2013.	No DPC was held for promotion to the post of House Father / House Mother / Matron between 2010 & 2013

18. From the above table it is not clear whether the respondent filled up 17 vacancies of House Father/ House Mother / Matron or 06 vacancies from 20.11.1989 till the year 1999. Thereafter 12 vacancies were filled in the year 2013. Thus, even if only 6 vacancies were filled till 1999, by the time the complainant became eligible in 2010, the roster had moved to 9<sup>th</sup> point and one vacancy was required to be earmarked for persons with disabilities. Admittedly the complainant became eligible for promotion to the post of House Father/House Mother / Matron in accordance with the relevant RRs notified by Social Welfare Department, Govt. of NCT of Delhi in the year 2010 on completion of 5 years of regular service in the post of Investigator. The complainant was the first and senior most person with disability to be considered for promotion to the said post. As the first DPC was held in the year 2013, the complainant had a claim to be considered for promotion in that year against point number 1 of the roster. It is thus a clear case of

Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 1  
25-D, Mata Sundari Road, New Delhi-02

deprivation of the entitlement of the complainant as he was considered and promoted only in August 2017.

19. It will be worthwhile to discuss the relevant instructions even at the cost of repetition before making my recommendation. DoP&T vide OM 36035/8/89-Estt.(Set) Dated 20.11.1989 decided that when promotions are being made within Group D, Group 'D' to 'C' and within Group 'C', reservation will be provided for three categories of disabilities namely Visually Handicapped (VH), Hearing Impaired (HI) and Orthopaedically Handicapped(OH). The applicability of reservation would however, be limited to the promotions being made to those posts that are identified as being capable of being filled / held by appropriate category of disability. Further, each of the three categories of persons with disabilities would be allowed reservation at 1% each.

20. DoP&T consolidated the instructions on reservation for persons with disabilities and issued the same vide OM No. 36035/3/2004-Estt.(Res) dated 29<sup>th</sup> December 2005. The relevant provisions of Para 2, 13 and 15 of the said OM are reproduced as below:

**"2. Quantum of Reservation:**

.....(ii) Three percent of the vacancies in case of promotion to Group D, and Group C posts in which the element of direct recruitment, if any, does not exceed 75%, shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 1  
25-D, Mata Sundari Road, New Delhi-02



**13. COMPUTATION OF RESERVATION:** .....all vacancies in promotion quota shall be taken into account while computing reservation in promotion in Group 'C' and Group 'D' posts. Since reservation is limited to identified posts only and number of vacancies reserved is computed on the basis of total vacancies (in identified posts as well as unidentified posts), it is possible that number of persons appointed by reservation in an identified post may exceed 3 per cent.

**15. EFFECTING RESERVATION - MAINTENANCE OF ROSTERS:**

(a) All establishments are required to maintain separate 100-point reservation roster registers in the format given in Annexure II for determining / effecting reservation for the disabled - one each for Group 'A' posts filled by direct recruitment, Group 'B' posts filled by direct recruitment, Group 'C' posts filled by direct recruitment, Group 'C' posts filled by promotion, Group 'D' posts filled by direct recruitment and Group 'D' posts filled by promotion.

(b) Each register shall have cycles of 100 points and each cycle of 100 points shall be divided into three blocks, comprising the following points: 1st Block - point No.1 to point No.33 2nd Block - point No. 34 to point No.66, 3rd Block - point No.67 to point No. 100.

(c) Points 1, 34 and 67 of the roster shall be earmarked reserved for persons with disabilities - one point for each of the three categories of disabilities. The head of the establishment shall decide the categories of disabilities for which the points 1, 34 and 67 will be reserved keeping in view all relevant facts.

Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 19  
25-D, Mata Sundari Road, New Delhi-02

(d) All the vacancies in Group C posts falling in direct recruitment quota arising in the establishment shall be entered in the relevant roster register. If the post falling at point no. 1 is not identified for the disabled or the head of the establishment considers it desirable not to fill it up by a disabled person or it is not possible to fill up that post by the disabled for any other reason, one of the vacancies falling at any of the points from 2 to 33 shall be treated as reserved for the disabled and filled as such. Likewise a vacancy falling at any of the points from 34 to 66 or from 67 to 100 shall be filled by the disabled. The purpose of keeping points 1, 34 and 67 as reserved is to fill up the first available suitable vacancy from 1 to 33, first available suitable vacancy from 34 to 66 and first available suitable vacancy from 67 to 100 by persons with disabilities.

(e) There is a possibility that none of the vacancies from 1 to 33 is suitable for any category of the disabled. In that case two vacancies from 34 to 66 shall be filled as reserved for persons with disabilities. If the vacancies from 34 to 66 are also not suitable for any category, three vacancies shall be filled as reserved from the third block containing points from 67 to 100. This means that if no vacancy can be reserved in a particular block, it shall be carried into the next block.

(t) After all the 100 points of the roster are covered, a fresh cycle of 100 points shall start.

(g) If the number of vacancies in a year is such as to cover only one block or two, discretion as to which category of the disabled should be accommodated first, shall vest in the head of the



establishment, who shall decide on the basis of the nature of the post, the level of representation of the specific disabled category in the concerned grade/post etc.

(h) A separate roster shall be maintained for group C posts filled by promotion and procedure as explained above shall be followed for giving reservation to persons with disabilities. Likewise two separate rosters shall be maintained for Group D posts, one for the posts filled by direct recruitment and another for posts filled by promotion."

21. It is not disputed that the post of House Father / House Mother / Matron etc. are identified suitable for persons with locomotor disability to which the complainant belongs. It is also not in dispute that the promotion post is a Group 'C' post to which reservation in promotion for persons with disabilities is applicable.

22. In view of the facts and circumstances of the case as brought out above, the course of action for the respondent seems very clear to mitigate the impact of the deprivation suffered by the complainant and hence it is recommended that the DPC held for promotion to the post of House Father / House Mother / Matron in the year 2013 be reviewed and the complainant be considered against Point No. 1 of the 100 points reservation roster that should be maintained for the posts in Group 'C' without any further loss of time. If the complainant is found fit by the review DPC, he be promoted to the said post with all consequential benefits within three months from the date of receipt of this order and this court be informed of the action taken as required under Section 81 of the Rights of Persons with Disabilities Act, 2016. It

Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
Room No. - 1  
25-D, Mata Sundari Road, New Delhi-02

is further recommended that the complainant be considered for promotion to the next higher post(s) based on his seniority as per his position in the review DPC.

23. A copy of this order is being forwarded to Pr. Secretary (Services), Govt. of NCT of Delhi.

24. The matter is disposed of accordingly.

25. Given under my hand and the seal of the Court this 01<sup>st</sup> day of January, 2019.



Court of Commissioner (Disabilities)  
National Capital Territory of Delhi  
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25-D, Mata Sundari Road, New Delhi-02

State Commissioner for Persons with Disabilities  
The Pr. Secretary (Services), Services Department,

Copy to:

7<sup>th</sup> Level, I.P. Estate, New Delhi-110002.