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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: [comdis.delhi@nic.in](mailto:comdis.delhi@nic.in)  
[Vested with powers of Civil Court under the  
Rights of Persons with Disabilities Act, 2016]

Case No. 4/1260/2015-Wel/CDI/579-580

Dated: 26/5/17

In the matter of:

Sh Surya Narayan,  
Code No. 300971,  
Moti Bagh, Horticulture Department,  
New Delhi-110021.

..... Complainant

Versus

The Chairman,  
New Delhi Municipal Council,  
Palika Kendra, Parliament Street,  
New Delhi-110001.

..... Respondent

Date of hearing: 15.05.2017

Present: Surya Narayan, Complainant  
Sh. Sharad Kumar, Joint Director & S.K. Sharma, Sr. Asstt.  
A&H, Deptt. of NDMC on behalf of Respondent.

### ORDER

The above named complainant, a person with 60% locomotor disability in left upper limb and left lower limb, vide his complaint received on 03.05.2016 submitted that he has been working as Mali in New Delhi Municipal Council (NDMC) for the last 27 years. In the year 2011, a list of 109 successful candidates who qualified the written examination and the Interview-cum-Trade Test for the post of Choudhary was issued. He was at Sl. No. 84. As per him, 36 Malis have been promoted as Head Malis and as he is the only Mali with disability, he should be

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promoted. The complaint was taken up with the respondent vide communication dated 17.05.2016.

2. Separately, the respondent vide letter No. SO(A&H)/710/SA-II dated 02.05.2016 submitted that the NDMC had invited applications to fill up 22 backlog vacancies of Mali under disabled quota i.e. 10 nos. for VH, 10 nos. for HH and 02 nos. for OH (One leg). Some of the applicants had submitted the disability certificates against two posts identified for OH(One Leg). The respondent sought a clarification whether the applicants who were not covered under OH (One Leg) category could be considered for the post of Mali. The Office of Commissioner for Persons with Disabilities informed the respondent that NDMC should follow the guidelines as per identified posts.

3. After exchange of a number of correspondence and hearings, the respondent vide letter dated 09.03.2017 submitted as under:

*"The post of "Choudhary" in NDMC is equivalent to the post of "Head Mali" at serial no. 51 of annexure-C of the above instructions and same is to be filled up in P.H. quota in OH category which is identified for a persons with one leg (OL) affected whereas Sh. Surya Narayan, the complainant herein suffers from Post Encephalitic left sided hemi-paresis.*

*In other words, while the post is identified only for a person with one leg affected, the disability of Sh. Surya Narayan is such that the entire left part of the body i.e. lower as well as upper limb is affected.*

*A clarification in this regard was sought from the office of CCPD through this Office letter dated 09.06.2016 in this case which was replied to by the office of CCPD through its letter dated 12.08.2016 stating that the department should follow guidelines as per identified post.*

*In order dated 10.02.2017 of the Office of CCPD as mentioned above, the above issue which was brought to the notice through the oral submissions has not been addressed. It may be appreciated that if Sh. Surya Narayan is to be given promotion, in the first instance, a decision will have to be taken by the competent authority to relax the eligibility criteria for the post of Choudhary, which being a policy decision affecting the rules of recruitment would come under the domain of the*

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executive. It may also be appreciated that for considering any such proposal the competent authority would require to know the reasoning on the basis of which the office of CCPD has reached to the conclusion that the post of Choudhary may be filled up by recruiting a person whose both limbs are affected whereas the instructions provided otherwise.

Further it is noted that the office of the CCPD in its order dated 10.02.2017 has directed to give promotion to Sh. Surya Narayan from the due date, a term which may lead to different interpretations. It is stated that till date the prescribed norms render Sh. Surya Narayan as ineligible for the post of Choudhary. Even if it is presumed that taking into account the reasoning to be given by the Office of CCPD, the competent authority decides to relax/revise the norms, legally such decision will be effective from a prospective date only.

It is also to be stated that since the post of Malis and Choudharies occur in various departments of Central Governments and Local Self Governments, such a decision will have wider ramifications.

In view of above, the Office of CCPD is requested to have a re-look on the issue and pass a Speaking Order."

4. Upon considering the above contention, it was decided to hold a hearing on 15.05.2017. During the hearing, the representatives of the respondent reiterated their written submissions and added that the duties of the Choudhary are slightly different from that of Mali. The area of work of Choudhary is much wider than a Mali who is required to work at a particular location. Furthermore, the post of Choudhary is not identified for persons with disabilities in one leg as well as in the arm.

5. I do observe that the issue deserved to be examined in the Office of Commissioner for Persons with Disabilities in more depth and in accordance with the relevant provisions of the Persons with Disabilities Act, 1995, the relevant notification and instructions of the appropriate Government before conveying its views. I have perused the record and the relevant provisions of the legislation and the Government's instructions on the subject which are mentioned in the succeeding paragraphs.

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6. As per DoP&T's instructions contained in OM No. 36035/3/2004/Estt/Res dated 29<sup>th</sup> December, 2005 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 percent each shall be reserved for persons suffering from (i) blindness and low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the post identified for each disability. The representative of the respondent clarified during the hearing that the post of Choudhary is to be filled 100% by promotion.

7. Para 3 of the above mentioned OM provides that reservation for persons with disabilities shall be computed on the basis of total number of vacancies occurring in all Group C & D posts as the case may be. Para 15 of the said OM provides for earmarking points 1, 34 & 67 of the roster in each cycle of 100 points for persons with disabilities. Govt. of India introduced reservation for persons with disabilities in the posts filled by promotion vide O.M.No. 36035/08/89-Estt(Sect) dated 20<sup>th</sup> November, 1989. Therefore, the respondent was required to reserve vacancies for persons with disabilities in Group C posts, to which the post of Choudhary belongs, from November, 1989.

8. The posts suitable for persons with disabilities were identified by DoP&T in 1986. Thereafter, the Ministry of Social Justice and Empowerment, Govt. of India have reviewed the list and the latest one was issued vide notification dated 29<sup>th</sup> July, 2013. Note 2, 3 & 4 of the said notification read as under:

*"Note 2: The list of posts being notified is not an exhaustive list. The Ministries, Departments, Public Sector Undertakings and the autonomous bodies may further supplement the list.*

*Note 3: If a post is already held by a person with disability, it shall be deemed to have been identified.*

*Note 4: If a post is identified in the feeder grade, the post in the promotional grade should also stand identified".*

Office of Commissioner (Disabilities)  
Ministry of Social Justice and Empowerment  
New Delhi-110016  
25-C, Maita Connaught Road, New Delhi-02

9. As per the list of identified posts issued vide the said notification, Head Mali appearing at SI.No. 51 of the list, is identified for OL, HH, LV, B. Physical requirement for the post are - ST= Standing, W= working, MF= manipulation by fingers, PP= pulling and pushing, L=lifting, BL=bending. The work conditions are - work performed mostly outside. Incumbent should be functionally able to complete the assignment task efficiently with aids and appliances whenever necessary.

10. Admittedly, the complainant qualified the written examination and interview- cum-trade test in the year 2011. The complainant has been working as Mali for more than 27 years. Therefore, the post of Mali shall deem to have been identified for persons with disabilities in lower limb and in the upper limb. The duties of Choudhary are stated to be different from that of a Mali, to the extent that a Choudhary would have to move around for supervising the work of other Malis. The additional disability is in his upper left arm, which would not in any way affect his efficiency to perform his work. As the post of Choudhary is a feeder grade for Mali, the former should also stand identified for the person with disability in lower limb and in the upper limb in accordance with Note 4 of Ministry of Social Justice and Empowerment's notification dated 29<sup>th</sup> July, 2013. Therefore, the complainant should have been considered for promotion to the post of Choudhary, if his statement that he is the only Mali with disability is true.

11. In the light of the above mentioned position and if the statement of the complainant that 36 malis out of the list of 109 have already been promoted and he is the only Mali with disability is true, in my opinion, a grave injustice has been done to the complainant by not promoting him to the post of Choudhary alongwith the first batch of Malis. Any delay in his promotion now would amount to perpetuation of injustice. I therefore, recommend that Sh. Surya Narayan be promoted to the post of Choudhary from the date he should have been promoted in accordance with the above mentioned instructions of DoP&T and the Notification of Ministry of Social Justice and Empowerment within one month from the date of receipt of this order with all consequential benefits as per rules and inform this Court of the action taken within three months from the date of receipt of this order.

The matter is disposed of accordingly.

Given under my hand and the seal of the Court this 26<sup>th</sup> day of May, 2017.

Court of Commissioner (Disabilities)

Ministry of Social Justice & Empowerment, Govt. of Delhi

Room No. 1

25-L, Minto Cinema Road, New Delhi-02

This order be also sent by email to the respondent at  
sks741965@gmail.com.



*(Signature)*  
(T.D. Dhariyal) 26.5.2017

**State Commissioner for Persons with Disabilities**

*(Signature)*  
Office of Commissioner (Disabilities)  
NCT of Delhi  
25-B, Noida Gated Road, New Delhi-02