

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
[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 4/1752/2017-Wel/CD/ 6533-34

Dated: 5/4/18

In the matter of:

Mr. Yogesh Kumar
H.No. 2266/31, Street No. 4 (opposite Shiv Mandir)
Anand Garden, Gurgaon
Haryana -122001

Versus

.....Petitioner

The Director
Department of Education
GNCT of Delhi
Old Secretariat Delhi-110007

.....Respondent

Date of Hearing: 19.03.2018

Present; Sh. Kedar Nath, D.A, Sh. Yogesh Kumar, Complainant, Sh. Vikas Thapa,
Sh. Vinay Kumar, Education Officer

CORRIGENDUM

Reference ROP dated 26.03.2018 in case No. 4/1752/2017-Wel/CD/6432-34
dated 26.03.2018 in the matter of Yogesh Kumar vs Director, Department of
Education, GNCT of Delhi,

"Record of Proceedings" mentioned therein be read as "Order"

(T.D. Dhariyal) 5/4/18
State Commissioner for Persons with Disabilities

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Record of Proceedings

The above named complainant, a person with 40% multiple disability vide his complaint dated 07.09.2017 submitted that he is working in Gobind Ram Gurukul Secondary School, Ram Bagh, Old Rohtak. He acquired disability during service and was issued a disability certificate on 26.10.2016, which is submitted to his office on 26.10.2016. He raised the following issues:

- (i) He was not getting the salary since March, 2017.
- (ii) He did not get any financial help to be given to employees with disabilities from the department despite submitting his disability certificate on 26.10.2016.
- (iii) He has not been reimbursed the tuition fee in respect of his two daughters amounting to Rs. 36000/-.
- (iv) He has not received reimbursement of medical bills.

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(v) He requested for transfer near his house but his request was not accepted on the ground that he was an employee of an aided school. He alleged that the department is discriminating against the employees of Government aided schools.

2. The respondent vide letter dated 10.01.2018 submitted the following comments on each of the points:

1. *"In para no. 1, the complainant has contended that he has not been paid salary since March, 2017. However, the complainant has admitted that he has received salary up-to September, 2017 vide his letter dated 07.11.2017 (Annexure -I)*
2. *The contention of the complainant in para No. 2 is that he has submitted a Disability Certificated dt. 05.10.2016 issued by Office of the Civil Surgeon, Gurgaon, and is valid upto 04.10.2019 (3 years) and his disability benefits file is under submission to higher authority.*
3. *In reply to Para No. 3 regarding reimbursement of tuition fees for which he is eligible and is under process and is in final stage, copy of reply of HOS is annexed as Annexure 2.*
4. *In reply to para No. 4 regarding medical reimbursement file no. GRG/2016-17/1357 dated 26.05.2016, it is stated that the case was rejected by the competent authority with the remarks "Actually the treating doctor has not declared the condition as emergency and problem doesn't seem to be life threatening & patient could have gone to Empanelled Hospital" (Annexure 3) and the decision was communicated to complainant vide No. GRG/2016-17/86 dated 25/02/2017(Annexure 4) and regarding admissibility of Spl. Casual Leave, file is under process.*
5. *In reply to Para No. 5 regarding his transfer to a neighbouring School near his place of residence, it is submitted that the school in which he is presently working is a Govt. of Aided School under the Management by a Managing Committee, which bears 5% Management share towards all the financial benefits. Transfer from one Govt. Aided*

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School to another is not possible unless employee is rendered surplus."

3. The complaint was taken up with the respondent vide notice dated 6.10.2017 followed by reminder dated 6.11.2017 and a hearing was scheduled on 24.01.2018.

4. On 24.01.2018, the complainant neither appeared nor could he be contacted on telephone as he has not mentioned his telephone in his complaint. Ms. C.P. Osta, Dy. Director (North) submitted that the Department has examined grant of transport allowance at double the normal rate to the complainant. His disability certificate is to be reviewed in October, 2019 and the instructions provide that transport allowance at double the normal rate is to be paid to the employees who have permanent disability. Therefore, a clarification was being sought. The medical bills are also under examination in light of the fact that the complainant could have gone to empanelled hospital and condition of the complainant was not life threatening. Reimbursement of tuition fee got delayed as the complainant had submitted a single bill including for the period after the handover of the school to the management for which period the management has to deposit 5% share. The matter was scheduled for hearing on 19.03.2018.

5. During the hearing on 19.03.2018, it was pointed out that while some benefits may be given by the concerned authorities' suo-motu, for others an employee with disability has to apply. He should therefore specify the entitled benefits that have been denied to him in addition to those mentioned in his complaint.

6. The Ld. Counsel for the complainant submitted that the complainant had applied for reimbursement of tuition fee of his children on 26.10.2016. However, he has not received the amount till date. So was the case with payment of double the transport allowance. His disability is permanent as per disability certificate dated 5.10.2016 issued by Office of Civil Surgeon, Gurgaon. He also submitted that medical board in Gurgaon, NCR initially issues disability certificate for a period of 2-3 years where after fresh disability certificate is issued. Therefore, the complainant should not be made to suffer. He also expressed the apprehension of inordinate delay in actual release of the arrears of double transport allowance for which the

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order dated 14.03.2018 has been issued by the respondents. He requested that direction should be issued to release the payment within one month.

7. The representatives of the respondent reiterated the written submissions and added that after the management deposited 5% share, the Department has submitted the bill for Rs. 36000/- to PAO for reimbursement of tuition fee. The amount will be credited to the account of the complainant very soon.

8. As regards, delay in sanctioning the transport allowance at double the normal rate to the complainant, they stated that the Medical Board struck off all the entries at S.No. 2 of the disability certificate i.e. whether the condition is progressive or non progressive; likely to improve or not likely to improve. After examination of the matter and considering that at Sl. No.(B) of the certificate, the Medical Board has mentioned that the complainant's overall permanent physical impairment as per the guidelines is 40%, the competent authority has accorded approval for allowing the transport allowance at double the normal rate to the complainant w.e.f. 26.06.2016. The complainant has also been directed to submit a fresh disability certificate after 04/10/2017 which is the date when the status of the disability is to be reviewed by the competent medical authority. However, the concerned school will make the payment after seeking the approval of the competent authority and the management deposits 5% its share.

9. Regarding his transfer near his residence, the complainant submitted that he had acquired disability before his school was handed over to the management and therefore the department should have transferred him as per the instructions of DOP &T, Government of India. He also submitted that he has submitted the essentiality certificate and therefore, his medical bills should be reimbursed.

10. It is observed that medical board has not taken due care while issuing the certificate of disability in respect of the complainant as it has struck off all the entries against sl. No. 2 based on which the decision at Sl. No. 3 regarding reassessment of disability is taken. It is also observed that the said disability certificate has been issued in Form – III which is meant for multiple disability. While the certificate very clearly mentions that the disability is permanent to the extent of 40% it does not quite clearly mention as to what are the other disabilities than the locomotor disability. This

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apparently created confusion in approving the transport allowance at double the normal rate to the complainant as the instructions provide that the said allowance is to be paid to persons suffering from permanent disability making the complainant suffer for no fault on his part.

11. In the light of the above discussion, the following recommendations are made;

- (i) As the complainant has 40% permanent disability, the respondent should take immediate steps to have 5% share of the management deposited on priority and release the transport allowance at double the normal rate due to the complainant within 2 months from the date of receipt of this order.
- (ii) Ensure reimbursement of tuition fee of the children of the complainant within 10 days of receipt of this order.
- (iii) The concerned competent authority should consider the medical bills submitted by the complainant for reimbursement as per rules and keeping in view the situation of the complainant and take a final view within three months from the date of receipt of this order.
- (iv) As regards the transfer of the complainant, the concerned competent authority may consider if it is possible to consider his request in the light of para 2 (H) of DOP & T's O.M. No. 36035/3/2013-Estt (Res) dated 31.03.2014 in relaxation of Rule 47 of the Delhi Schools Education Rules, 1973.
- (v) The medical authority in the Office of Civil Surgeon, Gurugram is advised to issue a fresh certificate of disability to the complainant mentioning clearly disabilities in the certificate strictly in accordance with the guidelines issued by the Department of Empowerment of Disabilities, Ministry of Social Justice and Empowerment, Government of India and in the formats prescribed for the purpose leaving no ambiguity.
- (vi) Commissioner for Persons with Disabilities, Government of Haryana may also like to take up with the concerned authorities in the State to ensure that assessment and certification of disabilities is done with utmost care and it is ensured that information in the certificate of disability does not leave any ambiguity. For instance, in this case there was possibility of even more delay

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but for a positive decision at some stage taken by the department in view of the contents at s.no. (B) of the certificate.

12. Action taken Report on the recommendations concerning the respondent be sent to this court within 3 months from the date of receipt of this order as required under section 81 of the Act. The complainant be also informed about the decision.

13. A copy of this order is being sent to Commissioner for Persons with Disabilities, Government of Haryana and Civil Surgeon, Gurugram for taking action on the recommendations at paragraph 11(v) & (vi).

16. The complaint is disposed off accordingly.

17. Given under my hand and the seal of the Court this 26th day of March, 2018.



State Commissioner for Persons with Disabilities

(T.D. Dhariyal)

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Copy to:

1. Commissioner for Persons with Disabilities, Department of Social Justice and Empowerment, Government of Haryana, Room No. 101-102, Laxmi Bhawan, Shri Mata Mansa Devi Pooja Sthal, Panchkula, Haryana for information and taking action, on recommendations at para 11 (vi) of this order.
2. Civil Surgeon, Civil Hospital Campus, Gurugram-122001, Ph. 0124-2322412, 2331672 for information and taking action on recommendations at para 11 (v) of this order

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