

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-110002

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

Case No. 721/1011/2019/02/9091 - 9092

Dated: 31/12/2019

In the matter of:

Suo-Motu

Case No. 714/1011/2019/01

In the matter of:

Dr. Nitesh Tripathi

H.no 8-B Block

Swami Vivekanand Marg

Sant Nagar, Burari

Delhi- 110084

.....Complainant

Versus

The Secretary

Deptt. of Health and Family Welfare

9th Level, A-Wing, IP Extension

Delhi Secretariat, Delhi-110002

.....Respondent

ORDER

Section 33 of the erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provided for reservation of 1% vacancies for persons with blindness/low-vision, 1% for locomotor disability and Cerebral Palsy and 1% for hearing impairment. After the said Act was repealed with the coming into force of the Rights of Persons with Disabilities Act, 2016 (RPwD Act) on 19.04.2017, not less than 4% of the total number

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of vacancies are to be reserved for persons with benchmark disabilities under Section 34 of the said Act. Now, the 4% reserved vacancies are to be distributed among more categories of specified benchmark disabilities as provided in Section 34 of the Act.

2. Department of Personnel & Training vide their OM No. 36035/3/2004-Estt(Res) dated 29.12.2005 and OM No. 36035/02/2017-Estt(Res) dated 15.01.2018 prescribed the procedure for effecting reservation and computing the reserved vacancies etc. at the rate of 3% and 4% respectively.
3. As per Department of Personnel & Training OM No. 36012/39/2014-Estt (Res.) dated 22-25th May, 2015 and the directions of Hon'ble Supreme Court of India, a special recruitment drive for filling up backlog of reserved vacancies was to be conducted by the concerned Departments.
4. Vide letter No. 5/1593/2017-Wel/CD/155-316 dated 05.05.2017, all the Pr. Secretaries/Spl. Secretaries/Addl. Secretaries/HoDs, Govt. of NCT of Delhi and the Corporations were requested to provide by 31.05.2017, the information relating to appointment of persons with disabilities against reserved vacancies in a prescribed format in respect of their Departments and all the establishments such as Offices/Organisations/Institutions etc. under their control. The format, among other things, sought the information about the number of total vacancies filled since 1996, the number of persons with locomotor disability, visual impairment and hearing impairment out of the total, the backlog of reserved vacancies, and whether separate 100-point vacancy based roster for persons with disabilities was being maintained or not in respect of Group-A, Group-B, Group-C and Group-D posts.

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5. It was also brought to the notice of the respondents that the Contempt Petition No. 499/2014 in Civil Appeal no. 9096/2013 in the matter of National Federation of Blind had also been filed in the Hon'ble Supreme Court with regard to computing and filling up the backlog of reserved vacancies. Further, the information provided to Ministry of Home Affairs in respect of GNCT of Delhi and other offices was not correct and the details were not as per the proforma. It was requested that special recruitment drive to fill the backlog of reserved vacancies be organized without any loss of time if already not done within a specified time frame.
6. It was observed that the requisite information in the prescribed format had not been received from the Health & Family Welfare Department. The Department was advised to depute the concerned officers alongwith vacancy-based roster on 18.03.2019 vide show-cause-cum hearing notice dated 14.02.2019.
7. Dr. Nitesh Kumar Tripathi, a person with 65% locomotor disability vide his email dated 18.01.2019 also submitted that Department of Health and Family Welfare advertised (Advt. No. 09/2013) 679 vacancies of GDMO and recommended only 16 candidates with disabilities against 36 vacancies reserved for them leaving a shortfall of at least 20 backlog vacancies. The Department forwarded a requisition on 19.01.2019 to UPSC for filling up 327 vacancies of GDMO, which included only 13 reserved vacancies for persons with disabilities instead of 34(14+20).
8. Both the cases were tagged as the issue involved in the complaint of Dr. Nitesh Kumar Tripathi would also be addressed in the Suo-Motu case.
9. During the hearing on 18.03.2019, Dr. Nitesh Kumar Tripathi, the Complainant in Case No. 714/1011/2019/01 reiterated his written

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submissions and added that he was also one of the candidates against 679 posts advertised in 2013. He was rejected despite there being sufficient number of unfilled reserved vacancies. Even while computing reserved vacancies in 2018 against 327 vacant posts, the Department reserved only 13 vacancies instead of 14 as per Section 34 of the Rights of Persons with Disabilities Act and DoP&T's OM dated 15.01.2018. He expressed his concern about depriving him and other persons with disabilities of their right to their recruitment against the reserved vacancies and that he should be compensated for the loss that he had been made to suffer since 2014.

10. The representatives of the respondent submitted reply vide letter dated 15.03.2019, the extracts of which is as under:

" After formation of DHS (Allopathy) Rules-2009, the requisition for filling up of 679 vacant posts of GDMO (out of sanction post 1235) was submitted to UPSC. As per requisition submitted to UPSC vide F.No. 70/432005/H&FW/1739-1741 dated 03.11.2013, 36 posts out of 679 vacant post of GDMOs were sent to UPSC UNDER PH(Ortho).

Further, as per Circular / Order dated 05.05.2017 issued from the Office of the State Commissioner for Persons with Disabilities, GNCTD provision of 04% reservation of post had been provided for persons with disabilities. Prior to said order, 3% reservation was in place.

As per requisition submitted to UPSC vide F.No. II/51/H&FW/2017/HR-Medical/2689-91 dated 19.11.2018, 13 posts out of 327 vacant posts meets the existing guidelines of 4% reservation as per circular / order dated 05.05.2017.

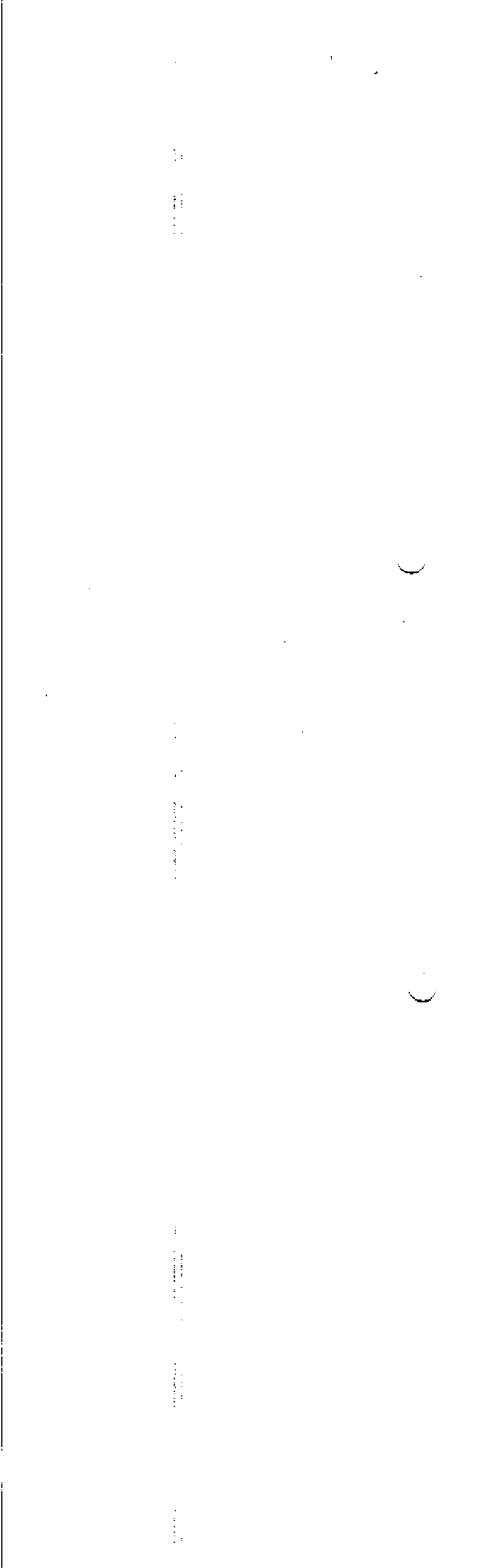
This is for kind information please.

Yours faithfully,

-Sd-

(Surinder Narag)


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Dy. Secy. (HR-MED)
Health & Family Welfare Deptt.
Govt. of NCT of Delhi"

11. They clarified that reservation for persons with disabilities was calculated @4% and so far no separate roster was prepared. As regards the information sought in the prescribed format, they submitted that the Health & Family Welfare Deptt. (H&FW) recruits paramedical staff, nursing staff and the GDMOs. The information in respect of paramedical and nursing staff had been compiled, which they have submitted. The information in respect of GDMOs had been called from the various hospitals as they did not have the information in H&FW Department.

12. On scrutiny of the information submitted in respect of paramedical and nursing staff, it was observed that in Column 6 of the format, the number of persons with disabilities appointed since 1996 had been given instead of the total number of vacancies filled i.e. persons with as well as and without disability. Therefore, the information needed to be re-submitted as explained to the representatives of the respondent. They were also informed that a separate 100-point vacancy based roster needs to be prepared for computing reservation for persons with disabilities in each group of posts. In the said roster, Points No. 1, 26, 51 & 76 are to be earmarked for **persons with benchmark disabilities** against the vacancies filled after coming into force of the Rights of Persons with Disabilities Act 2016 i.e. from 19th April, 2017. Prior to that, Points No. 1, 34 and 67 in the 100 point roster were to be earmarked. Therefore, as contended by the complainant, 14 vacancies against 327 vacant posts proposed to be filled up plus the number of backlog vacancies should have been reserved for persons with disabilities.


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13. The respondent Department was directed to compute the reserved vacancies based on a 100-point vacancy based reservation roster in accordance with the instructions of DoP&T vide OM No. 36035/3/2004-Estt(Res) dated 29.02.2005 and OM No. 36035/02/2017-Estt(Res) dated 15.01.2018 as applicable, and compute the backlog of reserved vacancies and send a requisition for special recruitment drive to UPSC on priority. In case the respondent Department had any doubt with regard to computing the reserved vacancies, the representatives of the Department were advised to come with the requisite information in the prescribed format already supplied and the reservation roster on or before the next date of hearing.
14. The correct information in respect of paramedical, nursing staff and GDMOs was also sought to be submitted. A copy each of the written submissions made by the respondent had also been given to the complainant.
15. On the next date of hearing on 26.11.2019, Dr. Yogesh Kataria appeared and informed that DGHS (HQ) has no information in connection with the cases in question. The information is to be given by the HR Section of Health & Family Welfare Department as it relates to the appointment of medical and other posts.
16. Pr. Secretary(H&FW) was therefore advised to personally look into the matter and direct the concerned senior officer to ensure submission of the information/clarifications and appear with all the relevant information, as directed vide ROP dated 25.03.2019, so that the matters can be disposed on.
17. On the next date of hearing on 13.12.2019, the respondent vide letter dated 13.12.2019 requested to adjourn the hearing as the concerned Deputy Secretary (HR-Medical) was on leave.

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18. It was pointed out that the list of identified posts is already available in respect of persons with (a) blindness and low vision (b) hearing impairment and (c) locomotor disability including cerebral palsy. The appropriate governments are now required to identify posts for persons with autism spectrum disorder, intellectual disability, specific Page 5 of 9 learning disabilities, mental illness and multiple disabilities besides specifying the posts separately for persons with deafness and hard of hearing, leprosy cured, dwarfism, acid attack victims and muscular dystrophy.

19. Vide letters dated 19.12.2019, 23.12.2019 and 24.12.2019, Health and Family Welfare Department has submitted the following details:

S. No.	Classification of post (Whether belongs to Class I, II, III or IV or to Group A, B, C or D)	No. of vacancies filled since 2009*	No. of posts reserved for persons with disabilities	No. of persons with disabilities vacancies filled since 1996 /2009	Number of employees with disabilities out of column 4			Backlog of reserved vacancies
					OH	VH	HH	
1	2	3	4	5	6			7
					OH	VH	HH	
1	Group A (GDMO Posts) Direct Recruitment	977	54	15	15	0	0	26**
2	Group A Non Teaching Specialists	458	33	2	2	0	0	31
3	Group C (Nursing Cadre posts) Direct Recruitment	4989***	243	20	20	0	0	223****
4.	Group C Paramedical technical posts Direct Recruitment	1567	86	33	20	0	5	53
Total		7991	416	70	65	0	5	333

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* Prior to 2009, GDMOs were being posted by M/o Health and Family Welfare, Govt. of India.

**Out of total vacancies reserved comes to 54 out of which 15 are filled up and requisition for 13 posts has already been submitted to UPSC dated 19.11.2018. Remaining 26 backlog vacancies of PwDs posts will be submitted to UPSC as and when the requisition will be submitted for filling up vacant posts of OBC candidates, which is presently on hold.

*** No such data available before 2009 in r/o Group C, Nursing Cadre posts by Direct Recruitment.

**** The requisition for 41 posts under PwDs category has already been sent to DSSSB. For remaining posts, the same will be sent to DSSSB as soon as possible.

A special DPC has been conducted on 10.12.2019 under the Chairmanship of Pr. Secretary (H&FW) regarding promotion of 18 Nursing Officers from Disability Quota to the post of Sr. Nursing Officer.

20. It is observed that respondent Department seems to have shown the reserved vacancies which perhaps includes the cumulative backlog except in case of GDMOs. Looking at the figures submitted, I am satisfied as far as the number of vacancies reserved for persons with disabilities as a whole. I would however advise the Department to have a thorough study of the instructions and keep the record of the computation clarifying each point with regard to maintenance of separate vacancy based reservation roster for persons with benchmark disabilities.

21. It was therefore possible to initiate action for conducting special recruitment drive to fill the backlog of reserved vacancies under the provision of PwD Act, 1995 in the posts already identified. Reservations against the vacancies that arose after 2016 for persons with other benchmark disabilities, for whom the posts are yet to be identified, could be filled once the exercise of identification was completed.

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22. In the light of the above discussion and the submissions made by the respondent, it is recommended that action to fill up backlog of 333 reserved vacancies for persons with benchmark disabilities in Group 'A' and Group 'C' posts be taken on priority preferably by conducting special recruitment drive at the earliest.

23. This Court be informed of the action taken on the above recommendations within three months from the date of receipt of this order as required under Section 81 of the Act which is reproduced below:

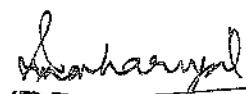
"Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person."

24. The case is disposed of.

25. Given under my hand and the seal of the Court this 31th day of December, 2019.




(T.D. Dhariyal)

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