

**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]

1. Case No. 378/1011/2018/07/9830-34

Dated:19/09/2018

In the matter of:

Sh. Rajesh Upreti
Village-Post Dhamdeval (Ganai)
Tehsil-Chokhutiya
Almora-Uttarakhand-263656

..... Complainant

2. Case No. 387/1011/2018/07

Dated:

In the matter of:

Sh. Kapil Pal
House No. 639 Block P-1, Street 18
Sultan Puri, Delhi-110086.

..... Complainant

Versus

The Pr. Secretary.
Deptt. of Health and Family Welfare,
9th Level, A-Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110 002.

.....Respondent No.1

The Chairman
Delhi Subordinate Services Selection Board
FC-18, Institutional Area, Karkardooma
Delhi-110092.

..... Respondent No. 2

Date of Hearing 13.09.2018

Present: Sh. Kapil Pal, Complainant in person.

Sh. Amit Pamasi, Dy. Secretary alongwith Sh. Stanley
Thomas, DA for respondent no.1.

Sh. R. Chopra, Secy. DSSSB for respondent no.2.

ORDER

Sh. Rajesh Upreti, a person with benchmark disability (65% cerebral palsy) vide his complaint/email dated 16.07.2018 submitted that DSSSB in the advertisement no. F(1) 477 DSSSB/P&P/2018/Advt/432 dated 05.07.2018 for the post code 2/18 (Pharmacist) had mentioned that the post is identified only for OL, BL. He also submitted that Chief Commissioner for Persons with disabilities vide letter no. 5214/1014/2015/R 11130 dated 06.10.2015 had advised Director, Employees State Insurance Corporation (ESIC), New Delhi and CMD, Neyveli Lignite Corporation Ltd., Chennai to include OA, OL, OAL, BL and HH suitable for the post of 'Pharmacist'. He enclosed copy of letter dated 02.02.2016 of ESIC vide which they informed the Court of Chief Commissioner that in compliance of their letter, OA, OL, BL, OAL & HH had been included and advertised. He also enclosed a copies of letter dated 04.08.2017 and 08.01.2016 of Railway Recruitment Board and Kalawati Saran Children Hospital, New Delhi respectively who included the above mentioned categories of disabilities as suitable for the post of 'Pharmacist'.

2. **Sh. Kapil Pal**, a person with benchmark locomotor disability (more than 40%) vide his complaint dated 13.07.2018 submitted that he is post-graduate in Pharmacy and a registered pharmacist under Pharmacy Act, 1948 with registration no. 22406. Chief Commissioner for Persons with Disabilities vide order date 09.05.2018 in his complaint no. 7057/1011/2016 directed Safdarjung Hospital to include OA, OAL, HH also as suitable for the post of 'Pharmacist'. He requested that the Department of Health & Family Welfare, Govt. of NCT of Delhi should be asked to comply with the directions passed in the said order dated 09.05.2018 and DSSSB should issue a corrigendum and should not close the date for receiving applications/

complete recruitment/conduct examination for the post of 'Pharmacist' for candidates with disabilities without including the categories of disabilities mentioned in the notification of Department of Empowerment of Persons with Disabilities.

3. The above complaints were taken up with the respondents under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "Act", vide notice dated 20.07.2018 and 24.07.2018. It was brought to the notice of the respondents that the post of 'Pharmacist' was identified for persons with OA, OL, OAL, BL and HH and why corrigendum to the advertisement accordingly should not be issued.

4. DSSSB (respondent no. 2) vide letter dated 07.08.2018 in response to case at 1 and dated 10.08.2018 in case no. 2 submitted as under:

"The requisition for filling up of 51 posts of Pharmacist has been received from Health & Family Welfare Department, GNCT of Delhi vide No. 1(753)TRC/H&FW/20179575 dated 17/01/2018. The posts are identified as suitable for PH, OH-(OL-One Leg, BL-Both Leg). Copy of requisition enclosed herewith.

The Board has been mandated to make recruitment for the post of Group 'B' (non-gazetted) & 'C' posts of various departments of GNCT of Delhi. The recruitment is being done as per the requisition received from the indenting department. The eligibility criteria such as upper age limit, educational qualification, experience etc. are being fixed by the Board as prescribed in the Statutory RRs/Requisition of the post which is framed by indenting/user department.

Further, it is relevant to mention here that the post of Pharmacist exists at two places i.e. at S. No. 992 & 1233 of Notification No. 16/15/2010 DD-III dated 29/07/2013. As per S. No. 992, post is suitable only for OL & BL Category of Disability whereas, as per S. No. 1233 post is suitable for OA, OL, OAL & HH Categories of disabilities (there is no BL category, as given at S. No. 992).

The H&FW Department has submitted his requisition as per S. No. 992. In case S. No. 1233 will be followed, the candidates belonging to BL category shall become ineligible.

Further, as the subject matter of the notice is related to requisition based upon RRs or policy decision to be taken by the user department i.e. Health & Family Welfare Department, GNCT of Delhi the reply may be sought from them.

Meanwhile, in case H&FW Department modifies the categories of disability in its requisition and informs the Board well before closing date i.e. 13/08/2018, a corrigendum to that effect can be issued by the Board.

Yours faithfully,

Dy. Secretary (P&P)

Encl: as above

No. F.1(344)/DSSSB/P&P/2017/

Dated:

Copy to:

- 1. The Principal Secretary, H & F W Deptt, GNCTD, 9th Level, Delhi Sectt. New Delhi.*
- 2. The Additional Secretary*
- 3. The Deputy with the request to submit the clarification to the Hon'ble Court of State Commissioner for Persons with Disabilities, NCT of Delhi.*
- 4. Mr. Rajesh Upreti, Village-Post Dhamdeval (Ganai), Tehsil-Chokhutiya, Almora, Uttrakhand-236656.*

Dy. Secretary (P & P)"

5. In response to notice in case no. 378/1011/2018/07, Department of Health & Family Welfare (respondent no. 1) vide letter dated 08.08.2018 submitted that as per notification no. No.16-15/2010-DD-III dated 29th July 2013 of Department of Empowerment of Persons with Disabilities, it has not been mentioned that the post of 'Pharmacist' is suitable for persons with disabilities in one arm and one leg (OL), both leg (BL) and hearing impairment (HH). The post of pharmacist is suitable only for OL, BL.

6. In the light of the reply of respondent no. 1, a hearing was scheduled on 13.09.2018. As the issue involved in both the cases is identical, these are being disposed off by a common order.

7. During the hearing, Secretary, DSSSB stated that DSSSB has issued the advertisement as per the requisition received from the Department of Health & Family Welfare. As stated in the reply dated 07.08.2018, had the Department of Health & Family Welfare modified its requisition, DSSSB would have had no problem in issuing the corrigendum. However, the closing date for receipt of applications which was 13.08.2018, is already over. Therefore, only the candidates who have applied in response to the earlier advertisement would be able to participate in the recruitment process, irrespective of their categories.

8. The representative of Department of Health & Family Welfare submitted that he has nothing more to add to the written submissions already filed in Case No. 378/1011/2018/07 of Sh. Rajesh Upreti on 08.08.2018. However, the Department will take action as per the directions of this Court.

9. It is observed that as per the notification no. No.16-15/2010-DD-III dated 29th July 2013, the posts of 'Pharmacist' and 'Sr. Pharmacist' appear at serial no. 176 and 177 in the list of Group B posts. Pharmacist also appears at serial no. 992 and 1233 in the list of Group C posts. As per serial no. 176 and 177 of the Group B posts, the post of 'Pharmacist' Chief Pharmacist/Store Keeper and Sr. Pharmacist are identified for OA, OL, HH. At serial no. 992 in the list of Group C posts 'Pharmacist' is identified only for OL and BL. Whereas at serial no. 1233, in the list of Group 'C' posts 'Pharmacist' is identified for OA, OL, OAL, HH. However, no clarification has been given for variance in

the categories of disabilities for which the post of 'Pharmacist' is identified.

10. In view of this, the post of 'Pharmacist', irrespective of the Group, should be deemed to be identified for all the above categories of disabilities, i.e. OA, OL, OAL, BL and HH. Accordingly, the Department of Health & Family Welfare (respondent no. 1) is advised to amend and send the requisition indicating suitability of the categories of persons with disabilities for which the post of Pharmacist is identified as indicated at serial no. 176 and 177 of the list of Group B posts and at serial no. 992 and 1233 of the list of Group C posts in the notification dated 29.07.2013 so that DSSSB can accordingly issue corrigendum to that effect. DSSSB is advised not to cancel the candidature of the complainants in the above cases and similarly placed other persons with disabilities who have applied under different categories of disability due to non-availability of their above mentioned respective categories in the OARS.

11. Department of Health & Family Welfare is also advised to ensure that in future, before sending requisition for recruitment to DSSSB or any other recruiting agency, the categories of persons with disabilities suitable for the posts be thoroughly examined with reference to the posts in different Groups and with different nomenclatures having identical functions overlooking any anomaly such as discussed above.

12. In view of the above mentioned anomaly in the list of identified posts in the notification dated 29.07.2013, a copy of this order is being forwarded to Secretary, Department of Empowerment of Persons with Disabilities for taking appropriate action while notifying the list of identified posts in pursuance to section 34 of the Act.

13. An action taken report as required under section 81 of the Act be submitted.

14. The complaints are disposed off.

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

(T.D. Dhariyal)
State Commissioner for Persons with Disabilities

Copy to :

1. Secretary, Department of Empowerment of Persons with Disabilities, M/o Social, Justice and Empowerment, 5th Floor. Paryavaran Bhawan, CGO Complex, Lodhi Road. New Delhi - 110003.

For information and necessary action on para 12 of the order.