

(12)

**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. 1048/1014/2019/07/ 7726 - 7732 Dated: 07/11/2019**

In the matter of:

**Sh. Devesh Sharma,**  
House no. 801/804 Raghunath Mandir  
Sombazar, Habibat Pura, Najafgarh  
New Delhi-110043.

.....Complainant

Vs.

**Registrar General**  
Hon'ble High Court of Delhi,  
Sher Shah Road,  
New Delhi-110003.

....Respondent No. 1

**Medical Superintendent**  
Dr. Ram Manohar Lohia Hospital  
Baba Khark Singh Marh,  
Near Gurudwara Bangla Sahib,  
Connaught Place, New Delhi, Delhi-110001.

.... Respondent no. 2

**Medical Superintendent**  
Rao Tula Ram Memorial Hospital,  
Jaffarpur New Delhi-110073

.....Respondent no. 3

**Last date of hearing : 24.10.2019**

**Present:** Sh. Chaitanya Puri, advocate alongwith Sh. Sunil Lakhina  
and Sh. Govind Singh for respondent no. 1.

Dr. MD Singh, Consultant & Professor and Dr. B.K. Kundu,  
Officer I/c on behalf of respondent no. 2.

Dr. A.K. Singh, CMO (NFSG) for respondent no. 3.

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## ORDER

The above named complainant, a person with low vision (40%) as per the disability certificate no. 07/eye/2016 dated 16.01.2016 issued by Rao Tula Ram Memorial Hospital (RTRM Hospital), Jaffarpur, New Delhi-110073, vide his complaint dated 26.07.2019 submitted that he had been selected for the post of Junior Judicial Assistant (Technical) in PH /PwD (LV) category by High Court of Delhi. He got offer of appointment for the said post and was instructed to have medical fitness examination in Ram Manohar Lohia Hospital (RML Hospital), Delhi. The RML Hospital first considered him as general candidate because his disability category was not mentioned in the offer letter. After checking him as general candidate without forming Medical Board, they assessed his visual disability as 30% and declared him unfit for the post. Delhi High Court therefore did not give him the job because RML Hospital declared him unfit. Before the medical examination at RML Hospital, he was also medically examined by the Indian Railways at their New Delhi Railway Hospital on 22/23 May and he was declared fit for the job under visually impaired category and his disability was assessed as 40%.

2. The complaint was taken up under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "RPwD Act, 2016" with Registrar General, Hon'ble High Court of Delhi and Medical Superintendent, Dr. RML Hospital vide letter dated 02.08.2019.

3. Dr. RML Hospital vide reply dated 20.08.2019 submitted that the letter dated 07.06.2019 of High Court of Delhi did not mention that the candidate had been selected under PwD category. On examination, it was found that he has NIL visual acuity in right eye [only perception of light in (PL) person] and 06/18 in the left eye. As per DoPT's guidelines on their website ([URL/persmin.gov.in/ais1/Docs/Appendix-III.pdf](http://persmin.gov.in/ais1/Docs/Appendix-III.pdf)), "*no specific standard of physical fitness other than visual acuity have been prescribed for examining candidates for non-gazetted appointments*" and

the vision should be 6/6 in the better eye, if it is NIL in the worse eye. The complainant was found to have no improvement in visual acuity with glasses on a subsequent date after one month on 17.07.2019 and hence based on the above criteria, he was declared unfit. The complainant showed the document that he had been selected under PwD category. As per DoPT's OM dated 29.12.2005, the Appointing Authority shall ensure that the candidate is eligible to get the benefit under PwD category and the percentage of disability should be 40% to avail the benefit of reservation. The complainant was re-examined as a person with disability on 18.07.2019 and he was found to have visual disability of 30% as per the **latest guidelines**. The findings of the medical examination were conveyed to Hon'ble High Court of Delhi and it has also been submitted that all appeals are to be referred to Ministry of Health.

4. Joint Registrar (Estt.) vide letter dated 22.08.2019 informed that the complainant was examined by CMO, NFSG and In-charge Medical Examination-I, Dr. RML Hospital under general as well as visually impaired category but was found unfit for the post of Junior Judicial Assistant (Technical).

5. This Court referred the matter to the Medical Superintendent, RTRM Hospital for re-examining and re-assessment of the disability of Sh. Devesh Sharma, if considered necessary, vide this Court letter dated 02.09.2019 and Joint Registrar (Estt.), Hon'ble High Court of Delhi was advised to keep a vacancy of Junior Judicial Assistant (Technical) unfilled till the final decision on the percentage of disability of Sh. Devesh Sharma.

6. Dr. A.K. Singh, Chairman, Disability Board, RTRM Hospital vide letter dated 14.09.2019 informed that the complainant was examined on 16.01.2016 and his BCVA was 6/18 and finger counting at 2 meter in left

eye and right eye respectively on the day of examination. As per reference no. 16-18/97-NI dated 21.07.1999 of Ministry of Social Justice and Empowerment, his visual impairment corresponds to category-I (40%). However, as per the guidelines vide notification no. 16-09/2014-DD-III dated 04.01.2018 under the Rights of Persons with Disabilities Act, 2016, the complainant with same visual acuity will fit in the "category II one eyed person" with 30% of disability. In view of this, the committee has decided to issue a new certificate as per the RPwD Act, 2016 but before proceeding further, the complainant needs to be re-examined. Chairman Medical Board also directed the complainant to report to the Hospital alongwith all examination reports done after the issuance of his disability certificate.

7. During the hearing on 24.10.2019, Sh. Chaitanya Puri, advocate for Registrar General, Delhi High Court submitted that the complainant vide his email dated 21.10.2019 has informed that he has settled in Indian Railways and he would go for higher studies. Therefore, he is not interested in doing the job in Delhi High Court for Junior Judicial Assistant (Technical). He further submitted that in light of this, the complaint could be closed. He further submitted that the vacancy circular was issued in the year 2019 by when the Rights of Persons with Disabilities Act had come into force with effect from 19.04.2017 and the guidelines for assessment of specified disability and certification of disability had also been notified on 04.01.2018. The last date of online application was 23.01.2019. Therefore in any case, the complainant could have been covered by the new guidelines and not availed the benefit based on the disability certificate dated 16.01.2016.

8. The vacancy notice of 2019 also very clearly mentioned that:

*"candidate belonging to persons with disability (PwD) category and suffering from disabilities, other than OL (one leg), BL (both leg), LV (low vision) or HH (hearing handicapped) of 40%*

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*or more shall be required to fulfil the criteria applicable for their respective categories and relaxation in age and marks shall be given to them as per their respective category only, if applicable. Only such persons would be eligible for reservation under the quota reserved for persons with disability, who suffer from not less than 40% of relevant disability mentioned above in this notice".*

9. He also clarified that the assessment and certification guidelines of 2018 are not being applied retrospectively as the vacancies were advertised in 2019. Therefore, the guidelines applicable as in 2019 should necessarily cover the eligibility criteria in respect of persons with disabilities.

10. Dr. A.K. Singh, CMO, NFSG on behalf of RTRM Hospital submitted that all the persons with disabilities who have earlier been issued permanent disability certificate are to be issued Unique Disability Identity (UDID) cards without examining the holder of the certificate of disability. If the new guidelines are to be applied to such persons from the date the said guidelines were issued, then all the persons with visual impairment need to be re-examined before issuing UDID card, for which there are no instructions. He sought a clarification as to what the Hospital should do.

11. Even though the complainant has decided not to join the post in the Hon'ble High Court of Delhi, it is important to examine the matter with reference to the provisions of the Act, the Rules made thereunder and the relevant instructions to ensure that the complainant is not deprived of his rightful entitlement and must be given the choice and opportunity to join the post without any fear or apprehension. It is also important to put the doubts to rest as there could be many more such cases. Hence, I consider it in the fitness of things and also in the interest of justice to go into the details and give my observations/findings rather than just close the matter.

  
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12. From the submissions of the parties and a careful perusal of the relevant provisions of the Act, and Rules etc., the following are my findings/ observations:

I) The Rights of Persons with Disabilities Act, 2016 (the RPwD Act, 2016) came into force on 19.04.2017 which repealed the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (PwD Act, 1995).

II) Section 56 of the RPwD Act, 2016 provides that:

*"The Central Government shall notify guidelines for the purpose of assessing the extent of specified disability in a person."*

III) Guidelines for assessment of disability and certification after enactment of PwD Act, 1995 were issued by Ministry of Social Justice & Empowerment, Govt. of India vide notification no. 16-18/97-NI (I) dated 01.06.2001.

IV) The guidelines for assessing the extent of specified disability under the RPwD Act, 2016 were notified by the Department for Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment on 04.01.2018.

V) The definition of 'low vision' was changed in the RPwD Act, 2016 and accordingly, the guidelines for certification of disabilities also got modified. A comparison of the definition of 'low vision' in PwD Act, 1995 and in RPwD Act, 2016 and the corresponding guidelines for assessment and certification is given in the table mentioned below:

	PwD Act, 1995	RPwD Act, 2016
Definition of low vision (40%)	Person with low vision means "a person with impairment of visual functioning even after treatment or standard	Person with low-vision "means a condition where a person has any of the following conditions, namely:

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	refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device."	(i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or (ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree."
Guidelines for assessing low vision (40%)	<b>2001</b> Better eye 6/18 to 6/36 Worse eye 6/60 to NIL	<b>2018</b> Better Eye 6/24 to 06/60 Worse Eye 6/24 to 6/60 (40%) Or Visual field less than 40 upto 20 degree around 50%

VI) As per the disability certificate No. 07/Eye/2016 dated 16/1/2016, the complainant has been certified to have permanent low vision (40%). The condition is not likely to improve and re-assessment of disability is not necessary.

VII) The definition of other disabilities like hearing impairment ('deaf' and 'hard of hearing') have also undergone changes in the RPwD Act, 2016.

VIII) Section 57 of the RPwD Act, 2016 provides,

*"(1) The appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability.*

*(2) The appropriate Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions.*

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IX) Department for Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, Govt. of India notified the Rights of Persons with Disabilities Rules 2017 on 15.06.2017.

X) Rule 18 (3) of the Rules provides as under:

*"The medical authority shall, after due examination –*

*(i) issue a permanent certificate of disability in cases where there are no chances of variation of disability over time in the degree of disability; or*

*(ii) issue a certificate of disability indicating the period of validity, in cases where there is any chance of variation over time in the degree of disability."*

XI) Rule 19 of the Rules provides,

*"A person to whom the certificate issued under rule 18 shall be entitled to apply for facilities, concessions and benefits admissible for persons with disabilities under schemes of the Government and of non-Governmental organizations funded by the Government."*

XII) Rule 20 of the said Rules, which is the most relevant provision in this case provides that:

*"The certificate of disability issued under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) shall continue to be valid after commencement of the Act for the period specified therein."*

XIII) Govt. of NCT of Delhi notified the Delhi RPwD Rules, 2018 on 28.12.2018. The said Rules have the identical provision for issuance of certificate of disability as in the Central Rules.

XIV) Govt. of NCT of Delhi circulated the medical authorities for assessment and certification of specified disabilities under the RPwD Act, 2016 on 02.05.2019.

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- XV) In view of the fact that various activities to implement the provisions of RPwD Act, 2016, especially the certification part, were undertaken over a span of more than 2 years. Thus, any person with disability in NCT of Delhi could be expected to get a certificate of disability under the RPwD Act, 2016 only after **02.05.2019**. It is likely that some persons in the same hospital may have got assessed and certified for their disabilities as per the old guidelines and some may have got the certificates under the new guidelines around 02.05.2019 or even after that date till the circular got disseminated to the concerned certified authorities. Therefore, it would not be reasonable at all to re-assess a person with disability possessing a certificate of permanent disability issued under the PwD Act, 1995 and the guidelines of 2001.
- XVI) Under the PwD Act, 1995, many persons with lesser extent of visual or other disabilities have already received the benefits.
- XVII) The RPwD Act, 2016 or the Rules do not provide for withdrawing the benefits from such persons nor for their re-assessment of disability. If one were to do that, the next issue would be the date from which the new definition should be applied to those who have already been certified. In light of such complications and infructuous exercise that might follow, the Govt. has rightly provided in Rule 20 of the RPwD Rules 2017 that the certificates of disability issued under PwD Act, 1995 shall continue to be valid even after commencement of the RPwD Act, 2016.

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XVIII) The vacancy notice of Hon'ble High Court of Delhi did not mention anything about the changed definition of 'low vision' or that the benefit of reservation would be applicable only to persons who are certified as persons with benchmark disabilities as per the changed definition and the new guidelines for certification.

XIX) The communication sent to RML Hospital for medical fitness of the complainant should have mentioned that the post of Junior Judicial Assistant (Technical) is identified for persons with 'low vision' and therefore, his medical fitness should be assessed accordingly.

XX) If a post is identified for a person with 'low vision', a person with lesser extent of disability cannot be declared as medically unfit, irrespective of whether the post is reserved or not. So, even if the complainant is treated to be having less than 40% visual impairment, as per the new guidelines, he cannot be declared medically unfit for the job. That would be absolutely illogical.

13. In view of the above discussion, even though the complainant has submitted that he is not interested in the post of Junior Judicial Assistant (Technical) in Delhi High Court (which may be out of fear), he should be informed that, if he so desires, he can join the post of Junior Judicial Assistant (Technical).

14. With regard to the request of Dr. A.K. Singh, CMO whether all the persons with visual impairment who were assessed in accordance with the guidelines of 2001, should be re-examined before issuing UDID cards, the answer is clearly in the negative.

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15. Even though Rule 20 of the RPwD Rules, 2017 is very clear, it is recommended that the Department for Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment should issue a suitable clarification to all the States/UT Administrations in this regard so that persons with disabilities in such situations are not unnecessarily inconvenienced and /or deprived of their entitlements. Secretary, Health and Family Welfare, Govt. of NCT of Delhi should also issue a clarification to all the Medical/Certifying Authorities in NCT of Delhi.

16. 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."*

17. The complaint is disposed off.

18. Given under my hand and the seal of the Court this 7<sup>th</sup> day of November 2019.



  
(T.D. Dhariyal)

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Copy to:-

1. Secretary, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, 5th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road New Delhi - 110003.


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For action on para 15.

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Email: secretaryda-msje@nic.in

2. The Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi, 9th Level, A Wing I.P. Estate, Delhi Secretariat, New Delhi-110002.
3. The Secretary, Department of Social Welfare, GLNS Complex, Delhi Gate, New Delhi-110002

  
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