

**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. 206/1121/2018/04/7342-47

Dated: 18.05.2018

In the matter of:

Shri Manish Kumar,  
H.No. 418, Gate No. 10A, Swantantra Nagar,  
Narela, Delhi-110040  
Email:- manishnagpal180292gmail.com  
Mobile: 09555922230

.....Complainant

Versus

The Medical Superintendent,  
Govind Ballabh Pant Institute of Post Graduate Medical Education &  
Research(GIPMER),  
1, Jawahar Lal Nehru Marg,  
New Delhi-110002.

.....Respondent No. 1

The Medical Superintendent,  
Institute of Human Behaviour & Allied Science,  
Dilshad Garden,  
Delhi-110095.

.....Respondent No. 2

**Date of hearing:** 14.05.2018

**Present** Sh. Manish Kumar, Complainant.

Dr. Sidharth & Sh. R.C. Sharma, MRO on behalf of  
Respondent No.2.

**ORDER**

The above named complainant, a person with 45% generalized dystonia with myoclonus and dysarthria as per the disability certificate dated 03.07.2012 issued by Gobind Ballabh Pant Hospital vide his complaint dated 12.04.2018 submitted that he cleared Engineering Services Examination (ESE) 2016 and secured all India Rank

254. However, Railway Board has rejected his claim for allotment of a service/post on the ground that he is suffering from neurological disorder with the above mentioned condition and that he has wrongly claimed himself to be one arm affected person though he suffers from neurological disorder.

2. The complaint was taken up with the respondent vide Show-Cause-Cum-Hearing Notice dated 13.04.2018 and a hearing was scheduled on 24.04.2018. It was brought to the notice of respondents that the then applicable guidelines for evaluation & certification of disabilities vide Ministry of Social Justice & Empowerment (MSJ&E) notification No. 16-18/97-NI.I dated 01.06.2001 (Section C), neurological condition/ neurological deficit cause locomotor disability. Para- 7.4. Table-III mentions about percentage of physical impairment due to dysarthria also. Thus, before 04-01-2018 i.e. date of notification of Department of Empowerment of Persons with Disabilities, Govt. of India regarding guidelines for assessing the extent of the specified disabilities, the assessment of disability and certification had to be done as per the said guidelines of 2001.

3. As per the Person with Disabilities (Equal opportunities, Protection of Rights and full Participation) Amendment Rules, 2009 (PwD Amendment Rules) disability certificate other than in the case of amputation or complete permanent paralysis of limbs, blindness and in case of multiple disabilities, is to be issued in form-IV. Every Disability Certificate must indicate the disability type (i.e. locomotor disability/ low vision/ blindness/ hearing impairment/ mental retardation/ mental illness), affected part of the body, diagnosis and percentage of impairment among other things. However, the Disability Certificate dated 03.07.2012 has been issued in Form- II which is meant for obvious disabilities i.e. complete paralysis or

blindness. IHBAS has also issued the disability certificate dated 24.08.2017 in Form-IX whose contents are not same as prescribed in Delhi Persons with Disabilities Amendment Rules, 2011 (Delhi PwD Amendment Rules) which were notified following the notification of the PwD Amendments Rules by Govt. of India.

4. It was also observed that as per examination notice No. 01/2017-ENGG dated 28.09.2016 of Union Public Service Commission (UPSC), Indian Railway Service Engineer has been identified as suitable for persons with disability category OA,OL,&HI and as per the complainant, he meets all the physical requirements mentioned in the said notice. Because of faulty disability certificate dated 03.07.2012, the complainant was running the risk of losing a job that he has secured with enormous hard work and struggle and getting through a rigorous selection process of UPSC for the Indian Engineering Service.

5. Respondent No. 1 was, therefore, directed to show cause why the disability certificate dated 03.07.2012 should not be replaced with a fresh disability certificate in accordance with the then applicable guidelines for assessment and certification of disabilities issued on 01.06.2001 in Form-IV of PwD Amendment Rules, as the complainant has locomotor disability due to neurological condition and the speech disorder was not a disability under the Persons with Disabilities Act, 1995. Respondent No.2 was directed to submit comments with respect to the certificate dated 24.08.2017 issued by IHBAS.

6. Respondent No. 1 vide letter dated 20.04.2018 submitted the following reasons why the disability certificate dated 03.07.2012 could not be replaced by

24.02.2018:

- “(i) Then Medical Authority took premature retirement in 2014 although she was going to be retired in year 2015.*
- (i) Medical Authority might had preferred to give disability according to diagnosis rather than to terming it as locomotor disability hence did not tick on locomotor disability or blindness.*
- (ii) At present GIPMER is not Medical Authority for Neurological disability assessment and certification for residents of Narela (North West Distt. Of Delhi) as Zonal Medical Authority is IHBAS Dilshad Garden, Delhi-95.*
- (iii) Re-assessment of applicants neurological / locomotor disability could be done by Zonal Medical Authority. However second opinion of G.B. Pant Medical Institute”.*

7. During the hearing on 24.04.2018, the parties reiterated their submissions. In the light of the position brought out in the Show-cause Notice dated 13.04.2018 and the fact that in the Persons with Disabilities Act 1995, ‘neurological disability’ was not a separate disability, respondent No.1 was directed to issue the disability certificate in respect of the complainant was in Form-IV based on the assessment done on 03.07.2012 within 15 days from the date of receipt of the record of proceedings dated 27.04.2018.

8. On the next date of hearing on 14.05.2018, neither anyone appeared on behalf of respondent No.1 nor any status report received. The representatives of respondent No.2 submitted letter dated 14.05.2018 and clarified that IHBAS has been issuing disability certificates as per the Persons with Disabilities Act, 1995 in

Form-IX which is as per Notification dated 31.05.2011 of Govt. NCT of Delhi. IHBAS made a small modification in the format for locomotor disability due to neurological disorders, as locomotor disability is caused both by neurological disorders like stroke, cerebral palsy etc. and other causes like amputation, etc. It has further been clarified that the disability certificate issued to the complainant in the modified format is not going to affect the case of the complainant in any manner. However, if desired, the certificate can be issued in the new format by Medical Authorities at IHBAS, though G.B. Pant Hospital has also been directed to issue the certificate in the new format. Any other difficulty faced by the complainant in availing benefits may not be related to the certificate issued by IHBAS and those aspects may be viewed separately.

9. The complainant submitted that neither he visited GIPMER nor was he contacted by the Institute for issuing fresh disability certificate. Therefore, he visited the Institute after the hearing and informed that the concerned members of the medical board of the Institute were out of station and therefore the status of action taken on the recommendations of this court vide RoP dated 27.04.2018 could not be ascertained. The complainant also informed that since the Railway Board is not allocating any service to him, he has approached Hon'ble High Court of Delhi and his Writ Petition is scheduled for hearing in the month of August, 2018. Keeping in view the nature of the issue involved, it will be in the interest of justice to dispose off the matter without waiting for respondent No.1 to intimate the status of action taken on the recommendation vide Rop dated 27.04.2018.

10. This Court is concerned with the limited issue of assessment of disability of the complainant in accordance with the guidelines at the relevant time and issuance of certificate of disability in an appropriate format by respondent No.1. In

order to put the issue into perspective, it will be appropriate to recapitulate the genesis of the procedures put in place by appropriate authorities for assessment of disabilities and their certification. At the time the disability certificate was issued by respondent No. 1 on 03.07.2012, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PwD Act), the PwD Amendment Rules, 2009 notified by the MSJ&E, Govt. of India, the Delhi PwD Amendment Rules 2011 Govt. of Delhi and the Guidelines for Evaluation of Various Disabilities and Procedure for Certification issued by the MSJ&E, Govt. of India vide notification dated 01.06.2001 were the relevant Act, Rules and guidelines in existence. The Rights of Persons with Disabilities Act, 2016 which has come into effect from 19.04.2017, the Rights of Persons with Disabilities Rules, 2017 and the Guidelines for assessment of disabilities notified on 04.01.2018 in pursuance of the RPwD, 2016 cannot be applied to the complainant who was assessed and certified on 03.07.2012. As per the PwD Act, 1995 chronic neurological conditions were not a separate disability, but as per guidelines of 01.06.2001, a person having neurological conditions or neurological deficit or dysarthria is to be assessed for locomotor disability and the percentage of disability would depend on the severity of such conditions. Section (C) of the said notification deals with assessment of locomotor disability due to neurological conditions. The PwD Act did not recognise speech disorder as a disability.

13. Therefore, having assessed the impairment due to neurological conditions of the complainant, the medical authority of respondent No.1 should have mentioned in the disability certificate on 03.07.2012, the percentage of locomotor disability indicating the affected body part(s) of the complainant due to those

conditions in Form-IV prescribed in the PwD Amendment Rules, 2009 or Form-IX prescribed in the Delhi PwD Amendment Rules, 2011.

12. Ministry of Social Justice and Empowerment (MSJ&E) amended the PwD Rules, 1996 and notified the Amendment Rules, 2009 on 30.12.2009. The amended Rules also prescribed revised forms of certificates of disability to streamline the certification. Following the said amendment by the MSJ&E, Govt. of NCT of Delhi also amended the Delhi Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules 2001 and notified PwD Amendment Rules 2011. The amended Rules also adopted the three forms of disability certificate. Forms of disability certificate in MSJ&E's Amendment Rules and their corresponding forms in Delhi PwD Amendment Rules, 2011 are given in the following table:

<b>S.No.</b>	<b>Disability</b>	<b>Prescribed Form in MSJ&amp;E's PwD Amendment Rules, 2009</b>	<b>Prescribed Form in Delhi PwD Amendment Rules, 2011</b>
1.	<b>In case of amputation or complete permanent paralysis of limbs and in case of blindness</b>	<b>Form-II</b>	<b>Form-VII</b>
2.	<b>In case of Multiple disability</b>	<b>Form-III</b>	<b>Form-VIII</b>
3.	<b>In cases other than those mentioned at Sl. 1&amp;2</b>	<b>Form-IV</b>	<b>Form-IX</b>

14. In view of the position explained in the preceding paragraphs there has definitely been an error on the part of the certifying authority of respondent No. 1 while issuing disability certificate to the complainant to his disadvantage. In my view, therefore, respondent No. 1 should correct the error and issue the disability

certificate in respect of the complainant in Form-IV or Form-IX for locomotor disability based on the assessment made in 2012 as his disability was permanent physical impairment as per the disability certificate issued on 03.07.2012 and I recommend accordingly.

15. It is also observed that the neurological condition has majorly affected the locomotive condition of the right arm of the complainant. It has caused mild speech impairment with no impact on his functional ability. The impact on other body parts of the complainant also does not appear to be so disabling as to affect his functional ability.

16. Although determination of suitability or otherwise of the complainant for civil engineering job falls under the purview of Railway Board / Department of Empowerment of Persons with Disabilities / Chief Commissioner for Persons with Disabilities, Govt. of India yet I feel it in the fitness of things to record my view that the study of civil engineering involves practicals and if the complainant with the same extent of disability has successfully completed his studies, performed the practicals and has secured the degree, there is no reason why such a person should not be considered suitable for the engineering service involving civil engineering functions. Moreover, it has been proved by many persons with disabilities that no two persons with same type and percentage of disability can be functionally the same. For example, a person with both arms amputated is doing the work of a tailor and is earning his livelihood in India though the post of tailor is not identified for a person who has disability even in one arm. This explains why the notification of MSJ&E containing list of identified posts clarifies that those lists are not exhaustive and while the establishments can add to the lists, they cannot exclude any post from the list of identified posts. I, therefore, see no justification for

disqualifying the complainant for any Civil Engineering job/post merely on the ground of the disability that he has, for whatever reason.

17. Respondent No.1 is directed to take action on the recommendation in Para 14 within 30 days from the date of receipt of this order and intimate this Court and the complainant as required under Section 81 of the Rights of Persons with Disabilities Act, 2016.

Given under my hand and the seal of the Court this 18<sup>th</sup> May, 2018.

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

Copy for information to the:

1. Secretary, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, 5<sup>th</sup> Floor Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.
2. Chief Commissioner for Persons with Disabilities, Sarojini House, 6, Bhagwan Das Road, New Delhi-110001.
3. Chairman, Railway Board, Government of India (Bharat Sarkar), Ministry of Railways (Rail Mantralaya) (Railway Board), Rail Bhawan, New Delhi-110001.