



भारत सरकार
कर्मचारी चयन आयोग
कार्मिक लोक शिकायत और पेंशन मंत्रालय
प्रतिष्ठा भवन, ओल्ड सी. जी. ओ. बिल्डिंग
महर्षि कर्वे रोड, मुंबई - 400 020
Phone No.: 022-22019117,18



F. No.: 002/2019/Misc-Corr/Nom/SSC(WR)/353
Dated: 20/07/2022

Government of India
Staff Selection Commission (WR)
Ministry of Personnel, Public Grievances & Pensions,
Pratishtha Bhavan, Old C.G.O. Building,
Maharshi Karve Road, Mumbai - 400 020
E-Mail ID: sscnomwr@gmail.com ; rdsscwr@gmail.com

To,

All the User Departments,
Maharashtra/Gujarat/Goa/Daman & Diu/Dadra & Nagar Haveli.

Sub: Speaking Order dated 20.04.2022 issued by C/o Chief commissioner of Persons with Disabilities (CCPD) in a Case No. 12898/1011/2021 in the matter of Sh. Mohak Kumar vs SSC - reg.

Madam/Sir,

Please find enclosed herewith a copy of Speaking Order dated 20.04.2022 issued by C/o Chief commissioner of Persons with Disabilities (CCPD) in a Case No. 12898/1011/2021 in the matter of Sh. Mohak Kumar vs SSC.

2. CCPD vide *ibid* Order recommended that as per MoSJ&E Order dated 04.01.2021, all the indenting establishments shall earmark the vacancies for 'Intellectual Disability' for the post of MTS. Hence, you are requested to do the same and then report the vacancy to SSC (WR).

Encls: A/a

Thank You

Regional Director
Staff Selection Commission (WR)



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment

भारत सरकार / Government of India

Case No. 12898/1011/2021

Complainant:

Shri Mohak Kumar,
R/o 173, Nehru Apartments,
Kalkaji, New Delhi-110019
Email: justiceformohak@gmail.com

Respondent:

Staff Selection Commission,
[Through: the Chairman]
Block No.12, CGO Complex, Lodhi Road,
New Delhi - 110003
Email: chairmanssc@gmail.com

Affected Person: The complainant, a person with 50% Intellectual Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 27.09.2021 regarding not considering the candidates with Intellectual Disabilities for the post of Multi Tasking posts by Staff Selection Commission in spite of the post is identified in the latest Government Notification dated 04.01.2021.

1.2 The complainant furnished a copy of the Notice for Recruitment of Multi Tasking (Non-Technical) Staff Examination 2020 advertised by SSC and submitted that as the Advertisement was published after 04.01.2021, there is a clear discrimination of the rights of Intellectual Disabled people and the same should be amended.

2. Submissions made by the Respondent:

2.1 The Respondent in their reply dated 02.11.2021 inter-alia submitted that SSC is a recruiting agency which conducts examinations for recruitment of various Group 'B' and Group 'C' posts for filling up the vacancies reported by the indenting Ministries/Departments/Organizations, Pertinently, the total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category including reservation for Divyangjan through the system of maintenance of roster are the exclusive domain of respective indenting

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5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075, Tel.: 011-20892364, 20892275

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

Ministries/Departments/Organisation. Thereafter, they report the vacancies (Horizontal and Vertical) to the SSC to be filled up by direct recruitment. The SSC does not have any role in the recognition of a particular post suitable to attached job profile of particular User Department.

2.2 The Respondent further submitted that the Notification No.38-16/2020-DD-III dated 04.01.2021 issued by Department of Empowerment of Persons with Disabilities (Divyangjan) [DEPWD] regarding identification of permissible disabilities of Persons with Disabilities (PwDs) has been examined. There are no specific identified permissible disabilities for the post named Multi-Tasking (Non-Technical) Staff. As such, in the absence of specific identified permissible disabilities for "Multi-Tasking (Non-Technical) Staff" in the notification dated 04.01.2021, it is not feasible to implement it.

3. Submissions made in Rejoinder:

3.1 The complainant in his rejoinder dated 23.11.2021 submitted that SSC uploaded the answer keys of the exam conducted by them and soon declared result neglecting people under intellectual category. SSC publish advertisements on the basis of requisition sent by concerned departments. It is the moral duty of SSC to go through all the requisitions sent by each department carefully. They must see whether all the laws/rules and regulations prevailing at that time have been followed. SSC cannot escape from this merely citing their inability to do so. It becomes their duty to cross check and verify from the legal experts in the Disability sector before publishing such advertisements on the public domain.

3.2 How can SSC say that the post of Multi tasking (Non technical) Staff is not identified as a permissible disability? It is illogical and unsustainable. It is feasible to implement right now. Had they followed all the guidelines earlier, victims like complainant would not have existed? The advertisement had come after 04.01.2021. The detail of Multi Tasking staff (Non-Technical) identified for Intellectual Disability in the notification dated 04.01.2021 (English version) is as under:

Sl. No	At Sl. No. of the Notification	Page No.	Designation
1.	99	1861	Multi Tasking Staff (Admn)
2.	100	1862	Multi Tasking Staff (Technical)
3.	106	1865	Senior Multi Tasking Staff (Office)
4.	107	1865	Multi Tasking Staff (Sanitary)
5.	678	2088	Multi Tasking Staff (Horticulture)
6.	1466	2370	Multi Tasking Staff (Marketing)

4. Observation/Recommendations:

4.1 A number of complainants approach this court feeling aggrieved by violation of list of identified posts for the Divyangjan issued by Ministry of Social Justice & Empowerment. This court is compelled to delineate certain points with respect to the list.

4.2 Genesis of this list lies in Section 33 of Rights of Persons with Disabilities Act 2016. This section mandates the appropriate government to constitute an Expert Committee for the identification of posts suitable for persons with benchmark disabilities. Objective of this provision is to get a list which can guide government establishments in issues related to suitability of posts for various categories of divyangjan.

4.3 MoSJ&E vide notification dated 4.01.2021 issued a list in which various post are identified suitable for various categories of divyangjan. Complaints which this court receives relating to violation of this list can be divided into two major heads – (a) direct violation of the list; and (b) violation because of misinterpretation.

(a) Direct Violation of the List:

These types of grievances are filed when the government establishment does not even refer to the list before issuing vacancy notification/advertisement. Sometimes, this results into a situation where certain categories of divyangjan are barred from participating in recruitment process even though the post advertised is identified suitable for them. For instance if an establishment is advertising the post of 'Chief Accounts Officer' and is barring divyangjan with 'Low Vision' then it is violation of the MoSJE list because the post of Chief Accounts Officer is identified suitable for divyangjan with 'Low Vision'.

(b) Violation Because of Misinterpretation:

Misinterpretation happens when any post does not find mention in the list. It happens that the list does not contain any post with exact same nomenclature as it exists in the establishment. To resolve this issue careful reading of the list and the notification attached with list is warranted.

4.4 If any post is not mentioned in the list it does not mean that such post has been identified as 'not-suitable' for all categories of divyangjan. Note 2 of the notification dated 04.01.2021 lays down the same. Note 2 enunciate that the list



is not exhaustive, it is merely indicative. If any post is not mentioned in the list it does not mean that it has been exempted. Government Departments/Ministries may add to this list. It means that framers of this list intended to make this list as a 'minimum benchmark'. All government establishments are bound by this list. What it means is that the government establishments are bound to not exclude any post which has been identified suitable in the list. Government establishments are also bound to not exclude any category of divyangjan which has been identified suitable vis-a-vis any particular post. However, government establishments are not limited by this list, meaning thereby that if any post is not mentioned in the list, the government establishment may identify such post as suitable for any category of divyangjan. Similar rule is laid down in Note-6 which lays down that this list is a principal list and if any other establishment has separate list, the one which has wider range of identified categories will prevail.

4.5 There is another rule which is the guiding force in such a situation when a post is not mentioned in the list. Note 3 of the notification lays down that if any post is already held by divyangjan employed in the establishment then such post will automatically stand identified suitable for such category of divyangjan.

4.6 Similarly, Note-4 lays down that if any feeder grade post is identified suitable for divyangjan, all the promotional grade posts will also be identified suitable for divyangjan.

4.7 Note-5 of the list also gives a different idea for resolving the problem of non-mentioning of a post. It lays down that if any post does not find mention in the list, the government establishment must look for the post of identical nature and identical place of job. If such post of identical nature and identical place of job is identified as suitable then the post which does not find mention in the list shall automatically stand identified though it has different nomenclature or is placed in different group.

4.8 Government establishment can look for posts of identical nature by referring to Column 5 and Column 6 of the list. In Column 5 of the list nature of work which is to be performed is mentioned and in Column 6 working conditions are mentioned.

4.9 These are few methods which government establishments can follow when any post is not mentioned in the list. From the rules laid down in Notes mentioned above, it is clear that the framers of these rules intended to make this list inclusive rather than exclusive. Hence, government establishments must interpret the rules and guidelines which have potential to create such an environment which is inclusive for divyangjan.



PRESENT CASE

4.10 The Complainant submitted that the Respondent issued notification of 'Multi Tasking Staff'. He further submits that the Respondent establishment failed to reserve the vacancies for divyangjan with 'Intellectual Disabilities'.

4.11 Respondent submitted that it is a recruiting agency which conducts examinations for recruitment to fill up vacancies reported by indenting Ministries/Departments. It is exclusive domain of the indenting organizations to determine vacancies and suitability of posts. Respondent does not have any role in the recognition of the particular post.

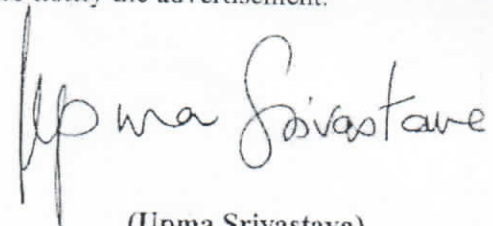
4.12 Complainant submitted the rejoinder and apprised this Court that the post of MTS is identified suitable for divyangjan with Intellectual Disability in MoSJ&E list dated 04.01.2021.

4.13 This Court after perusing the documents available on record and the MoSJ&E list dated 04.01.2021 concludes that excluding divyangjan with 'Intellectual Disability' is an act of discrimination with divyangjan. Post of MTS is identified suitable for divyangjan with 'Intellectual Disability'. Hence the present Complaint is direct violation of the MoSJ&E list dated 04.01.2021.

4.14 This Court recommends that the Respondent shall send a copy of this Order to all the indenting establishments which shall earmark the vacancies for divyangjan with 'Intellectual Disability' and shall re-notify the advertisement.

4.15 Accordingly the case is disposed off.

Dated: 20.04.2022



(Upma Srivastava)
Commissioner
for Persons with Disabilities