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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Decided on: 13.10.2025***

+ **W.P.(C) 1549/2021 & CM APPL. 4441/2021**

**UNION OF INDIA & ANR.**

**.....Petitioners**

Through: Mr. Subhash Tanwar, Mr. Naveen,  
Mr. Sandeep Mishra, Mr. Harshit  
Deshwal, Advocates.

versus

**SWARAJ KR GAYEN & ANR.**

**.....Respondents**

Through: Ms. Roma Bhagat, Mr. Rohan  
Sharma, Ms. Ruchika Sharma, Mr.  
Abhigyan Dwivedi, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**PRATEEK JALAN, J (ORAL)**

1. This writ petition has been filed by the petitioner-Union of India ["UOI"], against an order dated 12.10.2020 passed by the Court of Chief Commissioner for Persons with Disabilities ["PwD"], on a complaint filed by respondent No. 1 herein ["the complainant"].
2. The complaint arose in the context of a recruitment notification dated 10.02.2018 issued by the Railway Recruitment Board, Ministry of Railways, Government of India. The said advertisement was for several posts in Group C and Group D under various regional Railway units. The petitioner applied for appointment as a PwBD [Orthopedically Handicapped] candidate, in the demographic category of Scheduled Caste, under the vacancies reserved for Eastern Railways.
3. The said recruitment process was challenged before this Court by



the National Federation of the Blind in W.P.(C) 1855/2018, on the ground that the notification failed to identify reservation for candidates with visual impairment. The petition was adjourned from time to time, on the submission of UOI that it proposed to issue a corrigendum to rectify the position. The petition was ultimately disposed of on 29.01.2019, recording that the Ministry of Railways had issued an Office Memorandum dated 16/17.01.2019, making provisions for reservation in various categories, in accordance with Section 34 of the Rights of Persons with Disabilities Act, 2016 [“the Act”].

4. UOI thereafter issued a notice dated 28.03.2019, revising the number of vacancies and preference of posts for Persons with Benchmark Disability [“PwBD”] candidates. The number of seats in each post, and the number of seats reserved for each category of PwD, were stated for each of the regional Railway units separately.

5. According to the petitioner, a total of 2367 posts were advertised in Eastern Railway, but only ten posts were reserved for PwBDs [2 posts for Visual Impairment; 3 posts for Hearing Impairment; 3 for Locomotor Disability; 2 for Multiple Disability]. The primary contention advanced by Ms. Roma Bhagat, learned counsel for respondent No. 1, is that UOI was bound to reserve 4% of the total number of vacancies for PwBD candidates, as has been done in the case of the other regional Railway units in the same advertisement.

6. The complainant therefore made a complaint dated 19.09.2019 to the Chief Commissioner for PwDs, in which various contentions were taken, including the contention that UOI had violated the Act, and must enhance the numbers of seats, to create 4% reservation for PwBD



candidates.

7. The reply filed by the Railways before the Commissioner, suggests that the complainant did not meet the cut-off for empanelment, but does not specifically deal with the contention regarding the quantum of reservation in Eastern Railways.

8. The Commissioner, by the impugned order dated 12.10.2020, decided as follows:

*“14. On the basis of Observtions made above this court recommends that –*

*a. 4% of total number of vacancies advertised in 2018 notification (i.e. 95), inclusive of identified suitable as well as non-suitable for PwBD candidates should be reserved for filling by Persons with Disabilities.*

*b. As not reserving vacancies for PwBD candidates is in direct violation of provisions of RPwD Act, 2016, Judgments of Hon'ble Supreme Court, O.M. issued by DoPT and also Master Circular of the Railway Board. Hence, the respondent shall quash the whole process and conduct the whole exercise of recruitment afresh after proper calculation of reserved posts for PwBDs.”*

9. The principal submission of Mr. Sandeep Mishra, learned counsel for UOI, however, is that the Commissioner had no jurisdiction under Section 75 of the Act, to pass a mandatory order quashing the entire recruitment exercise, as has been done in the present case.

10. On merits, Mr. Mishra draws my attention to the following contents of the notice dated 28.03.2019:

*“With reference, to the directions, issued by the Honourable High Court of Delhi in WP No. 1855/2018, the RRB wise and Railways wise vacancies of various posts in level-1, reserved for PwBD candidates stand revised as detailed in the revised Annexure B attached with this Notice. **However, in Eastern Railway, since most of the vacancy notified viz Track maintainer-IV, Assistant Pointsman, Gateman, etc are not suitable for PwBD candidates; the shortfall of PwBD vacancies in this notification has been fully covered in the ongoing Notification RRC CENN-01/2019.**”*



[Emphasis supplied.]

11. In response, Ms. Bhagat submits that notice dated 28.03.2019 refers to the fact that in Eastern Railways, most of the notified vacancies [Track Maintainer-IV, Assistant Pointsman, Gateman, etc.] are not suitable for PwBD candidates. However, she draws my attention to the annexure to the said notice, where these posts were advertised even in respect of other Railways units, and although no reservations were provided for these posts, the total number of reservations was commensurate with the total number of vacancies. She submits that, only in the case of Eastern Railways, a different method of computing the number of vacancies was adopted.

12. The jurisdictional point urged by Mr. Mishra must be examined in the context of the statutory provisions. The functions of the Chief Commissioner are delineated in Section 75 of the Act, and consequences of a recommendation of the Chief Commissioner are provided in Section 76 thereof. The said sections read as follows:

*“75. Functions of Chief Commissioner—(1) The Chief Commissioner shall—*

*(a) identify, suo motu or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act and recommend necessary corrective steps;*

*(b) inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;*

*(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;*

*(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;*



(e) *study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;*

(f) *undertake and promote research in the field of the rights of persons with disabilities;*

(g) *promote awareness of the rights of persons with disabilities and the safeguards available for their protection;*

(h) *monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;*

(i) *monitor utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities; and*

(j) *perform such other functions as the Central Government may assign.*

(2) *The Chief Commissioner shall consult the Commissioners on any matter while discharging its functions under this Act.*

**76. Action of appropriate authorities on recommendation of Chief Commissioner**—*Whenever the Chief Commissioner makes a recommendation to an authority in pursuance of clause (b) [of subsection (1)] of section 75, that authority shall take necessary action on it, and inform the Chief 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 Chief Commissioner within a period of three months, and shall also inform the aggrieved person.”*

13. These provisions also been interpreted in several judgments of this Court, of which Mr. Mishra cited *Oriental Insurance Company Ltd. v. Chief Commissioner, Department of Empowerment of Persons with Disabilities (Divyangjan) and Anr.*<sup>1</sup>, and *National Power Training Institute v. Office of Chief Commissioner for Persons with Disability & Ors.*<sup>2</sup>.

14. In *Oriental Insurance Company Ltd.*, the Court held that the Chief Commissioner has no power to issue directions to a department or

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<sup>1</sup> 2022 SCC OnLine Del 2247 [hereinafter, “*Oriental Insurance Company Ltd.*”].



organisation to grant promotion to an employee from a particular date. The writ petition was disposed of, treating the impugned order of the Chief Commissioner as a recommendation to the employer.

15. Similarly, in *National Power Training Institute*, the learned Single Judge, while dealing with a challenge to an order of transfer, held that Section 75 of the Act does not confer any authority upon a Chief Commissioner to pass binding or adjudicatory orders akin to those issued by a Court of law, but instead its role is investigatory and recommendatory in nature.

16. However, it may be noted that the judgment of the learned Single Judge in *National Power Training Institute* was challenged before the Division Bench<sup>3</sup>. By a judgement dated 02.04.2025, the Division Bench held that the recommendations made by the Chief Commissioner for PwD under Section 75 of the Act is binding on the concerned authority, which must take necessary corrective or remedial measures. However, if the authority has valid and justifiable reasons for not accepting such recommendations, it may refuse to implement them, provided those reasons are duly conveyed to both the CCPD and the aggrieved person. The Division Bench modified the judgement of the learned Single Judge to the extent that the decision of the Commissioner was treated as a recommendation.

17. In the context of these decisions, the manner in which paragraph 14 of the impugned order has been framed creates an ambiguity. Although it is couched as a “*recommendation*” of the Commissioner, paragraph 14(b)

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<sup>2</sup> W.P.(C) 11104/2024, decided on 02.09.2024 [hereinafter, “*National Power Training Institute*”].

<sup>3</sup> In *Mukesh Kumar v National Power Training Institute* [2025 SCC OnLine Del 2056].



does *ex-facie* read as a binding direction quashing an entire recruitment exercise. In my view, following the aforesaid decisions of this Court, and the statutory scheme as interpreted in the aforesaid decisions, paragraph 14 of the impugned order must be read as a recommendation.

18. Section 76 of the Act stipulates that an authority shall take action on a recommendation, and submit a report to the Chief Commissioner within three months, or in the alternative, convey reasons for non-acceptance of the recommendations. However, in the present case, UOI has not followed this procedure, but instead approached this Court directly against the order. Ms. Bhagat is therefore right in submitting that this puts the respondent No. 1 in a predicament, where he does not know the reasons for non-acceptance of the recommendations as required by the proviso to Section 76 of the Act. While the writ petition itself discloses some consideration of this question by the Union, I am of the view that UOI should be bound to the discipline of Section 76 of the Act, and be directed to file an action taken report before the Chief Commissioner or to file a reasoned decision on the basis of which it has chosen not to accept the said recommendation.

19. Having regard to the fact that the issues involve statutory rights of PwDs, UOI is directed to take an appropriate decision in terms of Section 76 of the Act within three months from today. While taking the decision, UOI will provide necessary justification for the distinction sought to be made between Eastern Railways and the other Railways units, in the notice dated 28.03.2019. UOI will also clearly deal with the argument of respondent No. 1 that carry over of vacancies to the following recruitment of the year 2019 was not permissible. A copy of the order passed be



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served upon respondent No. 1 through his learned counsel on record, and also submitted to the Chief Commissioner within the period stated above.

20. The writ petition, alongwith pending application, is disposed of with the aforesaid directions.

**PRATEEK JALAN, J**

**OCTOBER 13, 2025**

*'Bhupi'/AD/*