

सं./ No. 41-01/2024-DD-III (CN: 37325)
भारत सरकार / Government of India
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice & Empowerment
दिव्यांगजन सशक्तिकरण विभाग
Department of Empowerment of Persons with Disabilities (Divyangjan)

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CGO Complex, Lodhi Road, New Delhi-110003
दिनांक / Dated: 08.11.2024

कार्यालय ज्ञापन / OFFICE MEMORANDUM

Subject: **Guidelines concerning identification of posts for persons with benchmark disabilities and their reservation in the Central Government Establishments for the effective implementation of the Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016) in pursuance of orders of the Hon'ble High Court of Delhi in W.P. (C) No. 17460/2022 and W.P. (C) No. 665/2023 in the matter of Kendriya Vidyalaya Sangathan (KVS) and Ors vs Union of India and ors**

The undersigned is directed to refer to the order dated 01.11.2023 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 17460/2022 and W.P. (C) No. 665/2023 in the matter of Kendriya Vidyalaya Sangathan (KVS) and Ors vs Union of India and ors and to say the following observations were made in the said order:

- i. That KVS assumed a power which was never vested in it by constituting its own committee to identify posts suitable for persons with benchmark disabilities (PwBDs),
 - ii. That there is a mismatch in the understanding of different Departments regarding the mandate under the RPwD Act, and
 - iii. That the concerned Secretary of the Department i.e. DEPwD, is directed to issue suitable guidelines for the implementation of reservation policy by all the Departments in a uniform manner.
2. Based on the directions of Hon'ble High Court of Delhi in above stated matter, the Central Government hereby lays down the **“Guidelines for identification of posts for persons with benchmark disabilities and their reservation in Central Government Establishments”** as under:

2.1: Chapter-I (Identification of Posts)

- i. Section 33 of the RPwD Act, 2016 deals with identification of posts for PwDs for the purpose of reservation. It mandates the Government to:
 - (a) identify posts in the establishment which can be held by respective category of persons with benchmark disabilities (i.e where disability is 40% and above) in respect of the vacancies reserved in accordance with the provisions of Section 34 of the RPwD Act, 2016,
 - (b) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts, and
 - (c) undertake periodic review of the identified posts at an interval not exceeding three years.
- ii. There was a similar provision in the erstwhile legislation namely the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to identify posts suitable for PwDs. A notification on the subject was issued by DEPwD on 29.7.2013.
- iii. After the enactment of RPwD Act, 2016, since the process of identification of posts suitable for persons with benchmark disabilities was taking time, this Department had requested all the Central Ministries/Departments to identify posts for persons with benchmark disabilities at their own level so that vacancies are filled up as per the RPwD Act, 2016 in time.
- iv. In the meanwhile, the Department had also constituted an expert committee on 19.11.2015 for identification of suitable posts for persons with benchmark disabilities with representatives from DEPwD; D/o Personnel and Training; M/o Health and Family Welfare; D/o Public Enterprises; Ministry/Department concerned i.r.o. which identification of jobs and related matters are to be reviewed; Director General of Employment and Training; HoD, PMR, Safdarjung Hospital, National Institutes on each disability and NGOs. This expert committee further constituted five Sub- Committees for i. locomotor disability, ii. hearing impaired, iii. visually impaired, iv. autism, specific learning disability, mental illness and intellectual disabilities and v. multiple disabilities to take care of identification of posts suitable for PwBDs.
- v. The gist of the report of Expert Committee i.e. the list of suitable posts to be reserved for PwBDs in Central Ministries, Departments, Public Sector Undertakings and Autonomous Bodies (total 3566 posts) is notified *vide notification no. 38-16/2020-DD-III dated 04.01.2021* which is available on the website of the Department i.e. www.depwd.gov.in. As per the said notification, the list of posts being notified is **only indicative** and **not an exhaustive list**. The Central Ministries, Departments, Public Sector Undertakings and Autonomous

Bodies may further supplement the list by adding to the list of posts identified for respective category of disability.

vi. Further, in pursuance of the provisions of said Act, **review of identified posts is to be conducted in an interval not exceeding 3 years.** In order to ensure that this review is done timely, following procedure needs to be complied with by all the Central Ministries/Departments:

(a) Every post under the Central Ministry/Department including the posts in public sector enterprises, autonomous organisations and other establishments needs to be considered for determining its suitability for persons with benchmark disabilities and no post should be left out. In case any post is left out, such post will be deemed to be open for all categories of disabilities which are eligible for reservation unless it is exempted by notification of DEPwD.

(b) **Each Central Ministry/Department will constitute a committee consisting of representatives of persons with benchmark disabilities and recommend suitable posts for PwDs to DEPwD for consideration and notification, wherever necessary.** This committee should have at least one representative with benchmark disabilities each from following categories:

- blindness and low vision;
- deaf and hard of hearing;
- locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy; and
- autism, intellectual disability, specific learning disability and mental illness.

The said Committee is required to look into the suitability of each/all post(s) in their establishments for specified category of disabilities taking into consideration the development in assistive technologies, the principal list of identified posts dated 04.01.2021 and global benchmarks in employment of PwDs. Such Committee is to be constituted at the level of Ministry/ Departments only, and not below that by PSUs/ autonomous bodies etc. and should be headed by Additional/Joint Secretary level officer. In terms of Note 2 of the gist of recommendations contained in DEPwD's notification dated 04.01.2021, the Ministry/Department may add to the list of posts or the sub-category/ category of disability based on the recommendations of the above mentioned Committee under intimation to this Department. However, no post or category or sub category existing in the notification of DEPwD dated 04.01.2021 or any such notification issued on the subject subsequently by the DEPwD can be reduced without obtaining approval of DEPwD.

(c) **DEPwD will constitute a broad-based expert committee** consisting of representatives of concerned Ministries/Departments, persons with benchmark disabilities, Chief Commissioner for Persons with Disabilities, experts and National Institutes. On the basis of recommendation of this Committee, **DEPwD will notify the list of suitable posts** in respect of posts of all Central

Ministries/Departments including CPSUs and autonomous bodies functioning under their administrative control on the lines of notification dated 04.01.2021. This review of job mapping exercise (notification no. 38-16/2020-DD-III dated 04.01.2021) is needed as nomenclature/job requirement of some posts might have changed, some new kind of posts may have got added, and also because latest advancement in assistive technologies now enable PwDs to do things which were not possible a few years ago. The exercise will cover all the posts common to more than one Ministry/Department along with posts which are specific to a single Ministry/Department. As indicated earlier in para 2.1 (v), list of posts dated 04.01.2021 is only indicative and not an exhaustive list. Central Ministries, Departments, Public Sector Undertakings and Autonomous Bodies may further supplement the list by adding to the list of posts identified for respective category of disability.

2.2: Chapter-II (Exemption)

- i. Second proviso to section 34 (1) of the RPwD Act, 2016 empowers the Government to exempt any government establishment from the provision of this Section. **DEPwD is the competent authority to consider and notify such exemption.**
- ii. Since identification of posts is a dynamic process, exemption will also be reviewed from time to time in the light of advancement of technology, availability of new and more efficient assistive devices, increase in capacity of persons with disability etc. **As such, any exemption is valid for a maximum period of 3 years. In case of those establishments in r/o of which exemption has already been granted by DEPwD and the period of 3 years from the date of notification of exemption has elapsed, they may approach DEPwD, within a period of 3 months from the date of issuance of this OM with fresh proposal to review the exemption.**
- iii. **It is emphasized that identification exercise should be carried out with due diligence and utmost care so that there is no requirement of seeking exemption during the 3 year window.**

2.3: Chapter-III (Reservation in direct recruitment and promotion)

- i. Section 34 of the said Act deals with percentage of reservation in vacancies in Government establishments. As per Allocation of Business Rules, 1961, DEPwD is the nodal Department for overall policy, planning and coordination of programmes for Persons with Disabilities. DoPT issues instructions relating to reservation of vacancies in posts and services under the Central Government based on the policy decisions taken by DEPwD in respect of PwDs. Accordingly,

DoPT, vide its O.M. no. 36035/02/20217-Estt (Res) dated 15.01.2018 has issued detailed instructions providing reservation for PwDs in vacancies to be filled by direct recruitment. Further, vide OM No. 36012/1/2020-Estt (Res.II) dated 17.05.2022, read with OM of even no. dated 28.12.2023, DoPT has issued instructions providing reservation in promotion to PwDs. All the Central Ministries/Departments are requested to bring the above instructions to the notice of all appointing authorities under their control.

- ii. It is stated that the 4% reservation for PwBDs is to be extended in terms of Section 34 of the RPwD Act, 2016 as under:

(a)	blindness and low vision	1%
(b)	deaf and hard of hearing	1%
(c)	locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;	1%
(d)	autism, intellectual disability, specific learning disability and mental illness;	1%
(e)	multiple disabilities from amongst persons under clauses (a) to (d) including deaf- blindness.	

- iii. Where in any recruitment year any vacancy cannot be filled up due to non availability of a suitable person with benchmark disability or for any other sufficient reason, the process of carry forward of vacancy/reservation and *inter se* exchange of reservation is to be carried out in terms of DoPT's instructions dated 15.01.2018 and 17.05.2022.
- iv. The objective of reservation gets fulfilled only if existing as well as backlog vacancies are filled in time, and also after giving wide publicity for the benefit of persons with disabilities which may also include intimation to the associations of persons with disabilities and placing the information on their official website.
- v. At the time of promotion, Note 4 of DEPwD's notification dated 04.01.2021 on identification of posts may be kept in mind which states that "If a post is identified in the feeder grade, all the posts in the promotional grade should also stand identified".
- vi. Rajasthan High Court in its judgment in the case of Rekha Meena vs State of Rajasthan 2020 ruled that persons with disability (with disability of 40% or more or even less) cannot be denied appointment on the ground of disability, if they did not claim reservation benefit available to them. In this context, DOPT had issued detailed clarification vide its OM no. 36035/02/20217-Estt (Res) dated 27.09.2022 relating to reservation of persons with benchmark disabilities as to the concept of own merit. This needs to be followed in letter and spirit.

3. These guidelines are formulated in consultation with Chief Commissioner for PwDs, DOPT and Ministry of Law and Justice.
4. These guidelines are effective from the date of issuance.
5. This OM is being issued in supersession of all earlier instructions issued by DEPwD on the subject except the **notification no. 38-16/2020-DD-III dated 04.01.2021 and 30-12/2020 DD-III dated 24.08.2022.**
6. This issues with the approval of Hon'ble Union Minister for Social Justice and Empowerment.

Bhje 08.11.2024.

(देबाला भट्टाचार्य/Debala Bhattacharjee)
अवर सचिव, भारत सरकार/ Under Secretary to the Govt of India
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To,

The Secretaries of all Central Ministries/Departments
(As per standard list)