

**ARUNACHAL PRADESH
PUBLIC SERVICE COMMISSION
ITANAGAR**

No.PSC/06/2023

Dated, the 17th June, 2024

To

The State Commissioner for Persons with Disabilities
Social Justice and Empowerment and Tribal Affairs
Government of Arunachal Pradesh
Itanagar

Sub: Action Taken Report

Ref: Your Order in case No. SJETA/2024/1/1086 dated 18th March, 2024

Sir,

I am directed to convey that, the Arunachal Pradesh Public Service Commission (hereinafter referred to as The Commission) has carefully examined the recommendations under the above reference made in the case of Ms. Mudang Yabyang, whereby Arunachal Pradesh Public Service Commission was directed vide above order to:

- (i) Amend the conduct of examination guidelines from 50% to 45% for Persons with Disabilities as per Rights of Persons with Disabilities Act, 2016:
- (ii) The criteria for persons with disabilities to be incorporated in the Arunachal Pradesh Service Commission Examination Guidelines, 2022 and
- (iii) To consider the case of Ms. Mudang Yabyang, if she, after amendment fulfills the criteria in the post of lecturer (Electrical Engineering) against a reserved vacancy clause and relaxation of standard of suitability for Persons with Benchmark disabilities.

In this regard the Commission has taken the following actions:

- (A) The Commission constituted an Internal Committee to examine the recommendations made in the aforesaid case. The report submitted by the Internal Committee after due deliberation, was accepted by the Commission.
- (B) The Commission has also obtained legal opinion on the matter on the legal aspects of the case which have been duly considered and found tenable.



In view of the above, the commission has taken the following decisions:

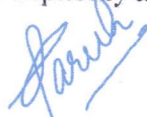
1. The Commission based on the report submitted by the Internal Committee and the legal opinion, has decided that the recommendations made to the Commission cannot be implemented on the following grounds:

- (i) There is no evidence on record to show that there has been serious misapplication/ non-application of provisions contained in rule 18(i) of the Arunachal Pradesh Rights of Persons with Disabilities Rules, 2018. As per rule 18(i) of Arunachal Pradesh Rights of Persons with Disabilities Rules, 2018 concession for PwD candidate is **5% of qualifying or pass marks**.

The Para 44 (v) of the **APPSC Conduct of Examination Guidelines, 2017** clearly mentions that *'in case of direct recruitment by interview a minimum of 50% of the total marks for the interview have to be obtained for consideration for selection'*. The total marks in the present case is 100, hence, 50 % of 100 is 50 marks, the qualifying marks which a candidate has to secure for consideration. However, Ms Mudang Yabyang secured 46.5 marks. After applying the concession of 5% of qualifying or pass mark in interview (i.e 50 marks) as provided in rule 18(i) of the Arunachal Pradesh Rights of Persons with Disabilities Rules, 2018, the relaxation is of 2.5 marks (i.e. 5% of 50). As such, after a concession of 2.5 marks, a score of 47.5 marks is required to come within the zone of consideration, whereas, she secured 46.5 marks only. **Therefore, even after applying the said relaxation under rule 18(i) of the Arunachal Pradesh Rights of Persons with Disabilities Rules, 2018 she does not qualify for recommendation for the said post.**

- (ii) Various representations have been made with reference to the DoPT, Govt. of India OM No. 36035/02/2017-Estt (Res), Dated 15.01.2018, Para 11.1 which states that *'if sufficient number of candidates with benchmark disabilities candidates are not available on the basis of the **general standard** to fill all the vacancies reserved for them candidates belonging to this category **may** be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts'*.

This OM has been forwarded by the Department of Administrative Reforms, GoAP vide OM No AR-31/2019/204, Dated 31.05.2019, clearly stating in Para 2 that the Department of SJETA under the **Government of Arunachal Pradesh has already notified the Arunachal Pradesh Rights of Persons with Disabilities Rules, 2018** (APRPwD) vide Gazette No. DSJE (Dis) - 14/2012 (part A) dated December 14, 2018 **consistent with the Office Memorandum of Government of India**. The APRPwD, 2018 already provides for concession of 5% of qualifying or pass marks for PwD candidates, however does not explicitly mention any further relaxation of merit.



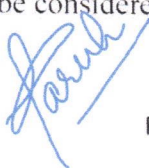
Further, the para 11.1 of the above mentioned Govt. OM No.36035/02/2017-Estt (Res). Dated 15.01.2018 is being used in the context of relaxation of degree of physical disability for a post in case no sufficient number of candidates in that category are available. This paragraph has nothing to do with relaxation of merit or marks obtained in written or in viva-voce/interview by PwD candidates. For example in a given recruitment if the requisite degree of physical disability was 50% and if sufficient number of candidates having 50% degree of physical disability are not available then the same may be relaxed. **Further, the OM stated above is only an Executive Order/Instruction and therefore cannot be exercised in such a way so as to further relax the 5% concession already provided in Rule 18(i) of the Arunachal Pradesh Rights of Persons with Disabilities Rules, 2018 that too retrospectively.**

Further, in the above OM Para 11.1, the word '**may**' and not '**shall**' has been used which is in itself is not mandatory and conferred necessarily discretion to apply or not to apply the clause on the Commission at that point of time. had it been applicable. Accordingly, the Commission had notified the result for the post of Lecturer, Electrical Engineering, Govt. Polytechnic College dated 22nd April 2022 which very clearly states that '*Due to non-availability of suitable APST PwD candidate, 1 (one) post reserved for APST PwD in Electrical Engineering has been kept vacant and to be carried forward for next recruitment year*'.

(iii) That the entire selection process has been completed for this particular vacancy which was returned to the department due to no suitable candidate was found in that category. A selection process cannot be reopened unless quashed and set aside by a **competent court of law**. Further, APPSC has already received fresh requisition for recruitment of one vacant post of Lecturer in Electrical Engineering (reserved for PwD candidate) vide Letter No. ED/HE (T)-353/2009 dated 28.09.2022 which is under process and shall be notified shortly.

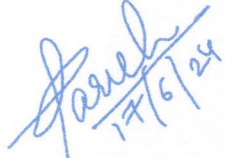
(iv) That the concerned examination was conducted by the Commission under the APPSC Conduct of Examination Guidelines, 2017 in which there is no provision for amendment of guidelines with **retrospective effect**. Therefore, the recommendation for amendment of guidelines reducing the qualifying marks to 45% from the 50% is untenable and cannot be implemented.

2. The Commission also considered whether the recommendations made by the State Commissioner for Persons with Disabilities are binding on the Commission. In this regard you are informed that Arunachal Public Service Commission is an autonomous and independent constitutional body under Article 315 to 323 of the Constitution of India having its own rules and regulations. The paragraph no. 10 of your order to the extent of suggesting APPSC to amend from 50% to 45% is improper and it is ultra vires to order that after amendment of its rules, the case of Miss Mudang Yabyang be considered on the following grounds :



- (i) Fixation of qualifying marks in any examination is the prerogative of the Public Service Commission unless recruitment rules of requisitioning department have its own qualifying marks.
- (ii) Interference in examination procedure and criteria would amount to interference into independent functioning of a constitutionally mandated authority, of the Public Service Commission.
- (iii) The State Commissioner for Persons with Disabilities can, and at the most, pass recommendation(s) which an authority may refuse to implement in appropriate cases depending on facts of each case. Any suggestion/recommendation therefore, is to be tenable, but cannot direct/ mandate and impose upon a constitutional body and more so, retrospectively. It is a fact of administrative law that all Acts and Rules are prospective unless specifically made retrospective, a tenet which is not reflected in the said order. Therefore, the State Commissioner's recommendation to reduce qualifying marks has been duly considered but rejected in toto.
3. As regards to violation of section 34 of the Act, the section pertains to reservation of post for PwD by the Government. Having a disability certificate does not automatically qualify the holder for appointment. Disabled candidates too have to qualify the requisite tests as per prescribed rules and regulations. In the present case Ms. Yabyang has not qualified the prescribed qualifying marks to be selected, even if the relaxation of 5% for PwD candidate is given, she remains unqualified.
4. The Commission has also examined the judgments in Paramjit Sharma - vs - Union of India and Dr. Gunjan Nain - vs - Dean, Maulana Azad Medical College and it is found that the facts in these two cases are vastly different from the present case. In the present case even after giving 5% relaxation as per the APRPwD Rules, 2018 the candidate does not qualify for recommendations. The DoPT, GoI OM nowhere provides for further relaxation once concession has already been given as per the Rules. Hence, in the premises of peculiar facts and legal issues involved in the present case, the Commission finds the recommendation so made to be not implementable, and accordingly has rejected the recommendation.
5. However, the Commission has decided that the interest and welfare of the PwD candidates is necessary, and hence the provisions of the Rights of Persons with Disabilities Act, 2016 and the Arunachal Pradesh Rights of Persons with Disabilities Rules, 2018 are being appropriately considered for future examinations.

This is issued with approval of the Commission.

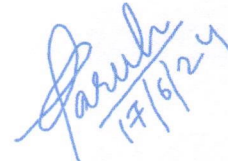

(Parul Gaur Mittal) IRS
Secretary, APPSC.

No.PSC/06/2023

Dated, the 17th June, 2024

Copy to :-

1. The Secretary to the Hon'ble Governor of Arunachal Pradesh.
2. The Commissioner to the Hon'ble Chief Minister, Arunachal Pradesh.
3. The PS to Hon'ble Chairman, APPSC.
4. The US to the Chief Secretary, Arunachal Pradesh.
5. The Secretary, Administrative Reforms, GoAP.
6. File.



(Parul Gaur Mittal) IRS
Secretary, APPSC.