

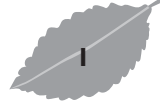


COMBATING DISCRIMINATION:

**SOME PATH-BREAKING ADVOCACY
INITIATIVES FOR THE VISUALLY IMPAIRED**



2012



COMBATING DISCRIMINATION: SOME PATH-BREAKING ADVOCACY INITIATIVES FOR THE VISUALLY IMPAIRED

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FOREWORD



I am delighted that the partnership between CBM South Asia Regional Office and All India Confederation of the Blind (AICB) has resulted in the publication of this book which showcases the results of efforts towards promoting the rights of people with disabilities.

CBM is committed to improving the quality of life of people with disabilities in low income regions of the world. With more than 100 years of experience in the field of disability CBM strives to build the capacity of partner organizations.

The partnership between CBM and AICB has helped people with disabilities attain their rights and have their voice heard. Among other things it has resulted in the provision of Braille books for visually impaired children. The University Grants Commission instituted 3% reservation for persons with disabilities, with 1% for the visually impaired, in all universities, following a directive from the Supreme Court due to the efforts and perseverance of AICB. Visually impaired students in various colleges and universities have been able to use computers for writing their exams instead of using scribes. This has led to an improvement in their results. Advocacy related to accessibility has resulted in progress towards making our country barrier-free for people with disability.

We encourage other NGOs and state governments to also participate in initiatives to support people with disabilities.

This book will enable readers to understand the current situation of people with disabilities and encourage them to take up similar initiatives to make the country more inclusive and the future better for people with disabilities.

CBM wishes AICB continued success in its work for people with disabilities.

A handwritten signature in blue ink that reads 'Sara Varughese'.

Dr. Sara Varughese,
Acting Regional Director CBM SARO.

LIST OF ABBREVIATIONS

AICB	:	All India Confederation of the Blind
CBSE	:	Central Board of Secondary Education
CCPD	:	Chief Commissioner for Persons With Disabilities
DG	:	Director General
DSSSB	:	Delhi Subordinate Services Selection Board
GOI	:	Government of India
MCA	:	Master of Computer Application
MCD	:	Municipal Corporation of Delhi
MSJE	:	Ministry of Social Justice and Empowerment
NCERT	:	National Council of Education, Research and Training
NGOs	:	Non-Governmental Organizations
NIVH	:	National Institute for the Visually Handicapped
NVS	:	Navodaya Vidyalaya Samiti
OM	:	Office Memorandum
PILs	:	Public Interest Litigations
P&T	:	Post & Telegraph
PWD ACT	:	Persons with Disabilities (equal opportunities, protection of rights and full participation) Act 1995
PWDS	:	Persons with Disabilities
RTI	:	Right to Information
SC	:	Scheduled Caste
SSC	:	Staff Selection Commission
ST	:	Scheduled Tribe
TGT	:	Trained Graduate Teachers
UGC	:	University Grants Commission
UNCRPD	:	United Nations Convention on the Rights of Persons with Disabilities
UP	:	Uttar Pradesh
UPSC	:	Union Public Service Commission

INTRODUCTION

We take great pleasure in presenting this volume of advocacy case histories as a representative statement of the rights-based work undertaken by AICB over the years, as well as an apt symbol of the long and enduring partnership which we have had with CBM. Both organizations have been committed to bring about crucial and visible changes in the lives of the visually impaired. The impact of the initiatives aimed towards this end over a period of many decades has been recognized across the board.

When All India Confederation of the Blind (a national self-help organization with 22 affiliates across the country) was formed in 1980, the need to ensure an equitable and dignified life for the visually impaired through the recognition and combating of all forms of discriminations against them, was an important factor as well as a salient objective behind its formation.

Over the years, multiple strategies to empower the visually impaired have been adopted by AICB through projects in key areas such as, education, preparation of materials in Braille and audio, vocational training, placement, women support, community based rehabilitation, technology, research and rights based activism, benefiting millions of blind and low vision persons across the country. A salient feature of our work concerning the visually impaired has been, that, while on one hand judicial activism and capacity building, integral to our advocacy endeavours, have been our key priorities, on the other, we have tried to integrate advocacy even in our service delivery projects. For instance, whereas we have a high capacity Braille Press to make books in Braille available to all sections of the blind, we have also undertaken effective efforts to ensure a policy change at the government levels

so that textbooks in Braille become available to thousands of visually impaired children studying in both special and inclusive schools.

One of our key support organizations as well as our partner in the present venture, the CBM was formed in 1908 with the vision to create an inclusive world in which all persons with disabilities can enjoy their human rights and achieve their full potentials. Presently, it supports over 1000 projects in over 100 countries.

CBM started to extend its support to India in 1967 and in 1975 the South Asia Regional Office was established in Trichy, Tamil Nadu to coordinate activities in India, Nepal, Bangladesh and Sri Lanka. In 1994, the Regional Offices in North and South were established to cater to the growing projects supported by CBM. Through its multiple activities, today, CBM is considered to be one of the leading professional organizations of the world for persons with disabilities.

Though the CBM-AICB partnership in the area of advocacy has been a relatively recent development during last few years, it must be emphatically stated that this partnership in many other respects resulting in diverse support has existed for more than 25 years now. CBM's role in supporting our organization has not only been critical and sustained, but also, its support in other projects has helped us focus on our rights based activities in terms of utilization of our resources.

The spirit of advocacy, that is the ability to identify and initiate actions to secure one's rights in an environment which creates impediments in the enjoyment of those rights and fundamental freedoms, ought to be, and often is, at the core of the philosophy of any self-help organization of persons with disabilities. Multiple dimensions of our advocacy work have consisted of judicial activism that is taking up cases

of discrimination against persons with disabilities in general and the visually impaired in particular, capacity building (conducting advocacy and UNCRPD seminars and workshops), forming advocacy-oriented partnerships with other like-minded organizations and strengthening our affiliates in advocacy work.

A fresh spurt and energy was injected in our advocacy work after the passing of the Persons With Disabilities Act, which was further intensified when CBM joined us in our quest to ensure a rights-based society and systems for the visually impaired.

The range of our advocacy initiatives during the last 14 years as well as their impact in bringing about visible change in the lives of persons with disabilities in general, and the visually impaired in particular, bear testimony to our prime focus towards creating an inclusive world for the blind and the low vision persons.

The present book is a statement of 15 such initiatives and the impact these have had in improving the lives of the visually impaired in particular and persons with disabilities in general through our judicial activism and community sensitization. It was in June, 2012 when the concept of this book with a difference originated during a discussion between AICB and CBM. It was noted that many landmark judgments had been obtained by AICB during the last 14 years spreading across a number of sectors which closely touch the lives of persons with disabilities. Time had now come to document details and explanations of the representative cases in a single volume so that others in similar situations as well as NGOs wishing to undertake/promote their advocacy work could benefit from our experiences.

Dr. Sara Varughese, Regional Director, CBM, SARO, was very supportive of the idea of such a book. She was prompt in approving the project as well as very encouraging throughout the writing process. The CBM Advocacy Officer, Mr. Umesh Baurai and other members of the CBM team have provided all possible cooperation towards the preparation of this volume. Their inputs have been of immense value in ensuring the quality of the materials contained in this book.

While preparing the case histories, we have tried to write the narratives in a simple story format so that both professionals and lay readers can benefit from our struggles and achievements in respect of advocacy initiatives. It may be possible to find collections of judgments relating to persons with disabilities, but the bare judgments do not explain the core of the issues, the process through which the legal struggle has passed and the long term impacts/implications of the judgments. Departing from the general trend of collections of bare judgments, this book attempts to focus on the actions behind the screen in respect of particular cases chosen for description in this volume. We have tried to demonstrate how the issues came to our attention, the difficulties faced in initiating and pursuing particular cases, the analysis of the judgments, their implications and the impact each judgment has had or has the potential of having on the lives of persons with disabilities.

At times, we have even indicated further action which needs to be taken regarding particular issues. While describing grave legal matters, care has been taken to ensure that the stories make interesting reading from an ordinary reader's point of view. Therefore, the language and style is at times informal. We have tried to keep each story as short as possible, so that the reader does not find it too long or heavy for completing one story in a single sitting. In all, 15 cases have been described in 12 chapters. We may hasten to add here that

these are only representative samples of our advocacy work and comprise only nearly half of the cases which we have taken up during the last 14 years.

The issues described in the following 12 chapters and 15 stories cover a wide range: recruitments, promotions, accessibility, discrimination during employment, interventions in the education sector, supporting women empowerment through advocacy, help to the elderly blind, issues concerning scribes and accessibility during recruitment processes, etc. The selected cases were taken up at various levels: at the CCPD level, in the high courts and also in the Supreme Court of India. Some attempts towards community sensitization as per Article 8 of UNCRPD are also described.

While we have received support from a number of legal experts in our advocacy work, we are particularly thankful to our two lead lawyers, Mr. Rajan Mani and Mr. Subhash Vashisht for their continued and committed involvement. We are also grateful to Justice Sunanda Bhandare Trust for providing help in some of our cases.

Presenting such complex initiatives, judgments and issues in simple language and that too covering a period of 14 years, has been no doubt a challenging and difficult task. Whether we have succeeded in our intentions and efforts can be best judged by you. The only recognition and reward we look forward to is that this book will make an interesting read and will prove beneficial to a cross-section of persons with disabilities, organizations working for them and others interested in creating an inclusive and rights based world.

Dr. Anil K. Aneja.

Vice President and Chair, Advocacy Committee,
All India Confederation of the Blind.

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Chapter - 1

Where Are Our Books? Access to Braille Books —A Basic Human Right

When Tanya, a visually impaired girl was admitted to a school for the blind in 1980, the first thing she asked for was books. "How can I read or learn without them?" she asked candidly. But unfortunately, there were very limited number of books for the blind that they could read on their own. In other words, Braille books were pretty much scarce, one copy for more than 15 students of a class. It was an early lesson in discrimination for Tanya. She learnt, without even knowing, that books, the basis of education, were also a remote resource for the blind.

It was not an isolated case. Most visually impaired children up to late 1980s, studied either without or very limited number of Braille books. And yet, taking great pains, many a time they performed better than the majority of their sighted classmates, who had ready access to books of all kinds: syllabus textbooks, comics, stories, and many more. Blind students were probably misconceived as children with special abilities, kids who can pick up lessons just by listening to class lectures, or maybe, their needs were perceived to be different from, and lesser than their sighted friends. But the fact is, they need to have their own books as much as others and Braille is the script through which books in any language could be accessible to them. However, education for the blind seemed to be nobody's business.

A Ray of Hope

When the Persons With Disabilities (PWD) Act came into force in 1996, one of our areas of interest was the chapter on education. Though, sadly, there is not even a single reference to Braille in this chapter, Section 27 (F) lays down specific provisions for the free supply of special books and equipments to persons with disabilities. We presumed, in the context of the blind, special books would primarily mean those in Braille. So we had hoped that kids like Tanya would no more run short of books in school and that every visually challenged individual could now enjoy reading books on their own like others read in print.

Appealing to Deaf Ears

However, the home truth was that things had not changed much on the Braille books front. We became aware of the situation in 2002 after receiving several complaints from Madhya Pradesh indicating that thousands of blind children in that state had to do without Braille books. Informal reports from other states also reflected a similar scenario. Now was the time for action, we realized. The right to access reading materials in Braille has to be viewed as a human right for a blind person. So we made a representation to the National Human Rights Commission in October 2002. Our demands were simple: blind children must receive their textbooks in Braille at the same time as their sighted classmates get their books in print and that there should be a definitive policy outline to ensure the availability of Braille books for the visually impaired, including children. The demand had become more urgent when we made our representation because the school syllabus in Delhi was completely overhauled and there were virtually no Braille books for the new syllabus. Whereas the National Council of Education, Research and

Where are Our Books?

Training (NCERT) had provided books to all sighted children, it had paid no attention to the blind kids.

When the National Human Rights Commission did not pay any heed to our appeal for the blind population's right to reading, we appealed to the Chief Commissioner for Persons With Disabilities (CCPD). The CCPD was quick to act and issued necessary directions to NCERT, but with no effect. We also wrote to the Ministry of Social Justice & Empowerment, but the issue did not appear to be sufficiently important to them. That was perhaps the reason behind their silence.

Knocking at the Door of Justice

When in January 2003, visually impaired persons including school children from across the country gathered at the AICB for our annual Louis Braille celebration (which always attracts a mega crowd), there were voices urging us to take firm action with regard to the inadequate availability of Braille books to the children in particular. When we consulted an eminent Supreme Court lawyer, we learnt that a major case regarding the implementation of the PWD Act had already been filed in the Apex Court by Sunanda Bhandare Foundation. An Interlocutory Application was filed in this case, that is case no. 116 of 1998. The NCERT, The National Institute for the Visually Handicapped (popularly known as NIVH) as also the Ministry of Social Justice & Empowerment, Government of India were made parties to the case. All the state governments were also sought to be included. We were looking forward to directions ensuring the implementation of the provisions of Section 27 (F) and Section 30 (C) of the PWD Act. These provisions mandate the free availability of books for students with disabilities. The Court was requested to direct all the Respondents in the case to outline a policy that guarantees the availability of Braille books to blind children

at the same time when printed versions are given to the sighted kids.

While some states took immediate steps in this direction after we approached the Supreme Court, the NCERT and NIVH started playing the blame game with each other for the delay. Attempts made by the Respondents to paint a rosy picture of the situation were, however, effectively rebutted by us. Consequently, on October 28, 2003, the Honourable Supreme Court of India accepted our application and issued directions to NCERT and NIVH to ensure that all textbooks in Braille become available before the commencement of the next academic year, that is, before April 1, 2004. The order implied that all state governments should follow the direction.

No Visible Change

While we were riding high on hopes of improvement in the situation regarding Braille books, our expectations turned futile when we learnt that syllabi of the Delhi Government schools had again changed. While others had got their textbooks, there were no moves to make Braille books available to the visually challenged children. We also got to know that discussions were on in Delhi and Chhattisgarh to replace Braille books with cassettes and CDs for the blind children as they were more cost effective. However, it was beyond our understanding as to why, in that case, the print format would also not be discarded in favour of the same low-cost alternative.

Losing no time, we made a complaint in the Office of the State Commissioner for Disabilities of both the states because education is primarily a state subject. While the

Where are Our Books?

Government of Chhattisgarh switched back to Braille, the Delhi Government seemed to be quite stubborn.

Delhi being the national capital, we had hoped that the action on the part of the State Commissioner for Disabilities would be rather prompt. This proved to be a totally unrealistic dream. The State Commissioner for Disabilities did not even take note of our petition for months, let alone taking any action. When a reminder was sent and it went unanswered, we moved to the Office of the CCPD in May 2005. But the application was referred back to the state as education was a state matter. Upon repeated representations, the CCPD, however, in August 2006, directed all state governments to implement the Supreme Court order and ensure the availability of Braille books for the visually impaired.

The New-found Impetus

In December 2006, the General Assembly of the United Nations passed the United Nations Convention on The Rights Of Persons With Disabilities (popularly known as UNCRPD) and education of the visually impaired children found special mention in Article 24 of the Convention. This fired our aspiration to intensify the struggle for ensuring Braille books to every single blind student. Another heartening truth in this connection was the fact that Braille was now beginning to gain greater prominence and recognition as a means of communication and accessibility as compared to the time of the PWD Act of 1995. So in the very month when this Convention was to be opened for signatures by state parties, that is in March 2007, we served a legal notice to the Delhi Government, which, despite all the above directions, refused to budge. When even that failed to make the Delhi Government realize its responsibilities towards blind students, we had no choice but to move to the Delhi High Court.

Victory At Last

When we filed our Public Interest Litigation (PIL) regarding availability of Braille textbooks for the visually impaired children, we had hoped for an early disposal of the petition because all we were asking for was the implementation of Section 27 (F) and 30 (C) of the PWD Act and the orders of the Supreme Court of India in our earlier case of 2003. However, the case lasted for 15 months and was heard by several judges because the Bench kept changing. Despite the Bench changing, the Court was always sensitive and prompt in considering the matters raised by us in our PIL.

The Delhi Government took a stubborn stand in the beginning. We were even accused of having vested interests in filing the petition. The lawyer for the Delhi Government tried to portray that there was no shortage of materials for the visually impaired and there had been no complaint from any quarter. According to her, we had filed the petition because we wanted to get business for our Braille press. Also, it was said that Braille books were heavy and children would find it difficult to carry them from home to school and back. That is why audio format was a cheaper and more convenient method of reading materials. All these claims were effectively countered by our lawyer.

When the High Court asked the Delhi Government to provide data regarding visually impaired children, it was provided without any survey. Not convinced, the Court asked the Government to conduct a survey in every school and every class and then submit the status report. The survey was done and the figure this time, was higher than the one provided by the Government earlier. This made the Court ask the Delhi Government for particulars of every visually impaired student and the data provided for the third time now showed yet

Where are Our Books?

another figure. The differences in the numbers all the three times were difficult to explain though.

Realizing the Court could not be misled any more, and the legislative obligations would have to be fulfilled, the Government finally consented to provide Braille books to all visually impaired students whether studying in the government, aided or recognized schools.

Braille For All

There was a time when there were no textbooks in Braille. Then came the time when, at the most, one could hope for only one copy of textbook for the entire class of 15 children. For every blind child to have a copy of his/her own as a part of the government's responsibility was at that time a dream, a dream nurtured by many visually impaired persons even after they had passed out from school and taken up various professions. Due to judicial activism, this dream of thousands has become a reality now in many states.

In the year 2009, the Parliament of India passed the Right To Education Act, granting the right to all Indian citizens. If this right has to become a reality, then the education of the visually impaired, who form a considerable portion of the population, cannot be ignored. Braille is the only medium which can ensure this right to the visually impaired in totality. For this to happen, it is important that judicial activism undertaken by AICB be replicated in other states as well. Only then, Braille books for every blind child can become a reality all across the country. Till such time, these children will keep asking, "Where are our books?"



A Learning for the Learned: Creating Space for the Visually Impaired Teachers in Universities

Education is an area in which the visually impaired have excelled despite many hurdles, surpassing their sighted counterparts on many occasions. Therefore, the 2006 circular of the Universities Grants Commission (UGC: the apex higher education body in the country), directing the universities to strictly implement the provisions of Section 33 of the Persons With Disabilities (PWD) Act, that mandates reservation of posts for the disabled, was a welcome move. Not many would know, however, that not too long ago, the same UGC had put up a stiff resistance to accept these very provisions. So unjust was their stance that AICB was left with no choice but to approach the Supreme Court. Here is an account of how the tables were turned.

Disabilities Act Disobeyed

Hoping that the implementation of the PWD Act would open up new vistas in the education sector for the visually impaired, we at AICB had set up an Education Committee in the early 1996. In one of the meetings of this Committee in July the same year, a member, rather cynically remarked that there was no use of this Committee. The reason: the UGC had decided not to comply with the PWD Act. A news like this, within six months of the PWD Act coming into force, was difficult to take in because we had pinned a lot of hope on

the success of this Act. Assuming that the member was misinformed, we first decided to ignore the remark. But it was suggested that we write to the UGC anyway to put the doubts to rest.

The response from the UGC however, raised not just further doubts but also quite a few eyebrows. The information given by that Education Committee member was true: the UGC in its meeting held on June 27, 1996, had discussed the provisions of Section 33 of the PWD Act and had decided that they were not applicable to the UGC and the universities. This was perhaps the first major challenge to the acceptance of the Act which could not be ignored. If this stand of the UGC went uncorrected, other departments and ministries of the government as well as autonomous bodies would use the UGC example and the PWD Act would fall flat.

‘Charity’ but Not Equality

So we decided to act against this irrational and anti-disabled stand of the UGC and set things right. Our first strategy was to engage in a dialogue and have this issue resolved. Accordingly, we wrote to the UGC Chairperson and also met her on March 19, 1997. While the then Chairperson was sympathetic, she told us that reservations for the disabled would lower educational standards in the country. However, on our insistence she decided to have the matter reconsidered and respond to us within three months. When there was no response till the end of June 1997, we wrote to the UGC Chairperson and even went to meet her again in July-end that year. But we seemed to be groping in the dark.

After sending another reminder in October 1997, we received a response which even the most audacious officers would hesitate to put on record. It was a letter from none other

than the Additional Secretary, UGC. This time the Commission stated its stand in writing: it was not bound by the PWD Act. The reservation for Scheduled Castes (SCs) and Scheduled Tribes (STs) was in the Constitution and therefore, a legal obligation for the UGC. But the Commission did not have any legal obligation as far as the reservation for persons with disabilities in the universities was concerned. However, as a 'charity' measure, the letter further stated, the Commission had issued a communication to the universities stating that it did not want the disabled persons to be discriminated against, when it comes to appointing teachers, this, provided, all other criteria match.

After reading the letter, we were sure that the UGC had totally misunderstood the PWD Act. At this stage, legal action appeared to be the only remedy, but before taking recourse to it, we wanted to exhaust all other possible avenues. But further correspondence, representations and even demonstrations were not enough to make the UGC realize what was so obvious to many: that is, the PWD Act was applicable to all establishments, wholly or substantially funded by the Government. So we decided to move to the Supreme Court of India because the matter had national implications and involved interpretation of the Act.

Irrationality Knows No Fear

When we filed our case against the UGC in the Supreme Court in February 1998, we had hoped that, being an important government body established by an Act of Parliament, the same Parliament that passed the PWD Act too, the UGC would soon see logic and comply with the provisions of the Act. But we expected too much. In its reply submitted in August 1998, the UGC did its best to argue that the issue of reservation for persons with disabilities should be

seen “in the light of relevant legal provisions and matrix”. The response then went on to twist the interpretation of the PWD Act to claim that it was not applicable to the UGC and universities and therefore, our petition should be dismissed.

Call for Action

A three-fold action was required to ensure smooth careers for the disabled including the visually impaired at the universities. This included:

- *Reservation of Teaching Posts*

We demanded a 3% reservation in colleges and universities for persons with disabilities as per Section 33 of the PWD Act and out of it 1 % for the visually impaired.

- *Relaxation of marks for the NET;*

A person wishing to apply for the post of a Lecturer (now called Assistant Professor) was required to secure 55 % marks at the Masters level to apply for the National Eligibility Test (NET), the qualifying test for being considered for the post.

We would have had no problems if these criteria were uniform. But that was not the case. In the case of SCs and STs (for whom posts were reserved in higher education institutions) the eligibility to apply for the NET examination was 50%. We wanted the same rule to be applicable for the disabled, too.

It is well known that persons having physical disabilities would find it more challenging to access education and perform well as compared to their non-disabled counterparts. This is so,

because, in the absence of required support systems, disability creates its own barriers. As provisions for reservations were now in place as per the PWD Act, we saw no reason as to why the relaxation in marks applicable to another category eligible for reservation, should also not be valid for persons with disabilities.

- *Accessible Question Papers*

As the performance of the blind and low-vision persons was being affected by non-substitution of visual questions, our third prayer to the Supreme Court was to direct the UGC to provide alternate questions to the blind instead of the visual ones. We also requested for allowing extra time for the NET examinees with disabilities.

Additional Task

When the word spread that we had filed a major case against the UGC, many visually impaired persons appearing in the Civil Services Examinations shared with us that the Union Public Service Commission (UPSC: the nodal government authority conducting Groups A and B examinations for Central Government jobs) was not providing extra time to the visually impaired using scribes. This too, being an issue having national impact, we filed an Interlocutory Application (IA) in this case itself.

Doors Opened for Hundreds...

In November 1998, responding to our IA against the UPSC, the Additional Solicitor General of India told the Supreme Court that the UPSC had already written to the concerned Ministry to approve extra time for the visually impaired and the matter might be kept pending till the response was

received from the Ministry. Subsequently, extra time was allowed, but not to the desired extent. As per the undertaking given in the Court, a survey was conducted by the UPSC and it was found that there was not much difference in the number of questions attempted by the visually impaired and their sighted counterparts in the same examination time. The findings were not correct, though as the survey was only statistical, not qualitative. But since the National Institute for the Visually Handicapped (NIVH) was a part of the survey, the Court accepted the findings. Even though not to the desired extent, the provision of extra time in the examination, granted by UPSC in response to our application in the Supreme Court did substantially enhance the selection chances of hundreds of blind and low-vision individuals.

With respect to the UGC, it was a four-year-long battle fought in the Court. The Supreme Court made the Chief Commissioner for Persons with Disabilities (CCPD) a party in the case for assistance. Finally, on March 19, 2002, the UGC agreed to implement the 3% reservation for persons with disabilities and 1% out of it for the visually impaired, in all universities. It also conceded our demand for reducing the eligibility marks for NET and lecturership from 55% to 50% in the case of persons with disabilities. A significant achievement in this case was the Supreme Court's acceptance of the principle that the facilities and concessions for the visually impaired should be at par with the SCs and STs.

After this landmark judgment of the Honourable Supreme Court in 2002, various High Courts have delivered judgments in specific instances, directing universities to ensure 3% reservation for persons with disabilities in the teaching posts. Owing to such judgments, hundreds of disabled persons have got appointment as lecturers in colleges and universities across the country.

While the reservation expanded job opportunities for persons with disabilities, lowering the eligibility conditions for applying for lecturership also did the same and a little more: It paved the way for a substantial number of persons with disabilities working elsewhere to take up teaching as a profession and push up their career graph.

Sitting Back Not an Option

One would think our job was done after the Supreme Court judgment. Unfortunately, that isn't the case. While the UGC has been sending repeated reminders to the universities to implement the provisions of the PWD Act and has been urging them to create other facilities for the PWDs for which funds are provided, many universities are yet to abide by them. That is why, during the last few years a number of Public Interest Litigations (PILs) have been filed by various organizations against some universities for not implementing the Supreme Court directives.

We, at AICB, have been monitoring the implementation of this judgment by filing RTIs and making representations wherever the shortfalls become visible. Owing to support from the Christoffel Blindenmission (CBM), we have recently filed two PILs in Uttar Pradesh and Madhya Pradesh respectively. These have been accepted by the respective High Courts and the proceedings are in the process.

A number of NGOs in various states ought to follow our example and take similar initiatives that we took. Only then, will the dream of the disabled including the visually challenged, of pursuing a career in the higher education sector, be realized.



Chapter - 3

Unreasonable Approach to Reasonable Accommodation: Issues relating to Scribes in Examinations

It was September 10, 2012. We received a frantic call from Mr. Kamal Kanjilal, a visually challenged Junior Clerk in West Bengal, a state in the eastern region of India, about 1400 kms away from Delhi. "Day after tomorrow is my examination for promotion but I am not being allowed to use a scribe for the test," said Kamal, tense and hassled. Our Secretary General, who was in the middle of his trip in the rural areas of Uttar Pradesh (a state located in northern India) at that time, immediately took note of the issue and sent an email to the Chief Commissioner for Persons With Disabilities (CCPD). He also spoke to him over the phone requesting him to take action with immediate effect. The office of the CCPD wasted no time, and Kamal's examination was postponed to 18th of the month. He was also allowed to use a scribe.

While our prompt action was instrumental in ensuring a scribe for Kamal during his exam, the denial of this basic necessity to the visually impaired by a large number of organizations and examining bodies has been a long standing problem causing inconvenience to many. Such complaints from the stakeholders have resulted in a number of advocacy initiatives at our end too. This is unfortunate because this condition,

which shouldn't have surfaced in the first place, has been persisting for decades despite legislative provisions.

Loophole in the Law

The use of scribes is an age-old practice in the exams for the blind. Section 31 of the Persons With Disabilities (PWD) Act gives a legislative shape to this practice by stating that all educational institutions should allow the use of scribes to the blind and low-vision candidates. While this law empowers those without sight, it has its own loophole too. As is easily noticeable, the Act makes it mandatory for the educational institutes only to allow scribes. It does not include the government organizations and other autonomous examination bodies in its ambit.

In a bid to standardize the law, the government extended the provisions of Section 31 of the PWD Act to all centrally-governed organizations and autonomous bodies. In November 2004, the Government of India (GOI) issued a circular stating that government organizations and all autonomous bodies should also follow the same rules in allowing scribes to the visually impaired as were being followed by the Central Board of Secondary Education (CBSE). As the CBSE rules regarding the use of scribes are quite comprehensive and have been found by-and-large satisfactory over the years, it was expected that this circular would put an end to all complaints with respect to scribes. But alas, it didn't.

Rule Without Rationale

If rules and rationality prevailed, the world would have been a better place to live in. Despite such clear directives from the

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Government, problems in the use of scribes by the visually impaired continued to persist. Though appropriate action was taken in cases brought to our notice, one particular complaint left us nonplussed . It is bound to set our readers wondering, too!

On July 14, 2008, two visually challenged individuals, Ms. Garima Chauhan and Mr. Sunil Kumar, came to AICB with the complaint that they could not take the written test for the post of Trained Graduate Teachers (TGT) conducted by the Delhi Subordinate Services Selection Board (DSSSB) on July 13, 2008. The reason: they were not blind enough to be allowed to use scribes. Both Garima and Sunil had studied through Braille system and had a near-total absence of sight. They were adjudged to be have 90% visual disability which meant that they could not use their sight to perform any major activity. Yet, the officials of the DSSSB did not consider it necessary to allow them to use scribes. They overrated the visual capacity of the candidates in question. "The scribes are given to only those with 100% blindness. But you score only 90% on the blindness scale," they told Garima and Sunil. The officials didn't keep it to verbal communication only. They went on to cite the reasons in writing too. This was not the first time that complaints of this nature had been received against the DSSSB, but considering 90% visual disability to be good enough for a person to write on his/her own, seemed to be a first-of-its kind example of irrationality.

Outright Disrespect for the Law of the Land

A job opportunity lost was a serious enough issue for us to take up the cudgels against the DSSSB, but what alarmed

us more was the audacity with which their officials defied the Section 31 of the PWD Act (which gives persons with blindness and low vision the right to use a scribe) as well as the subsequent government notification. The law of the land, it seemed, had no sanctity for them. They also overruled the principle of 'reasonable accommodation', one of the salient features of the United Nations Convention on the Rights of Persons With Disabilities. If using scribes by the visually impaired (a practice hundreds of years old) was not deemed to be a reasonable accommodation, then one wonders what that term would mean. What's more, they went back on their own commitment. The DSSSB advertisement inviting applications for the posts of TGTs stated that the blind could use scribes. Twelve posts in total were reserved for the visually impaired.

We Swung Into Action

Taking strong action against the DSSSB officials who denied Garima and Sunil the right to use scribes, thereby jeopardizing their prospects, seemed to be the best option. On one hand we sent a representation to the Secretary, DSSSB, registering our strong protest, and on the other, we filed a complaint in the office of the CCPD. The CCPD, as expected, took it seriously and fixed a hearing on 22nd August 2008. As it was also a service matter, we made the Department of Services a party as well.

As we delved deeper into the issue, we discovered that the discrimination was much graver than we thought. Not only did they render people with less than 100% blindness ineligible to use scribes, but they also made their own rules that were pretty difficult to follow. In instances where scribes were allowed, they had to be academically one class lower

and should have obtained that qualification not more than a year before the test. How the candidates would find scribes with such precise specifications was anybody's guess.

The Fight for Right

The DSSSB did not appear in the first hearing held on August 22, 2008. The Department of Services, Government of NCT of Delhi, conceded that the GOI rules and provisions regarding the use of scribes should have been followed. But as the Services Department did not have any role in conducting the exam, they were unable to speak on behalf of the DSSSB. The logic, however, appeared rather difficult to digest because requirements for posts are sent to the DSSSB by the Services Department and final appointments after the selection are also made by the various departments of the Delhi Government keeping the Services Department in the loop. Keeping this in view, the CCPD passed very strict orders asking the Services Department to examine the scribe policy of the DSSSB, look into the present complaints and also submit in writing why a re-examination of both Garima and Sunil should not be ordered and why action against the officials who denied them the facility of scribes, should not be taken. As there were a number of other similar complaints against the DSSSB, all the cases were heard together.

Realizing that they were in troubled waters, the DSSSB senior officials filed a written statement on September 10, 2008 stating that they held the Court of the CCPD in high esteem and would review their scribe policy. But as there were no provisions for re-examination, nothing could be done to set right the cases of Garima and Sunil. This satisfied neither us nor the CCPD. Therefore, on September 29, 2008, strict

orders were passed asking the DSSSB to bring their policy regarding scribes in consonance with the GOI notification and rules and also to hold a re-examination for both Garima and Sunil.

Rights Restored

Finally, the DSSSB accepted its mistake and relented. The re-examination for both Garima Chauhan and Sunil was held on January 25, 2009. Thanks to this re-examination, both of them are now working as TGTs in Delhi. We at AICB were not only happy for them, but also satisfied that we have been able to set right an important discriminatory action having far reaching implications. In another case afterwards, the CCPD ruled that the present judgment in our above case be used as a reference point in any similar case of denial of scribes.

There's More to It

Sunil and Garima's problems were sorted out, but issues pertaining to scribes still remain unresolved in many respects. With various organizations conducting examinations tending to formulate their own unique rules for scribes, there is no doubt an urgent need to standardize these rules and procedures at the national level. With this end in view, the office of the CCPD called a meeting of a cross-section of NGOs, government departments and other involved parties to finalize a policy document which could be adopted by the centre. Post this meeting, comprehensive and generally acceptable recommendations relating to the use of scribes were submitted by the CCPD to the Ministry of Social Justice & Empowerment.

We Haven't Given Up...

More than four and a half years have passed but this crucial draft is yet to be finalized. In March 2012, we filed an RTI in the Ministry of Social Justice & Empowerment to find out the status of those draft recommendations. We were informed that the document was sent to a number of ministries and examining bodies. Some of them were yet to submit their comments. So, the issue is still alive. We wonder when the Government would accord this matter the priority it deserves. The scribes may act as per our dictations, but our representations seem to have fallen on deaf ears with powers that be. We will, however, keep reminding and following up this important issue with the concerned authorities.



Chapter - 4

Breaking Free From Scribes: Ensuring Independence Through Technology

"If you want a thing done well, do it yourself," believed Napoleon Bonaparte. This time-tested view from the timeless legend has been proved true at different crossroads of our lives. Moreover, self sufficiency is the essence of independence, in the truest sense of the term. So, while scribes are saviours to many without vision, they are barriers to some in their quest for independence. But their dream of freedom (from dependence on scribes) can come true only with the help of technology. The story of Varun Khosla bears testimony to that. Here is how our combined efforts made it possible.

Going off the Beaten Path

Like many other children with impaired vision, Varun studied in a special school. Varun was a sharp and talented student. From the very beginning, he wanted to do something new, something different, which not many of his friends would have even imagined. So, as a youngster, Varun was overjoyed when a computer programming course was introduced as an option for the Plus II examinations. This was a subject that the blind students of India had hardly studied before at the school level.

Varun knew that exposure to technology will open up a completely new horizon for him on the job front. So he took

up programming quite seriously and it paid off later on. After joining college, he discovered that it was rather difficult for the visually impaired students to submit their assignments in Hindi (which was the medium of instructions for many) because the screen reading computer software supported only English files. His innovative mind swung into action immediately and by the summer vacation post his 1st year examinations, Varun developed a software through which the blind candidates could submit their assignments in Hindi.

Aiming High After an Early Break

Impressed by Varun's programming skills, a software company offered him summer training after his 2nd year examinations. He grabbed the opportunity with both hands and it didn't go waste. He was offered a job in a mainstream software company even before he completed his graduation. Though Varun dreamt of excelling in software development—his forte—he was aware of the fact that his B.A. degree wasn't enough to take him far in the field. So he rightly decided to pursue further studies in computers and enrolled himself for a Masters in Computer Application (MCA) course through distance learning, alongside his job.

The Speed Breaker

However, Varun's high-flying hopes received a major setback. This diligent student's request to the university authorities to allow him to write his examination papers with the help of a computer instead of a scribe, was turned down. It was not an unjust demand from a computer student. In fact, using computer in the examination hall was necessary for Varun, as it was easier to key in the coding and technical terms, rather than explaining them to a scribe. But the university authorities were not ready to accommodate. So chances were

high that Varun's performance, and thereby, his professional prospects would be affected by this non-co-operation from the university.

UGC and UNCRPD Overruled

Article 9 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) enjoins upon States Parties to guarantee total technological access to persons with disabilities. Varun's case was a classic example of denial of access to technology by the university, despite our government's ratification of the Convention.

This refusal was also an outright defiance of the University Grants Commission circular directing the universities to allow visually impaired students to use computers for taking examinations. As Varun took his first semester examinations, he realized that using a scribe had depleted his performance and that it could further deteriorate, in case he was compelled to use a scribe. Finding situations getting worse, he turned to AICB for support.

Converting Crisis Into Opportunity

When Varun wrote to us in January 2009, his first semester examinations were over. So we could not help him there. But we did realize that MCA being a technical course, it was a must that Varun got the facility of using computer for taking his exams. We viewed this crisis as a golden opportunity, the opportunity to ensure practical application of Article 9 of the UNCRPD in higher education institutions.

We knew that if we could procure permission for Varun to use computer in his exams, it would pave the way for others as well in higher education institutions, to avail the same facility

and be independent of scribes during the exams. Keeping this in mind, we prepared a representation and sent it to the Chief Commissioner for Persons with Disabilities (CCPD).

Hopes Restored

We sent our representation on January 23, 2009. The office of the CCPD was quick to swing into action and, on February 2, 2009, it sent directions to the concerned university asking the same to allow Varun to use a computer for taking his exams. These directions were complied with and Varun could finally write his exams with a computer from the second paper of the second semester. Not only did his dream to write his exams without the help of a scribe come true, but also, his hopes of doing well in the exams and subsequently in the software segment, were restored.

Dramatic Upsurge

The benefit of this permission reflected in Varun's mark sheet. Though he scored 59% in the exams that he took with the help of scribe (the 1st semester and in the 1st paper of the 2nd semester in his MCA course), he did so well in the rest of the exams where he was allowed to use computer, that he could maintain an aggregate of more than 75% at the end of four semesters. Considering the fact that Varun did not even secure 60% marks in the 1st semester, ending up with an aggregate of 75% meant, he scored much more than that in the remaining exams when he wrote with the help of a computer.

That was not all. Soon after passing his MCA with distinction, Varun got a job as a Software Engineer with Microsoft, one of the best software companies of the world. If he was not allowed to use a computer to write his exams, his performance might not have been good enough to land him

a job in a corporate such as Microsoft, where he draws a seven-digit annual salary now.

It is a well-recognized fact that getting an opportunity to work with a software giant like Microsoft is difficult for anyone and more so, for a visually impaired person if he/she does not have an enviable academic record. Varun's success was a matter of pride and satisfaction for us as well, because our efforts at advocacy in his case proved beneficial.

The Way Ahead

The directions of the CCPD in Varun's case opened the doors for those who wanted to do away with scribes and write their own exams through computers. Buoyed by our own success, we wrote to some of the major universities to make similar provisions for the visually impaired with respect to examinations.

We were happy to note that the University of Delhi incorporated the facility of using computers for writing examinations in its examination policy for the visually impaired. In March 2012, we also wrote to the Ministry of Social Justice & Empowerment asking them to incorporate such provisions in the document relating to examination policies for blind and low vision persons.

As Varun's story proves, it is possible to give shape to the provisions of Article 9 of the UNCRPD which addresses issues of accessibility through technology. But, India being a vast country, a lot of work needs to be done in this respect in various states. This is an important area that demands NGOs working in different states to join hands and work together. Only then can technology change 'what it means to be blind'.



Chapter - 5

From Calm to Crisis: Victimization of a Blind Employee

Stories of physically challenged people experiencing discrimination in the professional sphere (and social too!) are quite rampant in our society. While some are not allowed to join work despite being selected, others are not offered an opportunity to serve, and even worse, some of the work processes are inaccessible to many with disabilities. Here is a blow-by-blow account of the victimisation of a competent, but visually impaired individual, at work. Vinod Kumar Kesari, as he is called, was robbed of his livelihood. His fault: he is blind.

Vinod Lands a Job

Life was not a bed of roses for Vinod. Unable to move up the academic ladder, he learnt vocational skills. However, finding a job wasn't easy. But thanks to the special recruitment drive during the International Year of the Disabled, 1981, Vinod got appointed as a Chair Caner in a Central Government department. He was overjoyed. But the euphoria didn't last long.

Vinod was soon declared as a surplus staff. But good luck smiled on him again. He was absorbed as a peon in the office of the Director General (DG) of Audits at the Post & Telegraph (P&T) department of the central government. Vinod, who needed the job badly to meet both ends, thanked his stars again.

A Bolt from the Blue

Vinod's life was moving at a comfortable pace till July 2000. He used to get moderate duties as a peon and performed them to the best of his abilities. Suddenly, there was a bolt from the blue. In August 2000, Vinod was asked by his employers to appear before a medical board at Ram Manohar Lohia Hospital. This is one of the healthcare centres responsible for holding medical examinations of the candidates selected for central Government jobs before the issuance of final appointment letters. The rationale behind appearing before a medical board after 13 years of service was unfathomable to Vinod, but he obeyed with respect. Little did he know then that his employers had other plans for him. Forcing him to retire was all they had in mind. Forcibly retired from his permanent government job at the age of 49 for no fault of his (or is blindness a fault?), Vinod was shaken to the core. His retrenchment was inexplicable as his employers were aware of his blindness while appointing him. Puzzled, Vinod turned to our organization for support.

Traumatic Questions

When the author of this write-up first met Vinod in August, 2000 in the former's capacity as the Chairperson of AICB's Advocacy Committee, he was struck by Vinod's modest demeanour. It was beyond his imagination that a victim of shameless injustice was hiding his pain behind his own humble exterior.

As we listened to Vinod's story, quite a few questions kept bothering us: what could have triggered such a rude rejection of one's right to work and that too, by the Central Government? How can a person appointed on the ground of blindness be dismissed from service on the very same ground? How can this happen after five years of the implementation of the

Persons With Disabilities Act? Were the superiors of Vinod blind to his blindness till 2000?

Path Ahead

As we pondered over these baffling questions, we decided to focus on how to figure out the right move. Vinod's employers had been strategic enough to disburse his retirement benefits very soon to ensure that all channels of his comeback were blocked. Further, he was retired in public interest under Civil Services rules SR 56 (j) and 38.

Though the issue was very complex, we decided to take the bull by the horn. There were three possible way outs to us: to send a representation to his employers, that is, the office of the DG of Audits in the P&T department; to approach the law courts; to file a petition in the office of the Chief Commissioner for Persons With Disabilities (CCPD). Making a representation to the employers seemed to be pointless because they were the brains behind this crude conspiracy. Law courts were also not a good option as individual service matters take a long time for settlement. But Vinod's case needed immediate results. So the most effective remedy appeared to be a petition in the office of the CCPD.

A Tough Battle

It is said that even strict administration has a human face. But the employers of Vinod were determined to prove it wrong. When we filed a case in the office of the CCPD, we hoped that it won't take long to get justice for the victim in such an obvious case of victimization. But the other side was determined to fight tooth and nail. The case lasted for more than one and a half years and was heard by two Chief Commissioners. Realizing the complexity of the matter, the CCPD made

the Department of Personnel & Training (the nodal Central Government department for matters relating to recruitments) a Performa party, that is, a party which would assist the court and against whom no direct relief was sought.

In our arguments, we relied on Sections 33 and 47 of the PWD Act as well as on the fact that Vinod was appointed as a part of the special recruitment drive on an identified post. The fact of his blindness was known to his employers and was, in fact, the reason behind his appointment in a reserved post. As per Section 47 of the PWD Act, a person who acquires disability during his/her service cannot be retired or lowered in rank. This Section also states that promotion cannot be denied to any person with disability. We argued that if a person, who acquires a disability during service cannot be dismissed, retired or reduced in rank, then how could Vinod's disability, which existed before his appointment, be the cause of his dismissal?

The officer in the rank of the Deputy Director, representing the office of DG, Audits, P&T, however, was unyielding even in the face of obvious rules, legislative provisions and logic. Vinod was working in the post of a peon which was not identified for persons with blindness, so he was retired, argued the officer.

The respondent's reply was ironical when he was asked why this realization dawned on the office 13 years after his appointment, and nearly 10 years after his confirmation. Vinod was allowed to continue on charitable grounds even when he was unable to perform professional responsibilities, was what he conveyed. Interestingly, no action was ever taken against the victim's non-performance, nor was he issued any memo for the same. While drawing the attention of the authorities towards this discrepancy, we also pointed out that if the statements of the respondent are true, then such officials must be proceeded against for using public money for charity.

The opponents were also prepared with their points against Vinod. They quoted the two Civil Services rules—SR 56 (j) and 38—under which they forced him to retire in public interest. However, these could not be applied to Vinod, as under SR 56 (j), such an action could not be taken unless the employee was 55 years of age. Vinod was only 49. And, as he had not requested to be retired, pension rules did not apply to him. Fortunately, the Director, Department of Personnel & Training, supported our view and said that Vinod's employers were wrong in applying both the above rules on him.

Sweet Victory

The CCPD gave the verdict in favour of Vinod asking his employers to reinstate him with all the benefits of continuing service. Our joy knew no bounds because when we began our battle, we could only dream of such an outcome. However, the destination was still far off. Despite orders from the CCPD, the DG, Audit, P&T department, refused to reinstate him. Unfortunately, the PWD Act does not allow enforcement powers to the CCPD. So we approached the Central Administrative Tribunal (CAT) requesting them to endorse the orders passed by the CCPD so that these become enforceable. The CAT was pleased to pass such orders which Vinod's employers finally complied with.

Ten Years Later...

It was 4th January, 2012. While the Secretary General and the Vice President of AICB were walking towards their office after the Louis Braille Day function, they were greeted, amidst the crowd, by a person with a grateful smile. He was Vinod Kumar Kesari. Vinod is now working as a clerk in the same office where he was forcibly retired from. He is now approaching his natural retirement age. As we continued walking towards

the office, we wondered whether, even in the mainstream legal history, there would be many such cases where a man forcibly retired and put on pension, is not only reinstated, but also promoted in the same office.

Questions To Ponder

This is not a one-off case of violation of rules and victimization of a physically challenged person. Our society abounds in such instances. But Vinod's story has some complex implications. It raises some substantive and serious issues relating to the service provisions of disabled employees and the effectiveness of the CCPD's office.

- The first issue that emerges out of Vinod's case is whether the disability of an employee can be a ground for change in his/her service conditions and/or dismissal.
- Can a person initially appointed on the basis of his disability be dismissed for his disability later?
- Some of the provisions of Section 47 of the PWD Act, primarily applicable for those acquiring disability during service, were applied to a person who was disabled before joining service. Is it fair?
- Can a person be acted against or removed because the post he is working in is not identified for that disability category?
- Does CCPD's judgement have much significance without powers to have the same enforced?



Chapter - 6

Bringing Back on Rails: A Seesaw Battle for the Rights of the Visually Impaired

Indian Railways happens to be one of the largest public sector employers in the country. Therefore, it was natural to expect the Department to create large-scale job opportunities for persons with disabilities after the PWD Act was passed. However, we discovered after nearly 10 years of the enforcement of the Act, that the Ministry of Railways wasn't serious about its legal obligations towards the persons with disabilities. Unfortunately, realization about ignoring their legal obligation didn't dawn on them even after we drew their attention towards the issue. What ensued instead, was a six-year-long legal battle.

Left Out

It was in October 2005 that we noticed an advertisement issued by the Northern Railways inviting applications for Group D positions. The vacancies were large in number, but surprisingly, the advertisement did not indicate any reservation for persons with disabilities. This meant a significant loss of opportunities for them. So we decided to file a Public Interest Litigation (PIL) in the Delhi High Court.

Our petition came up for hearing on December 7, 2005 and

a notice was served to the respondent. Two months later, in February 2006, the High Court directed the Ministry of Railways to issue a corrigendum incorporating reservation for persons with disabilities and allow sufficient time for them to apply. But rails are made of iron. Instead of accepting the High Court directions, the Railways claimed that the advertisement had been cancelled due to internal reasons. This, perhaps, was a strategic move to ensure that the case is disposed of.

Widening the Scope

Even as the Railways cancelled the advertisement under challenge, it continued to issue other advertisements without providing for reservation for persons with disabilities. By now, the writing on the wall was clear: the Indian Railways was in no mood to implement reservation provisions for persons with disabilities. When these issues were brought to the notice of the Court, it decided to enlarge the scope of our petition. Consequently, the Ministry of Railways was asked to show its employment details since 1996 and also indicate the posts on which persons with disabilities had been or could be employed.

Beating About the Bush

For more than a year, the Ministry kept beating about the bush and nothing concrete seemed to emerge. Finally, in November 2007, the Respondents said that they were in the process of identifying suitable posts for persons with disabilities. A list of such posts was provided in March 2008.

However, this list was opposed by our lawyer on two grounds. Firstly, since we already have a list of identified posts issued by the Ministry of Social Justice and Empowerment (MSJE) in

2007, any identification by the Railways would have to be in addition to and not instead of the MSJE list. Secondly, even if the posts were identified, the benefit of reservation was not extended to persons with disabilities, as was clear from the advertisements issued by the Indian Railways.

Noticing that the Ministry of Railways was trying to avoid submitting details of the employment of the persons with disabilities on their reserved posts, the Delhi High Court gave specific directions to the Ministry on March 10, 2008. It directed them to submit to the Registrar (Rules) of the Delhi High Court, the list of posts identified for persons with disabilities by the Government/Railways along with details of their appointment on such posts since 1996. The Registrar was asked to examine the details and prepare a report indicating whether or not there is any backlog.

Backlog of Vacancies Coming to Light

The report, jointly worked out by the Indian Railways and the AICB, was submitted to the Court on 6th January, 2009, by the Registrar. It revealed that there is a backlog to the tune of 4254 vacancies for persons with disabilities in the Indian Railways from October 1996 to 2008. As the Railways Ministry itself was involved in the preparation of the report, there was no way it could deny the omission of its statutory obligation. So on 20th January, 2009, the High Court issued a comprehensive order which caught the attention of the disability sector and the media alike.

Historical Pronouncement

In its order, the Delhi High Court took note of the report of the Registrar. The calculations revealed that as many

as 66 vacancies needed to be filled in the Group A as per Section 33 of the PWD Act. The number of backlog vacancies in respect to persons with disabilities in Group C and Group D were 2377 and 1811 respectively. While accepting the report, the High Court directed the Railways to fill 50% of the backlog in 2009 and the rest in 2010. The Ministry of Railways was also directed not to make any fresh appointment before a schedule for the recruitment of persons with disabilities as per the orders of the Court was submitted.

This historic order was widely covered in the media as more than 4000 jobs are not often created through a single PIL, as was the outcome in the present instance. So the disability sector was riding high on hopes out of the expectation that the Railways would comply with the Court orders. But such expectations were perhaps too good to be true.

'Go Slow' Policy

The strategy of the Ministry appeared to be to go slow. So when the case was heard again, it was discovered that the Railways had not complied with the orders. Their Lawyer stated that contrary to the directions of the Court, rosters had not been prepared and no action had been taken regarding special recruitment drives. Annoyed at this laxity, the judges ordered that the Railway Board Member responsible for recruitments must personally appear in the Court on 13th April , 2009. Awakened by this sudden jolt, the Ministry of Railways braced up to face the situation. On one hand, the Railways sought exemption from personal appearance of its Board Member and on the other, they assured that all the rosters would be complete within a month.

Many a Slip Between the Cup and the Lip

The assurances held out by the Railways appeared to be a just lip service, because their actions spoke otherwise. In March 2009, an advertisement for filling up 1500 vacancies of the Railway Engineering Services was issued, but almost all the posts advertized were declared by the Railways as unsuitable for persons with disabilities. This was despite the fact that most of such posts were identified for various categories of disabilities by the MSJE in its identification list dated January 2007.

When our lawyer brought this to the attention of the Court, the Railways introduced a new twist in the tale. The Ministry sought exemption under Section 33 of the PWD Act with respect to the appointment of the technical Group A posts. This meant that out of a backlog of 66 vacancies of Group A services, only 10 would be filled. Later, this logic was extended to Groups C and D services as well by stating that the appointment of persons with disabilities would be made only on non-technical posts though the required number would be maintained.

For us, it was not the question of numbers, but a matter of principle. If persons with disabilities can work efficiently on technical posts, then why not appoint them? If the required percentage of reservation is met by appointing persons with disabilities on non-technical posts only, then what would happen to those who have acquired technical qualification? The attitude of the Railways was demeaning and unacceptable even in terms of Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which talks about equal access to all jobs.

Our Lawyer fought for more than two years on these issues.

On our request, both the MSJE and the Union Public Service Commission (UPSC) were made parties in the case.

Delay and Dithering

It was on 26th May, 2009, that the Indian Railways had given an undertaking in the Court detailing the timelines for the implementation of the High Court directions issued on 20th January, 2009. However, on one ground or the other, the Ministry kept delaying the issue. On 4th March, 2010, the Court even imposed a fine of INR 10,000 on the Ministry of Railways for not taking it seriously. By 21st July, 2010, the Court was at the end of its patience, as is evident from its comments on the case, "The present Public Interest Litigation, as is demonstrable, has a chequered career because of technical fetters which were sought to be pyramided by the Respondents, if we allow ourselves to say so, an ingenious effort to scuffle and smother the beneficial provision contained in the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has been made."

Rebuffed Time and Again

During the court hearings, it was brought to light that the Ministry of Railways, from time to time since 2005, had approached the MSJE seeking exemption from appointing persons with disabilities on various technical posts: Civil Engineer, Electrical Engineer and Mechanical Engineer. Even after being told that exemption was not possible, the Indian Railways requested for exemption for 27 posts. Despite such rebuffs, the Railways continued to press the matter with the MSJE.

Opposing the Ministry of Railways, we, among others, raised

the issue of the interpretation of Section 33 of the PWD Act under which only establishments and not specific posts could be exempted.

Finally, in July 2011, the Court ordered the competent Railways authority to be present. Consequently, the Executive Director personally appeared in the Court on 13th July, 2011. Now was the time for turnaround, as the Ministry of Railways realized that there was no point deliberately 'turning a blind eye towards the blind' and other persons with disabilities.

A Landmark Judgment: Its Implications and Impact

The judgment delivered in this case on 7th March, 2012, has far reaching implications in many ways. When we filed our petition, we had hoped to create around 200 vacancies for persons with disabilities. In the end, our PIL ensured livelihood and a life of dignity to more than 4200 persons belonging to various disability categories. This victory, greeted with immense joy throughout the disability sector, was also lauded by the media.

Equally important is the fact that the judgment provides clarity to quite a few significant issues. For instance, it establishes that any identification by an establishment or a ministry/department shall be in addition to, and not in derogation of, the list of identified jobs notified by the MSJE. Reservation on technical posts identified for persons with disabilities cannot be denied. Also, the Court appears to accept the view that as per Section 33, exemption can be granted only in respect of an establishment and not for specific posts in an establishment.

Barriers Yet to be Crossed

The High Court had given six months time to the Indian Railways to complete the recruitment process through special recruitment drives. While trying to adhere to this time frame, the Ministry has made their recruitment process rather challenging for persons with disabilities in three major aspects:

1. In the case of visually impaired candidates, the scribe details are being asked at the time of application itself. This has resulted in many of them not being able to take the examination for recruitment.
2. Also, scribes are being denied to the low-vision candidates.
3. The last issue is that of furnishing the disability certificate. The Railways Ministry has devised its own certificate which the medical boards have refused to sign in many cases.

Irrespective of such barriers, there is no denying the fact that, after the historic judgment in reference, the employment track and consequent greater economic empowerment as well as visibility of persons with disabilities in the Railways, is now irreversible.



Chapter - 7

Moving up the Ladder: A Difficult Climb

There was a time, not too long ago, when Government employment for the disabled was almost a dream. It was inconceivable for most employers that disabled persons, particularly the visually challenged, can perform as well as or even better than their sighted or non-disabled colleagues. There are harrowing tales of visually impaired employees struggling hard to cope with discrimination or being humiliated at the workplace.

But a ray of hope could be seen after the Government changed some of its reservation policies, especially with the enforcement of the Persons With Disabilities Act. The disabled now had the legal and legislative right to agitate in case the reservation policies were not implemented.

The Right to Dream Big

Unfortunately, it is condescendingly assumed that career goals of the disabled stop merely at getting a job. But don't they, like everyone else, have the right to dream of going up the ladder in their career? If equality of opportunity truly exists, then it must be admitted that persons with disabilities, like their non-disabled colleagues, deserve the right of upward mobility in their professions.

Recognizing their aspirations of a fruitful, rewarding career, the Government allotted a 3% reservation for the disabled

in promotions through an Executive Order in 1989. However, the reservation applied only to Groups C and D staff. When the PWD Act was being drafted, it was argued by several organizations, including AICB, that reservation in the promotion policy should extend to Groups A and B as well, as with SC/ST reservations. The final draft of the Act (which was adopted), however, left the issue unclear.

A Unique Case in Point

As organizations working with the visually challenged wondered how to grapple with this apparent ambiguity, we came across a unique incident. It pertained not to reservations in promotions, but rather, and more seriously, to the right of the disabled employees to seek promotion.

Alok Gupta and Shiv Shankar Pathak were two of the hundreds of visually impaired stenographers trained by AICB. With our training, they secured jobs as stenographers at the Punjab National Bank. Hardworking and sincere as they were, both were hopeful of making significant advancements in their career. They aimed to be bank officers. Banks appoint officers in two ways—direct recruitment and internal written tests. So when an internal circular inviting employees to apply for Officer level posts came out in December 1998, they were overjoyed. They were confident about their capabilities, but they didn't know that they would soon hit an unexpected roadblock. To their utter surprise, they were told that they were not eligible even for the written test on account of their visual impairment! Bewildered by this act of discrimination, Alok and Shiv turned to AICB for help.

For us it was a first-of-its kind case because this time the point of debate was not just the reservation in promotions, but the very right to seek promotions. Punjab National Bank's order implied that physically challenged employees of the

Moving up the Ladder

bank, particularly the visually challenged, should be happy merely with the positions they are offered at the entry level. It meant that they are not supposed to be ambitious. This blatant line of discrimination baffled their dream of an upward career graph. A further difficulty was that the concerned officials of the Punjab National Bank, in preventing the two employees in reference, were acting as per their internal norms. There was a settlement reached between the Employees' Union and the management of the bank in 1990 under which an employee certified to be disabled and unfit for supervisory duties by the Medical Officer will not be eligible for promotions. Such provisions were recorded as clause 3C of the bank rules. So the officials of the bank, while denying opportunities of promotion to the disabled employees, were in fact implementing in letter and spirit the clause 3C of the bank service rules and therefore, could not be charged with victimization or discrimination.

Hitting the Problem at its Root

We realized that the culprit was clause 3C of the service rules of the Punjab National Bank, not the officials who had prevented Alok and Shiv Shankar from appearing in the entrance test. If this clause went unchallenged and was allowed to be implemented, then it would not only mean doom for those two employees, but also to all disabled persons working in non-supervisory positions as they would never be able to seek promotion. To add to the misery, the same clause could also be introduced in the service rules of other banks or offices, denying opportunities of growth to thousands of disabled employees. So we decided to target the clause, the root of the trouble.

After studying the bank rules and other relevant documents carefully, we challenged the action of the bank in preventing

Alok and Shiv Shankar from appearing in the entrance test for promotion by filing a case in the office of the Chief Commissioner for Persons With Disabilities (CCPD) in April 1999.

This office was new. So there were a lot of hopes attached to this court. It must be said however, we were rather unsure of the speed and efficacy of this court, as we decided to approach the CCPD under Section 59 of the PWD Act. The office being new, there were no precedents as well. In fact, this case was the third to be filed (case no. 3/99) after the CCPD office had started functioning.

Did the Bank Relent?

To begin with, they definitely didn't. In fact, in their written response to our petition, they defended their action by citing clause 3C of their service rules. They also argued that a disabled employee, by virtue of his/her disability, was not competent to handle the duties of an officer. After the written responses from both sides, a personal hearing took place on 3rd August, 1999, a day which we shall always cherish because of this case.

Rule Vs. Rule

It was our first case hearing in the office of the CCPD. Our Advocacy Chair was arguing the case without the help of any lawyer though it was his first experience in matters of this kind. The other side was represented by high officials, for example, the Deputy Chief General Manager, who was also the legal advisor of the bank. It was a rather 'tight case' because both the parties had a strong foundation of rules to support their arguments.

It was a two-hour hearing with aggressive arguments from

both the sides. Our contention was that it was an open and shut case on the violation of Section 47 of the Persons With Disabilities Act: a violation so gross that it could not be defended by anyone. Section 47 states that no promotion can be denied to a person with disability merely on grounds of disability. In the present instance, disability was the only ground of denial. So it was a point blank violation of the PWD act and hence, the action of the bank was liable to be set aside. Using constitutional provisions for our support we stated that the action of the bank was also a violation of Article 14 of the Constitution of India, i.e. the right to be treated equally. Inequality between the disabled and the non-disabled employees of the bank was being perpetuated by preventing the former from appearing in the entrance test for promotion.

The bank representatives, on the other hand, stuck to their guns saying that that they were acting under the rules of the bank which had been accepted by the Employees' Union and therefore, could not be challenged by any employee individually. They also said that as most officers were posted in the branches where the major task was Accounts, visually impaired persons will be unable to perform their tasks.

We had done enough research to prove that the claims of the bank were misleading. Not all officers worked in such branches and they performed many other tasks apart from maintaining accounts and dealing in cash. We also pointed out that the bank already had two officers who had lost sight during service and were yet allowed to continue and were doing very well. As for the settlement between the bank and the Employees' Union under which no disabled employee could seek promotion, we argued that this clause should have been removed after the passing of the PWD Act, especially when the settlement was amended in October 1998 to accommodate provision for reservation of SCs and

STs in promotions. If the company's clauses are inconsistent with the law of the land, as in this case, and the PWD Act is not amended or removed, it is not the fault of the employees concerned. So they should not be made to pay for the laxity of the bank.

Our Trump Card

Arguments went on like this with the bank officials taking an adamant stand. At last, we used their own rules against them. We said, "According to you, under clause 3C of your service rules, a disabled employee cannot be promoted if he is declared unfit for supervisory duties by the Medical Officer. Does the Medical Officer know the details of the duties assigned to officers? If not, then how can he certify whether an employee is fit for those duties or not?" They conceded this point. We further asked whether a medical examination of the two employees in reference was conducted before denying them the opportunity to appear in the promotional test. To this they said "No". This was the clinching point. We pressed hard on the case and asked, "If your clause 3C states that a medical examination has to be conducted and no such examination was conducted, then how could you come to the conclusion that these two employees are not fit for officer level positions? As per your own clause, such a conclusion can be reached by the Medical officer only after examining the employee. Does it not demonstrate a clear bias?"

Actualizing Ambitions

By the end of the hearing, it was clear that the verdict would go in our favour. But we did not know whether the bank would comply. Therefore, it was a pleasant surprise when a call from the CCPD office intimated us that the bank had agreed to

change its discriminatory provisions. Thus, the clause 3C was deleted from the Punjab National Bank service rules.

This victory did not only help Alok and Shiv Shankar to chase their dream, but also paved the way for many like them to fulfill their ambitions. Subsequent to this judgment, scores of persons with disabilities were appointed as officers in various banks both through direct recruitments and promotions. Now disabled stenographers or clerks in banks can nurture the dream of becoming managers some day.

A Lesson Learnt

An important learning through this case has been that it is not just enough to have command over the PWD Act for advocacy purposes, it is equally important to study and put to good use other laws to ensure equality and dignity for persons with disabilities. Winning this case was an important milestone for us but issues of accessibility and appropriate work environment still remain to be addressed comprehensively. Our efforts in this direction are on and will be further intensified.



Chapter - 8

Towards Social Advocacy: Creating Accessible Physical Environment for the Visually Impaired

How many times do people stop by to help that man with dark glasses cross the road or get on to the bus? Yes they do, but only when it suits them. A little bit of concern and sensitivity can make life a lot easier and comfortable for those who can't see. But unfortunately, the physical barriers faced by the visually challenged are generally overlooked as they are mostly able to move about freely and often quite independently. However, the barriers do exist. Here are two tales that tell us the truth.

I

Physical Accessibility for the Blind

Till a few years ago, bus was the chief means of commuting in Delhi (Now of course, Delhi metro has come as a big relief!). Naturally then, like everyone else, the visually challenged persons, too, had to rely majorly on this public transport for going from one place to another. But taking buses has been and still remains nothing short of performing an arduous gymnastic feat. And the ordeal seems all the

more difficult when one has to face and overcome it day after day.

Bus Stops Are There But Buses Don't Stop

The bus stops are there within short distances and are quite prominently marked out; so prominent that even the blind can't miss them. But for some strange reason, the bus drivers tend to overlook them most of the times. So buses halt far away from the stoppages. Though we are unaware of the thought behind such a mindless act, it seems they are too bothered about the convenience of the existing passengers. Probably, that is why they try to make sure that new passengers find it tough to get on to the bus.

While people with regular vision may treat this as a good opportunity to exercise and shed a few kilos (running a few metres does help you lose!), it can be a real hazard and sometimes, even a life threatening proposition for those with visual impairment. Moreover, it makes sense for them to join in this race for bus, only if they are able to identify the bus number. There have been quite a few accidents involving the visually impaired, due to this blatant and irresponsible violation of traffic rules by the Delhi bus drivers.

Seeking Solution

As an organization of the blind, we realized the urgency with which the issue needs to be addressed. But at the same time, we also felt that concerns of this kind cannot be tackled only by judicial advocacy. There is no traffic law that permits the drivers to overstep traffic rules and stop the bus anywhere else than the bus stop. Also, Delhi buses are not equipped with appropriate accessible features that could

help the blind identify the bus numbers and their respective destinations. Such systems could be put in place effectively only by negotiation and sensitization.

In March 2007, a delegation of our organization met the Transport Commissioner and apprised him about the problems. He gave us a patient hearing and promised to do the needful. A significant action point that emerged out of this meeting: training sessions for bus drivers and conductors be organized.

This would give them a hands-on experience of the problems faced by the blind passengers, thereby making them more sensitive to the visually impaired travelling in the buses. Thus, they would realize the importance of stopping at the right place, we hoped. The Transport Department officials were very supportive and offered to integrate such sensitization drives with the usual training provided to the bus personnel.

The Sensitization Starts

Though we had conducted numerous capacity building and training workshops for various target groups, training bus drivers and conductors in disability-related issues was a completely new experience. We realized that sensitization at the grass-root level was as important as filing major Public Interest Litigations. It was also an important part of social advocacy in line with the importance accorded to spreading awareness regarding issues relating to persons with disabilities. So the blueprint of a six-month training session was prepared.

This strategy consisted of a partnership among the Transport

Department, AICB and another NGO. Two half-day sessions a week were conducted as part of the mainstream training of drivers undertaken from time to time by the Transport Department. These sessions consisted of discussions focusing on the problems of the visually impaired through audio-visual materials and practical experience.

Yes, every bus driver and conductor participating in this training was given a real-life experience of being blind. All of them were blind-folded and asked to find and get into the bus standing outside the training institute. As fears of participants falling and hurting themselves were expressed, we made a provision for every blind-folded driver/conductor to be escorted by another participant. They played the role interchangeably. In this way, the participants perceived the problems of the visually challenged while learning the techniques to help them.

Impressive Impact

If this was our first experience in training bus drivers and conductors, for them also it was the first exposure to a training of this type. Surprisingly, there was no resistance at their end though they knew that the trigger behind the drive was their irresponsible rule violation. They were, in fact, excited. "The blind have opened our eyes," remarked some. More than 500 bus personnel were sensitized in disability issues. This initiative of ours also resulted in the Transport Department of Delhi celebrating an accessibility week in September 2007. As the Chief Minister and the Transport Minister of the National Capital Territory of Delhi were the chief guests, the event received high media attention. The name of our organization as partner of this event was mentioned on the invitation cards of the event sent out by

the government. In fact, the AICB representative was made to sit next to the Chief Minister on the stage.

What Next?

We didn't stop at training only. In November 2007, a meeting of the AICB representatives and others was held with the Chairman, Transport Department to work out ways of improving accessibility for persons with disabilities in the buses. However, it must be realized that NGOs, with their limited resources, may find it difficult to sustain such long-term initiatives. So it is necessary for the concerned government agency/department to take forward the process set in motion by the NGOs. In this particular case, it would be the responsibility of the Transport Department to ensure that such sensitization drive continues as part of the regular training of the drivers and conductors. Long journeys always begin with a small step. The day may not be far when this small yet significant move by AICB in social advocacy would become the government's commitment at the national and state levels.

II

Blockers and Breakers

Physical accessibility at the community level has varying dimensions. If the bus drivers break laws on the road by not stopping at the right place, car owners create hurdles for the physically challenged by parking vehicles at the wrong places. Such incidents keep increasing because none questions them. One day we decided to raise our voice.

No Entry

Picture this: you are back from work, tired and exhausted, but you can't get inside your own house, thanks to the cars parked at your door. Visually impaired girls staying in the AICB hostel faced such a situation for nearly a year.

There is a Municipal Corporation of Delhi (MCD) office right across the road where our Head Quarter is situated in Rohini, Delhi. To facilitate the employees of the office, a parking zone was made by the government on our side of the road. We protested but all of it fell on deaf ears. Slowly, the parking contractor started using the service lane as well.

When the blind college girls returned to the AICB hostel every afternoon, they used to face extreme difficulty getting into the building because of the crowd of vehicles outside the parking area. When we protested, all we got was a lip service response: 'The person manning the parking lot will help the girls to the gate.' After a lot of persuasion, our patience gave way and we decided to make this matter public.

Noise Making Pays

This was one initiative in which one of our staff members (the recording studio in-charge) took the lead. We approached the high officials of the Transport Department and also involved the reporter of a leading English national newspaper. The reporter came, spent a full day at the parking, took extensive photographs and then went to meet a Transport Department official.

Immediately after that, our phones kept buzzing. There were fervent requests to stop the story from appearing in media.

Immediate action was also assured. At the same time, the local traffic police started calling, wanting to know what we wanted. The very same MCD officials, who had once refused to listen, now deputed special staff to ensure that no vehicle was parked on our side of the road. An enquiry was also conducted against the parking contractor which revealed that his license to maintain the parking had expired long ago and he was issuing parking receipts in an unauthorized manner.

A Good Lesson

These two instances reflect not just the importance of advocacy relating to community accessibility, but also the need to be vigilant and vocal about seemingly insignificant actions troubling the disabled individuals. If organizations working in the disability sector remain alert to accessibility issues in their respective areas, the day may not be far when the whole country will become barrier-free for persons with physical challenges.



Non-Application of Sections 32 and 33 of the PWD Act: Some Path-Breaking Judicial Pronouncements

After the provision of 3% reservation for persons with disabilities in employment, it was thought that many roadblocks would get removed. The expectations were the highest from the government recruiting organizations, which are important bodies for implementing laws and rules for ensuring equitable employment.

Therefore, when these very recruitment organizations (which are expected to safeguard the interests of persons with disabilities with respect to employment) themselves flout rules and regulations, judicial activism remains the only effective remedy. As a result, in the recent years, AICB has taken up a number of cases of violation of Sections 32 and 33 of the PWD Act. Two of these are narrated below, which point to some of the common problems relating to breach of statutory provisions.

I

The Top Is Not For You

Following an Executive order in the 1980s, hundreds of visually impaired persons got the opportunity to be employed as school teachers in Delhi. Many went up as high in the ladder as Post -Graduate Teachers. While some of them were also able to become Vice Principals, albeit after overcoming many difficulties, yet the position of Principal, specially in government mainstream schools was considered beyond their reach.

Reaching this coveted post is the dream of almost all the school teachers—the visually impaired being no exception. But when it came to the appointment of the visually impaired as principals, the Delhi Government showed callous disregard for their capabilities as also statutory positions.

Thus in July, 2004, when 90 vacancies for the post of Principals in government mainstream schools were advertized, instead of three vacancies, only one was reserved for persons with disabilities and none for the visually impaired. This was despite the fact that as per the identification done under Section 32 of the PWD Act, the Principal's post stood identified for blind and low-vision persons. As many visually impaired aspirants for this post perused the advertisement, they approached us with the hope that we might be able to help them realize their dream of becoming the head of the school, one day.

Rising to the Occasion

It took us no time to realize that here was a case of glaring

discrimination practised by the Delhi Government. This was not only a violation of Section 33 of the Persons With Disabilities Act, but also, and equally importantly, an indirect negation of the capabilities of the visually impaired to work at top administrative posts in the education sector.

So, we immediately sent a representation both to the Delhi Government and the UPSC, because the latter was the recruiting body in this case. When months went by and no response was received, we were left with no choice but to move the Delhi High Court, especially, since the matter involved a number of substantive issues.

What Did We Want?

It was not just the question of 1% reservation for the visually impaired that we were agitating about, though that in itself would have been a good enough reason to approach the High Court. There were a number of other important issues relating to recruitment of persons with disabilities, particularly the visually impaired.

The first issue was of course the non-reservation of one percent vacancies for the visually impaired for the post of Principal, despite this post being identified for blind and low vision persons. In addition, we also introduced the issue of age relaxation for persons with disabilities, something which was overlooked in the advertisement in reference. The third important issue was to do with calculation of 3% persons with disabilities in any recruitment. Till we filed our case, the general practice appeared to be to recruit a total of 3% such persons by making a separate merit list for them.

This led to a scenario when a person with disability might

perform better than a general candidate and yet not be recruited because 3% other PWDs performed better than him/her. In other words, if there were hundred vacancies and ten persons with disabilities performed better than the last general category candidate, only three of these ten would be taken and the rest left out even when they might have done better than the last general category candidate.

In our view, this practice was exclusionist because, rather than enhancing the opportunities for meritorious persons with disabilities, in some cases, it tended to exclude them. Some visually impaired persons who had been victims of this discrimination asked us to take up this issue as well.

Important Outcomes

In its order of April 29, 2005, the High Court stayed the recruitment process undertaken following the advertisement for the filling up of 90 vacancies. On July 15, however, the Delhi Government stated that it had already issued a corrigendum inviting applications from other disability categories as well and therefore, the stay was vacated in respect of 87 vacancies. But, appointment on three vacancies, meant to be reserved for PWDs continued to be stayed.

Finally, on August 3, 2005, the Court delivered its judgment in this matter. Apart from granting the required reservation for persons with disabilities in the matter in reference, the Court made important pronouncements with regard to the calculation of persons with disabilities (3%) in any recruitment process.

Citing a judgment delivered by a Constitution Bench of the Supreme Court in 1995, the Delhi High Court upheld our

contention that the 3% recruitment of persons with disabilities should be calculated after excluding those persons with disabilities who had been selected in the general merit. That is to say, the 3% reservation may be counted after the last selected candidate of the general category because persons with disabilities, selected before this cut-off marks would be deemed to be selected in the general merit and therefore, would not be counted towards reservation quota.

A Landmark Judgment

The above judgment helped in substantially enhancing the employment opportunities for persons with disabilities in various sectors. Following this High Court direction, the Department of Personnel & Training, Government of India, issued a comprehensive Office Memorandum on recruitment of persons with disabilities. Para 7 of this OM issued on December 29, 2005 clearly notifies the provisions in consonance with the High Court directions in our case by stating that PWDs selected in the general merit would not be counted towards 3% reservation. In the same spirit, Para 22 talks about relaxation of standards if the required number of 3% PWDs are not available.

The impact of our present initiative can also be seen in the fact that, in Delhi, many mainstream government schools are headed today by the visually impaired as Principals. Soon after the directions of the Delhi High Court, we took up a similar case of discrimination in the appointment of Principals by the Navodaya Vidyalaya Samiti (NVS) with positive outcomes.

In the times to come, the changes brought about through our PIL will no doubt be considered as landmark initiatives

as far as the employment opportunities for persons with disabilities are concerned.

II

Non Compliance Yet Again!

If there have been problems for persons with disabilities at higher level recruitments (as the preceding story demonstrates), things have been no better at other rungs of the ladder as well. The following instance presents details:

Delhi Subordinate Services Selection Board (DSSSB) is the recruitment arm of the Delhi Government in respect of Groups B, C and D services. Interestingly, for nearly 15 years now, it has not been able to find the correct way to implement reservations for persons with disabilities.

Another story in this volume demonstrates some of the problems faced by the visually impaired with regard to the use of scribes for taking entrance tests of the DSSSB. The instance of non-compliance of the PWD Act, which came to our notice in November, 2011, however, was yet another example of violation of rules.

Convenience Rules the Roost

The DSSSB issued an advertisement in October, 2011 inviting applications for filling up around 2000 vacancies for more than 60 posts. A mega opportunity of employment for all, but not the visually impaired! Blatant violations of Sections 32 and 33 were visible in many respects.

Non-Application of Sections 32 and 33 of the PWD Act

As is well-known to many, Section 32 of the PWD Act provides for identification of posts by the appropriate governments. In pursuance of this provision, the Ministry of Social Justice & Empowerment (MSJE) has issued lists of identified jobs for various categories of persons with disabilities. The last such lists were issued in 2007. Since MSJE is the nodal Ministry for PWDs, it is natural to expect that the state governments would follow the list prepared by that ministry and would add to that list if necessary. Further, in the case of Delhi, there is a separate provision for the Central Government orders to be applicable in letter and spirit.

Totally disregarding these rules and stipulations, the DSSSB, in its advertisement of October 2011, decided to be arbitrary as far as reservation of posts for the visually impaired was concerned. As a result, certain posts which are clearly identified for blind and low vision persons and on which they have worked successfully for decades, were not shown as identified for them and thus no reservation for them was provided on such posts. The posts included, among others, Junior Stenographer, Stenographer, Clerk, Assistant Law Officer, Legal Manager, Special Educator, Junior Social Worker etc.

Another surprising fact was that, in some cases, a post in one department was identified for the visually impaired, but in another department of the same Delhi Government that particular post was not shown as identified for this disability category. Since the identification of posts was inaccurate, the extent of 3% reservation as mandated in Section 33 of the PWD Act was also not maintained.

Disowning Responsibility

As it was a comprehensive advertisement, it took some time

for us to analyze and prepare tables highlighting multiple dimensions of various issues which we wished to be addressed. After this exercise, we sent a representation to DSSSB pointing out the discrepancies and anomalies in their advertisement in reference with the request to correct the same before proceeding further with the recruitment process.

Instead of realizing its mistake, the DSSSB disowned all responsibility by replying that it was only an examination conducting body and acted as per the demands raised by various user departments. This statement contradicted the functions of this organization as stated on its own website. As the issue had far-reaching implications not just in respect of Delhi, but also for other states, we decided to challenge this discriminatory practice and approach the Delhi High Court.

Unexpected Results

By the time we approached the Delhi High Court, the recruitment process as per the advertisement in question was well underway and written examinations for some posts had been held. Also, such cases normally take time to be decided as the issues involved are complex. Our prayer was that owing to non-compliance of Sections 32 and 33, the entire advertisement should be quashed and fresh recruitment started.

Fortunately, the bench appreciated our point of view and the case was decided in our favour over two hearings only. Our happiness on such speedy justice was further augmented by the judgment through which our prayer of quashing the advertisement was granted. A fresh recruitment process was ordered after ensuring compliance with the PWD Act.

What It Means

While the present initiative has helped create an equitable recruitment system in the Delhi Government and significant job opportunities for the visually impaired, it is also an instance of the practical application of Article 27 of UNCRPD. In the larger context, the judgment in the present case has significant potential to be used in other states, too.

Time and again it has been observed that the identification lists prepared by the state governments as per Section 32 of the PWD Act do not conform to the Central lists and a substantial number of posts are left out in the former, thereby significantly reducing employment opportunities for persons with disabilities in states. The Delhi High Court judgment in our case against DSSSB establishes and confirms that the identification lists issued by the MSJE are the nodal lists and any identification of jobs by states for persons with disabilities would be in addition to the MSJE list and not in derogation of it.

If the organizations working in various states use this judgment to get the identification lists revised and brought in consonance with the Central list, the lives of a lot more persons with disabilities would be richer in terms of employment, finance and dignity.



Chapter - 10

Beckoning and Barring: Are Our Recruitment Processes Accessible?

Although the world is full of suffering, it is full also of the overcoming of it.

—Helen Keller

Battling a hurdle is all about telling yourself, “Never say die.” So is fighting for your own rights. The struggle of the AICB to ensure the right to accessible recruitment procedure for those with visual impairment, is a tale of such undying spirit and determination.

Expanding the Horizon

Though reservation for persons with disabilities in the services of Groups A and B has been made owing to the provisions of Section 33 of the Persons With Disabilities Act, such a reservation in Groups C and D services has been existing since 1977. It was on November 4, 1977 that 3% vacancies in Groups C and D posts were earmarked for physically challenged persons. Through an Executive Order dated 20th November, 1989, these reservations were extended to promotional appointments as well in C and D Groups. Such provisions opened the long-locked avenues for persons with disabilities, creating substantial employment opportunities for them.

AICB was prompt enough to realize the budding prospects of

those with visual impairment in the Indian job market and started a Hindi stenography course for them in the early 1980s. More than 300 visually impaired persons have been able to secure a living for themselves through this programme so far.

In a bid to catch up with the changing job profiles and the emerging technologies, AICB continued to make the necessary upgradations in its stenography and typing skills' programmes. So, when computers began to be introduced in offices in the early 1990s, suitable computer and screen reading software training was integrated with our stenography programme.

Clouds on the Horizon

All seemed to be going well till the Staff Selection Commission (SSC), the recruitment agency of the Central Government, as well as some hiring bodies of the state governments (responsible for recruiting personnel for Groups C and D services), brought about major changes in their testing procedures, making these inaccessible for the visually impaired.

It was in early 2011 that our typing instructor as well as some of our trainees brought to our notice that SSC's Skill Test for the post of stenographer made it mandatory for the candidates to perform only on 'Inscript' keyboard and not on the Remington and Godrej ones, which they were trained on. These keyboard layouts are used for Hindi typing both on the typewriter and the computer. As our trainees were not used to 'Inscript' keyboards, chances were high that their performances would dip. This meant loss of opportunities, in case the SSC went ahead with its decision of allowing the Skill Test only through 'Inscript' keyboard.

However, AICB trainees were not the only sufferers. Almost all stenography and typing institutes for the visually challenged across the country used to provide training on Remington and Godrej keyboards only.

As if this was not enough, the SSC now laid a new rule: the skill tests would be conducted on computers instead of the manual typewriters, the traditional medium for such tests. This was not a challenge for the AICB trainees as we have a strong computer training programme. But the trouble surfaced from a rather unexpected quarter. The computers used for the test were totally inaccessible as they did not have any screen reading software. This is what we call "Beckoning and Barring". Benefits are offered, but the path to access them is barred.

The Road to Reformation: A Bumpy Ride

The challenge was grim and it demanded immediate attention. So AICB lost no time in swinging into action. On 24th February, 2011, a letter was sent by the Secretary General, AICB to the Chairman, SSC, drawing his attention to the skill test procedures which created serious barriers for the visually impaired. A request was made to allow the visually challenged individuals to use the keyboard layouts they were trained on. This was accompanied by an appeal to provide appropriate screen reading and magnifying softwares if the tests are conducted through computers.

But this did not yield any result. So we filed a petition in the office of the Chief Commissioner for Persons With Disabilities (CCPD) highlighting the issues in reference and requesting that the SSC be issued urgent directions to protect the interests of the visually impaired. The office of the CCPD sent

a communication to the SSC on 7th April, 2011 urging them to take cognizance of our representation and take appropriate action.

These efforts had but a miniscule effect on the SSC's decisions. When several blind and low-vision candidates went for the Skill Test on 15th April, 2011, they found themselves virtually at sea with unfamiliar keyboards and computer screens without screen reading softwares. The plight they found themselves in can be well imagined. But all was not lost. Our efforts seemed to bear some fruits. The invigilators were very supportive and helped the candidates to get used to the keyboards and read the computer screen.

Everything said and done, there is no denying that such test procedures undermined the near-complete independence with which people with no or low vision have worked as stenographers and typists for so many years. But we decided to wait because we realized that fundamental changes in the systems and introduction of provisions such as screen reading softwares cannot be brought about in a matter of days. We had also hoped that the office of the CCPD would take further action on our petition.

As we were wondering how to go forward with this issue, the crisis struck once again in December 2011. Some of our trainees, who qualified the written tests conducted by the SSC in the latter part of 2011, were called for the skill test with no change in the rule. The examinees had to use 'In script' keyboard and they were not provided with screen reading softwares. Now, this was a nerve-wrecking experience for the candidates. We realized the time has come to convert discussions into decisions and decisions into actions.

So another representation was sent to the SSC and at the same time, citing the case of one particular applicant, Ms.

Neetu , who was called for the skill test on 10th January, 2012, the office of the CCPD was requested to take urgent action on our pending petition against SSC, which was filed on 31st March, 2011.

Though the Chief Commissioner had recently taken over, both he and the Deputy Chief Commissioner, immediately took note of our request and fixed a hearing on 5th January, 2012. But nobody from SSC arrived, making their casual attitude even clearer.

The AICB Vice President, arguing on behalf of the trainees and the Confederation, challenged the entire recruitment process of the SSC after the CCPD letter of 7th April, 2011 (referred to above). He argued mainly on two points: the deserving visually impaired candidates could not perform well due to inaccessible testing conditions; and they were not provided with a level playing field with the sighted, thereby violating Article 14 of the Indian Constitution. In the absence of conditions conducive to good performance, the outcome of the skill test could not be treated as accurate.

As the SSC was not represented, the CCPD passed interim orders to provide relief to the candidates scheduled to sit for the skill tests in January, 2012. He also directed the SSC to file its response by 25th January and the hearing was fixed for 3rd February, 2012.

On the next date of hearing, an officer of the rank of the Under Secretary in the SSC appeared. He argued that the screen reading softwares were not required because the blind could use computers without such special softwares. So little was his knowledge about how the visually challenged persons worked, that he accused our organization of working against the interests of the blind. They would be put to disadvantage in case special softwares were provided during the skill test,

Beckoning and Barring

the SSC officer reasoned. He even tried to browbeat the AICB Vice President by speaking loudly and making personal remarks.

Fortunately, the CCPD ruling on the necessity of the reading software to totally blind persons, went in our favour. Another line of argument of SSC was the cost factor. Its representative stated that the testing processes were outsourced and installing screen reading software across the country would be a cost intensive activity. We countered by referring to Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and by pointing out that unless the recruitment process was accessible, the element of 1% reservation for the visually impaired could not be maintained.

After hearing the arguments, the CCPD directed the SSC to submit a written deadline for providing the screen reading software.

Touching a Milestone

On 24th February, 2012, the CCPD passed the final order in this matter directing the SSC to introduce screen reading softwares in their recruitment processes including skill tests. Following this order, we also made a representation to the SSC in April, 2012 requesting them to indicate a timeline for the implementation of the order. This representation was made owing to certain complaints that we received in March, 2012. While we have not received any response to our communication, an advertisement issued by the SSC after our representation and the order in reference, did state that the screen reading softwares would be provided during the skill test.

This was a landmark victory for AICB because it had the

potential of creating new accessibility systems for the visually impaired in recruitment processes.

The Way Ahead

Our struggle against the SSC is but the beginning of a larger process. As the level of compliance on the part of the SSC is not clear, we are in the process of filing a PIL on this issue in the Delhi High Court. Similar issues of accessibility may arise in different states as well with respect to recruitment processes undertaken by the respective Public Service Commissions. Also, it is important that NGOs working in various states are alert to such problems, become aware of the CCPD order obtained by us and use the same in ensuring accessible recruitment processes to the blind. In the next few years, there is a strong possibility of the examinations at various levels becoming online. In that case, the current CCPD order will become more relevant.

The journey has just begun and we have 'miles to go before we sleep'.



Chapter - 11

Partners in Their Struggle: Multiple Strategies Towards Women Empowerment

It's not that I'm so smart, it's just that I stay with problems longer.

—Albert Einstein

Remaining undaunted in an adverse situation, the determination not to give up till the end, is the key to success, though rather delayed at times. Taran Kaur's struggle for her deserved recognition and remuneration at work is a tale of troubles and tenacity.

It was the soft, rhythmic swing of her voice that struck us when we first met Taran, a visually impaired music teacher from Punjab. Nonetheless, what touched us more, was not the lilt in her tone, but that unmistakable grit in her character that shone through as she narrated the story of her fight, both on the personal and professional fronts, spanning more than two decades.

Taran Crosses Her First Stumbling Block

It was 1972 when a happy Taran returned home after completing her High School from Model School for the Blind in Dehradun, all geared up to pursue her academic dreams. But her spirits were soon dampened, as her over-protective

family wouldn't allow her to study further. They were afraid that their daughter would not be able to manage alone in college, a common fear that grips parents of special children. All her efforts to persuade her family went in vain.

However, Taran, undaunted, had made up her mind NOT to let her career go for a toss. She wanted to make the best out of the situation she was thrown in, and decided to take up music, staying at home. And the girl with a golden voice not only passed the Visharad (a music degree equal to a B.A.) with flying colours but also grabbed a job as an Ad-hoc Music Teacher in a government school. Impressed by her success, her family eventually allowed her to complete graduation and further studies: an M.A., an M.Phil and a B.Ed included! She also sailed through the UGC NET examination that even sighted candidates find difficult to crack at the first attempt.

The Second One Was More Difficult

Despite her academic achievements, Taran's professional life was punctuated with rough patches. It's the story of a 25-year-long fight against the system, or rather, the lack of it. What seemed to be surprisingly sad was, this deplorable episode of discrimination took place in a government school, where such victimizations and road blocks are least expected.

In September 1980, the Punjab Government invited applications from school teachers working on an ad-hoc basis with a view to regularize their services. Like many others, Taran had also applied. Whereas the services of others were regularized in a year's time, Taran's application was kept pending. She was told that her department had placed her in a higher pay scale by mistake and therefore, she must return the extra money paid to her as her salary in order to get her application processed.

This was a clear case of discrimination. Firstly, it was the government's decision to place Taran in a certain pay scale. Secondly, other music teachers regularized on the basis of this application were also drawing similar pay before their regularization. Lastly, the person whom she replaced as an Ad-hoc Teacher, was also in the same pay scale as Taran. So there was no solid ground on the basis of which the Department of Education could ask her to return money.

Firm As a Rock

Taran had two choices: either to yield to the demands of her employers or to fight it out. She opted for the second choice, a path less taken. For seventeen long years her application for regularization was kept pending, but Taran did not give in. She stuck to her guns even as she lost two assured promotions and also the Dearness Allowance paid from time to time to all government employees. Despite such losses, Taran was rock solid in her protest.

Trying Times

Finally, the moment of the ultimate choice arrived. In 1997, Taran was asked to choose: either accept a lower pay grade and get regularized or leave her job. Three days was all she was given, to take this crucial decision. Faced with the fear of losing her job, she unwillingly consented to the conditions unjustly thrust on her and accepted her regularization on the terms dictated to her.

But Taran was a born fighter. Even after her regularization, she made representations asking for her due promotions and a higher pay grade, the one in which she was originally placed in 1976 as an Ad-hoc Teacher.

When Taran's employers saw that she had persisted for nearly 25 years and would not stop demanding her rights, they stopped her salary in March, 2005. For three months, this woman with an undying spirit to fight back, sustained without salary. It was then that she turned to AICB for assistance.

A Difficult Proposition

Taran's plight was definitely unacceptable. Her case had turned tougher as she had herself accepted a lower pay grade. After an employee accepts a particular service condition, his/her right to agitate about it later may not be as strong. But in this case, the consent was not voluntary as she was given a choice between the fire and the frying pan: accepting the lower pay scale or leaving the job. Moreover, she was given very little time to respond.

As the matter related to the state government, we wrote to the Secretary of the Department of Education, Punjab, along with a copy to the Chief Commissioner for Persons With Disabilities (CCPD). This being a state matter, we knew that the CCPD would, in all likelihood, refer it to the State Disability Commissioner of Punjab.

The Strategy

We knew that if the reference of the matter was processed through the CCPD, then the impact might be stronger and the action, faster. The strategy paid off.

The Commissioner of Disabilities, Punjab, served immediate notice to the concerned officials and the salary of Taran Kaur got released with retrospective effect soon after. When no further action regarding her promotions from the back date was in sight, we again sent a reminder to the CCPD who,

in turn, referred it back to the Commissioner of Disabilities, Punjab. Thus, the matter was revived and this time, the State Commissioner informed that a show cause notice had been served to the concerned officials. This was in December, 2005.

Fortunately, within two months from this, the matter was brought up again before the mobile court of the CCPD in Punjab. The CCPD was prompt in passing orders in favour of Taran Kaur stating that her promotion and grade benefits must be provided.

Systemic Weakness

As is known to many, the office of the CCPD has passed several landmark orders, many of which have had strong impacts on various rights of persons with disabilities. However, an important weakness of the system is that the orders of the CCPD are not enforceable. As the compliance is voluntary, there have been instances of establishments and even government organizations neither appealing against the orders of the CCPD nor implementing them. Taran's case was one such instance.

Justice Delayed But Not Denied

Despite the orders of the CCPD, no action appeared to be forth coming. The last resort now seemed to be political lobbying. So we approached a minister in the government who gave us a patient hearing. We also approached the Chief Secretary of the state. These resulted in some movement in the Department of Education. Finally, after a really long struggle, Taran's rights were restored: a higher pay grade from the beginning of her service, that is from 1980 and

also the benefit of the promotions she was entitled to, since 1980.

A Cause of Concern

While this success calls for a celebration, we should not lose sight of the deeper concern that this case reflects: the path to justice for the disabled is rather convoluted. It's a road with too many blockades.

Victimization of disabled employees, particularly the visually impaired, has been a concern for us for long. Remember the story of Mr. Vinod Kesari told in one of our previous chapters? A blind woman is put to double the disadvantage—being a woman and being blind—while facing situations like Taran's.

We had received a complaint from Ms. Nirja Reddy who, during her tenure in a recognized school owned by a trust, was demoted as a teacher due to her visual impairment. While Ms. Rashmi Shukla, a visually impaired State Transport employee of Uttar Pradesh, was denied her promotional benefits, Ms. Sangita Sharma was not even selected despite performing well in the entrance test conducted for the selection of stenographers. In all these cases, the concerned persons got their due benefits with our prompt and active efforts.

Vision for the Future

It is often said that advocacy is a tool for empowerment. In the case of visually impaired women, the advocacy strategy must also include capacity building and skill development so that they are able to take an active role in the advocacy activities aimed towards their empowerment. This is also in

line with the spirit of Article 6 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which relates to the empowerment of women with disabilities, the basis of our advocacy initiatives.

In keeping with the spirit of Article 6 of the UNCRPD, AICB has been running many capacity building programmes, seminars and training workshops which more than a thousand women have benefited from. Some of them are now leaders in the sector. For most of these initiatives, we have been supported by Marga Schulze Foundation as also some other organizations and Christoffel Blidenmission. AICB is of the firm belief that one half cannot move ahead if the other is lagging behind. So our efforts move in unity with the interests and rights of the visually impaired women.



Chapter - 12

Sun Shine at Sunset: Securing a Smooth Life After Retirement

After years of hard work, retirement is like a dream to many. For them, it's the time to live a life of freedom, freedom to do nothing while allowing them to pursue their long-cherished dreams. But life after retirement isn't always as smooth-sailing as one would like it to be, especially for those who are discriminated against on account of their physical disability. Here are two stories that bear testimony to this and to the fact that sincere judicial activism can steer them clear of this predicament.

I

When Dharam Pal Barpagga, a visually impaired Lecturer, took voluntary retirement after nearly 30 years of service at the Bhatkhande University in Lucknow, he had hoped to spend the rest of his life, devoting himself to music. But man proposes and God disposes. Within a month of retirement, Dharam Pal realized that he would need to shift his focus from passion to pension, his primary source of income after retirement, as it was at stake. All he got after cessation of his duty, was interim pension, which also stopped after a year. The next few years saw him running from pillar to post to get his dues. His several rounds at the concerned offices, however, earned him nothing more than an empty assurance, "Your work will be done soon."

Action at Once

Bewildered at the plight that he found himself in, Dharam Pal reached out to AICB for support, when he learnt that it had opened an advocacy cell in U.P. So he met our Secretary General when the latter visited Lucknow in January 2008.

We realized that this man had suffered too much for too long and therefore, we decided to act promptly. Consequently, an RTI application was filed to find out the reasons behind the non-payment of pension.

Victim of Bureaucratic Battle

The response to the RTI application revealed a complex scenario to us. In the year 2000, Bhatkhande Music Institute became a university under the U.P. Government. The issue of granting pension to the employees of the Institute (now a university) was settled in April 2001 by a notification which clearly stated that the employees of Bhatkhande University would receive pension on the same terms and conditions as were applicable to other State Government employees. Despite this notification, an internal dispute had been going on between the State Government and the Bhatkhande University as to who should pay pension to the employees working in the Institute before it became a university. Dharam Pal was the victim of this unfortunate confusion.

Seeking Solution from the State

This case being a state matter, we decided to first approach the office of the U.P. Commissioner for Disabilities. Though our experiences so far with respect to the state commissioners for disabilities had not been as positive as expected, we were lucky this time. On April 30, 2008,

the Commissioner for Disabilities, held a mobile court in Lucknow and issued notices to the Bhatkhande University and the U.P. Government on our petition. The responses from both were, however, similar to the RTI response. But there was a small improvement after we revived this matter: the University re-opened its correspondence with the Government on this issue. The U.P. Commissioner for Disabilities also didn't sit idle. On June 30, 2008, he issued directions to the U.P. Government to ensure the regular payment of pension to Dharam Pal and arrange for the payment of interim pension till the time it could be done.

Flawed System

As is known to many, the orders of the Chief Commissioner for Persons With Disabilities (CCPD) and state Commissioners for Disabilities are not enforceable. Often, it is rather baffling to see the government ignoring the decisions of its own officers appointed to safeguard the interests of persons with disabilities. The case of Dharam Pal was no exception. As repeated representations were being made to the U.P. Government to comply with the order of the State Commissioner for Disabilities, Dharam Pal kept waiting for a little bit of sunshine in the remaining years of his life.

Call for Justice

One whole year passed by but there was no progress on this front. Now, our only hope seemed to be the state High Court. Though we were skeptical about this option since legal processes are often long drawn and Dharam Pal's necessity was urgent (the plight of a visually impaired person without pension for five years is, we are sure, quite imaginable), we finally moved to the Lucknow Bench of the Allahabad High Court.

To our utter surprise and joy, the decision proved to be fruitful. The Honourable High Court disposed of the matter within a week, giving strict directions to the State Government to release the pension of Dharam Pal with retrospective effect within two months. During the hearing, the Court came out hard on the U.P. Government for the harassment caused to this visually impaired Lecturer. It also came to light that pension was a problem with many others in the Bhatkhande University for some years. Thus, they too, along with Dharam Pal, benefited through our efforts. This incident is a classic example of how judicial activism for persons with disabilities, can at times, help others in similar situations.

II

Discrimination at the workplace is a fairly common scenario for persons with disabilities. While inequality at any level is unacceptable, it hurts even more after many years of service, that is at the time of retirement. In the early 2008, we came across a glaring instance of inequality after retirement.

Selectively Excluded

In 2007, the Delhi Government introduced a scheme for teachers working in its schools: two years of re-employment after retirement. When the scheme was implemented, it came to light that this scheme was discriminatory in so far as it created two classes of teachers working under the same Delhi Government and on same terms and conditions. While the teachers working in schools supported by the Education Department were eligible for this re-employment, those working in the schools run by the Social Welfare Department were not covered in it. Thus, ironically, this scheme of the Delhi Government gave a

stepmotherly treatment to the teachers working in one of its own departments vis-a-vis those working under another department of the same government. So now, there were clearly two classes of teachers under the Government.

Violation of the Constitution

This 'second-class-citizen' treatment towards the teachers working in schools of the Department of Social Welfare (many of these teachers were persons with disabilities), made the discrimination undeniably visible.

Moreover, the provisions formulated under the scheme were a breach of the principle of 'equal pay for equal work' which also implies 'equal benefits'. The non-provision of re-employment of teachers working in the special schools also violated Article 14 of the Indian Constitution which grants the right to equality to all citizens in all respects. Unfortunately, all this took place, despite the 1985 Delhi Government circular that brought teachers working in the special schools run by the Social Welfare Department, at par with others in the same profession.

Leaving No Stones Unturned

This unjust policy of inequality was unacceptable to AICB. So we took up the matter in an appropriate manner. We sent a representation to the Secretary of the Department of Social Welfare requesting him to ensure that the inequalities practised in respect of the re-employment issue of teachers working in special schools run by the Social Welfare Department, were immediately set right. In addition, we also brought the issue to the notice of the Chief Commissioner for Persons with Disabilities (CCPD). In response, the Social

Welfare Department acknowledged the validity of the issue, but said that a separate cabinet note would have to be put up for the purpose. However, we did not find it necessary to take special permission to extend the provisions of the scheme as teachers of both Education and Social Welfare Departments under the Delhi Government are governed by same service conditions. So we contested the above response. Finally, in October 2008, the CCPD passed orders directing the Delhi Government to take care of the anomalies pointed out by AICB.

Statutory Inadequacies Once Again

Like the earlier case in this chapter, the Delhi Government did not pay heed to the directions of the CCPD. Even a representation made to the Minister for Social Welfare went unanswered. But there was a positive impact of our move on the affected teachers. The CCPD judgment was an important tool in their hands. Buoyed by our activism in this respect, the teachers themselves got enthused and followed up the implementation of the CCPD judgment. As a consequence of above efforts, the re-employment provisions for the retired teachers of schools run by the Social Welfare Department of the Delhi Government were put in place.

Re-employment not only adds extra income for a visually impaired senior citizen, it also enhances his/her dignity and self worth. Our initiative helped in correcting a rather glaring distinction and discrimination between departments within the same Government.

Four Years Later...

Having trust in our advocacy initiatives, in August 2012, some retired teachers approached us and pointed out the difficulties

faced by the visually impaired senior citizens after retirement. Many of these teachers had worked in special schools for the blind under the Delhi Government. They asked for support to form their own self-help group under the supervision of AICB. This group was meant to be a forum where they could meet and discuss their problems and sort them out with our help through advocacy. As a consequence, a special day was celebrated for the visually impaired senior citizens during the Senior Citizens' Week.

The above instances have brought home to us the need for advocacy for the disabled senior citizens, in order to ensure for them a meaningful life in line with the articles of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The scope of a rights-based approach for persons with disabilities, especially those with visual impairment, should extend beyond their productive years.



Not Yet the End

As we conclude this volume of advocacy case histories, we deem it important to once again highlight the fact that the foregoing stories describe only some important representative cases which have had significant impact on the life quality of persons with disabilities, especially the visually impaired in critical walks of life— education, recruitment, accessibility and other aspects of habilitation and rehabilitation. A number of other rights-based initiatives aimed towards equality, empowerment and inclusion of blind and low-vision persons remain to be recorded.

Another dimension of such work, which is often overlooked is that advocacy does not always bear such sweet fruit as savoured through the pages of this volume. At times, it happens that a very important initiative does not yield the desired outcomes, despite one's best efforts. When such disappointments take place, one is reminded of the fact that the courage to stand up for what ensures dignity, non-discrimination and equity for persons with disabilities is a continuing process, and therefore, what might appear to be a failure today has the potential of turning into a big success tomorrow. As we pursued the cases described here, there were many times when seemingly insuperable deadlocks were faced, which should not be forgotten even when success follows at the end.

As the advocacy horizon has become much wider after UNCRPD came into force, new possibilities of rights-based

action have emerged. The extent to which persons with disabilities and organizations working with them can take advantage of such opportunities would determine the quality of life the PWDs will have in the years to come. During the last few years, advocacy for persons with disabilities appears to have emerged as a specialized area for some lawyers, something which is a welcome development. While lawyers can provide the much needed legal and technical resource and articulation to the concerns of the stakeholders, it is also imperative for the DPOs and other organizations working in the disability sector to make advocacy an integral part of their philosophy and action.

While many advocacy milestones have been described in this volume, there are several more yet to be accomplished. Clearly, long and winding paths would have to be traversed before all-round rights-based and equitable society becomes a living reality for persons with disabilities. We do hope that this volume would form a small step in this long journey.



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CBM SARO Regional Director, Dr. Sara Varughese, addressing a gathering of Govt. officials in Chennai.



Visually Impaired students learning computers at All India Confederation of the Blind.