



NATIONAL FEDERATION OF THE BLIND

(AFFILIATED TO WORLD BLIND UNION)

PLOT NO. 21, SECTOR VI
 M. B. ROAD, PUSHP VIHAR
 NEW DELHI-110 017

(Donations made to this Federation will be eligible for tax relief under section 80-G of the Income Tax Act, 1961)

Ref. No. NFB/E-29(23)/2017/173

Dated 12-4-2017

To

Mr. N.S. Kang
 Secretary
 Deptt. Of Empowerment of Persons With Disabilities
 M/o Social Justice & Empowerment
 Govt. of India, Paryavaran Bhawan,
 New Delhi

Subject: Finalization of Rights of Persons With Disabilities Rules 2017,

Sir,

At the outset as a member of the committee constituted for framing RPWD Rules 2017, I wish to express my gratitude to your honour for sparing your precious moments on various occasions and giving a patient audience to the undersigned on the issues pertaining to framing of Rules. While many suggestions have been accepted by your honour and have been included in the draft final Rules circulated along with the notice for the meeting of the committee scheduled for 13.4.17, many other important suggestions have yet not been incorporated in the Rules which are necessary for the implementation of various provisions of the Act. As such, I wish to place the following submissions for consideration of the committee:-

- 1. Rule 3(1) of the proposed draft rules circulated on 10.4.17 should be modified as follows:-**

EXISTING 3(1)

“ Head of the establishment shall ensure that the exception under sub-Section (3) of Section 3 of the Act are not misused.”

PROPOSED MODIFIED 3(1)

“Head of the Establishment shall ensure that no act or omission which has the effect of restricting, curtailing or denying any right specifically conferred by the Act, is undertaken by the establishment in exercise of powers under exception to section 3(3) of the Act.”

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The justification for this proposed modification has already been explained in my earlier submissions however for the sake of appreciation of committee members the same is reproduced hereinbelow:

This change is suggested as the proposed formulation in the official draft does not provide any safe guard in terms of the assurance given by the Hon'ble Minister in Rajya Sabha and in any case, the remedy provided in this Rule is already available to any person under the Act for making complaint with regard to discrimination, deprivation etc. in addition, in case the suggested sub rule is not included, the rights conferred under the Act in absolute Terms can be restricted, curtailed or even denied by using the proviso under Section 3(3) of the Act. For example Under Section 31 of the Act, a child with disability has a right to free education upto the age of 18 years in a special school or in a neighbourhood school of his choice.

In case the suggested sub-rule is not included, it would always be open to any neighborhood school to deny admission of a child with disability on the ground of non-availability of infrastructure. Similarly, the right to have public documents in accessible formats granted under the Act can be curtailed or denied by using proviso to Section 3(3) on the ground of lack of facility for reproduction of any public document in an accessible format.

Further, the suggested rule 3(1) in the present form is very vague and leaves everything within the discretion of the head of the establishment whose act or omission will be in question.

2. It is suggested that following explanation to Rule 4 may be inserted

"No academic research, technological development research or any other research which does not infringe right to privacy of a person with disability as its' subject, shall come within the ambit of Section 6(2) of the Act"

In case this explanation is not inserted in Rule 4, the research of any kind in the field of disability including academic and technological development research will come to stand still. Further, the Act envisaged, the constitution of research committee in the context of protecting persons with disabilities from being subjected to torture, cruel, inhumane or degrading treatment. Section 6(2) of the Act mandates establishment of this research committee for ensuring that no person with disability is made a subject of any research without his/her free and informed consent. These provisions itself are sufficient to justify the insertion of the suggested explanation to Rule 4. In addition, this explanation is also necessary in view of the provisions of section 28 of



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the Act which is titled as Research and Development and which mandates, "The appropriate Govt. shall initiate or cause to be initiated research and development through individuals and institutions on issues which shall enhance habilitation and rehabilitation and on such other issues which are necessary for the empowerment of persons with disability". Further, section 25(2)(a) also mandates that appropriate Govt. and local authorities shall take measures and make schemes and programmes to promote health care and prevent the occurrence of disabilities and for the said purpose shall under take or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities. Thus, this explanation is not inserted provisions of section 28 and section 25(2)(a) will become redundant and the appropriate Govt. will not be able to undertake any research or cause any research to be undertaken as mandated by those statutory provisions.

3. No procedure has been provided in the circulated finalized rules for implementing the mandate of section 7 in the absence of which it would be difficult to implement this provision therefore the following suggested new rule should be considered for inclusion as suggested earlier.

"Any person / regd. Organization as defined in Section 2 (z) may make a complaint in writing of any abuse, violence and exploitation of a person with disability in Form in Triplicate to the nearest police station where the incident has taken place or is likely to take place. In addition, The district magistrate or the SSP of the district shall also establish telephonic help lines with designated vehicles and police personnel to assist the person with disability in distress in lodging the complaint and getting suitable protection at the place where he or she is available at the time of such telephonic call.

On receipt of such a complaint, the in-charge of the police station shall immediately forward it to the executive magistrate within whose jurisdiction the concerned police station is situated after entering it in "Daily Diary" and shall also forward the said complaint to the chairman of Dist Level Committee

The Executive magistrate shall follow the same procedure as laid down under sections 133 to 143 of Criminal Procedure Code for removal of public nuisance".



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4. The suggestion made by the under signed for inserting the following new rule has not been included.

"Procedure to make all public documents available to persons with disabilities in accessible formats

Every govt. establishment as defined in section 2(k) of the Act and any other body or entity responsible for maintenance, storage and dissemination of public record will be obliged to ensure that the public records are filed, stored and disseminated in accessible formats such as in Braille, large print, accessible e-text and captioning facilities wherever technically feasible.

Website, all such platforms offering information, services and payment gateways of every govt. Establishment and other entities responsible for provision of any public facility or duty shall be made accessible to persons with benchmark disabilities by modifying them to conform to the accessibility standards notified under the Act.

5. The following new rule should be included dealing with the implementation of section 12(4)© regarding testimony of persons with disabilities in alternative to the earlier suggestion which has not been accepted by the department in view of the opinion of law department:

"All judicial and quasi judicial authorities/ foras shall make necessary modification in the Rules, procedures and practices with regard to recording of testimony within three months of the notification of these rules providing for

- (a) Recognition to the manner of giving testimony by different categories of disabilities;
- (b) Provision for necessary facilities and equipments to enable a person with disability to record his/her testimony, arguments or opinion in their preferred language and means of communication;
- (c) Provision for necessary personnel assistance such as sign language interpreter etc. to enable persons with disabilities to communicate and participate in the judicial and quasi judicial proceedings.



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6. The following new rule should be inserted to implement the provisions relating to school education:-

i) **“Right of every child with disability to be admitted in school**
No child with disability shall be denied admission and the benefit of free education in terms of section 31 of the Act by any school for pursuing education up to the senior secondary level.

ii) **Provisions for special teaching requirements of children with disabilities, text books in accessible formats and educational equipments etc. to be included in the eligibility requirement for recognition of educational institutions**

Every state govt. shall modify its existing mechanism and procedure for grant or refusal of recognition to any educational institution by incorporating provisions for special teaching requirements of children with disabilities, text books in accessible formats and educational equipments etc. as a part of its Education Code for enabling children with disabilities to complete school education in terms of section 31 of the Act.

The existing educational institutions shall ensure that they comply with sections 16 and 31 of the Act by creating human and material infrastructure necessary for ensuring quality education for children with disability within a period of 6 months from the date of notification of these Rules.

Explanation:

It is clarified that benefits of free education (including requisite facilities and technologies) for children with benchmark disabilities shall be made available to them up to the completion of their school education.

iii) **Special allowance to the family of girl child for her education-**
Every appropriate Govt. and local authorities shall provide special allowance for families of girl child to meet their educational needs.

iv) **Special schools to have proper infrastructure man power and residential facilities**

Every appropriate Govt. shall ensure that every Special school has a quality hostel facility, adequate educational equipments and devices and qualified trained teaching and non-teaching staff strictly in accordance with the norms of recognition of any school as laid down in the respective education code.



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Every appropriate Govt. shall ensure that the teaching and non-teaching staff of special schools are governed by the same service conditions and are given same salaries and allowances as are admissible to their counterparts in other schools.

- v) *Education department and bodies responsible for conducting examination and/or prescribing syllabus shall take following steps within a period of six months of the notification of these rules-*

Make necessary modifications in the syllabus and pattern of question papers for examination keeping in view the accessibility requirements of children with different disabilities e.g. providing exemption from learning more than one language in the case of hearing impaired, providing descriptive questions in place of visual questions for visually impaired etc.

Adhering to guidelines for providing scribe to persons with visual impairment or any other disability issued from time to time by the Chief Commissioner for persons with Disabilities;

Giving extra time for writing exams to students with benchmark disabilities as applicable."

7. **The committee should consider inserting following new rule relating to implementation of the scheme of reservation in higher educational institutions as contained in section 32 of the Act as in the absence of such rule the said statutory provision may not be implemented in an equitable manner giving benefit to most vulnerable categories of disabilities.**

"Every Govt. Institution of higher education and other higher education institutions receiving aid from the Govt. shall distribute the reservation of at least 5% seats equitably to different categories of persons with benchmark disabilities as defined in Schedule to the Act in every course in proportion to the applications received from the applicants belonging to aforementioned five categories of benchmark disabilities"

8. **The following new rule should be inserted in order to ensure that scheme of reservation while filling up vacancies is properly implemented.**

- a) **Filling up of vacancies reserved for persons with benchmark disabilities**



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Every Govt. establishment shall notify the reserved vacancies for persons with benchmark disabilities in every recruitment by clearly notifying the number of vacancies reserved for each of the four categories of persons with benchmark disabilities entitled to the benefit of reservation to the extent of 1% each in terms of section 34 of the Act.

While notifying the vacancy (s) reserved for persons with disability to the recruitment body / agency, the establishment shall also furnish a certificate in Form-G about the correctness of the computation of reservation for persons with disability and the recruiting body shall satisfy itself about the correctness of the certification before initiating the recruitment process.

Keeping in view the horizontality of reservation for person with disabilities, the notification of reserved vacancies for persons with Benchmark disabilities shall not be notified as restrictive to general category, SC/ST or other backward class category.

Persons with Benchmark disabilities belonging to any category viz. general or SC/ST or OBC will be eligible for appointment for all vacancies notified as reserved for persons with benchmark disabilities.

While making selection for the vacancies reserved for persons with Benchmark disabilities, candidates selected on their own merit will not be counted against the vacancies reserved for persons with Benchmark disabilities and they will be adjusted against general category, SC/ST or OBC, as the case may be, after their selection.

A separate combined inter-se merit/wait list based on relaxed standards in respect of each of the four categories of persons with benchmark disabilities entitled to the benefit of reservation U/S 34 will be prepared for selection and appointment against the reserved vacancies for each of them.

b) Disability certification after selection against a vacancy reserved for persons with benchmark disability.

- i) If any candidate is selected against any reserved vacancy for person with benchmark disability, he will be referred for disability certification again by the Special Medical Board constituted for the purpose which shall be comprised of the medical practitioner in the area of the concerned disability to which the selected candidate belongs.



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- ii) The report of such a special medical board will be sent to the concerned establishment by the Chairman of the Board with a copy to the selected candidate;
- iii) In case the selected candidate is aggrieved by the report of the Special Medical Board, he may prefer an appeal to the head of the concerned establishment who will then refer it to another special appellate medical Board which will be composed of other sets of experts in the area of category of disability to which the candidate belong located in another hospital.
- iv) The Chairman of the Appellate Medical Board will forward its report to the concerned establishment with a copy to the selected candidate and the decision of the Special Appellate Medical Board will be final.
- v) In case Special medical Board or Special Appellate Medical Board, as the case may be, certifies the disability of the selected candidate in terms of the definition assigned to the given disability in schedule to the Act, he will be offered appointment against the reserved vacancy.
- vi) In case the Special Medical Board or Special Appellate Medical Board, as the case may be, holds that the selected candidate is not a person with disability, the concerned establishment will start processing the case of the other person who is next in the merit/wait list for appointment against such reserved vacancy by following the same procedure.

The above rule is proposed keeping in view that many establishments in their advertisement mentioned generally vacancies reserved for PH which is against the scheme of reservation. Further, in spite of stipulation in the existing DoPT instructions to the effect that persons selected on their own merit will not be counted against the vacancies reserved for persons with disabilities, the Govt. itself has gone back from the said stipulation and is litigating in the supreme court. Similarly, in the Civil Service Examination Rules Rule 17 provides similar statement but has not been implemented till now. In addition, the present draft rules circulated by the department specifying the procedure for notification of vacancies to the employment exchange under Rule 11 has become practically redundant for all the vacancies under Govt. establishments as in terms of section 3(2)(a) of The Employment Exchange (Compulsory Notification of vacancies) Act, 1959, vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the union or a state public service commission and the like, are exempted from the said Act meaning thereby that the aforementioned vacancies are not to be notified to the employment exchanges. Since now all the vacancies are filled



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by independent recruiting agencies for instance in the case of Central Govt. by UPSC for group A & B vacancies and by SSC in case of Group C vacancies. Now there is no group D vacancy in Central Govt. Similarly, in railways and nationalized banks recruitment take place through their respective recruitment Board taking out practically all vacancies from the purview of the said Act. The said Section 3 is reproduced hereinbelow:-

“This Act shall not apply in relation to vacancies

- in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;
- in any employment in domestic service;
- in any employment the total duration of which is less than three months;
- in any employment to do unskilled office work;
- in any employment connected with the staff of Parliament. III. Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf this Act shall not also apply relation to: a. Vacancies which are proposed to filled through promotion or by absorption or surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Commission and the like; b. Vacancies in an employment which carries a remuneration of less than sixty rupees in month”.

The following new rule is suggested for insertion:

Already existing disability certificates should also be recognized by the Rules for the period of their validity.

The disability certificate should be valid for all purposes and across the length and breadth of the country for all the benefits”.

- Suggestion to delete rule 37(2(d) as this empowers the Central Govt. to remove any person with disability or even not appoint any person with disability as Chief Commissioner or Commissioner inspite of being recommended for such appointment. If at all, the department would like to retain the power of removal of the Chief Commissioner**



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or commissioner on the basis of physical or mental condition, the following is suggested in place of existing rule 37(2)(d).

RULE 37(2)(d)

“is in the opinion of the Central Government, unfit to continue in office by reason of infirmity of mind or body or serious default in the performance of his functions as laid down in the Act;

SUGGESTION

If the incumbent after appointment becomes incapable of discharging his duties by reason of his physical or mental condition, the Central Govt. may remove him provided that before proceeding under this rule, the Central Govt. shall provide to the incumbent reasonable opportunity of being heard and also after a certification from a specially constituted medical board to the effect that the physical and mental condition of the incumbent has become such that he can no longer discharge his duties as Chief Commissioner or commissioner. While assessing the incumbent, the medical Board shall ignore his disability and give its opinion about the medical fitness taking into account his existing physical mental condition not attributable to his disability.

10. The following new rule is suggested for insertion pertaining to functions of advisory committee attached to the Chief Commissioner for persons with disabilities

Functions of the Advisory committee:-

- (a) *The advisory committee constituted rule 95 of these rules shall generally assist the chief commissioner in discharge of his function and do all acts necessary for this purpose.*
- (b) *In particular, and without prejudice to the generality of the foregoing function, it shall;*
- (c) *Assist the chief commissioner in enquiring into the complaints of deprivation of the rights of persons with disability and in finalising the recommendations while disposing of such complaints.*



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- (d) *In carrying out inspections whenever directed by the chief commissioner for ascertaining the utilization of funds meant for persons with disabilities*
- (e) *Assist in finalising the recommendations of the chief commissioner regarding rules for persons with disabilities laying down the standard of accessibility for the physical environment, transportation, information and communication, including appropriate technologies and systems and other facilities and services provided to the public in rural and urban areas in terms of section 40 of the act.*
- (f) *Undertaking awareness raising campaigns for sensitizing different sections of the society about the rights of persons with disabilities.*
- (g) *Monitoring the implementation of the provisions of the act.*
- (h) *Any other function assigned by the chief commissioner in the discharge of his duties*

11. The following new rule is suggested for insertion pertaining to offences and penalties

Offences under the Act to be Cognizable-

"All offences mentioned in chapter XVI of the Act shall be cognizable and the procedure for investigation of these offences shall be same as that of the cognizable offences"

12. Insertion of following New Rule relating to Misc. Chapter which is based on previous experience:

Time limit for formulating, notifying and implementing schemes and programs under the act-

Every scheme and program mandated to be formulated, notified and implemented under the Act shall be so formulating, notified and implemented within a period of 6 months of the notification of these rules.



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It is most respectfully requested that the suggestions made hereinabove may be placed before the committee for consideration in tomorrow's meeting and a positive decision may be taken for ensuring effective implementation of the Act.

Thanking you,

Yours faithfully,

(S.K. RUNGTA)

General Secretary NFB

- CC i) K.V.S. Rao, Director,
 ii) All members of the committee with request to give their favourable consideration in the meeting.