



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.3722/1022/2016

Dated 27/01/2017

In the matter of:

Smt. Deepani Agrawal
E-704, Halwasiya Utsav Enclave
Faizabad Road
Lucknow
Uttar Pradeshi - 226 016

..... Complainant

Versus

NTPC Limited
(Through the Chairman & Managing Director)
NTPC Bhawan
SCOPE Complex
7, Institutional Area, Lodhi Road
New Delhi - 110 003

..... Respondent

Date of hearing : 23/11/2016

Present :

1. Smt. Deepani Agrawal, Complainant along with her husband Shri J. K. Agrawal
2. Shri Harjit Singh, AGM (HR) & LO (PwD), Shri S. S. Das, DGM (HR - A&P) and Shri Naveen Sahu on behalf of Respondent

ORDER

The above named complainant filed a complaint dated 22/01/2015 before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as Act regarding retention of her husband at NTPC, Northern Region Headquarter, Lucknow with Promotion.

2. The complainant has submitted that his husband Shri Jaideep Kumar Agrawal has been promoted to the post of Additional General Manager on 31/12/2014 and transferred to NTPC Dadri. She further submitted that her husband has requested NTPC management for his retention at Northern Region Headquarter, Lucknow on the grounds that their son who is 12 years old and has 90% disability (Mental Retardation) is studying in Class V at Lucknow. She stated that their son cannot sit, stand, write or do any activity on his own and solely dependent on them for all his requirements like feeding, toilet, bathing, etc., and better facilities for his education and treatment are available in Lucknow. NTPC Management has turned down the request made by her husband stating that NTPC has its own transfer policy and no deviation is possible in transfer policy.

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3. The matter was taken up under Section 59 of the Act with the respondent vide Court's letter dated 24/03/2015 to consider the request of the Complainant in the light of DoP&T's OM No. AB 14017/41/90-Estt (RR) dated 15/02/1991, OM No. 42011/3/2014-Estt (Res) dated 06/06/2014 and OM No.42011/3/2014-Estt (Res) dated 17/11/2014 and submit action taken report within 30 days from the receipt of the letter.

4. Respondent vide letter No.01/HR/Phy. Chall./67 dated 13/04/2015 submitted that -

- (i) Shri Jaideep Kumar Agrawal, Emp No. 021361, Additional General Manager (Fld Engg) joined NTPC on 05/10/1991 as Executive Trainee and is currently posted at NTPC, Dadri Thermal Project.
- (ii) For past 15 years (approx), Shri Jaideep Kumar Agrawal was posted at NTPC Regional HQ at Lucknow.
- (iii) Shri Jaideep Kumar Agrawal was promoted to AGM level during CPC-2014 and was posted at Dadri Thermal based on option/choice exercised by him during promotion process.
- (iv) NTPC adheres to DoP&T's instructions with regard to posting of Govt. employees who have differently abled dependents, but in the instant case Shri Jaideep Kumar Agrawal has himself chosen to be posted at Dadri Thermal on promotion to AGM level.
- (v) As per terms and conditions of promotion order dated 31/12/2014 of Shri Jaideep Kumar Agrawal "Since the promotion is against specific requirement/vacancy, any request for change of place of posting would entail automatic cancellation of the order of promotion. Further on joining the new place of posting if the employee seeks a transfer to any other place in less than 03 years of his/her joining the new place of posting, on promotion, his/her case may be considered for transfer subject to his reversion to previous post/grade".

5. In response to the respondent's letter dated 13/04/2015, the complainant stated that her husband was forced to filled up Dadri as choice as choice of posting at Lucknow was not there, which implied that no vacancy was existing at NTPC NRHQ Lucknow in O&M, OS, Cenpeep, CEETEM, EEMG, EMG/AM, FM, Estate, BE areas. But later on when promotion order vide reference no. 01/HR/EX-25/CPC(E6-E7)/2014 was declared, one executive Mr. Naveen Gupta (Employee No.006566) STA to D(O) has been posted at NTPC NRHQ Lucknow. She further alleged that NTPC is not adhering to the DoP&T's instructions with regard to posting of Government employees who have differently-abled dependents. The complainant has requested the Court to seek the following information from NTPC Limited:

- (a) When vacancy was not existing how Mr. Naveen Gupta has been posted at Lucknow?
- (b) When the vacancy at Lucknow in O&M, OS, Cenpeep, CEETEM, EEMG, EMG/AM, FM, Estate, BE area was notified.
- (c) How many has applied against that vacancy at Lucknow in O&M, OS, Cenpeep, CEETEM, EEMG, EMG/AM, FM, Estate, BE area? Honorable Court may asked NTPC to submit the "Option for posting on Promotion against notified vacancies (CPC-2014) E6 level "forms as submitted by employee against the vacancy at Lucknow.
- (d) Honorable Court may also ask NTPC to submit the option of posting on Promotion form of Mr. Naveen Gupta.

6. Respondent vide letter no. 01/HR/Phy. Chall./83 dated 07/07/2015 stated that Shri Jaideep Kumar Agrawal had already completed more than 10 years service at Lucknow, therefore, he was not eligible for opting the vacancy at Lucknow as per Policy and his posting is no way connected to the posting of Mr. Naveen Gupta who has been posted to Lucknow based on organizational requirement and at management's discretion. Shri Agrawal met Director (HR) under "Meet the Director (HR) Programme" on 07/07/2014 and requested for his transfer to Faridabad, Badarpur and Dadri, etc., under the condition that if project posting is essential. Respondent also stated that in case Smt. Deepani Agrawal wants that her husband should be again posted to Lucknow, than she may kindly advice her husband to provide the request letter for posting to Lucknow along with undertaking w.r.t. reversion to previous grade for consideration of management as per extant rules.

7. Complainant vide her letter dated 07/08/2015 and 30/09/2015 submitted that the replies given by NTPC are factually incorrect and requested the Chief Commissioner for Persons with Disabilities for a personal hearing.

8. Upon considering the written submissions of both parties the hearing was scheduled on 23/11/2016.

9. During the hearing on 23/11/2016, the complaint reiterated his earlier submissions and requested the Court to give directions to NTPC to consider retention of her husband at NTPC, Northern Region Headquarter, Lucknow with Promotion in the light of DoP&T's OM regarding "Posting of Government Employees who has differently abled dependents".

10. Respondent vide their written submission at the time of hearing on 23/11/2016 submitted that:-

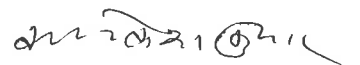
- (a) Shri Jaideep Kumar Agrawal has been transferred and posted to Dadri Thermal Power Project near to Delhi on promotion w.e.f. 01/10/2014.

- (b) The transfer to Shri Agrawal on promotion was made on the basis of his options for place of posting on promotion submitted by him. He had not indicated any such problem about his child at the time of submission of his choices rather he had given his willingness for posting to any place in case there is no vacancy at the places of option given by him. The promotions are being made on the basis of available vacancies.
- (c) Further as per Govt. guidelines an employee (Caregiver) who has differently abled dependents may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraint. Shri Agrawal was posted to Dadri on elevation to the post of AGM level and it was not a normal job rotation or routine posting.
- (d) Since 1994 till February, 2015 around 21 years, Shri Agrawal was on city based postings in NTPC i.e. Regional Headquarters at Nagpur and Lucknow. Also as per NTPC Transfer Policy (CHRC 749/2014, clause: 10.4) Executives at E4, E5 and E6 level who have spend 10 years at a particular location are compulsorily transfer to a different location on promotion.
- (e) His place of posting on promotion i.e. Dadri is one of the most sought after projects amongst the employees/executives of NTPC for its vicinity to New Delhi, as well as excellent infrastructure facilities available in the township.

11. The Court observed that there should be a clear option in the Online Form in respect of child/dependent with disability so that it could be filled during the submission form.

9. Upon hearing both the parties, the case is disposed off with the following directions to the respondent:-

- (i) Online Form should be modified and Clause in respect of child with disability should be incorporated.
- (ii) Shri Jaideep Kumar Agrawal should apply for promotion online and NTPC authorities should consider his request for transfer on promotion in the light of DoP&T's OM No.42011/3/2014-Estt(Res) dated 06/06/2014 and 17/11/2014.
- (iii) Respondent should apprise the Court about the action taken in 90 days.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities

