



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.: 4673/1022/2015

Dated: 10.07.2017
Dispatch No.....

In the matter of :

Shri Somesh Kumar,
Director,
IDSE,
HQ DG MAP, R 2170
E-in-C's Branch,
IHQ of MoD (Army),
Kashmir House,
Rajaji Marg, New Delhi - 110 0011
Email<somesh.kumar66@nic.in>

.....Complainant

Versus

Ministry of Defence, R 2171
(Through the Secretary)
South Block,
New Delhi - 110 011

.....Respondent 1

The Engineer-in-Chief,
IHQ of Ministry of Defence (Army),
Engineer-in-Chief's Branch, R 2172
Kashmir House,
Rajaji Marg, New Delhi - 110 011

.....Respondent 2

Date of Hearing : 16.06.2017

Present :

1. Complainant. - Shri Somesh Kumar, present.
2. Respondent 1 - Absent
3. Respondent 2 - Absent

ORDER

The above named complainant has filed a complaint under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as the Act, regarding his posting to Delhi for treatment of his 16 year old Son suffering from Mental Retardation.

2. The complainant has submitted that his 16 year old son is suffering from Mental Retardation. He served in North East Region while on deputation with NHA. After joining his Dept., i.e. MES (E-in-C's branch under MoD), his request to complete his tenure in Delhi was turned down by his establishment and he was posted to CE Jaipur Zone on 26.11.2013. He could

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not take his family along with him as his son had been under treatment in a Special School in Delhi. He again requested for his transfer to Delhi from Jaipur, which was also turned down by his establishment. The complainant's grievance is that his request for posting in Delhi is being delayed by E-in-C's branch on flimsy and unjust grounds despite there being clear vacancies in Delhi and a number of officers were posted at Delhi as additional officers in January 2015.

3. The matter was taken up with the respondent under Section 59 of the Persons with Disabilities Act, 1995 vide this Court's letter dated 07.07.2015 followed by reminder dated 06.08.2015.

4. The Respondent vide their letter no. B/17003/SE/16/E/1B dated 12.08.2015 stated that the complainant belongs to 1987 batch of Engineering Services and he was posted at various staff and executive appts. The complainant never represented whenever he was posted to executive appt. From executive appt he was posted to this choice station Bhathinda close to his home town Sunam on the medical ground of his son. The Respondent submitted that the complainant had always been defiant to the directions of the department whereas department has always been ready to accommodate the complainant within the parameters and constraints of the organisation. In Dec 2014 the complainant again requested for posting to Delhi but did not apply for compassionate ground posting. They further stated that while Jaipur has far better facilities as compared to Guwahati, the complainant never had a problem at Guwahati but is not willing to continue in Jaipur. The complainant had stayed for four years at Guwahati while he was on deputation and presently he is posted at Jaipur which is a much better place than Guwahati and where all medical facilities are available. The Offg Dir Pers (M), Directorate General (Personnel), Engineer-In-Chief's Branch, vide letter no. 70001/SE/120/2015 dated 02.09.2015 transferred the complainant from HQ CE Southern Western Command to HQ DG MAP New Delhi for reporting by 15.10.2015. A copy of Respondent's letter dated 12.08.2016 was forwarded to the complainant for his comments vide email dated 21.08.2015.

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5. The Complainant vide his letter rejoinder dated 19.10.2015 has submitted that his posting has been issued as a Compassionate Ground posting whereas he had never asked for a posting on compassionate ground. He had requested E-in-C's branch not to consider his posting on compassionate ground, and that his request be considered as per instructions issued vide DoP&T O.M. No. 42011/3/2014-Estt.(Res.) dated 06.06.2014 which clearly stipulates that parents of disabled children should be exempted from routine exercise of transfer. He further submitted that the option of applying on compassionate grounds was available to him even prior to issue of DoP&T O.M. He submitted that the posting on compassionate grounds is limited to two years as per guidelines on Cadre Management of Civilian Officers issued by E-in-C's branch in 2013. He has moved as per the posting/movement order as an obedient government servant but has requested this Court to issue necessary instructions to Ministry of Defence. A copy of complainant's letter dated 19.10.2016 was forwarded to the Dir Pers (M), Directorate General of Personnel/E-1B for their comments vide this Court's letter dated 16.02.2016.

6. The Respondent vide letter no. B/17003/SE/16/E-1B dated 01.03.2016 submitted that the complainant has misused the provisions of the Act apparently to get the choice posting to Delhi whereas adequate facility existed at Jaipur, his previous HQ for taking care of differently abled child. Now his name will come up for consideration after two years and appropriate decision will be arrived at as per the prevailing circumstances. A copy of Respondent's letter dated 01.03.2016 was sent to the complainant for his comments vide this Court's letter dated 05.05.2016.

7. The complainant vide his reply dated 23.05.2016 has submitted that he didn't understand the Respondent's statement saying that he has misused some Act to get a choice posting to Delhi. He had always requested E-in-C's Branch and Ministry of Defence to post him to Delhi as per DoP&T policy and has never used any language unbecoming of an office. He was posted in Jaipur in Nov 2013 despite his request for posting to Delhi, as he had completed just one year in Delhi after serving for 04 years in North-East and he joined as there was no such policy at that time. The Respondent's statement that the complainant is left with 9 years of

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service and cannot be permanently placed in Delhi till superannuation is clearly in contradiction to the DoP&T's policy. He further submitted that his posting was delayed by E-in-Cs' Branch on flimsy and unjust grounds for more than one year despite there being clear vacancies in Delhi. The complainant once again reiterated his earlier submission that his post has been issued as a COMPASSIONATE GROUND POSTING and posting on compassionate grounds is limited to two years. The complainant has requested this Court to issue necessary instructions to Ministry of Defence for treating his posting as a posting of parents of differently abled children as per DoP&T O.M. dated 06.06.2014 and not as a compassionate ground posting.

8. Upon considering the replies of both, the complainant and respondent, a hearing in the matter was scheduled on 16.06.2017.

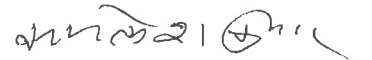
9. During the hearing, the complainant vide his written submission furnished that his posting was delayed by E-in-C's Branch for more than one year despite there being clear vacancies in Delhi. Despite every time his request submitted to E-in-C's Branch, duly recommended by superiors in the channel of reporting, he was informed that his request has been considered and was asked to wait or give some undertaking. He waited and gave undertakings as asked for without any question, but lastly on 30.06.2015, i.e. after one year, he was told that 'his name will be considered in next turnover of posting depending upon the availability of vacancies' despite a number of officers being posted to Delhi as additional officers in January 2015. So he approached this Court and it was only with this Court's intervention that he got posted to Delhi. He has been posted to Delhi but his posting has been issued as COMPASIONATE GROUND POSTING though he had specifically requested for posting under provisions of DoP&T Policy No. 42011/3/2014-Estt.(Res) dated 06.06.2014 and not as a compassionate ground posting. The posting on compassionate grounds is limited to two years as per guidelines on Cadre Management of Civilian Officers 2015 issued by Ministry of Defence. He requested DG (Pers) MES vide his DO letter No. 300296/SK/Tue/Pers dated 24.05.2016 to treat his posting under provisions of DoP&T Policy No. 42011/3/2014-Estt.(Res) dated 06.06.2014 and not as a compassionate ground posting so as to enable unhindered systemic

rehabilitation of his son. But he has yet to receive any communication on his request. He has not been considered for appointment as CWE as per seniority which he was due for since April 2016. There had been clear vacancies of CWE in Delhi but other officers, senior to him in the station, have been accommodated against the same. Not granting the CWE appointment may affect his career adversely. His request for deputation to other organizations are also being rejected by Ministry of Defence without giving any reason despite his being eligible and meeting the requirements and applying strictly as per deputation policy of Ministry of Defence.

10. During the hearing, no representative either from Respondent no. 1 or Respondent no.2 was present.

11. The Court disposed off the matter ex-parte and through the present order advises the Respondents to adhere to the DoP&T OM No. 42011/3/2014-Estt.(Res) dated 06.06.2014 while dealing with the instant case of complainant's posting, taking into consideration the disability of his 16 year old son, who is suffering from mental retardation with a view to enable unhindered systemic rehabilitation of his son.

12. The case is accordingly closed.



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