



**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.: 6719/1023/2016

Dated: 29.03.2017  
Dispatch No.....

In the matter of :

Smt. Shrabani Mondal,  
B-78, 1<sup>st</sup> Floor,  
Amar Colony,  
Lajpat Nagar-IV,  
New Delhi - 110024

.... Complainant

**Versus**

All India Institute of Medical Sciences,  
(Through the Director)  
Ansari Nagar,  
New Delhi - 110 029

..... Respondent

Date of Hearing : 23.02.2017

**Present :**

1. Smt. Shrabani Mondal - Complainant
2. Dr. Sanjay Arya, Professor, Hospital Admn and Shri B.K. Singh Admin Officer – On behalf of Respondent.

**ORDER**

The above named complainant filed a complaint dated 04.08.2016 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' against harassment, humiliation, insult and torture at workplace and her transfer making it difficult to take care of her Autistic child.

2. The complainant submitted that she is working as Staff Nurse in AIIMS since 2002. She was posted in Lithotripsy Ward from April 2013 to September 2015. She was posted in the said Department on compassionate grounds keeping in view of the condition of her hyperactive sleep disturbance Special autistic child who has multiple health problems. She was on Child Care Leave to look after her Autistic Child hospitalized in AIIMS due to convulsion. After resuming her duties on 07.09.2015 she was orally informed by Mrs. Manju Singh that her duty has been changed from Lithotripsy Ward to Ward Block, OPD DNS without any valid reason. She is being harassed mentally and emotionally by Mrs. Manju Singh. She is being forced to join hectic duty and is being tortured physically and emotionally. She submitted that she is a Scheduled Caste. She also registered complaints in Women Grievance against CNO & OPD DNS. Due to her hectic duty she is not able to give proper attention to her Autistic child.

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3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 16.08.2016 followed by reminder letter dated 04.10.2016.

4. The respondent vide letter no. Nil dated 12.10.2016 inter-alia submitted that the allegations/accusations leveled against the doctors and senior officers by the complainant are wholly in correct and baseless. The complainant is in the habit of making repeated complaints before the higher authorities without any justification. The complainant has submitted before the Hon'ble CAT under O.A. 2053/2016 a similar allegation claiming the following reliefs;

- i) To quash the Order dated 14.05.2016 and 27.01.2016 and other proceedings in view of the O.M dated 17.11.2014 and 06.06.2014 issued by DoP&T to respondent to exempt the complainant from the routine transfer in future. The next hearing in this case was held on 17.10.2016 in CAT, New Delhi.
- ii) The Respondent stated that on the similar grounds, the complainant has filed the present complaint dated 04.08.2016 before CCPD which is Sub-judice as per the respondent.
- iii) The complainant's allegation against the deponent, Smt. Sarita Mehta and Dr Manju Singh are without any foundation and she is in the habit of not attending to her duty in proper manner. Dr. Manju Singh is never in any conspiracy against complainant's autistic child.
- iv) The complainant has also approached the Delhi Commission for Women and National Commissioner for Scheduled Caste.

5. The complainant vide her rejoinder dated 09.11.2016 submitted that the contents of the reply affidavit of the defendants are false and denied. The defendants are in the habit of dragging innocent persons like they dragged her autistic child. The three defendants mentioned in her complaint humiliate and harass her and her autistic child mentally as well as physically. The said acts of the trio defendants deteriorate the condition of her autistic child knowingly and intentionally. She further submitted the defendants in connivance with each other and distorted true facts of her complaint and gave false and fabricated the facts of her complaint in their reply dated 12.10.2016 with a view to save their skin. She submitted that the defendants must prove the averments mentioned in her complaint for which she has evidence with to prove that defendants humiliate and harass, torture, insult and harm her Autistic child. She submitted that her ongoing litigation in the Hon'ble CAT, New Delhi is only Administrative in nature. She further submitted that she was made to work for 176 hours a month with four days off in critical care unit while other staff has been working 150 hours with 8 days off.

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6. Upon considering Respondent's reply dated 12.10.2016 and complainant's rejoinder dated 09.11.2016, a hearing was scheduled on 23.02.2017.

7. During the hearing the complainant submitted that she will file her written submission within a week. The complainant filed her written submissions dated 27.02.2017 submitting that with due permission she obtained Medical Leave w.e.f. 06.06.2016 to August 2016 on account of her depression and she was also hospitalized for a week during 10.06.2016. During the medical leave, she personally made telephonic call to the concerned authorities at AIIMS regarding her medical leave. She also personally visited her office and also sent her husband personally to meet the concerned officials at AIIMS to intimate about her medical leave. In spite of all these efforts made by her, the concerned officials in AIIMS sent the absent report to her residential address which caused an unnecessary harassment to her. The officials at AIIMS wrongly and mischievously mentioned the dates of her medical leave from 30.05.2016 to August 2016 instead of 06.06.2016 to August 2016. The concerned officials even added these seven days leave from 30.05.2016 to 05.06.2016 to her medical leave. As the matter is/was sub-judice before the Hon'ble Central Administrative Tribunal, New Delhi, fully knowing the facts the concerned authorities of AIIMS during her hospitalization as mentioned above forcibly sent various summons to her for appearing in Departmental inquiry aggravating her sufferings which affected her autistic child. She further submitted that she is going to apply for the National Florence Nightingale Award 2017 and Nominations for awards 'for Excellence in Nursing 2016' on the strength of her past experience and 39 appreciations she received from all quarters (including patients and doctors). She feels that she has apprehension in her mind that the concerned authorities of AIIMS might play a dirty trick to prevent her from achieving the said Award. She further reiterated that she is being harassed mentally and emotionally at her workplace. She is being forced to join hectic duty and is being tortured physically and emotionally. Due to her hectic duties, she is not able to give proper attention to her Autistic child.

8. The respondent submitted the written unsigned submission during the hearing. The respondent vide their written submissions dated 22.02.2017 (received in this Court on 28.02.2017) submitted that the complainant's work place was changed from Lithotripsy to AB-4 Ward last year. Her posting was changed to AB-4 due to the written complaints against her from the Resident and officials in the department regarding the work and conduct of the complainant. In order to avoid punitive action, the complainant's work place was changed. They submitted that the applicant chose not to appreciate the message and started making allegations against her seniors and tried to portray as if they were harming her without any

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reason. They submitted that it is wrong to state that the applicant was transferred due to prejudice of DNS Ms. Manju and Dr. Dogra. As regards the working hours are concerned, any nurse has two types of duty hour. Straight duty shift = 8 hours. Shift duty hours depend on shift. Working in various shifts are as follows:  
Morning Shift : 8.00 am to 2.00 pm – 6 hours.  
Evening Shift : 2.00 pm to 8.00 pm – 6 hours  
Night Shift : 8.00 pm to 8.00 am – 12 hours.  
Straight Shift : 8.00 am to 4.00 pm - 8 hours

Further those who are on straight duty get Sunday and all Gazetted Holidays as off and on Saturdays working hours are 8.00 am to 12.00 ( 4 hours). Overall offs and duty hours are same for all nurses. The applicant's contention that her work in the ward where she was transferred from Lithotripsy is very hectic is not true. It is submitted that while she was posted the Lithotripsy, she was all alone and working hours were the same as were in the ward, i.e. 8 am to 4 pm. It was because of her special child that she was posted in AB4 ward in straight shift not in normal shift duty. In wards, normally nurses are posted in Morning, Evening and Night Shift, but in the case of complainant, she was posted in straight duty and not in shifts to help her, take care of her special child. As regards the allegation of the complainant that DNS Ms. Manju Singh tried to spoil her APAR and that she has the proof in this regard cannot be true as now-a-days a copy of APAR is provided to the employee before it is finalized. The employee has a right to make a representation against any adverse entry in the APAR. The applicant was issued a show cause notice dated 14.11.2015. This they submitted was done as she was making false allegations against her seniors in representations. After examination of her explanation, a warning was issued to the applicant vide memo dated 11.12.2015. The complainant was absent most of time from December 2015 to March 2016. The representatives of the respondent submitted that after the change of posting, the complainant was on leave for one or other reason and did not work in her new area of posting.

9. During the hearing and perusal of the record this Court observed that the issue involved in the matter is regarding transfer of the complainant from Lithotripsy Ward to Ward Block, OPD DNS. Although the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 does not contain a provision on transfer of the parents of Children without disability yet DoP&T vide their O.M. No. DoP&T vide its OM No. No. 42011/3/2014-Estt.(Res.) dated 17.11.2014 had issued guidelines regarding posting of Govt. employees who have differently abled dependents. It has been mentioned that the autism spectrum disorder child requires constant caregiver support and it would be imperative for the Government

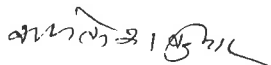
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employees to take care of their autism spectrum disorder child on continuous basis, it has been decided to include 'Autism' in the term 'disabled', as defined in Para 3 of the O.M. No. 42011/3/2014-Estt.(Res) dated 06.06.2014.

10. The DoP&T earlier vide their OM No. AB 14017/41/90-Estt. (RR) dated 15.02.1991 had advised the Ministries / Departments of Govt. of India that as the facilities for medical help and education of mentally retarded children may not be available at all stations, a choice in the place of posting is likely to be of some help to the parent in taking care of such a child. That department had advised all the Ministries / Departments to take a sympathetic view and accommodate such requests for posting to the extent possible. The intention underling the policy of the Govt. is to make reasonable accommodation and best efforts so that a child with mental retardation gets proper care, education and medical help. After the DoP&T's O.M. dated 15.02.1991, Govt. of India had enacted a number of socially beneficial legislations like, Persons with Disabilities, Act, 1995, N.T. Act for the Welfare of Persons with Autism, CoP, M.R. and Multiple Disabilities Act, 1999, RCI, Act 1992 to promote empowerment of Persons with Disabilities and support their well being. There has also been a paradigm shift in the entire approach towards the concerns of persons with disabilities and promote an inclusive and rights based society. A policy or the law would not specify each and every detail whether the accommodations being provided or reasonable or not and in the best interest of a child with disability particularly those with mental retardation and other developmental disabilities. It would have to be considered and decided by the concerned employers and the competent authorities. While doing so, they are expected to appreciate the objective and spirit behind enacting various Acts and the policy of the Government mentioned above.

11. Exceptions to the existing policies will have to be made in order to achieve the broader objectives of the social legislations as also striking a reasonable balance between the interests of an organisation and the parents/caregiver of the persons with disability concerned. The AIIMS, may, therefore, consider the matter of transfer of the complainant to any Department with reasonable accommodation in the light of the above discussion and consider relaxing the existing transfer norms to some extent considering the genuineness of this case and condition of the autistic son of the complainant. The court also advised the respondent to give a conducive environment to the complainant so that she can discharge her official duties comfortably and can also give enough time to look after her autistic child as well.

12. The case is disposed of accordingly.

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